

MINUTES OF THE House COMMITTEE ON TransportationThe meeting was called to order by Representative Rex Crowell at
Chairperson1:30 ~~xxx~~ p.m. on March 30, 1987 in room 519-S of the Capitol.

All members were present except: Representative Gross

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Jim Sullins, Kansas Motor Car Dealers Association
Mr. Marc Gorges, Wichita Automobile Dealers Association
Mr. Mark Ayesch, Wichita, Kansas
Mr. R. D. McKay, McKay Fleet Leasing
Mr. Lloyd McBride, Wichita, Kansas
Mr. Larry Leatherman
Ms. Sherry Hagemeister, Auto Network, Wichita, Kansas
Mr. Denny Armstrong, World Wide Auto Brokers, Olathe, Kansas
Mr. Ed Keele, Keele Associated, Ltd.
Mr. Ray Petty, Kansas Department of Human Resources.

The meeting was called to order by Chairman Crowell and the first order of business was a hearing on SB-115 prohibiting persons from acting as new or used vehicle brokers, except for manufactured home brokers.

Mr. Jim Sullins, Kansas Motor Car Dealers Association, testified in support of SB-115. (See Attachment 1)

He said the Kansas Motor Car Dealers Association strongly believes that brokering in Kansas should be eliminated now, rather than waiting until some point in the future where either dealers or consumers, or both, have been injured beyond repair. He added there is nothing that a broker does that he could not do as a new car dealer, used car dealer, or licensed salesman. Mr. Sullins also stated that is why 117 of the 125 licensed brokers hold some other type of license.

Mr. Marc Gorges, Wichita Automobile Dealers Association, testified in support of SB-115. (See Attachment 2) He said the automobile dealers of Kansas and ultimately the consumers, have a lot at stake in this issue. An auto dealership requires a substantial investment in real estate as well as inventory. He added they provide over 7,000 jobs in Kansas and pay considerable taxes on property, inventory and sales. Mr. Gorges requested that the Committee support SB-115.

Mr. Mark Ayesch, Attorney, Wichita, Kansas, gave favorable testimony concerning SB-115.

Mr. R. D. McKay, McKay Fleet & Leasing, testified in opposition to SB-115. (See Attachment 3) Mr. McKay explained that brokers form the agency between buyer and seller, and all vehicle orders and sales are placed through new franchised dealers and used car dealers licensed by the State of Kansas Motor Vehicle Department.

Mr. McKay said the lack of consumer protection allegation is also totally false as the licensed dealers complete all paperwork on each vehicle, and they also notify the manufacturer as to the name, address, make and model, and identification number of each vehicle purchased.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation

room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on March 30, 1987.

Mr. Lloyd McBride, Wichita, Kansas, testified in opposition to SB-115. He praised automobile brokers and said they have been a great help to him in obtaining fleet trucks for his electrical business.

Mr. Larry Leatherman, spoke in opposition to SB-115, and said he is a small independent businessman and using brokers to locate vehicles saves him time.

Ms. Sherry Hagemeister, Auto Network, Wichita, Kansas, testified in opposition to SB-115. (See Attachment 4) She said Auto Network is a service available to assist customers with the purchase or lease of a new automobile.

Ms. Hagemeister said it was their intent to request that Governor Hayden appoint a broker to the dealer review board to review and inform brokers of state licensing statutes so that all brokers comply with licensing regulations.

Mr. Denny Armstrong, World Wide Auto Brokers, Olathe, Kansas, testified in opposition to SB-115. (See Attachment 5) He said if SB-115 is enacted, consumers would no longer be able to buy new and used motor vehicles through independent brokers.

Mr. Ed Keele, Keele Associated, Ltd., Overland Park, Kansas, spoke in opposition to SB-115. (See Attachment 6) He stated that passage of SB-115 would put him out of business as a new and used vehicle broker, and requested that the Committee defeat this bill.

The hearing on SB-115 was concluded.

The next order of business was committee discussion and action on SB-102 concerning handicapped parking.

Mr. Ray Petty, Kansas Department of Human Resources, spoke concerning handicapped parking placards and license plates. He said it is important that both placards as well as license plates be issued so that when a handicapped person travels and is not using his own car, the placard may be used in order to park in "handicapped" parking spaces.

A motion was made by Representative Spaniol to amend SB-102 by increasing the fine in Line 107 from \$25 to \$100. The motion was seconded by Representative Wilbert.

A substitute motion was made by Representative Sutter that the amount of the fine in Line 107 be increased from \$25 to \$50. The substitute motion was seconded by Representative Snowbarger. Substitute motion carried.

A motion was made by Representative Justice that SB-102 be recommended as amended favorable for passage. The motion was seconded by Representative Adam.

A substitute motion was made by Representative Shore that the word "both" be stricken in Line 84 and that the current statutory language be reinserted in Lines 85 and 86. The substitute motion was seconded by Representative Spaniol. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xx~~ p.m. on March 30, 19 87

A motion was made by Representative Spaniol that SB-102 be recommended favorable for passage as amended. The motion was seconded by Representative Wilbert. Motion passed.

The next bill taken up for Committee discussion and action was SB-170 concerning the liquefied petroleum motor fuel tax, exempting municipally owned vehicles using LP gas from having to pay tax on fuel. Committee discussion ensued.

The next bill taken up for Committee discussion and action was SB-115 prohibiting persons from acting as new or used vehicle brokers.

A motion was made by Representative Dillon that SB-115 be tabled. The motion was seconded by Representative Wilbert. Motion passed.

The meeting was adjourned at 3:25 p.m.


Rex Crowell, Chairman

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Pat Wiechman	Topeka	Ks. Automotive Dismantlers & Recyclers Assn.
Steven R. Wiechman	Topeka	"
Joel Wright	Topeka	Ks Credit Union League
Ken Kuyper	Topeka	KMHI
Mervey Hagemeister	Wichita	Auto Network
Coccy Hagemeister	Wichita	Auto Network
Donny Christman	Olatche Kansas	Armstrong's Car Brokers
Mack Wedel	Minneapolis, Ks.	Towin's Country C-O-B Inc.
PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.
Jim Sullins	TOPEKA	Ks. Motor Car Dealers Assn.
DEAN TRIMMELL	CROWN/CROWN	Ks. Motor Car Dealers
CARL TSCHETKE	BURLINGTON	Ks. Mo. CAR DEALERS
CHARLES BELT	WICHITA	WICHITA AUTO DEALERS ASSOC.
MARC F. GORGES	Wichita Ks.	Wichita DEALERS ASSOCIATION
Joe SELF	Wichita, Ks	Wichita automobile Dealers ASSOCIATION
Mark Ayest	" "	"
Walt Lesline	" "	Chairman Dealer Review Board/Auto Dealer Wichita
R. DeLoRay	" "	Brokers
Larry Leathman	" "	Ltk Development Corp.
L.A. McBride	" ✓	ME BRIDE ELECTRIC
Bruce Molvin	Topeka	
Virginia Wilbert	Pottsburg Ks.	
Julie Edwards	Fredonia	visitor (relative)
Judy Krueger	Kansas City	SBA
EDWARD O. KEELE	OVERLAND PK, KS	NEW CAR BROKER

Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION

by the
KANSAS MOTOR CAR DEALERS ASSOCIATION

Monday, March 30, 1987

RE: Senate Bill 115

Mr. Chairman and Members of the Committee. I am Jim Sullins, Executive Vice President of the Kansas Motor Car Dealers Association, the 355 member trade association representing the franchised new car and new truck dealers of Kansas.

We appreciate the opportunity to come before you this afternoon in support of Senate Bill 115, as amended by the Senate Committee. For your information, the bill was unanimously approved, as amended, by the Senate Committee, and was passed by the full Senate 39-1.

The bill you have before you would delete a class of license from the current Dealer-Manufacturer-Salesman Licensing Act, K.S.A. 8-2401 et seq., and would also establish a new class of license. In general, brokering of vehicles would be prohibited by this deletion with the exception of the brokering of mobile homes, which would be specified in the statutes. The mobile home broker provisions were the provisions amended back into the original SB 115 by the Senate Committee.

Before adequate discussion concerning this issue can take place, we feel that first an explanation of what a broker is and does should be provided so that everyone fully understands what we are discussing.

Attach. 1

As defined in K.S.A. 8-2401 (ff), a broker is any "person who, for commission, money or other thing of value, is engaged in the business of: (1) selling or buying vehicles or mobile homes for other persons as an agent, middleman or negotiator; or, (2) bringing buyers and sellers of vehicles or mobile homes together, but such term shall not include any person engaged in a business in which the acts described in this subsection are only incidentally performed."

In simpler language, a broker of a vehicle represents either the buyer or seller of a vehicle, and acts as the negotiator in the transaction. Generally, a broker acts as a representative of the seller. The seller has a vehicle which he or she needs to dispose of for whatever reason. The broker attempts to secure a buyer for the vehicle at the price which the seller desires to receive. Generally, a specific "bottom" price is agreed to between the seller and broker. The broker is then paid a commission on the sale of the vehicle by the seller. Additionally, brokers may also receive a "listing" fee from the seller up front for attempting to secure a purchaser of the vehicle.

Brokers also represent purchasers in some instances when an individual is looking for a specific vehicle. Again, the broker is paid a commission for services, but this time it is from the purchasers rather than the seller.

This type of transaction only takes place at the retail level. This is an important distinction as at the wholesale level there are two separately licensed types of dealers who conduct business only with licensed new or used car dealers. Those two types of dealers are (1) wholesalers, and (2) auction companies. Neither of these types

of licenses are affected by this bill. Both work at the wholesale level of the automobile business and both may legally only conduct business with and between licensed new and used vehicle dealers.

Brokers have a rather questionable past in Kansas. Several years ago, brokering of new and used vehicles began in Kansas when the statutes were mute on the subject. In an effort to regulate and control this new area, statutes were enacted to bring brokers under the dealer licensing law. Attempts were also made to assure that brokers operated as much like a regular used car dealer as possible. While these attempts were made, brokers continued to operate out of their homes with simply a telephone, rather than from an established place of business which was required of new and used vehicle dealers. Again, changes were made to assure that brokers had to meet the same established place of business requirements, sign requirements, etc., as other types of dealers.

Initially, KMCDA worked to assure that the so-called "level playing field" approach was maintained. If someone wanted to be in the automobile business, KMCDA felt that they should be under the same rules as all other dealers. While these attempts were made, in reality the level playing field has never been reached, and in some areas never will be reached which is bad for the counties where the brokers operate and the state as a whole.

For example, brokers do not have to collect the state and local sales taxes. Since the broker never owns the vehicle and never shows on the vehicle title, he is not technically making the sale even though it is a retail transaction. Since he is not technically making the sale, he is under no obligation to collect and remit sales taxes to the state. This

gives him a lower operating cost since he does not have the bookkeeping requirements, and it provides a loophole by which the state, counties and cities could be losing sales tax revenue. This loss comes from the under-reporting of the actual sale price by the purchaser to the county treasurer. Since there is no "paper trail" generated by the broker, the county treasurer simply has to take the word of the purchaser as to the amount paid for the vehicle. This is not an uncommon problem faced by the treasurers and the Department of Revenue on the occasional and isolated sale between individuals, and the addition of broker transactions only goes to make it a larger problem.

Also, since the broker never owns the vehicles they sell, an inventory tax stamp is not required to be affixed to the title. Even though the broker is a regulated class of dealer operating in a retail manner, the county in which he is located does not receive any inventory tax money from the transactions which the brokers conduct.

As we hope you can see, brokers seem to operate on the fringe of the motor vehicle industry in Kansas, and KMCDA feels that the time has come to delete this fringe element from the industry as other states have already done.

Turning your attention now to the bill itself, the first 239 lines are basically the amendment made by the Senate Committee to allow the continuation of mobile home brokering. It was necessary to add the definition section of the current law to the bill so that the necessary changes desired by the Senate could be made. What you see in bold lettering is the current law.

The first change is found on lines 240 through 246 which is simply the addition of a definition of a "mobile home broker." The change found on line 304 also deletes the license and fee for a broker, and then institutes the same \$50 license fee for a mobile home broker.

The change in the statute which would effectively eliminate brokering in Kansas can be found on line 416 where new subsection (r) has been added which states that "From and after the effective date of this act, no person shall act as a broker in the sale of a new or used vehicle." The effective date of the act is January 1, 1988, to coincide with the licensing year. Any other changes found in the bill are merely technical in nature dealing with the Senate's amendment.

The first question you are probably going to ask yourself is how many people would be put out of business by this bill. According to figures provided by the Dealer Licensing Bureau of the Kansas Department of Revenue, as of March 16, 1987, there are currently 125 licensed brokers in Kansas. For comparison, there are over 3000 licensed vehicle dealers statewide, so the brokers make up about one-half of one percent of all the dealers in Kansas.

At this point, I would strongly caution you that while you would be eliminating this one class of dealers, not to be misled into thinking that you would be completely eliminating all 125 operations. In contrast to what you either have been told or might be told by the opponents of this bill, you will not be closing 125 business entities that create jobs, revenue, and tax dollars. In reality, you will, at the very most, affect only a handful of businesses.

The records of the Dealer Licensing Bureau, as I mentioned, show that there are currently 125 licensed brokers in Kansas. Of those brokers, 11 are mobile home dealers or parks and 3 are real estate companies which deal in mobile homes. These 14 businesses would still be able to acquire license under SB 115.

Taking away those 14, we now have 111 brokers. Of those, 21 are new vehicle dealers who have either a car, truck, motorcycle, trailer, or recreational vehicle franchise. None of those 21 businesses are going to close simply due to the fact that they can't have a broker's license.

Now our total is down to 90 brokers. Of those 90, 74 are used car dealerships which also hold a broker's license. I would also point out that in all of the above mentioned cases, the broker's license is issued to the same address as the licensed new or used car or mobile home operation.

We have now reduced the 125 affected businesses to 16 statewide. However, the number gets smaller.

Seven of the remaining 16 brokers are automobile leasing companies and one is a credit union.

Take away those 8, and we are left with eight businesses which might, and I stress might, cease to exist with the passage of this bill. The number may still be less.

I personally crosschecked all 125 brokers to see if they had a different type of license. In all but 8 cases I was able to find another type of license at the same address as I mentioned a few moments ago.

It is quite possible that a few, if not all, of the remaining eight brokers operate out of another type of business which is not licensed by the Division of Vehicles such as a body shop, independent repair facility, car rental/lease agency, etc. Without further investigation, which time kept me from doing, it is impossible to tell if these eight businesses are stand-alone operations, or just part of a larger operation which is the case with the other 117 licensed brokers in Kansas.

As you can see, virtually no one would be "put out of business" by this bill. In most cases, if not all, a brokering operation is simply one part of another business, which in all likelihood is holding a broker's license for a convenience situation anyway.

Now since some franchised dealers hold a broker's license, you might be wondering why KMCDA would seek to delete this type of license. Our reasons are two-fold.

First, we feel that it is a consumer protection matter in the area of vehicles which might not normally reach the Kansas market without the broker. As we all know, there is a \$3 billion per year fraud which occurs nationally called odometer tampering. Mileage is taken off relatively late model vehicles, and then those vehicles are sold for an average of \$750-1000 per vehicle more than what they should be worth. We feel that brokering is a means by which this fraud can be transacted and unsuspecting consumers can be enticed into purchasing a vehicle which is not what it is represented to be. In a brokering situation, the consumer purchased a vehicle from another individual whom they do not know, and who may not even exist. It would

be very simple for the criminal element involved in this fraudulent activity to get a title in a fictitious name, and pass it on to an unsuspecting consumer. Additionally, this same type of fraud could occur with other types of damaged vehicles such as flood cars, wrecked cars, etc. If nothing else, doing away with brokers could stop some of this type of consumer fraud. As a side note, since the brokers do not show on the chain of title, it could be very difficult to tie a broker into this type of operation.

Secondly, the new car and new truck dealers of Kansas can see a growth in brokering on the horizon which could be very damaging to the franchise system, and in turn, the economy of Kansas.

The members of the Kansas Motor Car Dealers Association have made very large investments in their businesses to acquire the franchises from their manufacturers. If brokering continues to be allowed in Kansas, there is nothing in the current statutes to prevent brokers from handling new vehicles and seriously damaging the markets of the franchised dealers who have made substantial investments.

There were some 155,489 new vehicles sold by new vehicle dealers in Kansas during 1986 (new cars, trucks, motorcycles, mobile homes and trailers). Even with these substantial sales, the number of franchised dealers in Kansas continues to drop as smaller operations are not able to continue in today's economic climate.

If brokers are allowed to take away some of the limited business which currently exists, these franchised dealers with all of their investments, could be damaged to the point of having to close their businesses.

Additionally, if brokers are allowed to grow and enter the new vehicle market, in turn putting some franchised dealers out of business, the very people who purchase vehicles from brokers are going to be the ones who get hurt. The consumers who purchase vehicles through brokers may not have a franchised dealer nearby to service that vehicle either under warranty or when there is a problem with the vehicle. Furthermore, if the vehicle is out of the manufacturer's warranty, the local franchised dealer is going to be less likely to offer special assistance to a consumer who purchased their vehicle from someone else, especially if it was through a broker who is selling new cars without a franchise directly in competition with the franchised dealer.

As it stands today, brokering is not a big industry in Kansas. During 1986, only 2,512 vehicles were "brokered" out of a total of some 302,642 vehicles sold by new and used vehicle dealers. That is 8/10's of one percent of all vehicles sold by dealers in Kansas during 1986. How many of those were new vehicles we don't know, but we do know there were some new vehicles brokered in Kansas.

With respect to the new vehicles, you might be wondering where the brokers get their new vehicles. Admittedly, they do work with a new car dealer who supplies them with the necessary vehicles. While some Kansas new car dealers may be working with brokers, not all of the cars would have to come from Kansas dealers. In the border areas, especially in the Johnson/Wyandotte county areas, it is very possible that a broker would be getting his vehicles from dealers in other states. Even Kansas dealers have been solicited from national companies to provide vehicles through brokering operations in other states. The most recent being AMWAY, which is setting up a network through a leasing company to broker new vehicles to their AMWAY representatives and customers.

They have solicited dealers in Kansas to "sell" cars to their people for \$150 over dealer cost, and then for the privilege of selling the car, the dealer remits the \$150 to AMWAY. I don't know of any dealers in Kansas who are doing this, but if they don't, dealers in other states might, and all a broker needs is one dealer anywhere in the country to supply his new vehicles.

Mr. Chairman and Members of the Committee. I know that at least a few of you have been contacted by brokers who have been telling you that this bill is not good for business and consumers, that jobs are going to be lost, and tax dollars are going to be lost. I have received some of those same calls and letters, and frankly, there is a lot of misinformation being circulated.

As we have already pointed out, there are not going to be over 100 businesses put "out-of-business" by this bill. It is questionable as to if any will be put out-of-business.

One broker who called my office told me that he paid thousands of dollars in property taxes to his county, and that not only was the bill not fair, but it would have negative economic impact on his county. Well, after thinking over that statement and the purported thousands of dollars in tax, I concluded that absolutely nothing in the statement had anything to do with this individual being unable to broker cars in Kansas. His broker's license is issued to an independent service facility which is about two years old. It is a new building with bays for 8-10 cars, employs several mechanics, has new equipment, and does a pretty good business. In addition to the service business and broker's license, they also hold a used car dealer's license. In my estimation, the loss

of the broker's license to that individual will have absolutely no effect. The individual will still be able to sell as many cars as he wants or can with his used car dealer's license, and the lack of a broker's license will have no effect on the service business. Additionally, in my opinion the county will not be losing any tax dollars because the broker portion of the business doesn't generate any tax dollars. As for the property tax and the thousands of dollars he paid last year, that wasn't generated by the broker operation, it was generated by the fact that he has a 2-year old building, with lots of new equipment, setting in a pretty good business location which means that the real estate is fairly expensive. With or without the broker's license, this individual will still be paying taxes on that real and personal property.

He was also upset that he would not be able to broker new cars if this bill passed. While that is true, there would be nothing to prevent him from becoming a licensed salesman for the dealership from where he is getting his cars. He could be the classic "outside" salesman.

Mr. Chairman and Members of the Committee, brokers have said in their letters that "Viable existing business must be given top priority." If that is the conclusion of this Committee, then you will pass, not kill, SB 115.

The franchised new car and new truck dealers of Kansas employ some 7,000 people statewide. The franchised dealers generate over \$2 billion in retail sales annually, second only to the grocery stores in total retail sales in Kansas. Total payroll for Kansas dealerships is over \$136 million annually, nearly 10% of the state's total retail trade payroll.

Total sales tax collected by franchised dealers exceed \$40 million annually. For every new vehicle sold by franchised dealers in Kansas, approximately \$660 in federal, state, and local taxes are generated.

If the broker's argument that "viable existing business" must be protected is valid, then they are making a perfect argument for the passage of SB 115.

Mr. Chairman and Members of the Committee, the Kansas Motor Car Dealers Association strongly believes that brokering in Kansas should be eliminated now, rather than waiting until some point in the future where either dealers or consumers, or both, have been injured beyond repair.

There is nothing that a broker does that he could not do as a new car dealer, used car dealer, or licensed salesman. That's why 117 of the 125 licensed brokers hold some other type of license. If the other 8 are not connected in some way to another business, then it would be very simple for them to get a used car license in place of the broker's license. And, the cost is the same -- \$50.00.

The Kansas Motor Car Dealers Association and our 355 members respectfully request that you give this matter your strongest consideration, and that when you take action, you recommend SB 115 favorable for passage by the full House of Representatives.

Thank you for your time and consideration, and I would be happy to answer any questions.

* * * * *



Wichita Automobile Dealers Association

Testimony Presented

To

House Committee on Transportation

By

Marc Gorges

Monday, March 30, 1987

SB 115

Mr Chairman and Members of the Committee, I am Marc Gorges, owner of Gorges Bros. Volvo, in Wichita, Kansas. I appear before you today in support of SB 115, representing not only my dealership, but also the other 18 members of the Wichita Automobile Dealers Association. Let me say at the outset Mr Chairman, that we appreciate your willingness to schedule hearings on this issue--one which we consider of great importance to the car purchasing citizens of Kansas, and to our industry.

Jim Sullins, of KMCDA, has provided you a history of the evolution of auto brokers in Kansas. A fringe element of our industry that many states have seen fit--in the interest of their consumers--to eliminate. So, instead of reploting that ground let me address a few concerns I have heard voiced about the issue.

One allegation says repeal of the brokers license would "allow dealers to set prices of automobiles without any form of independent competition or consultation for the public."

Two points:

1. Dealers do not "set prices of automobiles, manufacturers do.
2. If you don't think there is competition in the automobile business, take a look at auto ads in the newspaper. Better yet, spend a little time car shopping--you'll find competition alive and well.

Another myth is that brokers "get you a better deal". Simple logic tells you it isn't so. A dealer, to stay in business, must make a profit. A broker doesn't arrange a sale for free--he expects to profit from the sale. And who pays the broker? The dealer! So he has to add that expense onto his own profit. That's right, you have built a middleman into the system. Which tells me the consumer could have dealt with, and purchased the automobile directly from the dealer for at least the same price--and probably at a lower price!!

And then there is the admonition that by attempting to repeal the brokers license we are "stifling free enterprise". As an independent business person, I strongly support the free enterprise system. But, I also support playing the game by the same rules. Is it free enterprise when a broker:

1. Has no responsibility to collect state and local sales taxes!
Therefore having no sales tax bookkeeping requirements, no sales tax audits, no sales tax collection oversight!
2. Has no responsibility for inventory tax stamps! Local units of government lose revenue everytime a vehicle is brokered through an out-of-state dealer--and a majority of them are. If there is any kind of inventory tax collected--it doesn't benefit Kansas.
3. Has no direct or physical way to honor warranties. Oh yes, I am aware that the Attorney General issued an opinion saying a broker was responsible for the implied warranty liabilities that all other dealers must honor. I ask you, how is a broker going to do that, with the desk or telephone that usually comprise their business inventory? Its true that we honor warranty work on vehicles purchased at another dealership, however, we also provide a considerable amount of repair--for free--outside of the warranties. We do it for the benefit of our customers--to retain their business--and to meet the competition, because every dealer I'm familiar with

provides those "extras".

Members of the committee, the auto dealers, and ultimately the consumers, of Kansas have a lot at stake in this issue. An automobile dealership requires a substantial investment, in real estate and inventory. They provide jobs, over 7,000 in Kansas. And pay considerable taxes, property, inventory, sales. Do you realize that the franchised new car dealers alone generate over 15% of the state sales tax revenues??

Those investments, those jobs, those revenues are in jeopardy. Rural areas of our state will be the first to suffer. We cannot permit that to happen.

I urge your support of SB 115. Mr Chairman, thank you for the opportunity to speak--and I would stand for questions.



R. D. McKay FLEET & LEASING

1621 SOUTH ERIE

WICHITA, KANSAS 67211

(316) 264-9603

TO: Representative Rex Crowell
Chairman - House Transportation Committee
Members - House Transportation Committee

FROM: R. D. McKay Fleet & Leasing
R. D. McKay Broker & Owner

TESTIMONY: Opposing SENATE BILL 115
Prohibiting the sale of new and used vehicles

BACKGROUND: Refutation of allegations by KMCD

Brokers form the agency between buyer and seller

All vehicle orders and sales are placed thru new franchised dealers and used car dealers licensed by the State of Kansas Motor Vehicle Department

Brokers are prohibited by Motor Vehicle Department regulations from receiving or collecting monies from their clients. All checks are made out directly to the dealers. The dealer collects all Kansas State sales taxes and issues the customer a receipt for sales tax. The paperwork - sales orders, invoices, manufacturers certificate of origin, finance forms, liens and papers necessary for titling - is all prepared by the new franchised and/or independent used car dealer.

The broker is a licensed sales arm for the new and used car dealers with whom they do business. Remuneration and/or commissions for sales are negotiated between the broker and the dealer and paid by the dealer to the broker. As any other independent business man, brokers keep books and pay both Federal and State income taxes. At the close of each calendar year licensed dealers issue a 1099 form to the broker and IRS stating the amount of monies paid to the broker during that twelve month period. As with all business tax, returns are subject to audit.

The broker as an independent business man is subject to the regulations set form by the Kansas Motor Vehicle Department. Any irregularities by the broker could be cause for revocation of the license.

The lack of consumer protection allegation is also totally false. As the licensed dealers complete all paperwork on each vehicle they also notify the manufacturer as to the name, address, make and model, identification number of each vehicle purchased. The consumer or purchaser is fully protected on all warranty and/or vehicle recalled by the manufacturer.

Attach. 3



R. D. McKAY FLEET & LEASING

1621 SOUTH ERIE

WICHITA, KANSAS 67211

(316) 264-9603

- FACTS:
1. According to the State of Kansas Motor Vehicle Department there are approximately 160 vehicle brokers.
 2. Licensed dealers are the beneficiaries of all vehicle sales or leases.
 3. Businesses maintaining small, medium or large fleets of vehicles use a broker to handle vehicle purchases of all makes saving them both time and money - the broker acts as their purchasing agent.
 4. Brokers furnish licensed dealers with a volume of business at the least amount of cost.
 5. Free trade and competition is as American as apple pie. The buyers purchase at the best negotiated price. The dealer's sales are more cost effective and retain better gross profits.
 6. Eighty-five percent of business in America is classified as small business.
 7. Governor Hayden has set up a commission to attract new business to the state of Kansas. It is not their intention to close down 160 small businesses.
 8. Unemployment - passage of this Bill will contribute to higher unemployment.
 9. Revenues of the state are already at the critical stage - passage of this Bill would increase an untenable problem.
 10. Free trade and competition are the American standard we all believe in - we don't believe in restraint of trade and/or cartels of any kind.
 11. As most brokers, I have placed much in Investment - Time - Experience and Money.

We sincerely hope you will oppose Senate Bill 115.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. D. McKay', written over a circular stamp or mark.

R. D. McKay

Owner

R. D. McKay Fleet & Leasing

March 30, 1987

To The State House Transportation Committee,

AUTO NETWORK is a service available to Wichitans to assist them with the purchase or lease of a new automobile. AUTO NETWORK acts as an agent for busy working people to help them with the second largest purchase most people will make in their lifetime. We feel that we provide an important service for our clients, and so do our clients. I am the owner and operator of AUTO NETWORK. I am licensed by the state through the vehicle dealers and manufacturers licensing act.

Interesting enough, as small as our clientele, though very important to us, Senate Bill Number 115 (Session of 1987) would eliminate this service by striking the portions of the Vehicle Dealer and Manufacturing Licensing Statues concerning brokers. This act , if allowed to pass, would allow dealers to set prices of automobiles without any form of independent competition or consultation for the public. I also understand that such anti-trust legislation has been tried in South Dakota and California and was corrected immediately in court allowing brokers to operate and be licensed as before.

I am obviously very concerned about Senate Bill Number 115 which amends any portion concerning licensing brokers and goes further in K.S.A. 1986 Supp. 8-2404 to say no person shall act as a broker in the sale of any new or used vehicle. This bill would eliminate AUTO NETWORK if passed into law.

To date, AUTO NETWORK has complied with all state regulations for licensing. We maintain an established place of business which has been inspected and approved by the Kansas Department of Revenue - Division of Vehicles. The licensing statue requires a sign that is easily visible from the street identifying the established place of business.

Broker dealers are requird to file a D-58 form to inform the Dealer Licensing Bureau of each months sales.(attached)

Attach. 4

Broker dealers are also required to pay annual fees of \$50.00.

The brokers portion of the licensing statues have never asked nor seen reason to require brokers to collect and remit state sales tax. The sales tax is collected and remitted by the selling dealer or by the state tagging agency.

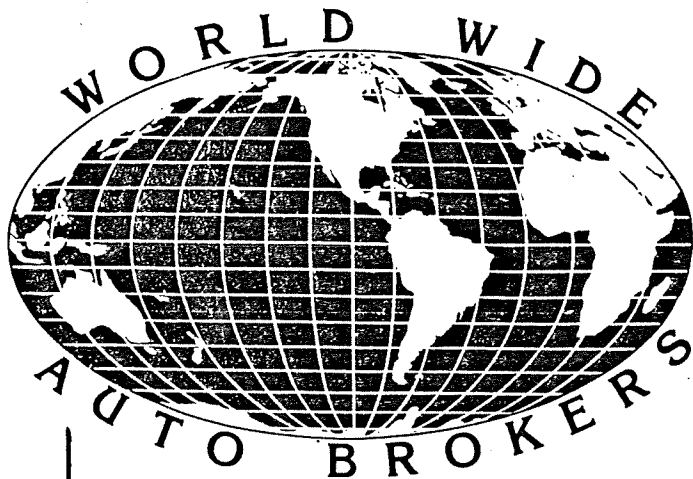
Our position on Senate Bill Number 115 is one of defense. We feel that the brokers in the state of Kansas would like to comply with any reasonable request that the licensing statues would require. If this bill is passed into law, the new statues would restraint trade and create a monopolistic situation.

It is our intentions to request that the governor appoint a broker to the dealer review board to review and inform brokers of state licensing statues so that all brokers comply with licensing regulations.

Thank you for your time,

Sherry Hagemeister D-4562

Sherry Hagemeister



521 North Mur-Len Road, Suite B
Olathe, Kansas 66062 • (913) 829-0111

February 25, 1987

Mr. Rex Crowell
Chairman of the Transportation Committee
Room 431 North
State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman & Members of the House Transportation Committee:

Please let me direct your attention to Senate Bill 115. Senate Bill 115 will put all automobile brokers in the state of Kansas out of business.

Consumers would no longer be able to buy new and used motor vehicles through independent brokers if this bill would become law. This bill would eliminate automobile "brokers" from Kansas dealer statutes. "Brokers" are currently licensed through the Kansas Department of Revenue Division of Vehicles as are other new and used car dealers. Brokers have been licensed in this state since 1979. "Brokers" as defined in the Kansas Statutes: Broker means any person who for commission, money or other thing of value, is engaged in the business of: (1) Selling or buying vehicles for other persons as an agent, middleman or negotiator; or buying vehicles for other persons as an agent, middleman or negotiator; or (2) bringing buyers and sellers of vehicles together.

Kansas Senate Bill 115 says, "from and after the effective date of this act no person shall act as a broker in the sale of any new or used vehicle".

I believe this bill (if it were passed) would create a dealer monopoly in the sale of new and used motor vehicles in Kansas.

"Monopolies where businessmen concert their actions to deprive others of access to merchandise they wish to sell to the public." (Sherman Anti-Trust Act). This bill was said to be introduced to the Senate by a group of businessmen, namely the Kansas Motor Vehicle Dealers Association. I know that they would like to deprive us of new motor vehicles to sell to the public.

The broker's function is to make available new vehicles for sale to the public sold through regular franchised dealers at discounts to the consumer. There are Kansas new vehicle dealers who work with brokers and enjoy the plus business that the brokers refer to them. Although it does appear that a large number of dealers oppose the brokers since they are trying to put us out of business...these dealers wish to concert their actions to deprive the brokers of access to sell new vehicles to the public!

Attach. 5

Brokers in the state over the past several years have saved many consumer in the community thousands of dollars on their new vehicle purchases. We can supply you with the names of hundreds of customers who will tell you that the broker way is the only way to buy a car! Although, I would say, the number of vehicles sold by brokers is a drop in the bucket compared to the non-brokered sales in Kansas. The number of brokers in the state are small. We are small businessmen who don't have the money or power that the Kansas Motor Vehicle Dealer Association has. We weren't even aware that Senate Bill number 115 existed until it was approved by the Senate Committee.

The new car broker business has undergone attack by new car dealers, their associations and various state motor vehicle dealer departments since the concept first came into existence in the United States.

The legality of new car discounting has been proven in the United States Supreme Court 384 U.S.127 Monopolies 17 (2,3) Joint, Collaborative Action by Automobile Dealers, their associations and automobile manufacturer to cause minority of those dealers to terminate business dealings with discounters and deprive franchised dealers of freedom to deal with discounters if dealer chose was unlawful conspiracy in restraint of trade. Sherman Anti-Trust Act 1, 15, U.S.C.A.1.

Sale of new motor vehicles is lawful business which any person has right to pursue, subject to reasonable legislative regulation and no person who complies with such reasonable regulations as legislature may prescribe may be arbitrarily deprived of that right. West's Ann. Vehicle Code, 285.

We believe that current broker laws requiring brokers to maintain an office outside the home were designed to put undue burden on the brokers and thereby, put them out of business. Current broker laws didn't eliminate brokers, so now they are trying to finish us off for good with Senate Bill number 115.

National media has shown quite an interest in the new car broker business. Let me quote in part from a few of the more prominent articles.

The Wall Street Journal: "Car buying services can save money, especially for those who hate haggling". U.S. News and World Report: "Consumers who are looking for a good buy in an automobile but don't like to do a lot of comparison shopping are turning increasingly to car buying services in order to save big dollars." Autoweek: "Thousands of car and truck buyers each year find that the use of an auto broker can indeed save them considerable time, trouble and money. Money Magazine: "Consider letting an auto broker do the buying if you hate to haggle." Newsweek: "There's still a way, however, to cut the cost of life on wheels -- and that's by using the services of an auto broker."

To pass Senate Bill number 115 would put all brokers and any future brokers out of business.

I have lived in Kansas the majority of my adult life. My family and my home are here in Olathe. My daughter plans to attend K.U.

I purchased an office building for my business and furniture for that office at 521 North Mur-Len Road. It was purchased "exclusively" because the "state" said that "brokers" have to have an office outside the home to operate their business in Kansas. Will the state make these payments if they put me out of business? To pass laws that can put a small business owner out of business to lesson competition, for the big guy somehow doesn't seem like what America (the land of the free) is all about. How will I pay my bills? How will I pay for that office that the state required me to have? How will I pay for my daughter's college tuition?

I invested my life and my life savings into the broker business. To for me and the other brokers out of business will cause us an unbearable amount of sorrow, grief and tremendous financial hardship. The broker business is my sole means of support. To outlaw my business will force me out of my home, my office, my city and my state. I love Kansas. I chose to live here. I love America.

If, through legislation, our livelihood can be taken away from us, whose business will be taken away next? Will it be yours?

These feelings are shared by all the brokers in Kansas. Brokers and their customers are all currently listed with the Division of Vehicles. Please call any one of the brokers or their customers and ask any of them if they would like this business to be out-lawed.

Please stop Senate Bill 115

Thank you for your consideration. Your support and response in this matter would be greatly appreciated.

Respectfully Yours,

Denny Armstrong,
President

Phone Numbers:
(913) 829-0111 business
(913) 764-7344 home

DA:cc



KEELE ASSOCIATES, LTD.

P.O. Box 12424
Overland Park, KS 66212
(913) 648-8411

February 21, 1987

Hon. Robert Vanorum
State Representative - Overland Park
The State Capitol
Topeka, KS 66612

Dear Bob,

Thanks for taking the time to speak with me on the phone today regarding the currently passed Senate Bill # 115.

As an independent licensed Kansas new car dealer broker (D-4596), I have a vital interest in seeing S.B. 115 defeated in the 1987 House session of the Kansas Legislature. The present Dealer license law and broker requirements are onerous enough on a small business person working to make a profit. New car brokering in Kansas is very expensive considering fees, office rent, personal property tax, business telephone and other expenses related to maintain compliance with the law.

Bob, the Senate bill is written to put me out of business. I need your help to defeat SB 115 in the House.

I have brokered new cars part-time in Overland Park since 1981 with a Kansas license. My new car dealers include Land Noller (Lawrence & Topeka), Ron Olson Chevrolet, et al (Paola) and Bob Allen Ford (Bob Hewlett) on Metchief Ave. These dealers want me in business! I sell new cars for them and in turn save my customers money since overhead is substantially reduced. That is the purpose of brokering. I earn a commission on each sale. Just like a real estate agent.

Attach. 6



KEELE ASSOCIATES, LTD.

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Overland Park, KS 66212
(913) 648-8411

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The present office outside the home requirements, et al are a squeeze designed to make life and business difficult for brokers. A reading of K.S.A. § 2408 and Supp 8-2401, 06 and 10 reveal zero (0) benefits for the broker (no plates, etc) none.

Brokers should be able to operate from an office in the home or a regular office unencumbered by statutes supported by monopolistic car dealers.

Remember if you cut the competition - you can keep prices higher. If you have all dealers selling at or close to sticker (MSRP) the customer pays top dollars.

Please consider my urgent request for help... yourself and your colleagues who support small business people. I have the names of many satisfied customers whom I have helped save thousands of dollars in new car purchase situations. My policy of customer satisfaction is reflected in my practice of not cashing a customer's check until the new car is delivered to the satisfied customer.

Let's get together to beat SB 115 now. Thanks

Sincerely,

Ed Keele

Business Office
8301 W. 95th St
(Dave Thompson State Farm)

Residence
10009 Wedd
Overland Park 662
888-91115

P.S. Attached are legal paper where broker prohibition was found in restraint of trade & unconstitutional. Sorry this was not typed - weekend!