

Approved 2-5-90 _____
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~/p.m. on February 1, 1990 in room 519-S of the Capitol.

All members were present except:

Representative Dean, excused

Committee staff present:

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

Conferees appearing before the committee:

Mr. Lawrence Stadel, Kansas Marine Dealers Association
Mr. Jerel Wright, Kansas Credit Union League
Mr. Jim Graham, Hertz Corporation
Rep. Jane Aylward
Mr. Kevin Allen, Kansas Motor Car Dealers Association
Mr. Dan Carlson, Kansas Independent Auto Dealers Association

The meeting was called to order by Chairman Crowell, and the first order of business was a bill request.

Mr. Lawrence Stadel, Kansas Marine Dealers Association, requested that legislation be introduced to provide that all boats be entitled to receive a refund on boat gas purchased on a cumulative basis exceeding 40 gallons per year. (See Attachment 1)

A motion was made by Representative Freeman that this be introduced as a Committee bill. The motion was seconded by Representative Lucas. Motion carried.

The next order of business was a hearing on HB-2691 concerning the sale of motor vehicles away from the dealers place of business.

Mr. Jerel Wright, Kansas Credit Union League, spoke in opposition to HB-2691. (See Attachment 2)

Mr. Jim Graham, Hertz Corporation, spoke in opposition to HB-2691. (See Attachment 3)

Representative Jane Aylward, suggested an amendment to HB-2691 which would allow automobile dealers to display vehicles at shopping malls.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,

room 519S Statehouse, at 1:30 ~~am~~/p.m. on February 1, 1990

Mr. Kevin Allen, Kansas Motor Car Dealers, testified in support of HB-2691. (See Attachment 4)

Mr. Dan Carlson, Kansas Independent Automobile Dealers Association, spoke in support of HB-2691. (See Attachment 5)

Discussion and questioning by Committee members followed.

The hearing on HB-2691 ended.

Representative Herman Dillon requested a bill be introduced which would preclude the use of the special permit process to allow triple bottom trailers other than where currently allowed.

A motion was made by Representative Dillon that this legislation be introduced. The motion was seconded by Representative Lucas. Motion carried.

Representative Dillon also requested that Secretary Horace B. Edwards, Kansas Department of Transportation, come before the Committee to discuss funding for the transportation of the handicapped.

Chairman Crowell announced that the hearing on HB-2681, which was scheduled for February 1, 1990 would instead be held on February 8, 1990.

Attention was turned to HB-2661 concerning the time period when lighted lamps are required.

A motion was made by Representative Gross that HB-2661 be recommended favorable for passage. The motion was seconded by Representative Lucas. Motion carried.

The next bill taken up was HB-2662 concerning when lighted lamps are required. A motion was made by Representative Freeman that HB-2662 be recommended favorable for passage. The motion was seconded by Representative Lawrence.

A substitute motion was made by Representative Dillon that language be added to clarify that it does not apply to intermittent use or delay. The substitute motion was seconded by Representative Wilbert. Motion carried.

A motion was made by Representative Freeman that HB-2662 be recommended as amended favorable for passage. The motion was seconded by Representative Dillon. The motion failed 10-9 on a division.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on February 1, 1990.

The next bill taken up was HB-2657 regarding inspection clearance by motor carriers.

A motion was made by Representative Everhart that HB-2657 be recommended favorable for passage and placed on the Consent Calendar. The motion was seconded by Representative Dillon. Motion carried.

The minutes of the House Transportation Committee held on January 30, 1990, were approved as written.

The meeting was adjourned at 3:00 p.m.



Representative Rex Crowell

GUEST LIST

COMMITTEE: Transportation

DATE: 2-1-90

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Bruce Stout	301 W. 10 th	Atty Gen Office
DON LINDSEY	OSAWATOMIE	UTU
Nancy Lindberg	Topeka	AG
Pamela Mauro	Topeka	AG
Charlotte Bl... (unclear)	Topeka	AG
Al... (unclear)	301 W 10 th	AG
Randy Evans	301 W 10 th	AG
Jacques Dabie	Topeka	Ks. Ind. Auto Dealers Assn.
Dan Carlson	Topeka	KS Ind Auto Dealer Assn.
Dean Trammel	COUNCIL GROVE	KMCDA
PAT BARNES	TOPEKA	KS Motor Car Dealers Assoc.
Kerwin Allen	Topeka	Kansas Motor Car Dealers Association
Sharon Humphreys	"	KMHA
OH C Y... (unclear)	1206 W 10 th	Tyres
Mike Logan	Topeka	Ks Auto. Dealers Regulatory Coalition
Leroy Jones	"	BLE
JIM KEELE	PAOLA	B.L.E.
Mary Neubauer	Lawrence	AP
Ma... (unclear)	"	KDOP
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Paul... (unclear)	"	KCU
Jim... (unclear)	7346 W 83 DENVER	HERTZ
Carol Malachuk	6918 S.W. 28 th Topeka	FD Emp. Credit Union
Greg Wimbley	Topeka	KCU
Dan... (unclear)	Overland Park	Letters for Rep Cummings



Stade ①

KANSAS MARINE DEALERS ASS'N., INC.

January 29, 1990

Chairman Rex Crowell
Transportation Committee
Statehouse
Topeka, KS 66612

Dear Chairman Crowell,

The motor-vehicle fuel tax refund has been and still is a big issue in the marine industry.

At this time, we are paying an 11¢ State Road Use Tax and a 9.1¢ Federal Tax on all gasoline purchased for marine use. The aviation industry is exempt from these taxes and the farmers are allowed a State refund. Aviation obviously does not use the highways and farmers supposedly do not. More obviously, marine vessels (boats) do not use any highways. They are strictly used in water only.

We would ask that the current bill be revised to read that ALL boats be entitled to receive a refund on boat gas purchased on a cumulative basis exceeding 40 gallons per year.

Thank you for your consideration and attention in this matter.

Sincerely,

Gina L. Hodgson, Pres.
KS Marine Dealers Ass'n., Inc.

Attach. 1

TESTIMONY ON H.B. 2691

AN ACT concerning the sale of motor vehicles

Presented to the

HOUSE COMMITTEE ON TRANSPORTATION

February 1, 1990

by the

KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Jerel Wright, Governmental Affairs Director for the Kansas Credit Union League (KCUL). Our association represents 98% of the 147 state-chartered and 42 federally-chartered credit unions located in Kansas. KCUL member credit unions serve the personal financial needs of over 500,000 individual credit union members and have over \$1.5 billion in combined assets. Kansas credit unions range in asset size from \$29,000 to \$114 million and range in membership size from 58 to 43,000 members.

Kansas credit unions oppose HB 2691 in its present form.

CREDIT UNIONS PROVIDE SERVICES TO MEMBERS

Credit unions are non-profit, democratically controlled financial cooperatives led and operated largely by volunteers. The purpose of a credit union is not for profit, not for charity but for service to individual credit union members. When credit unions were formed, they offered only basic share deposit accounts and loans. Over the years, credit unions have evolved and many now offer a wide variety of services.

Attach. 2

New services at a credit union typically stem from the demand from the individual credit union members. One of the services many credit unions have provided over the last 10 years or so is the opportunity to purchase late model, reliable used cars at a discount from rental car agencies. The rental car agencies have gone so far as to sponsor "Credit Union Sales".

OFF-SITE AUTO SALES

When credit unions originally became involved with the rental car agency sales, the individual members would attend the sale at the rental car agency's "established place of business" (as defined by the Vehicle Dealers Act). As the sales became more popular, credit unions asked the rental car agencies to hold the sale at the credit union or some location which was more convenient for the individual credit union members and the credit union to discuss financing the vehicles.

When the rental car agencies began holding the sales at locations other than their established place of business they coined the term "off-site auto sale" to refer to the sale at a credit union. With the success of the sales in the early 1980's came criticism and concern of individual vehicle dealers and Kansas Motor Car Dealers Association because of the competition with the dealer's traditional used car market.

RULING BY KANSAS DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES

The concerns were so strong that the dealers asked the Kansas Department of Revenue, Division of Motor Vehicles to review state law concerning the location where a licensed vehicle dealer may conduct a sale. The Division looked to K.S.A. 8-2401 et. seq. (vehicles dealer's and manufacturer's licensing act) to determine whether the rental car agencies had authority to hold the sales at a location other than the established place of business. Finding no authority for or prohibition of the off-site auto sale, the Division ruled that any sale not held on a licensed, permanent dealer lot was illegal.

SUIT FILED TO INTERPRET THE STATUTE

Upon the ruling of the Division of Motor Vehicles, the Hertz Corporation and Avis-Rent-A-Car sued the Division (in 1984) for an injunction of the ruling prohibiting off-site auto sales and for a judicial interpretation of the vehicle licensing law. The District Court of Shawnee County issued an injunction against the Division. The lawsuit was carried on until 1987 when the rental car agencies and the Division agreed to a settlement. A copy is included in my testimony as Attachment I.

Under the settlement, the Division agreed to offer legislation to the 1988 Legislature which would allow vehicle dealers to conduct business at supplemental places of business so long as the dealers comply with the requirements of the Vehicle Dealers Act. The Division introduced HB 3085 which was subsequently approved by the

1988 Legislature and became effective on July 1, 1988.

HB 3085 (1987)

The bill amended K.S.A. 1987 Supp. 8-2401 by creating subsection (nn) which provides the following definition, "Supplemental place of business" means a business location other than that of the established place of business. The bill also amended K.S.A. 1987 Supp. 8-2404 subsection (o) with the following language: If a supplemental place of business is not operated on a continuous, year-round basis, the dealer shall give the department 15 days' notice as to the dates on which the dealer will be engaged in business at the supplemental place of business. These changes provided the Division with the ability to investigate and either approve or disapprove of a location for an off-site auto sale prior to the date of the sale. Rental car agencies and credit unions are and always have been participating in off-site auto sales within the requirements of the Vehicles Dealers Act.

HB 2691

This bill strikes at the heart of the settlement agreement between the Kansas Department of Revenue, Division and the Rental Car Agencies. First, the bill amends K.S.A. 1989 Supp. 8-2401 subsection (nn) by adding language which would require a "supplemental place of business" to be operated by a dealer on a year-round basis within the same city or county as the established place of business. This provision places restrictions on the location of the sale far beyond the regulation proposed by Division

in the 1988 settlement.

Second, the bill amends K.S.A. 1989 Supp. 8-2404 subsection (p) in part, by striking the language on page 10, lines 37 through 41 which currently allows a dealer to seek approval from the Division for an off-site auto sale by providing a 15 day notice. The provision along with the change proposed to K.S.A. 1989 Supp. 8-2401 essentially closes the door on any off-site auto sale by an individual vehicle dealer. This change is again contrary to the settlement and legislation approved by this committee and the Kansas Legislature in 1988.

DEALERS SEEKING ADDITIONAL AUTHORITY

While seeking to legislate their competition out of business by eliminating off-site auto sales, the vehicle dealers would like this committee to provide even more assurances for their success by only allowing motor vehicles shows or displays in which a majority of the vehicle dealers (of the county where the show takes place) participate. In addition, the legislation would authorize the vehicle dealers at the show to offer the vehicles for sale, something which is not currently authorized under the Vehicle Dealers Act.

Although, the car dealers offer all of these changes under the disguise of consumer protectionism, you could better describe this legislation as dealer protectionism. By approving this bill, you would help to eliminate free trade in an open market for the

consumer. When the FTC was asked to comment on a similar piece of legislation considered by the 1986 and 1987 Illinois Legislature, the Chicago Regional Office of the Federal Trade Commission concluded that restrictions of the kind found in HB 2691 would result in reduced competition and increased prices paid by the Illinois Consumer for used cars. A copy of the FTC letter is included as Attachment II.

I will conclude my comments by saying that credit unions are interested in helping their individual members receive the best car for the best price, while abiding by all laws, rules and regulations of the State of Kansas. We feel the present law provides for fair competition among vehicle dealers. To that end, we propose amendments in two provisions of HB 2691.

PROPOSED AMENDMENTS (Attachment III)

On page 6, in lines 18, 19, 20 and 21 by striking the words:

of the dealer which is also operated by the dealer on a continuous year-round basis within the same city or county as the established place of business

And on page 10, in line 37, 38, 39, 40 and 41 by reinserting the words:

If a supplemental place of business is not operated on a continuous, year-round basis, the dealer shall give the department 15 days' notice as to the date on which the dealer will be engaged in business at the supplemental place of business.

Thank you, Mr. Chairman, for considering our comments. I will stand for questions at your direction.

ATTACHMENT I

FILED BY CLERK
KS. DISTRICT COURT
3RD JUDICIAL DISTR.

JUN 1 10 12 AM '88

GENERAL JURISDICTION
TOPEKA KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 13

THE HERTZ CORPORATION,
A Delaware Corporation, Authorized
to do Business in Kansas,

Plaintiff,

AVIS RENT A CAR SYSTEMS, INC.,
a Delaware Corporation, Authorized
to do Business in Kansas,

Plaintiff,

vs.

THE STATE OF KANSAS,
THE DEPARTMENT OF REVENUE OF
THE STATE OF KANSAS,
THE DIVISION OF VEHICLES OF THE
DEPARTMENT OF REVENUE OF THE
STATE OF KANSAS,
HARLEY T. DUNCAN, as Secretary of
Revenue of the State of Kansas,
ROBERT BUGG, as Director of the
Division of Vehicles of the
State Department of Revenue of
the State of Kansas,

Defendants.

Case No. 84 CV 1489

Chapter 60

JOURNAL ENTRY

NOW on this 17th day of May, 1988, the above-captioned matter comes on for hearing as regularly scheduled by the Court. The plaintiff, The Hertz Corporation, appears by its attorney, James R. Orr. The plaintiff, Avis Rent A Car Systems, Inc., appears by its attorney, Steven C. Montgomery. The defendants, The State of Kansas, The Department of Revenue of the State of Kansas, The Division of Vehicles of the Department of Revenue of the State of Kansas, Harley T. Duncan and Robert Bugg, appear by their attorney, Mark Wettig. There are no other appearances.

After reviewing the file, hearing statements of counsel and being otherwise fully advised in the premises, the Court finds as follows:

1. On or about December 15, 1987, at a conference held before the Court, the various counsel representing the parties to this action reached an agreement, whereby defendants agreed to execute a consent order granting judgment to the plaintiffs in the event defendants were unable to obtain a legislative solution to this action during the 1988 Kansas legislative session.

LEWIS, ALDENSON
& MONTGOMERY
ATTORNEYS AT LAW
10 S.W. TOPEKA AVENUE
TOPEKA, KANSAS 66611
(913) 232-0733

2. 1988 House Bill No. 3085, a copy of which is attached hereto, was passed by the legislature and signed into law by the Governor, the effective date of said Act being July 1, 1988.

3. House Bill No. 3085, in pertinent part, allows licensed vehicle dealers to conduct business at supplemental places of business so long as the dealers comply with the requirements contained in the Act.

4. While the passage of House Bill No. 3085 resolves the substantive issues litigated in this action after the bill's effective date of July 1, 1988, said legislation does not resolve the pending issues from the present date through June 30, 1988.

5. Pursuant to the prior agreement entered into by the parties hereto, judgment is hereby entered on behalf of plaintiffs and against defendants for the period prior to the effective date of House Bill No. 3085. The plaintiffs, The Hertz Corporation and Avis Rent A Car Systems, Inc., prior to July 1, 1988, shall be allowed to conduct sales of used vehicles at locations other than their established places of business. The defendants shall not interpret, enforce, administer or construe the Vehicle Dealers and Salesmen Licensing Act, K.S.A. 8-2401 et seq., in any manner which would prohibit plaintiffs from so conducting such sales.


6. Commencing July 1, 1988, the judgment entered in this action shall be superseded by the provisions of 1988 House Bill No. 3085, a copy of which is attached hereto.

7. The costs of this action are assessed to the plaintiff, The Hertz Corporation.

IT IS SO ORDERED.

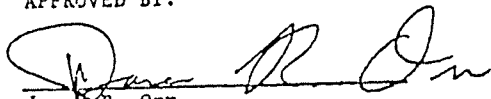
JUDGE OF THE DISTRICT COURT

PREPARED BY:

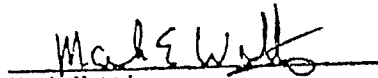


Steven C. Montgomery
ALDERSON, ALDERSON & MONTGOMERY
1610 S.W. Topeka Avenue
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(913) 232-0753
Attorneys for Plaintiff, Avis Rent A Car Systems, Inc.

APPROVED BY:



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The Department of Revenue of The State of
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Department of Revenue of The State of Kansas,
Harley T. Duncan and Robert Bugg

FEDERAL TRADE COMMISSION
Chicago Regional OfficeSuite 1437
35 East Monroe Street
Chicago, Illinois 60602
Area Code 312 353-4423

April 24, 1987

The Honorable Woods Bowman
State Representative
2100 Ridge
Evanston, IL 60201

Dear Mr. Bowman:

The Federal Trade Commission staff is pleased to have this opportunity to respond to your letter of April 15, 1987, requesting our comments on House Bill 1173.¹ This bill would have the effect of prohibiting fleet dealers, such as Avis and Hertz, from conducting fleet sales outside a 10 or 15 mile radius around their licensed, permanent dealer lots. The probable result of this legislation would be to reduce competition and to increase the prices paid by Illinois consumers for used cars. We believe that consumers will be best served if the market is left free to operate without unnecessary regulation, and we therefore recommend that this bill not be enacted.

Our interest in this legislation stems from the Commission's mandate to enforce the antitrust and consumer protection laws of the United States. Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition, and unfair or deceptive acts or practices. By enforcing this statute, the Commission staff has gained substantial experience in analyzing the impact of various restraints on competition and the costs and benefits to consumers of such restraints. In recent years we have been involved in several such issues that specifically related to the used car market. In 1984, for example, the Commission issued the "Used Car Rule" to reduce the effects of oral misrepresentations in used car transactions.² The development of this rule, as well as the conduct of investigations and studies relating to the

1 The views presented in this letter are those of the Chicago Regional Office and Bureaus of Competition, Consumer Protection, and Economics and are not necessarily those of the Commission itself. The Commission has, however, voted to authorize us to present these comments.

2 Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. § 455.

automobile industry, have provided the Commission staff with substantial experience in several aspects of the automobile market.³

In November of 1986, we were invited to provide written comments on House Bill 787, which was very similar to the legislation that is now being considered. We opposed that bill. It was our belief that HB 787 was likely to harm consumers by increasing the price of used cars. Therefore we believe that the Illinois legislature acted in the best interest of consumers when it chose not to enact that bill.

HB 1173 raises the same issues. HB 1173 would amend the Illinois Vehicle Code to prohibit the issuance of a supplemental license to a new or used vehicle dealer intending to hold a sale outside of his or her relevant market area.⁴ It is our understanding that most fleet sales are currently held outside the seller's relevant market area. HB 1173 therefore proposes to virtually eliminate fleet sales as they are presently conducted.

The purpose of this bill is apparently to protect consumers against "fly-by-night" used car sellers. Illinois already addresses these concerns, however, through the Illinois Consumer Fraud Act⁵ and through its regular licensing of new and used car dealers.⁶ We are not aware of any reason to believe that HB 1173 would provide consumers any addition protection from fly-by-night operators.

3 The FTC Bureau of Economics' Staff Report on the Effect of State Entry Regulation on Retail Automobile Markets, January 1986, is a recent example of the FTC's concern with anti-competitive regulations in the automobile market.

4 Section 2 of the Motor Vehicle Franchise Act defines relevant market area as a 10 or 15 mile radius around the dealer's principal location, depending upon the population of the county. Ill. Rev. Stat. ch. 121 1/2, § 752 (1985).

5 Illinois Consumer Fraud and Deceptive Business Practices Act, Ill. Rev. Stat. ch. 121 1/2, § 262 et seq. (1985).

6 Illinois Vehicle Code, Ill. Rev. Stat. ch. 95 1/2, § 5-101 et seq. (1985).

Indeed, we believe that HB 1173 would adversely affect Illinois consumers by restricting competition in the used car market. This in turn would be likely to lead to price increases. The usual practice of fleet dealers, such as Avis and Hertz, is to hold used car sales on credit union property. Such sales entail low overhead, and fleet dealers may therefore pass along substantial savings to consumers. Credit unions recently surveyed by the Illinois Credit Union League estimated that members paid an average of \$1,118 less for a used car sold at a credit union sponsored fleet sale than they would have paid a "conventional" used car dealer. Credit unions, however, tend to be located in parts of the state other than where the fleet owners maintain their principal lots. Thus the principal effect of restricting supplemental licensing for used car dealers will be to increase the prices paid by consumers for those cars.


The effects may be particularly pronounced in certain areas of the state. We understand that many fleet sales are made in the smaller cities or towns where there may only be a limited number of conventional dealerships. Competition from the fleet sales may be especially important in this context.

In addition, the proposed bill would harm consumers in the car rental market. Fleet sales benefit this market by enabling fleet dealers to turn over their inventories more efficiently. By effectively prohibiting fleet sales as they are now conducted, HB 1173 would tend to increase the cost of car rentals.

In conclusion, we believe that HB 1173 would ultimately harm consumers of used vehicles. The unjustified limitations on fleet sales would lead to unnecessary increases in fleet dealers' costs and, correspondingly, to unnecessary increases in the prices consumers pay for used vehicles. Restricting fleet sales in the manner proposed would also reduce the competition that these sales provide to other segments of the used car market. The proposed bill may also lead to similar increases in price in the rental vehicle market. For all of the above reasons, the staff of the Federal Trade Commission recommends that HB 1173 not be enacted.

We appreciate having had this opportunity to provide our views on these issues.

Sincerely,


John M. Peterson
Director
Chicago Regional Office

ATTACHMENT III

PROPOSED AMENDMENTS to HB 2691

On page 6, in lines 18, 19, 20 and 21 by striking the words:

of the dealer which is also operated by the dealer on a continuous, year-round basis within the same city or county as the established place of business

And on page 10, in lines 37, 38, 39, 40 and 41 by reinserting the words:

If a supplemental place of business is not operated on a continuous, year-round basis, the dealer shall give the department 15 days' notice as to the date on which the dealer will be engaged in business at the supplemental place of business.



The Hertz Corporation
225 Brae Boulevard, Park Ridge, NJ 07656-0713

February 1, 1990

The Honorable Rex Crowell
Chairman, House Transportation Committee
House of Representatives
State of Kansas
Topeka, Kansas

Mr. Chairman, Members of the Committee, Fellow Citizens:

My name is Jim Graham, region group car sales manager for the Hertz Corporation. On behalf of The Hertz Corporation, and its Rent-A-Car Division, I respectfully submit the following commentary on the proposed legislation amending KSA 1989 Supp. 8-2401, 8-2404 and 8-2410. These comments memorialize the concerns of the aforementioned parties as well as those of the other rental car companies and numerous local credit unions and consumers groups who will be affected by the proposal to wipe out off-site sales by individual, licensed dealers. A written copy of my comments will be provided to the committee and I request that it be made a part of the record of this hearing.

I. Introduction

The proposed legislation, House Bill No. 2691, deals with the who, how and where of car sales in Kansas. Inasmuch as Hertz does not object to all of the bill, my comments will be restricted to "licensed location" sections. However, a general word about off-site sales is in order.

In the course of protecting the public good, those that govern are often asked to protect subgroups within the public. Occasionally such requests are appropriate, calling the attention of those charged with governing to the proper needs of consumers. But just as frequently, some competitors in the marketplace attempt to use the rule making authority of government as a means of disarming other competitors and keeping the focus of marketplace activity on themselves.

Page 2

We believe that such an attempt is the genesis of House Bill No. 2691 and that the proposals would have the affect of foreclosing the public's access to an important alternative source of good condition, late model automobiles.

The prohibition on off-site sales is not incrementally protective of the consumer, is unnecessarily burdensome on fleet owners and credit unions, and, in fact, will work to deprive consumers of access to small fleet and credit union sponsored alternatives to retail used car lots.

If the concern is to provide a method of determining who is responsible for consumer complaints about particular cars, the answer is found in holding the registered owner accountable for the retail disposition of his or her car, not in making it impossible for consumers to find alternatives to the standard used car sales lot. The fact is that existing consumer protection statutes and common law fraud theories are still effective in protecting the public from the unscrupulous. The proposed changes will only decrease the opportunities available to the consuming public, and make them further unable to bargain with standard used car dealers by removing a valuable form of competition.

II. There is no rational basis for further limitations on off-premises sales by licensed dealers.

House Bill No.2691's restrictions on off-premises sales by validly licensed, individual dealers serves no purpose other than to protect individual car dealers from competition. The facts confirm that off-premises sales present no danger to the viability of dealerships. On the contrary, off-premises sales stimulate the local market place, give the consumers choice, and cause local dealerships to become more competitive in their pricing and other terms, yielding a benefit to the consumer.

This view is entirely supported by the Federal Trade Commission (see attached letters from FTC to Illinois and Wisconsin lawmakers). The FTC's position letters give strong support to the proposition that further limits on off-premises sales by licensed dealers is nothing so much as anti-competitive, and to that extent, anti-consumer. In the absence of a clear benefit

to the consuming public, it is unclear whether further anti-competitive restrictions on free trade would even be lawful.

A. Off-premises sales support the local car service market.

Naturally, the most important thing to Hertz is maintaining its seventy-one years of good reputation. This puts an even higher burden on our car sales operations than most dealers could attempt to meet. In order to maintain that reputation, we make sure that we are always available to respond to any customer concern, and the customer knows that Hertz will be around long after most dealerships are gone. Hertz contracts with local service facilities all across the country to provide additional support for our cars.

It has already been admitted that off-premises sales will not deprive any dealership of all of its sales or even a significant number in terms of its survival. Therefore, warranty and other service income received by the dealership from off-premises rented cars is still incremental income to the dealership, and in an average dealership, 31% of its service income pays the overhead for the entire store. Hertz is glad to contribute to that income by putting cars on the road that might not have sold had we not offered a price low enough to attract the marginal buyer.

B. Off-premises sales bring money to local communities and stimulate local economies.

Some dealers claim that off-site sales take millions of dollars out of local communities, based on applying a multiplier effect to the sale price of each car sold. This is totally inapposite. Every car sold, whether by a rental company or a local dealership, originates outside the community, with the exception of trade-ins. Therefore, the actual "dealer's cost" of the car, i.e., the capital cost of the car, will always go to suppliers outside the community.

In other words, whether a car is carried on our books at \$7,000 or a local dealer goes to an auction and buys it for \$7,000 that \$7,000 never entered the local economy. Thus, any deprivation of the local economy is limited to the difference between the Hertz sale price and the dealers sale price, minus

dealer profit, since that which the dealer finally pockets presumably benefits no one but the dealer. And because Hertz' prices are generally lower, money stays in the pocket of the local consumer instead of accumulating in the bank accounts of individual dealers. But then, that is what the dealers are complaining about.

Hertz and the other rental car companies further keep money in the community by sponsoring these sales in conjunction with local credit unions. The interest income from credit union sales goes entirely to local credit unions, strengthening their ability to assist local members in mortgages, home improvement, boat and car loans.

III. Conclusion

It all comes back to competition. The only reasons that the complaining dealers do not do more off-premises sales is that their personal economics do not allow it. Maybe they can not carry a sufficient volume of cars. Maybe they can not efficiently transport vehicles to temporary licensed locations. Maybe they cannot get along with the credit union, or maybe they cannot guarantee state wide service.

We do all of the above, and our doing so presents a tremendous value to the consuming public, with prices up to \$1,000 lower than standard dealerships regularly offer. The dealers are not going anywhere. But they may have to offer better prices to the consuming public in order to compete with us. That is truly serving the public interest.

If a particular dealer is abusing the public, the Department has the authority to fine, suspend or condition the performance of that licensed dealer. One of these powers should be utilized in lieu of depriving the consumer of a choice.

Respectfully submitted,

0146M

Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION
By The
KANSAS MOTOR CAR DEALERS ASSOCIATION

Re: HB 2691, "Off-Site Sales" of Motor Vehicles

Mr. Chairman, members of the committee, I am Kevin Allen, Executive Vice President of the Kansas Motor Car Dealers Association, representing 330 franchised new car and truck dealers in Kansas. I appear before you this afternoon to support HB 2691. This bill would revise current law governing the sale of vehicles at locations away from a licensed dealer's main location. We call this concept "**Off Site Sales**".

To sell vehicles under present law as a dealer, one must have an established place of business with a working telephone, certain signage requirements and proper zoning. This is to assist law enforcement and provide some evidence that the operator is in the auto business and can be located to meet the responsibilities required of the dealer by the law and consuming public at the point of sale.

Present law also contains a loop hole affecting the above requirement. A supplemental place of business is allowed to be operated under present law with few requirements, and it need not be operated on anything other than a temporary basis. In other words, I can give the director of vehicles fifteen days notice as to the time, date and place I want to operate and then do so. There appears to be no prohibition in the law to prevent selling vehicles at a supplemental place of business out of a flat car parked at a railroad siding, a parking lot, or a transport in the middle of town. This creates a lack of accountability for consumer protection, service, implied warranty requirements or responsibilities, and substantially increases the likelihood of fraudulent or incomplete sales (such as transferring title), dumping vehicles with rolled odometers, or damaged vehicles. More important, however, it allows auto dumping which can depress a market for months creating hardship for local car dealers.

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We believe Kansas wants and needs to have long-term stable businesses comprising the economic base of its communities. The stability and operating rules this proposal supplies will see to preserving this benefit for the future and help prevent questionable sales practices offered out of an empty bag.

There is another legitimate important public policy concern for this legislation. We have many regulated industries. Such regulation is generally through inspection, licensing or both. The oil and gas industry, certain professions, the auto industry, financial markets and financial institutions are but a few examples. The rules and regulations for these industries are suited to their specialty and are designed to protect the public interest. This interest ranges from assuring a stable supply of quality goods and services to holding retailers to certain obligations with the goal of assisting others in avoiding financial loss.

One of the problems allowed under current law is the practice whereby financial institutions essentially are engaged in the business of marketing autos. This is generally for the purpose of generating loan business for the institution. It is not uncommon for this to be done by way of a special sale where many vehicles are brought to the door step of the institution and sold on the spot. They can do this because the parking lot essentially becomes a "supplemental place of business" under current law for the dealer offering the vehicles. This practice should not be allowed as a method of side stepping the purpose for regulating and licensing the industry.

This may sound good for the consumer, but is it really? It is obvious in this day and age that low prices are going to be available from the traditional market. There is, however, a difference between a low price and a give away price. Large rental companies and other institutional buyers receive fleet discounts from the manufacturer which allows them to purchase cars cheaper than dealers. If a business does not recover overhead or return a reasonable profit, it does not survive. If the market is eliminated or depressed because of the mentioned practice the established sales outlets must leave the business. Who will fill the void? How many miles will people have to drive to service their vehicles or enforce

implied warranty responsibility?

The results are the same with the practice of auto dumping. With this practice fleets of used vehicles are delivered to an area by large companies holding the units. A typical example would be a rental company which sets up a tent sale at a lot or location miles from its usual place of business and brings in more cars than are usually absorbed into the local market. The aftermath of this practice is a saturated market with depressed sales for the same product for months afterward. Once again, the established dealers risk loss of their businesses. While this may seem desirable in the short run, the loss of established dealers this fosters can only lead to regional marketing centers, fewer suppliers and higher prices. How would you like it if you maintained a large investment in a small town dealership and contributed to the community only to lose your investment, or be unable to draw a return because a large auto rental company from miles away poured hundreds of vehicles into a supplemental place of business (perhaps the local fairgrounds) for a week long sale and then disappeared until next year.

This bill does nothing to stop anyone from selling vehicles after obtaining a license at as many locations as desired. Nor will it lessen competition or prevent anyone from engaging in business anywhere the licensing law allows. It doesn't even stop anyone from selling next door to the small town dealer mentioned above or at the local fairgrounds. All it requires is that the seller maintain a local place of business all year round so inspectors can check titles, verify licensing compliance and keep track of the flow of vehicles furnished the public. It assures the public a better chance of finding their seller locally and requiring that the seller stand behind his product. It also will preserve a market economy free from the monopolistic influences created by over supply.

I appreciate the opportunity to appear before you today and would be happy to stand for any questions you have.

Carlson
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KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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TO: House Committee on Transportation

SUBJECT: House Bill 2691

Mr. Chairman and Members of the Committee:

My name is Dan Carlson. I am President of the Kansas Independent Automobile Dealers Association, and we represent 332 Used Car Dealers in the State of Kansas. Today I am here to voice our favorable opinion on House Bill 2691, the Off-Site Sales Bill.

Our Association believes that the passage of this bill will make it possible that no dealers have an unfair advantage. We are not against competition but in fact encourage it. Without this bill, others--namely Rental Car Organizations--have been able to profit by associating themselves with financial institutions, mostly credit unions, by having a special sale of vehicles on an off-site location. They have these sales, usually semi-annually, with great promotion. Most of the vehicles offered for sale are brought in from out of the area. For example, a rental dealer may have 20 vehicles to offer for sale; but many times will bring in on loan as many as 100 extra vehicles from across the country.

If the dealer sells these vehicles, they pay the local taxes. If not, they simply ship them back across the state lines. These special sales can cause a long term disruption in a small market. Local dealers pay and collect taxes every day while providing employment for thousands across the state. These dealers are business people who make large investments and long term commitments to provide a special service to their communities. These dealers must follow many federal and state regulations to operate their businesses.

The automobile market today is very competitive, and its economic forecast is a tough one. The Kansas Independent Automobile Dealers Association urges the passage of this bill to close a "loophole" and restrict any unfair advantage. Thank you for your time.

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

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