

Approved

Thomas F. Walker
Date 3-15-90

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Thomas F. Walker at
Chairperson

9:00 a.m./p.m. on Wednesday, March 14, 1990 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research Dept.
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Thomas C. Stiles - Kansas Water Office
Pat Barnes - Kansas Motor Car Dealers Association
Steven R. Wiechman - Kansas Automotive Dismantlers and Recyclers Association
Dan Carlson - President, Kansas Independent Automobile Dealers Association
Mark Wettig - Department of Revenue

Chairman Walker called the meeting to order. He stated the minutes of the previous meeting would stand approved at the end of today's meeting if there were no corrections or additions.

SB 537 - relating to the Kansas Water Authority

Thomas C. Stiles, Kansas Water Office, explained the bill. It would increase from 21 to 22, the number of members on the Kansas Water Authority. The added member would be the administrative officer of the State Conservation Commission. This person would be a nonvoting ex officio member. The Kansas Water Office supports this bill because the State Conservation Commission has a major role in the development of the state water plan. There is no fiscal impact on the bill.

As there was no one else to speak to the bill, Chairman Walker declared the hearing closed on HB 537.

SB 539 - dealer review board

Pat Barnes, Kansas Motor Car Dealers Association was first to address the bill. (Attachment 1) Mr. Barnes stated the bill would re-establish the Kansas Dealer Review Board, presently scheduled to sunset July 1, 1990. The present bill would still be insufficient to restore the authority needed to continue in an effective manner as was originally intended. The bill would need to have the appeal powers restored and the balloon that was part of the attachment was referred to. He went through the balloon and answered questions put forth by committee members. Mr. Barnes continued with his testimony. He stated for many years the Dealer Review Board acted as an advisory, investigatory and, to a certain extent, judicial body within the framework of the dealer licensing laws. He gave the board makeup and said that the bill now would add a manufactured housing representative. From a review of the authority the Dealer Review Board once held as compared to what it now holds, it appears the board 'accidentally' lost a great deal of its power with the voluninous revisions in the Administrative Procedures Act when it was adopted several years back. Chairmen of the Judiciary Committees of both houses have been contacted in recent days and Mr. Barnes stated his people have found no opposition to the proposal that is being made today. When the amendments to accommodate the Administrative Procedures Act were made, the board lost its function of refereeing and balancing out the disparity of bargaining power between dealers and manufacturers. Without the Board, there is very little Court relief available. This would be re-established without disrupting the present administrative framework or amending the Administrative Procedures Act.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

room 522-S, Statehouse, at 9:00 a.m./p.m. on Wednesday, March 14, 1990

Through the proposed amendments submitted today, the Board is asking to once again be given the power to act as a participant in any administrative appeal process regarding violations of the Dealers and Manufacturers Licensing Act, or other issues raised under that Act for Dealer Review Board action. Mr. Barnes referred to the Board as the dealer's last line of defense. Some past criticisms of the original Senate bill were that it would have given the board prosecutorial powers. This portion has been removed so as not to enter into the administrative process.

The Department of Revenue opposes inserting the Board back into the chain of appeals on the basis that the Administrative Procedure Act was the result of years of expert study to create a uniform system of appeals which this proposal will undo. This is not true. The Administrative Procedure Act is referenced in this proposal as also governing the board's procedure. Mr. Barnes closed by saying that this will be a cost effective board with beneficial impact on the regulatory affairs of the industry and public. It was mere accident that the board lost much of its authority - this should be rectified.

Mr. Barnes was asked several questions regarding dealer disputes, the accidental loss of powers that the board is trying to place back in the bill, board makeup and off-site selling. Several comments were made by several committee members.

Steve Wiechman, general counsel, Kansas Automotive Dismantlers and Recyclers Association, gave some background on his experience in the vehicle industry and state government. He told of an appeal to the Dealer Review Board of one of his decisions. Without this board, the appeal would have gone to district court. This matter was handled in one day. It would have been a lengthy appeal process if it would have gone through the Court system. The restoration of the powers of the board is a way for alternative dispute resolution. There is a broader span of knowledge to draw upon. There is no one harder on a vehicle dealer or manufacturer who is dishonest than another vehicle dealer. It is in the state's best interest to provide a tool to industry to control and regulate themselves. (Attachment 2)

Mr. Wiechman gave the example of the insurance industry as regulating itself.

Dan Carlson, President, Kansas Independent Automobile Dealers Association, distributed copies of testimony (Attachment 3) and addressed the bill. He was present to represent 332 Used Car Dealers across the state. He stated the people who serve on the Dealer Review Board are active members of the auto industry and provide expertise in meetings with the Department of Motor Vehicles. The average used car dealer knows little of the Board's function because current law will not allow it to function the way it should. His organization believes the Board should have the ability to listen and review in an appeal process alleged violations of Dealer Licensing laws as well as Manufacturer's violations. The continuation of the Board will serve the best interests of the public.

Mark Wettig, Department of Revenue, spoke in opposition to the bill. He stated he disagreed with Mr. Barnes in that the powers were not taken away accidentally. He also disagreed as to the Board having expertise that would save thousands of dollars. Under this bill the new vehicle dealers would have to excuse themselves from hearings.

Questions were asked of Mr. Wettig regarding the district court process and the regulation of persons within their own industry.

Chairman Walker closed the hearing on Substitute for SB 539. He directed the committees attention to SB 358 - Assistant Attorney General in office of State Fire Marshal.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S Statehouse, at 9:00 a.m./p.m. on Wednesday, March 14, 1990

Representative Gjerstad moved that SB 358 be reported favorably for passage.
Representative Graeber gave a second to the motion. The motion carried.

SB 502 - publications of state historical society

Representative Sughrue moved that SB 502 be passed and placed on the
Consent Calendar. Representative Weimer gave a second to the motion.
The motion carried.

SB 537 - Water Authority

One of the members stated there was no fiscal impact on the bill.

Representative Weimer moved that SB 537 be reported favorably for passage.
Representative Turnbaugh gave a second to the motion. Motion carried.

The meeting was adjourned.

STATEMENT BEFORE THE HOUSE COMMITTEE ON GOVERNMENTAL
ORGANIZATION BY THE KANSAS MOTOR CAR DEALERS ASSOCIATION
WEDNESDAY, MARCH 14, 1990

Re: Substitute for SB 539 - Restoring Dealer Review Board

Mr. Chairman, members of the committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, representing 330 franchised new car and truck dealers in Kansas. I appear before you to support Substitute for SB 539, a very important issue to us. This bill would re-establish the Kansas Dealer Review Board which is presently scheduled to sunset this July 1.

Before I continue with the remainder of my testimony I would like to point out my emphasis beforehand. This is because the present bill would be insufficient to restore the Dealer Review Board the authority needed to continue it in an effective manner or in the manner originally intended. The present bill would need to have the addition of appeal powers to fully restore the purpose of this important board. The attached balloon would properly accomplish the task.

For many years Kansas has had the Dealer Review Board acting as an advisory, investigatory and, to a certain extent, judicial body within the framework of the dealer licensing laws. The board was originally established by K.S.A. 8-2412 which sets forth the criteria for its makeup, membership and other agency

Attachment 1
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requirements. The eight members of the board presently established by law, consist of two public at large representatives, two new vehicle dealers, two used vehicle dealers, a manufacturer representative and a salvage vehicle dealer representative. The present bill would also add a manufactured housing representative. The members are appointed to serve three year terms which are staggered. The board was never intended to assume a full time operating function, but only meets when needed. As such, it is a very efficient body for the State to have.

The Dealer Review Board was originally established as a buffer between dealers and manufacturers in regard to franchise contracts and as a self-regulating industry board with regard to reviewing violations of the Dealer Licensing Act. In fact, their primary responsibility was reviewing and fact finding with regard to violations of the Dealer Licensing Act. They also investigated unconscionable acts and practices by manufacturers directed against dealers and by dealers directed against the general public. From our review of the authority the Dealer Review Board once held as compared to the authority it now holds, it appears the board accidentally lost a great deal of its power with the voluminous revisions in the Administrative Procedures Act adopted several years back. The result is now a hodgepodge of board powers which essentially cannot be exercised, except through the Courts, which is not efficient. In our discussion with the

chairmen of the judiciary committees of both houses in recent days, we have found no opposition on their part to the proposal we are making here today.

Despite the "revisions," the Dealer Review Board currently serves an important function for the Kansas automotive industry. Because the board's construction is representative of the public as well as all segments of the industry, and because its members are active in the day to day activities of those affected by dealer operations, its members:

- (1) are a useful resource for the Department of Motor Vehicles in establishing regulations that improve dealer practices;
- (2) serve as an experienced body to make suggestions for changes in current law;
- (3) are a sounding board for industry problems; and
- (4) provide the expertise necessary to ferret out operating problems created by current law, yet balance such problems against the greater public interest.

In short, this board keeps the State of Kansas informed as to the continually changing automotive business environment. This is a complex industry which at times cannot be fully understood without a working knowledge of practices within the industry, whether those practices are legitimate or illegitimate.

Those in charge of regulating the industry under the authority of the Dealers and Manufacturers Licensing Act would be without an effective means of evaluating problems created by

Kansas laws and practices, as well as possible solutions, without the Dealer Review Board. Elimination of this board would leave Kansas dealers without an effective regulatory board through which problems could be expertly analyzed and recommendations made to the State.

When the amendments to accommodate the Administrative Procedures Act were made, the board lost its function of refereeing and balancing out the disparity of bargaining power between dealers and manufacturers. Without the Dealer Review Board there is very little Court relief available to address strong arm practices by manufacturers wielding the powers of their boiler plate franchise contracts. This function would be re-established by this bill without disrupting the present administrative framework or amending the Administrative Procedures Act.

We do ask through our proposed amendments that the Dealer Review Board once again be given the power to act as a participant in any administrative appeal process regarding violations of the Dealers and Manufacturers Licensing Act, or other issues raised under that Act for Dealer Review Board action.

In restoring that function, all you would be doing with this bill is providing an aggrieved party the ability to appeal a decision of the Director of Vehicles to the board and appeal a decision of the board to the judicial system. This is no dif-

ferent from what takes place when a person files claims before some other types of boards as, for example, an unemployment compensation claim before the Employment Security Board of Review.

This board is a dealer's last line of defense against losing his dealership, or investment, due to unfair or arbitrary enforcement, manufacturer requirements or other practices. Indirectly, communities are also protected, especially small communities, since dealerships have a noticable economic impact wherever they are located. Even so, this is not the only function the board provides the public. There are many other acts which are prohibited by law which this board is able to address.

The cost of this board is nominal. Historically, it was self-funded by salesmen licensing fees. The cost in 1989 to operate the Board was under \$5,000.00. With the restoration of the board's power, we do not anticipate the cost would substantially increase based upon the number of appeals that are now taking place with the Director of Vehicles. Most importantly, however, is the fact that this board would operate different from the present system with the inherent conflict where the Division of Vehicle's attorneys sit as both advocates and decision makers in the hearing process.

Opponents have virtually no reason to object to the proposal we offer. Some past criticisms of the original Senate version, for which this bill was substituted, would've given the board prosecutorial powers. We have removed those powers from

our amendment so they will not enter into the administrative process. (The board presently has injunctive authority - a prosecutorial power.) This cures "due process" criticism as well as the possibility of abuse.

Opponents (i.e., the Department of Revenue) have also opposed inserting the board back into the chain of appeals. The justification to date is that the Administrative Procedure Act was the result of years of expert study to create a uniform system of appeals which this proposal will undo. This is not true. The Administrative Procedure Act is referenced in this proposal as also governing the board's procedure. All the Act does is govern procedure, not the chain of hearings accorded a party, or their interim appeal rights.

One other criticism is that this board could violate constitutional due process where new vehicle dealers on the board sit in judgment of manufacturers. We have corrected the problem for such instances by removing the new vehicle members from dealer manufacturer disputes. (Even those cases criticising peer review boards for this have never invalidated such boards or found them unconstitutional. Such cases have only criticised the procedure which was observed in the isolated type of case in question.)

In closing, I would say to you this is one of the better examples of a cost effective board which actually has a beneficial impact on the regulatory affairs of the industry and public

with which it deals. It is a mere accident that his board lost much of its authority, and that accident should be rectified. Without the restoration of our proposed amendment to this bill we think it will be difficult to find qualified members willing to devote their time on the present near-voluntary basis. We hope you will support this action as, once again, dealers of all kinds cannot operate without the Dealer Review Board. It had merit when the legislature first created it, and it has merit now.

Substitute for SENATE BILL No. 539

By Committee on Governmental Organization

2-28

9 AN ACT amending the vehicle dealers' and manufacturers' licensing
 10 act; concerning the dealer review board; amending ~~K.S.A. 8-2412~~ 8-2410 and
 11 ~~and K.S.A. 1989 Supp. 8-2411~~ and repealing the existing sections; and K.S.A. 8-2412
 12 also repealing K.S.A. 1989 Supp. 74-7276.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) The dealer review board created by K.S.A.
16 8-2412 and amendments thereto shall:

17 (1) Confer with the director on matters related to regulations
18 relating to improved vehicle dealer practices;

19 (2) serve to make suggestions and recommendations for changes
20 in current law relating to vehicle sales and trade;

21 (3) act as a resource for vehicle industry problems; and

22 (4) provide expertise to uncover operating problems created by
23 current law, while balancing problems against the greater public
24 interest.

25 (b) The provisions of this section shall not require any action
26 prior to adoption of any rules and regulations by the secretary of
27 revenue.

28 Sec. 2. K.S.A. 1989 Supp. 8-2411 is hereby amended to read as
 29 follows: 8-2411. (a) When any licensee is found to be allegedly vi-
 30 olating any of the applicable provisions of this act, or any order or
 31 rule ~~or~~ and regulation adopted pursuant thereto, the director upon
 32 the director's own motion or upon complaint may commence a hear-
 33 ing against the licensee, which hearing shall be conducted in ac-
 34 cordance with the provisions of the Kansas administrative procedure
 35 act.

36 (b) Any person who is found to have violated any applicable
37 provisions of this act, any rule and regulation adopted pursuant
38 thereto or any applicable order of the director shall be subject to a
39 civil penalty of not less than \$50 nor more than \$1,000 for each
40 violation or such person's license may be suspended or revoked or
41 both civil penalty and license suspension or revocation.

42 (c) Any party aggrieved by the decision of the ~~board~~ director
43 may appeal the same to the district court in accordance with the

;and perform such other and further duties as assigned by law.

Sec. 2.: Set forth at page 4, attached hereto and incorporated by reference.

Sec. 3. K.S.A. 1989 Supp. 8-2411 is hereby amended to read as follows: 8-2411. (a) When *hearings are to be conducted in accordance with this section, or when* any licensee is found to be allegedly violating any of the applicable provisions of this act, or any order or rule or regulation adopted pursuant thereto, the ~~board or~~ director upon ~~the director's~~ *their* own motion or upon complaint may commence a hearing *before the director* against the licensee, which hearing. *Hearings shall be conducted before the board or director in accordance with the provisions of the Kansas administrative procedure act, except as otherwise set forth herein. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.*

(c) Any party aggrieved by the decision of the director may appeal from a final order of the director, or the director's authorized representative, by filing a notice of appeal with the board within 30 days of such order. Upon request, the board may allow any interested party to appear before it regarding such order. The board, on its own motion, may affirm, modify or set aside any decision of the director, or the director's authorized representative, on the basis of the evidence previously submitted in the case and issue its final order accordingly.

Substitute

Substitute

provisions of the act for judicial review and civil enforcement of agency actions.

3 Sec. ~~8.4~~ K.S.A. 8-2412 is hereby amended to read as follows: 8-
4 2412. (a) The governor shall appoint ~~eight~~ *nine* members to serve
5 on the dealer review board with the individual terms of office for
6 each appointee to run as follows: One new vehicle dealer, one used
7 vehicle dealer and one salvage vehicle dealer, each to serve for three
8 consecutive years; one new vehicle dealer, one used vehicle dealer,
9 and two additional members both of whom shall be appointed from
10 the public at large, each to serve for two consecutive years; and one
11 representative of a first or second stage manufacturer to serve for a
12 period of one year, *and one representative of manufactured homes*
13 *to serve for a period of three years.* Upon the expiration of their
14 respective terms, board members shall be appointed by the governor
15 to serve for three consecutive years.

16 (b) The board shall elect a chairperson from among its members.
17 The chairperson shall serve for a period of one year. The board shall
18 elect successors each subsequent year.

19 (c) Any proceeding conducted by the board shall be construed
20 to be a meeting of the board under this section for each day the
21 proceeding is conducted. To constitute a meeting of the board within
22 the meaning of this section, a quorum of the board must be present
23 and participating. ~~Four~~ *Five* members of the board shall constitute
24 a quorum. All final orders shall be in writing and shall be signed
25 by the chairperson and approved by the board.

26 (d) Members of the board attending meetings of such board shall
27 be paid compensation, subsistence allowances, mileage and other
28 expenses as provided in K.S.A. 75-3223, and amendments thereto.
29 In no event shall any member be paid compensation or allowances
30 for more than 90 days in any calendar year.

31 (e) Meetings of the board may be called by the director, the
32 chairperson of the board or any three members of the board, after
33 first giving notice, in writing, at least 10 days prior to such meeting.
34 The notice of any meeting of the board shall state the time and
35 place of such meeting which special meeting may be held at any
36 place within the state of Kansas. Additionally, such notice of the
37 meeting shall state the purpose thereof.

38 (f) The director of vehicles may either appoint or designate a
39 secretary for the board. The secretary shall perform, among other
40 things, the following duties: Prepare the agenda for the meetings of
41 the board; prepare notice of all meetings and cause the same to be
42 mailed to all board members; take minutes of all meetings of the
43 board and thereafter cause copies thereof to be distributed to all

(e) (d) Any party aggrieved by the decision of the board may appeal the same to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(e) Whenever the board conducts a review or hearing on an appeal of a dispute between a first or second stage manufacturer, or their distributor, and a new vehicle dealer, in that capacity, then the new vehicle dealer members of the board and the first or second stage manufacturer members of the board shall not participate in any manner in the hearing, consideration or decision the board is to make on the appeal.

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board members; arrange for meeting places within the state of Kansas at the direction of the chairperson; prepare vouchers for each board member to submit for expense of attendance at meetings; and, such other duties as requested by the board.

(g) All records of the dealer review board established by K.S.A. 8-2311 shall be and are hereby transferred to the board created by this section.

(h) (g) The board shall be attached to the department of revenue and shall be within the department of revenue as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of revenue. The division shall serve as the administrative and enforcement agency of the board in all respects and shall perform such services and duties as it may be legally called upon to perform. In the event the board fails to perform any of its official duties within the time prescribed herein, the division may perform such duties and certify its action to the board for review.

New Sec. 45. The dealer review board established by K.S.A. 8-2412, and amendments thereto, shall be and is hereby continued in existence in the manner set forth in K.S.A 8-2412, and amendments thereto, on and after July 1, 1990.

Sec. 56. ~~K.S.A. 8-2412~~ and K.S.A. 1989 Supp. ~~8-2411~~ and 74-8-2410 and ~~74-7276~~ and K.S.A. 8-2412 are hereby repealed.

Sec. 67. This act shall take effect and be in force from and after its publication in the statute book.

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Sec. 8-2410 K.S.A. 1989 Supp. 8-2410 is hereby amended to read as follows: 8-2410. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

- (1) Proof of financial unfitness of the applicant;
- (2) material false statement in an application for a license;
- (3) filing a materially false or fraudulent tax return as certified by the director of taxation;
- (4) negligently failing to comply with any applicable provision of this act or any applicable rule or regulation adopted pursuant thereto;
- (5) knowingly defrauding any retail buyer to the buyer's damage;
- (6) negligently failing to perform any written agreement with any buyer;
- (7) failure or refusal to furnish and keep in force any required bond;
- (8) knowingly making a fraudulent sale or transaction;
- (9) knowingly engaging in false or misleading advertising;
- (10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;
- (11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;
- (12) knowingly violating any law relating to the sale, distribution or financing of vehicles or mobile homes;
- (13) being a first or second stage manufacturer of vehicles, factory branch, mobile home manufacturer, mobile home branch, distributor, distributor or factory representative, officer, agent or any representative thereof, who has:
 - (A) induced or has attempted to induce, by coercion, intimidation or discrimination, any dealer to involuntarily accept delivery of any vehicle or vehicles or mobile homes, parts or accessories therefor, or any form of advertisements or other commodities which shall not have been ordered by the dealer;
 - (B) unfairly, without due regard to the equities of the vehicle dealer, and without just provocation, canceled, terminated or failed to renew a franchise agreement with any new vehicle dealer;
 - (C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any vehicle dealer to involuntarily enter into any franchise agreement with such first or second stage manufacturer, factory branch, distributor, or any representative thereof, or to do any other act to a vehicle dealer which may be deemed a violation of this act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a franchise agreement existing between such parties;
- (14) being a first or second stage manufacturer, or distributor who for the protection of the buying public fails to specify in writing the delivery and preparation obligations of its vehicle dealers prior to delivery of new vehicles to new vehicle dealers. A copy of such writing shall be filed with the division by every licensed first or second stage manufacturer of vehicles and the contents thereof shall constitute the vehicle dealer's only responsibility for product liability as between the vehicle dealer and the first or second stage manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the first or second stage manufacturer shall constitute the product or warranty liability of the first or second stage manufacturer. The first or second stage manufacturer shall reasonably compensate any authorized vehicle dealer for the performance of delivery and preparation obligation;
- (15) being a first or second stage manufacturer of new vehicles, factory branch or distributor who fails to supply a new vehicle dealer with a reasonable quantity of new vehicles, parts and accessories, in accordance with the franchise agreement. It shall not be deemed a violation of this act if such failure is attributable to factors reasonably beyond the control of such first or second stage manufacturer, factory branch or distributor;
- (16) knowingly used or permitted the use of dealer plates contrary to law;
- (17) has failed or refused to permit an agent of the division,

during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchase and sale of vehicles or mobile homes;

- (18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;
- (19) has failed or refused to surrender their dealer's license or dealer's plates to the division or its agent upon demand;
- (20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;
- (21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or salesman;
- (22) has cross-titled a title to any purchaser of any vehicle or mobile home. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle or mobile home and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title;
- (23) has changed the location of such person's established place of business prior to approval of such change by the division;
- (24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";
- (25) doing business as a vehicle dealer other than at the dealer's established or supplemental place of business, with the exception that dealers selling new manufactured homes and new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed 14 days;
- (26) any violation of K.S.A. 8-126 *et seq.*, and amendments thereto, in connection with such person's operation as a dealer;
- (27) any violation of K.S.A. 8-116, and amendments thereto;
- (28) any violation of K.S.A. 21-3757, and amendments thereto;
- (29) any violation of K.S.A. 79-1019, and amendments thereto;
- (30) failure to provide adequate proof of ownership for motor vehicles in the dealer's possession;
- (31) being a first or second stage manufacturer who fails to provide the director of property valuation all information necessary for vehicle identification number identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles.

(b) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, *except as otherwise set forth herein. All testimony at any hearing shall be recorded, but need not be transcribed unless the applicant further appeals. Any party aggrieved by the decision of the director, or the director's authorized representative, following the hearing provided by this section may appeal to the board in the same manner as set forth in subsection (c) of K.S.A. 8-2411, and amendments thereto. Any person aggrieved by the decision of the board may appeal the same to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.*

(c) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its salesmen or representatives while acting as its agent.

~~(4) Any licensee or other person aggrieved by a final order of the director may appeal to the district court as provided by the act for judicial review and civil enforcement of agency actions.~~

~~(d) The revocation or suspension of a first or second stage manufacturer's or distributor's license may be limited to one or more municipalities or counties or any other defined trade area.~~

1-11



HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE

March 14, 1990

Substitute for Senate Bill No. 539

Mr. Chairman, Members of the Committee:

I am Steven R. Wiechman, general counsel for the Kansas Automotive Dismantlers and Recyclers Association.

With the committee's permission, I feel compelled to share with you some of my experience with the vehicle industry and state government to provide you some history to consider in your deliberations on Senate Bill 539.

When I completed law school in 1974, I became the attorney for the K.B.I. working in organized crime. That experience lasted for one year. Thereafter, I began working for the Department of Revenue, Legal Services Division, Division of Vehicles.

During my three plus years with Revenue, I had the opportunity to be the legal counsel to the Dealer Review

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Executive Office
1101 W. 10 Topeka, Kansas 66604
913 - 233-1666

Attachment 2
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Board. Evelyn Fateley was the chairman of the Board for part of the three years. In addition, I was also setting in the Director of Vehicles' chair. During that time, I held hearings for dealer violations. More importantly, during that period, I held a hearing involving a vehicle manufacturer that wanted to cancel a franchise agreement with the Pontiac dealership in Wichita, called Dahlinger Pontiac. Some of you will recall that dealership.

Part of that three day hearing revolved around a financial take over, an involuntary leverage buyout, of the dealership by a person connected to the John Delorean organization. Both the manufacturer and the former dealer, Jerry Dahlinger had an opportunity to come before the Director of Vehicles to present their concerns, claims and defenses. Findings of fact and conclusions of law were written. Because there was a Dealer Review Board in existence at that time, an appeal of my decision was made to the dealer review board to review my decision. Without the dealer review board, the appeal would have been to the District Court. But because the dealer review board existed, that board, as it was composed at that time, had an understanding of the related issues of the vehicle industry. That knowledge allowed what could have been a

lengthy appeal process through the Court system to be handled by those-in-the-know in one day. The knowledge and expertise saved thousands of dollars for the parties and the same for the state court system.

There is, in existence now, experimental programs across the state to create alternative dispute resolution to relieve the Court system of burdens of new cases. It is my firm belief that the continuation of the existence of the Dealer Review Board and the restoration of the powers of the Dealer Review Board is a way for alternative dispute resolution. In some respects, it is better than one person setting as the decision maker. There is a broader span of knowledge to draw upon to resolve disputes short of the Court. I will not stand before you today and tell you that the existence of the Dealer Review Board will prevent Court appeals. However, I do believe that it will, in many cases, produce a result that will provide dispute resolution at reduced costs to the parties and Kansas taxpayers. How many, I cannot say. Just as we cannot say how many lives are saved with a seat belt.

Senate Bill 539 is necessary to the industry as a whole. Not just to the advantage of the dealer or manufacturer but also to the individual consumer. K.S.A.

8-2402 sets forth the declaration of public policy. It *states in part that it is the policy of the state to provide "fair and impartial regulation;" to promote "fair dealing and honesty" in the industry among those engaged in the industry without unfair or unreasonable discrimination or undue preference or advantage; to protect the public interest in the purchase and trade of vehicles and to protect against irresponsible vendors and dishonest or fraudulent sale practices. I feel confident in saying that there is no one harder on a vehicle dealer or manufacturer who is dishonest, deceptive, fraudulent or simply unfair, than another vehicle dealer. To be otherwise reflects on ones own way of life, if you are a dealer. No one is more critical of another member of the legislature if someone has done some act contrary to public policy than a member of the legislature. In such a case, it reflects upon you. I can simply say, that I believe that it is in the best interest of the State of Kansas for you, as a legislative body, to provide a tool to industry to regulate and control themselves. If that tool is provided and not used, there is no one to blame but themselves. The cost is insignificant compared to the costs that would otherwise be expended.

I will be happy to try to address your questions or provide you further information, if I can do so.

Respectfully submitted,

Steven R. Wiechman
Attorney for KADRA

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

1115 WESTPORT SUITE E • MANHATTAN, KANSAS 66502 • 913-776-0044



March 14, 1990

TO: HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

SUBJECT: SENATE BILL 539

Mr. Chairman and Members of the Committee:

My name is Dan Carlson, President of the Kansas Independent Automobile Dealers Association. I am here today representing 332 Used Car Dealers in the State of Kansas, and asking for the continuation of the Kansas Vehicle Dealer Review Board.

The Dealer Review Board as it stands now acts as a sounding board with the Department of Motor Vehicles and to the Director of Motor Vehicles concerning current laws and business in general. The people that serve on the Board are active members of the automobile industry and provide great expertise in their meetings with the Department of Motor Vehicles.

However, the average used car dealer knows little of the Dealer Review Board because current law will not allow it to function the way it should. We believe the Board should also have the ability to listen and review in an appeal process alleged violations of Dealer Licensing laws as well as Manufacturer's violations.

We believe that this Board is necessary to the Kansas Automobile Dealer for an advisory voice in the determination of the laws that govern our industry. The continuation of this Board along with some of the needed changes will help the Automobile Dealers of this state and will serve the best interest of the public.

Thank you for your time.

Attachment 3
D.O.
3/14/90

Individually we struggle to be heard—Collectively we cannot be ignored.