



**Testimony of Laura MacCleery,  
Counsel for Auto Safety and Regulatory Affairs, Public Citizen,  
before the  
Maryland State Senate Finance Committee  
*Submitted March 24, 2005***

Thank you, Chairman Middleton, Vice Chairman Astle and members of the Finance Committee. My name is Laura MacCleery, and I am Counsel for Auto Safety and Regulatory Affairs at Public Citizen, a public interest organization with over 150,000 members nationwide, including more than 4,000 in the state of Maryland. Public Citizen has represented consumer interests through lobbying, litigation, regulatory oversight, research and public education since 1971.

I am pleased to be here today to voice my support for S. 959, the Motor Vehicle Buyer's Bill of Rights, and I want to thank the bill's co-sponsors, and particularly Senator Mooney, for introducing this thoughtful and important bill.

For many people, buying a vehicle is the largest or second-largest purchase decision they will ever make. Yet some public opinion surveys rank car dealers below lawyers like myself or even below politicians.

When consumers go to dealerships, many may carry this suspicion with them, yet, according to their reports and e-mails to Public Citizen, it does them little good. Although it is a widespread practice to shop around for the best sticker price on a vehicle, few consumers have mastered the art of competitively shopping for the best loan terms. They do not carry a compound interest calculator into the dealership with them and are therefore disarmed by the flurry of paperwork and long waits before being dealt with by the finance manager at the dealership.

Even worse, many leave the dealership in their new car believing in good faith that a deal has been struck, only to receive a call 10 days or even several weeks later asking them to return to sign new paperwork. Consumers report that attempts to refuse the new, and far more expensive, deal are met with intimidation, threats and other unsavory tactics. Consumers are told that their trade-in has already been sold and that they will have to walk home if they walk away.

Clearly, this is unacceptable. Honest dealers have nothing to fear from forthright competition on loan products. The bill before us today would take an enormous and valuable step forward to curb these abuses of consumers' trust in a fair shake.

Our work in this area over the past year and a half has been eye-opening. In December 2003, Public Citizen released a report entitled "Rip-Off Nation," available on our Web site at [www.autodealerscam.org](http://www.autodealerscam.org). Working with an industry whistleblower, the report drew up a blueprint for consumers who want to stay alert to the many opportunities for unfair dealing in automobile purchases.

The Minnesota Attorney General's Office has called these kind of unscrupulous tactics "industry-wide practices." Since publication of our report, Public Citizen has received a barrage of letters, survey responses and e-mails from consumers across the country confirming that consumers continue to experience the scams detailed in our report. Over 700 consumers from 44 states, including Maryland, have taken the initiative to contact Public Citizen over the past 15 months to tell us their troubling stories.

Despite the greater attention such issues are now receiving in the news, unscrupulous dealers continue to fleece consumers. The Maryland Motor Vehicle Buyer's Bill of Rights would provide two new critical protections for consumers. I will address these in turn.

First, by requiring the disclosure of dealer mark-ups on loan products, consumers would be better informed and far more likely to competitively consider their opportunities to secure better loan terms. More than 70 percent of the consumers who have thus far filled out our online survey financed their purchase through a dealership. As was shown in a hidden camera expose by NBC Dateline in December 2003, dealership F&I managers may assure consumers that they have their best interests in mind, even implying that they work for the consumer, rather than for dealership. Consumers should be made better aware that dealerships also profit from their role in arranging the loan, so that they can shop for a loan with the best rates for them.

As has now been widely reported, dealerships do profit on loans, most often because lending institutions tack on an additional few percentage points, or a flat rate fee of 1 percent, to the cost of the loan. Over the life of the loan, this additional percentage point can mean thousands of dollars for the dealership. Dealerships may therefore choose the loans that maximize their own profit, rather than providing the optimal deal for the consumer.

As detailed in "Rip-Off Nation," this compensation structure on loans also provides a compelling incentive for dealerships to "pack" or "stuff" purchase contracts with expensive additional products to raise the basic amount of principle on the purchase that is financed. In addition to profiting directly from extras such as gap insurance, etch and extended warranties, dealerships increase the dollar value of their percentage-based dealer reserve on the loan.

In response to similar issues addressed in California and New York, dealers have claimed that they offer competitive loan terms and can make loans available for a wider range of consumer purchasers, due to the depth of their risk portfolios with banking institutions. The disclosures required by S. 959 would do nothing to discourage consumers for purchasing a loan with competitive or even advantageous terms from a dealership. Even after the additional profit built into the loan terms for the dealership, a particular deal may be a good one for the consumer.

Yet where a better deal for the consumer may be obtainable from a different source, the disclosures would spur consumers to shop around based on accurate comparisons of the deals available to them. The additional transparency required by the bill will raise consumer awareness that the dealer has added a mark-up to the financing costs.

This transparency is good medicine for this marketplace as well. Record numbers of consumers are now “upside-down” on their vehicle loans, meaning that they owe more in financing costs than the vehicle is worth. Many places in the industry are now addressing the expense of these high-cost loans in the wrong way — by offering 70-month loans, meaning that consumers will not be in a positive equity situation on their vehicle for many years, and perhaps for almost the entirety of those long six years if the vehicle depreciates rapidly. Saddling consumers with expensive loans means fewer buyers are available to purchase new model vehicles and there is much less liquidity in the consumer marketplace in general.

Second, the Motor Vehicle Buyer’s Bill of Rights would help protect consumers against another costly scam called “yo-yo financing.” Yo-yo financing occurs when dealers allow customers who buy their vehicles with dealership-arranged loans to drive them off the lot on the day of purchase. This is a common practice called “spot delivery.” The catch is that even though the buyers may think they now own the vehicle, the financing is not yet final. A few days or even two weeks later, dealers contact the purchaser to say that the financial deal has fallen through and they must bring the car back in to renegotiate their agreement.

At this point, many consumers are attached to the new vehicle and are more likely to agree to highly unfavorable financing terms in order to hold onto it. Consumers must also deal with the hassle of returning to the dealer, whose behavior can verge on the utterly outrageous, to maintain the sale. Consumers report to us that they have had their credit threatened and have been bullied, mocked and ridiculed, as well as harassed by more frightening means. An 83-year old grandmother was told she had to walk home from the dealership or sign away her financial health on the new deal.

A case that went to the U.S. Supreme Court last year more than demonstrates the response of dealerships to consumers who resist signing a new loan document. According to *The Washington Post*, when Bradley Nigh, just 22 years old, was called back to a dealership three weeks after making a purchase and asked to sign new paperwork, he refused and asked for his trade-in vehicle back; “[A]ccording to the court records, which

state that when Nigh then balked at renegotiating, the dealer threatened to have him arrested for auto theft.”

Yo-yo financing essentially deprives consumers of their right to informed negotiation under the Truth in Lending Act and provides consumers with a false estimate of their true costs for the vehicle, effectively denying consumers the right to shop for a legitimate financing rate.

In essence, yo-yo tactics betray consumers trust and are designed to trap them into one-sided contracts of adhesion. They are a trap for even the savvy consumer. Yo-yo financing is a swindle, a con, which shields a dealer from having to compete honestly.

One consumer from Baltimore who wrote to Public Citizen describes how she was ripped-off in a yo-yo financing scam:

On the first meeting with the representative, I was told that the interest rate was 2.9 percent. This is the reason I decided to buy the car from this dealership. When I went the second time to sign the contract, the papers were rushed in front of me to sign. I took my time to read the details and I saw a 7.39 percent interest. I said that I was promised a 2.9 percent and the reply was that it was because my credit was not good. I signed the contract because they ha[d] already taken my trade in car and I needed a car. I know I have debts, but my credit rating is good.

The Motor Vehicle Buyer’s Bill of Rights would provide consumers with much-needed disclosures on dealer mark-ups and legal protections against yo-yo financing scams. However, these schemes are only two of the many underhanded ways in which unscrupulous dealers scam consumers. Other key items that lawmakers should address in the future to reduce abuses are to prohibit loan “packing” or “stuffing,” to set out basic requirements for certification of used cars in the state of Maryland, and to prohibit the use of binding mandatory arbitration language in contracts, which limits consumer access to the basic protections offered in the law.

Automobile dealers are entitled to a fair profit. However, they are not entitled to perpetrate intentional flim-flammery that takes advantage of their natural upper hand over consumers. This bill would not deny honest dealers their hard-earned pay, would provide consumers who purchase vehicles in Maryland important new protections from unscrupulous dealers and would set an example for the nation. I thank you for your leadership, and hope the bill earns, as it should, the enthusiastic support of Maryland legislators.