STATEMENT OF

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NATIONAL AUTOMOBILE DEALERS ASSOCIATION

before the

Senate Consumer Protection, Product Safety and Insurance Subcommittee

hearing on

S. 921, the Raechel and Jacqueline Houck Safe Rental Car Act of 2013

May 21, 2013

Madame Chairman, Ranking Member Heller and Subcommittee members, thank you for inviting me to testify. My name is Peter Welch and I am President of the National Automobile Dealers Association (NADA). NADA is a national trade association that represents the interests of over 16,000 franchised new car and truck dealer members. NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repairs and parts sales. Last year America's franchised new car and truck dealers collectively employed nearly a million individuals, and sold or leased over 14.4 million new vehicles. NADA members operate in every congressional district in the country, and 40 percent of our members sell fewer than 200 new vehicles per year. NADA appreciates the opportunity to comment on the Raechel and Jacqueline Houck Safe Rental Car Act of 2013, a bill that would regulate most rented vehicles under open recall, but not taxis or limousines for hire.

Dealers play a vital role in ensuring that defective and non-conforming vehicles are fixed and made safe to drive. For millions of customers, it is the dealer alone who remedies a recalled vehicle. When motorists receive a recall notice but fail to act on it, many dealers will independently contact their customers to alert them to the recall and schedule an appointment. When a customer brings her car in for routine service, it is the dealer who performs any recall or warranty work outstanding – and at no consumer charge. And the quality of the repair can be assured because the work performed at franchised new car dealerships will be done by a factory trained technician. During extraordinary circumstances, such as the 2010 Toyota unintended acceleration recall, many Toyota dealerships stayed open 24 hours a day to meet demand. Our recall system, which Congress created, is entirely dependent on the franchised new car dealers who faithfully fix millions of recalled vehicles every year.

Before I get to the concerns we have with the bill, I would like to make one thing perfectly clear: America's franchised new car dealers support the purpose behind S. 921. Vehicles that are not mechanically sound or are unsafe to operate should never be rented to members of the public. Not only is it irresponsible, the legal liability for doing so is so severe that it would bankrupt most of our members.

However, we do have a number of concerns that we respectfully ask the subcommittee to consider.

Not all "safety recalls" render a vehicle unsafe to operate. We agree that recalls which require immediate repairs to systems such as steering, fuel delivery, accelerator controls, or other crucial components should not be rented to the public until the defect is remedied. On the other hand, many recalls are due to defects or non-compliance with technical federal motor vehicle standards which, depending on the circumstances, may not render a vehicle unsafe to operate until a recall fix has been completed. For example, a July 2012 recall was issued for certain vehicles equipped with a front sunroof glass panel that was susceptible to breakage in extremely cold weather. While this recall could be of concern to a motorist in Minnesota in January, it is unlikely to cause anyone in a warm climate harm. Another recent recall was due to the owner's manual containing an inaccurate description of the operation of the front passenger occupant

classification system. Since owner's manuals are no longer routinely found in the glove box, it is unlikely this recall if left unremedied for a short while would cause injury. Yet another recall involved a passenger car being recalled because the air bag label installed on the driver's side sun visor could separate from the surface of the visor. In this example, if the dealer did not have a replacement sun visor in stock, the mere possibility of the air bag label peeling off would have been enough to ground the vehicle under this bill.

These examples demonstrate that S. 921 does not distinguish between serious recalls and minor recalls, and would require a vehicle to be grounded until the recall is addressed, no matter how minor.

S. 921 is also overly broad in that it regulates auto dealerships that operate small rental or loaner fleets in the same manner as multi-national rental car giants. The Hertz, Avis/Budget, and Enterprises of the world have hundreds of thousands of vehicles in their rental fleets because their primary business purpose is to rent vehicles. In comparison, the primary business of a franchised new car dealer is to sell, lease, and service vehicles. Renting cars or providing loaner vehicles to service customers is incidental to a dealer's primary business, and no dealer has tens of thousands of vehicles for rent.

Unlike large rental car companies that maintain a wide array of vehicle makes and models in their fleets, many dealers only maintain a single vehicle model in their loaner pools. S. 921 could cause an economic hardship for small dealers if a part necessary to fix a dealer's only loaner vehicle model is unavailable. Large rental car companies have the model mix and wherewithal to avoid this problem; many dealers do not.

Every day across America, dealers start fixing recalled vehicles as soon as they receive the necessary parts and instructions from their manufacturers. Indeed, it is standard practice for a new car dealer to check every vehicle it is franchised to service for any outstanding warranty or recall work whenever that car enters its service department. But sometimes recall work cannot be performed through no fault of the dealer. These cases involve situations where recall parts are unavailable or, in some cases, have not yet been designed or manufactured by the automaker.

Section 3 of the bill purports to address this problem by allowing rental car companies (which under the sweeping definition in the bill of "rental company" would include many auto dealers) to perform a "temporary fix", but only if the vehicle's manufacturer includes in its recall notice a provision that "specifies actions to temporarily alter the vehicle that ***eliminate*** the safety risk posed by the defect or noncompliance*" (emphasis added)*.

As a practical matter we do not believe that an auto manufacturer would ever include such a provision in one of its recall notices. An interim measure may "reduce" a safety risk or in rarer instances make it safe to operate for an interim period, but "eliminating" a safety risk is a very high bar. We are interested to learn whether the National Highway Traffic Safety Administration (NHTSA) would permit automakers to allow a dealer to take an interim measure to alter a vehicle in a manner that "eliminates" a noticed safety risk. In those recalls where no interim eliminating measure is specified by the manufacturer, the vehicle would have to be put out of service. Moreover, there is no provision in the bill to make a dealer whole for this loss of use.

S. 921 would also create friction between large rental companies, auto manufacturers, franchised new car dealers and members of the public who own recalled vehicles. The friction point would revolve around the priority of access to recall parts. The bill would create a tug-of-war between large rental companies who have the economic power to demand they receive recall parts first, and franchised new car dealers who will try to keep recall parts in stock so that they can fix vehicles for members of the public who have received recall notices sent by automakers.

Finally, we are also concerned that the bill would subject auto dealers to new inspections [49 U.S.C. §30166(c)(2)], additional reporting requirements [49 U.S.C. §30166(e)], and significant monetary penalties (up to $15 million) for violations [49 U.S.C. §30165(a)(1)]. In addition, Section 9 of the bill gives NHTSA open-ended authority to add more regulatory burdens "as appropriate."

In conclusion, I urge the subcommittee to mindful of the unique needs of small business during your consideration of this bill. The large rental car companies that support this legislation

comprise 93 percent of the market. While this bill is unlikely to put any dealer out of business, it has the power to make it uneconomical or impractical for dealers to provide loaner or rental cars to a number of their customers.

In tax law, health care law, and many other areas, Congress has understood the differences between big business and small business and has legislated accordingly. We urge this subcommittee to closely examine whether a multinational corporation with nearly a million vehicle rental fleet should be regulated the same as an auto dealer on Main Street with a fleet of 5 loaner vehicles. We are ready to work with the Chairman and Ranking Member to ensure that small dealers are not disproportionately impacted by this well-intentioned legislation.

Thank you for your consideration.