

Testimony of Kathryn Wayland  
In Opposition to  
HB 5310- AAC the Licensing of New and Used Car Dealers  
Transportation Public Hearing  
Legislative Office Building,  
Hartford, Connecticut  
March 5, 2018

Good Morning, Senator Leone, Senator Boucher, Representative Guerrera, Representative Carney, and members of the Transportation Committee. My name is Kathryn Wayland, I am the chairwomen of the Lyme Board of Finance and the owner of Reynolds Subaru in Lyme, Connecticut. I am here today to speak in opposition to HB 5310 - AAC the Licensing of New and Used Car Dealers

The Reynolds family has been in business on Hamburg Cove since 1859 selling wagons and boats and now 6 generations later selling automobiles. And we have seen a thing or two! I tell you this because this bill that you are considering and that the legislature has wisely rejected now for 3 years is, in my opinion, the greatest threat to locally owned auto retailers and consumers in our history.

I have many areas of concern regarding allowing Tesla and others under the direct sale provisions of RB 5310 to go around existing franchise laws. These concerns include: Tesla stores outsourcing their workforce to places not in Connecticut, the loss of consumer protections and dealer advocacy for warranty work, recall repairs and lemon law claims in a direct sale, and lastly false claims that Connecticut is losing tax dollars by not having direct sell stores in the state.

This misconception that sales tax is not paid on Tesla's bought out of state is absurd. Tesla continues to argue that when a Connecticut resident buys a car out of state in say New York that they are not paying Connecticut sales tax, this is a straw man argument. Connecticut's sales and use tax is paid on vehicles when the vehicle is registered. If a Connecticut resident buys a Tesla, or any vehicle in Westchester, New York, they will pay the sales tax on the vehicle when they register the car with Connecticut DMV. New York dealers do not charge Connecticut customers the New York sales tax...just like I don't, and am not required under Connecticut law, to charge a New York resident the Connecticut sales tax, rather the customer is given a DRS Certificate 125 and pays the sales tax in their home state of New York when they register the car. It would be ludicrous for a NY dealer to charge the sale tax as the NY state and county tax is higher than Connecticut and it would only hinder making the sale in their store.

Tesla's public comments are much different than their comments made for a court case. On January 16, 2018, Tesla filed a brief in the pending DMV litigation in Connecticut Superior Court regarding the illegal Tesla store in Greenwich. Tesla testified: "It makes no difference to the place-of-sale analysis that Connecticut residents may pay Connecticut sales tax on their

new Tesla cars. ...The place of taxation does not determine the place of sale for purposes of § 14-52".and I quote from Teslas filing **"Vehicle purchasers always pay sales tax where they first register their cars, regardless of the place of sale."** (See Attached)

Why is Tesla saying one thing under oath and another thing in public?

So why is there a need for special exclusive legislative protections for this company?

There is not good reason. And it will do harm to a sector of Connecticut's economy that employs 14,000 people and accounts for 17% of all retail sales in this state and whose 270 dealers pay over 18 million dollars in local property taxes. (See Attached) If it ant broke don't fix it.

I have attached a graph to my testimony, please look at it and before you vote on this bill think carefully about the damage it will do. Sales have been dropping in our state for 3 years for all vehicles, 2018 promises to be a very tough year for auto sales. My family has been in business for six generations, my brother was here last year and asked that you listen to us. HB 5310 will hurt locally owned dealerships, local jobs and local taxes. Don't' make it more difficult for dealers under the existing system to sell vehicles by giving special treatment to a company like Tesla that employees 8 people in a dealership - or to big foreign manufacturers like Geely and Tata or the Chinese conglomerate Tencent that already owns 5% of Tesla - that will also qualify for a direct sale store able to put existing dealers out of business and your constituents out of a job.

I urge you to vote against this harmful bill. There is truly no need for it, and it will only hurt consumers and communities, slow job growth in our state, unfairly disadvantage businesses, and not create the tax benefits Tesla incorrectly mentions.

Though our business has changed over the past 6 generations, one constant has been our commitment to the local region through good customer service, local jobs, supporting local charities and organizations, and a deep-rooted commitment to the state of Connecticut.

Thank you for your time.

NO. HHB-CV-17-6038099-S	:	SUPERIOR COURT
	:	
TESLA, INC.	:	JUDICIAL DISTRICT OF NEW BRITAIN
	:	AT NEW BRITAIN
VS.	:	
	:	TAX AND ADMINISTRATIVE
APPEALS CONNECTICUT DEPARTMENT OF	:	SESSION
MOTOR VEHICLES; MICHAEL BZDYRA,		
: COMMISSIONER OF MOTOR VEHICLES;		
:		
	:	
and	:	
	:	
CONNECTICUT AUTOMOTIVE	:	
RETAILERS ASSOCIATION, INC.	:	JANUARY 16, 2018

**BRIEF OF PETITIONER TESLA, INC.**

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bear the attendant risk of loss until such delivery, *a sales contract that merely provides that the goods will be shipped to a certain location will be deemed to be a shipment contract.*” *Id.* (emphasis added). The Court held that the sales occurred in Massachusetts because Cardwell delivered the tickets to his Connecticut buyers by placing them in the mail in Massachusetts: “Because delivery of the goods to the carrier constitutes delivery to the buyer under a shipment contract[,] ... the ‘sale’ of the tickets, as defined by the code, occurs in Massachusetts.” *Id.* at 732.

*Cardwell* is dispositive here. Indeed, the facts in this case are even stronger than in *Cardwell*. There, the contract did not specify when title passed, but the Court deemed it a shipment contract simply by applying the normal presumption. Here, the MVPA expressly provides that title passes to the buyer when Tesla loads the car onto a common carrier, indicating that the parties *expressly intend* for the buyer to assume ownership of the vehicle at the time and place of shipment. Under *Cardwell*,<sup>10</sup> those sales necessarily occur in California, *not* in Connecticut.<sup>11</sup>

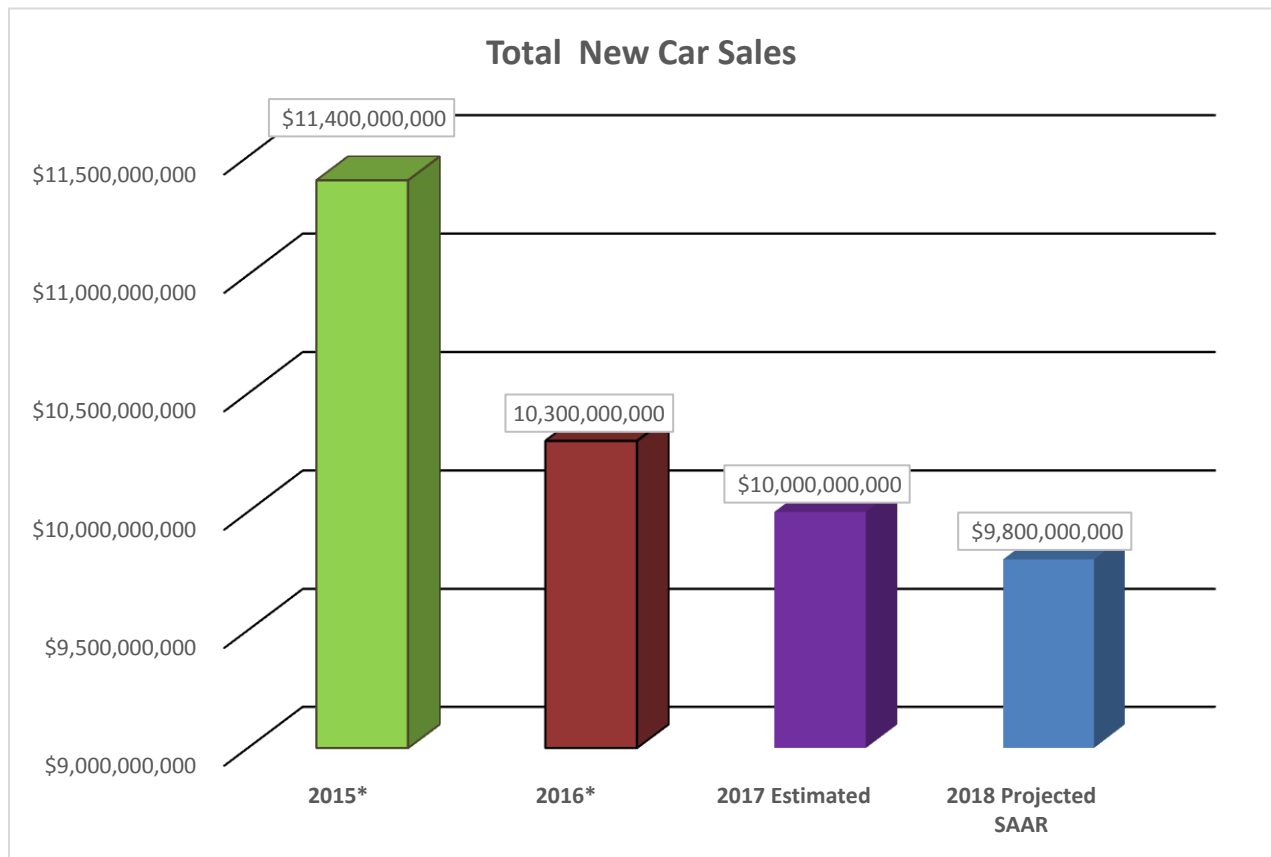
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<sup>10</sup> Although the MVPA contains a choice-of-law provision that designates New York or Massachusetts as the jurisdiction whose law governs, CARA Ex. 22, at 7 (AR544), the operative legal rules in both places are the same as those in *Cardwell*. Both states adopt the U.C.C. provisions codified in C.G.S. §§ 42a-2-106(1) and 42a-2-401(2), which state that sale occurs upon passage of title, and both employ the U.C.C. presumption favoring shipment contracts. N.Y. U.C.C. Law §§ 2-106, 2-401; Mass. Gen. Laws Ann. ch. 106, §§ 2-106, 2-401; *Stampede Presentation Prods., Inc. v. Productive Transp., Inc.*, No. 12-CV-491A, 2013 WL 2245064, at \*4 (W.D.N.Y. May 21, 2013); *Droukas v. Divers Training Acad., Inc.*, 375 Mass. 149, 157-58, 376 N.E.2d 548, 553 (1978). Thus, whichever state’s law applies, the result is the same: title passes where Tesla delivers its cars for transport to a customer, and thus no sales of Tesla cars occur in Connecticut.

<sup>11</sup> It makes no difference to the place-of-sale analysis that Connecticut residents may pay Connecticut sales tax on their new Tesla cars. No one contests Connecticut’s authority to tax goods sold to Connecticut consumers from outside the state. The place of taxation does not determine the place of sale for purposes of § 14-52. **Vehicle purchasers always pay sales tax where they first register their cars, regardless of the place of sale.** Applying this principle to Tesla purchases, a Connecticut resident whose internet purchase occurs in California (because title transfers there) will pay Connecticut sales tax, not California sales tax. But that does not change the fact that the sale occurred in California when the buyer took title to it. Under Tesla’s sales model and the undisputed evidence in this case, Tesla does not in any scenario “sell” its cars in Connecticut.

Tax Town	Tax Totals
Ansonia	\$25,067.00
Barkhamsted	\$21,000.00
Berlin	\$96,247.00
Bolton	\$24,100.00
Branford	\$475,275.00
Bridgeport	\$262,372.00
Bristol	\$500,560.00
Brookfield	\$40,141.00
Brooklyn	\$68,391.00
Canton	\$108,532.00
Cheshire	\$73,000.00
Colchester	\$76,566.00
Danbury	\$485,038.00
Darien	\$119,391.00
East Hartford	\$675,703.00
East Windsor	\$447,068.00
Ellington	\$77,800.00
Enfield	\$158,673.00
Fairfield	\$839,473.00
Glastonbury	\$57,775.00
Greenwich	\$1,063,823.00
Groton	\$169,955.00
Guilford	\$3,952.00
Hamden	\$173,500.00
Hartford	\$2,960,609.00
Lyme	\$46,870.00
Madison	\$29,300.00
Manchester	\$617,416.00
Meriden	\$117,286.00
Middlebury	\$59,156.00
Middletown	\$12,400.00
Milford	\$741,128.00
Mystic	\$150,000.00
New Britain	\$502,617.00

Tax Town	Tax Totals
New Canaan	\$73,993.00
New Haven	\$177,419.00
New London	\$714,626.00
New Milford	\$16,326.00
Niantic	\$35,529.00
North Franklin	\$25,629.00
North Haven	\$370,442.00
Norwalk	\$306,120.00
Norwich	\$176,094.00
Old Saybrook	\$185,651.00
Plainville	\$206,415.00
Putnam	\$157,039.00
Ridgefield	\$374,806.00
Shelton	\$123,168.00
Simsbury	\$212,988.00
Southbury	\$28,257.00
Southington	\$2,186.00
Stamford	\$463,553.00
Stratford	\$85,875.00
Thomaston	\$37,914.00
Torrington	\$332,446.00
Vernon	\$486,819.00
Wallingford	\$134,500.00
Waterbury	\$185,000.00
Watertown	\$567,604.00
West Haven	\$74,341.00
West Simsbury	\$470,165.00
Westbrook	\$145,485.00
Westport	\$313,815.00
Wilton	\$47,081.00
Windham	\$57,000.00
Windsor	\$52,109.00
Woodbridge	\$127,652.00
<b>Total Property Taxes \$18,048,231.00</b>	



\* Sources: Alliance of Automobile Manufacturers, Center for Automotive Research, HIS Markit, NADA Industry Analysis Bureau of Labor Statistics