

Approved 4-28-90
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 March 12, 1990 in room 519-S of the Capitol.

All members were present except:

Representatives Gross and Everhart, excused.

Committee staff present:

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

Conferees appearing before the committee:

Mr. Mike Grogan, Kansas Automobile Dealers Coalition
Mr. Kevin Allen, Kansas Motor Car Dealers Association
Mr. John Schmid, Perl Chevrolet-Buick, Coffeyville
Mr. Tommy McGeeney, Kansas Independent Automobile Dealers Assn.
Mr. Dirk Bloemendaal, Amway Corporation
Mr. Allen Jessup, A. J.'s Auto Plaza, Wichita
Mr. Jerel Wright, Kansas Credit Union League
Mr. Paul Zeh, Wichita
Ms. Aleta Blue, Signature Fleet & Leasing, Andover, Kansas
Mr. Don Steele, Wichita, Kansas
Mr. Ed Martin
Mr. Larry Leatherman, Signature Fleet & Leasing, Andover, Kansas

The meeting was called to order by Chairman Crowell and the first order of business was a hearing on SB-486 concerning automobile brokers under the Vehicle Dealers' and Manufacturers' Licensing Act. Chairman Crowell distributed to Committee Members copies of the opinion issued by Attorney General Bob Stephan concerning SB-486. (See Attachment 1)

Mr. Mike Grogan, Kansas Automobile Dealers Coalition, testified in support of SB-486. (See Attachments 2 and 3)

Mr. Kevin Allen, Kansas Motor Car Dealers Association, testified in support of SB-486. (See Attachment 4)

Mr. Allen stated that Mr. Norman Sherbert, General Motors Corporation and Barry Coffman, Ford Motor Company both are in support of SB-486.

Mr. John Schmid, Perl Chevrolet-Buick, Coffeyville, Kansas, testified in support of SB-486. (See Attachment 5)

Mr. Tommy McGeeney, Kansas Independent Dealers Association, spoke in support of SB-486. (See Attachment 6)

Mr. Dirk Bloemendaal, Amway Corporation, testified in opposition to SB-486. (See Attachment 7)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on March 12, 19 90

Mr. Allen Jessup, A. J.'s Auto Plaza, Wichita, Kansas, testified in opposition to SB-486. (See Attachment 8)

Mr. Jerel Wright, Kansas Credit Union League, testified in opposition to SB-486. (See Attachment 9)

Mr. Paul Zeh, Wichita, Kansas, spoke in opposition to SB-486. (See Attachment 10)

Ms. Aleta Blue, Signature Fleet and Leasing, Andover, Kansas, testified in opposition to SB-486.

Mr. Don Steele, Wichita, Kansas, spoke in opposition to SB-486.

Mr. Ed Martin, Wichita, Kansas, testified in opposition to SB-486. (See Attachment 11)

Written testimony from Wal-Mart Stores, Inc., in opposition to SB-486, was distributed to Committee members. (See Attachment 12)

Mr. Larry Leatherman, Signature Fleet and Leasing, Wichita, Kansas, testified as an opponent to SB-486.

The hearing on SB-486 ended.

The meeting was adjourned at 3:30 p.m.



Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 3-12-90

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Russell Mueller	P? Box 40 Hope Ks 67451	None
Ryan Spohn	R.R. 1 Box 58 Tampa Ks 67483	Close Up Ks.
DONALD R. STEELE	233 N. Edgemore Wichita	SELF
PAUL ZEH	455 N. Parkridge, Wichita	Self
Larry Leitchman	1949 N Andover Road Andover Kas	Signature Fleet & K
Mita Blue	1949 N. Andover Rd Andover, Ks	Signature Fleet & Leasing
Elizabeth M. Jessup	1210 E. Central Wichita	AI's Auto Plaza West
Jay Allen Jenz	1210 E. CENTRAL ⁶⁷²¹⁴ Wichita	AI'S AUTO PLAZA WEST
Bill Allen Arnold	8410 W Kellogg ^{Wichita} 67409	Ks Credit Union People
Jared Wright	Topeka	KCUL
Byron John	7575 E. Fulton, Ada, Mich	AMWAY
Dirk Bleemendaal	7575 E. Fulton, Ada, Mich	AMWAY
Mark Wetters	Topeka	Dept. of Revenue
Kim Brown	126 N Hickok, Ulysses Ks	Close-up Kansas
Robbie O'Boys	Box 37 Ulysses, Kc.	close-up Kansas
L. W. Allen	RR 2 Augusta, Ks	Mealor
Tom Whitaker	Topeka	Ks Motor Carriers Assn
BOB GRANT	TOPEKA	KCU
Carol Feather - Francis	1221 Fairview Liberal,	Leadership Liberal
Mark Manning	Box 1821, Liberal, Ks	Leadership Liberal
Young Lundberg	Box 676, Liberal, Ks	Chamber of Commerce
DAN BARTZ	810 ARROWHEAD LIBERAL Ks	Leadership Liberal
Aaron B. Lane	610 west 3 rd ST ^{Wichita} Ks	Hill's motor company
Heath Kintzel	2421 Wichita St,	None
Ed DE SOIGNIE	TOPEKA	KANSAS CONTRACTORS ASSOC.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 2, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 22

The Honorable Vernon L. Williams
State Representative, Ninety-First District
State Capitol, Room 431-N
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles--Licensure of
Vehicle Sales and Manufacture--Brokers

Synopsis: 1990 Senate Bill No. 486, in prohibiting the
practice of automobile brokering, is invalid in
that it places arbitrary and unreasonable
limitations on the conduct of a legitimate
business. Cited herein: K.S.A. 1989 Supp. 8-2404;
1990 Senate Bill No. 486; L. 1955, ch. 172.

* * *

Dear Representative Williams:

You request our opinion regarding the validity of 1990 Senate
Bill No. 486 as it attempts to prohibit the business of
brokering new and used vehicles in the state of Kansas.

It is well settled that the legislature may, pursuant to the
State's police power, enact statutes to protect the public
health, safety and morals, preserve and promote the public
welfare, and even prohibit unequal and unfair competition.
State v. Consumers Warehouse Market, 183 Kan. 502 (1958).
However, "[w]hile the police power is wide in its scope and
gives the legislature broad power to enact laws to promote the
health, morals, security and welfare of the people, and
further, that a large discretion is vested in it to determine
for itself what is deleterious to health, morals or is

Attach-1

inimical to public welfare, it cannot under the guise of police power enact unequal, unreasonable and oppressive legislation or that which is in violation of the fundamental law." Gilbert v. Mathews, 186 Kan. 672, 677 (1960). In Gilbert, the Kansas Supreme Court was called upon to determine whether then-existing sections of the "new goods public auction law," L. 1955, ch. 172, constituted a valid exercise of police power in promoting the public health, safety and welfare of the people of the state, or whether instead these provisions were unreasonable, arbitrary, discriminatory or confiscatory and imposed solely for the purpose of limiting or eliminating competition for the benefit of persons engaged in selling goods other than at auction. The court began its discussion with the following statements:

"While there are no Kansas cases specifically in point, it is universally recognized that the business of an auctioneer and of selling merchandise at auction is a legitimate business which cannot be prohibited directly or indirectly. However, the right to sell at auction is not absolute but may be withheld unless there is compliance with reasonable regulations. The business is affected with a public interest and is subject to reasonable legislative restriction and regulation to prevent abuses and frauds. Requirements for the licensing of auctioneers and auctions as well as other regulations which are reasonable and not wholly arbitrary have long been upheld. The right to regulate and license the business does not, however, include the right to prohibit it directly or, in effect, to adopt unreasonable and unfair regulations, or such regulations as would be oppressive or highly injurious to the business." 186 Kan. at 676.

The court recognized the potential problems associated with "here today and gone tomorrow" merchants, and that "[t]he legislature may well have found there are greater opportunities for deception and fraud in such sales than in those from established places of business [and] that those who conduct such auctions require more policing and are a greater burden to the community since they assume no responsibility

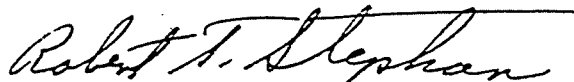
for its welfare." 186 Kan. at 680. Nevertheless, the court held the subject provisions invalid in that they placed "arbitrary and unreasonable limitations, regulations and impositions on the conduct of a lawful business, and [were] designed to be so oppressive and unreasonable that [they prohibited] the conduct of such lawful business." 186 Kan. at 686. The court stated that "[a]buses may, and probably do, grow up in connection with the auction business and are adequate reason for regulation but this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way." 186 Kan. at 689.

We believe the Gilbert case is on all fours with the issue here presented. 1990 Senate Bill No. 486 is offered as consumer protection/dealer protection legislation, but rather than attempting to further regulate brokers of new and used vehicles, it totally outlaws the conduct of that business except when "performed or authorized within the requirements or scope of any other category of license. . . ." S.B. 486, §§ 1 (ff), 3(v). Proponents of the bill contend that it is needed to eliminate unfair competition, to maintain the current automobile distribution system, and to protect consumers from fly-by-night sellers who are not responsible for the product sold. Minutes of the Senate Committee on Transportation and Utilities, Jan. 25, 1990, and attachments. Again, we do not believe these purposes justify completely outlawing an otherwise legitimate business concern. We think it interesting to note the United States Supreme Court in 1966 found concerted efforts by General Motors Corporation and its franchised dealers in Los Angeles, California to exclude vehicle brokers from the market in that area were unlawful restraints of trade under the Sherman Antitrust Act. United States v. General Motors Corporation, 384 U.S. 127, 16 L.Ed.2d 415, 86 S.Ct. 1321 (1966). Staff of the Federal Trade Commission (FTC) have taken the position that the prohibition of brokering would, be of more harm than benefit to consumers. Comments of the Staff of the Federal Trade Commission on Prohibition of Automobile Brokering, House Bill 4390 (S-6), Before the Senate Committee on Commerce and Technology, General Assembly of the State of Michigan, September 29, 1988; Opinion letter dated March 21, 1989 from staff of the FTC to the Honorable Aldo A. DeAngelis, Senate Assistant Minority Leader, State of Illinois. Finally, we note the following: brokers are currently required to be licensed and to maintain an established place of business which cannot also be a residence; K.S.A. 1989 Supp. 8-2404(a), (k); the director of vehicles may when issuing a new or renewal license require information relating to a broker's

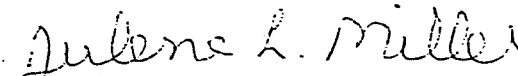
solvency "or other pertinent matter commensurate with the safeguarding of the public interest" to use in determining the fitness of the broker to engage in business, K.S.A. 1989 Supp. 8-2404(c); applicants for brokers' licenses must furnish and maintain a bond in the amount of \$15,000 "as indemnity for any loss sustained by any person by reason of any act by the licensee in violation of any act which constitutes grounds for suspension or revocation of the license", K.S.A. 1989 Supp. 8-2404(i); brokers are considered suppliers under the Kansas consumer protection act and thus are subject to that act's provisions, Attorney General Opinion No. 86-25; manufacturers' warranties generally must be honored by franchised dealers of the manufacturer regardless of where or from whom the vehicle was purchased. Other potential problems associated with the business of brokering vehicles, such as coverage by the lemon law and the ability to trace brokered vehicles in the event of a safety recall, may and should, in our opinion, be achieved by less drastic measures.

In conclusion, 1990 Senate Bill No. 486 is invalid in that it places arbitrary and unreasonable limitations on the conduct of a legitimate business.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 28, 1987

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5249ATTORNEY GENERAL OPINION NO. 87- 126

The Honorable Vernon L. Williams
State Representative, Ninety-First District
2402 Coolidge Avenue
Wichita, Kansas 67204

Re: Automobiles and Other Vehicles--Licensure of
Vehicle Dealers and Manufacturers--Brokers

Synopsis: 1987 Senate Bill No. 115, if passed into law, would prohibit vehicle brokers from conducting business within the State of Kansas. We do not believe that this proposed prohibition is reasonable under the circumstances in that it is so oppressive that it prohibits the conduct of a lawful business for stated purposes that may be achievable by less oppressive means. For this reason we believe 1987 Senate Bill No. 115 in its current form would offend the guarantees of equal protection found in the United States and Kansas Constitutions. If, however, the legislature could show a substantial relationship between the prohibition and the promotion of public health, safety and welfare, and that the prohibition is necessary to achieve such goal, 1987 Senate Bill No. 115 may be able to withstand constitutional challenge. Cited herein: 1987 Senate Bill No. 115; K.S.A. 8-2401; K.S.A. 8-2402; Kan. Const., Bill of Rights, §§1, 2, U.S. Const., Fourteenth Amendment.

*

*

*

Dear Representative Williams:

As State Representative for the Ninety-First District, you request our opinion regarding the constitutionality of 1987 Senate Bill No. 115. Specifically, you inquire as to whether a law prohibiting automobile brokers from conducting business in the State of Kansas can survive constitutional scrutiny.

1987 Senate Bill No. 115 amends the Vehicle Dealers' and Manufacturers' Licensing Act, K.S.A. 8-2401 et seq. The term "broker" is defined in Section 1(ff) of the bill as follows:

"Broker" means 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. . . ." (Emphasis added.)

Section 2(q) of 1987 Senate Bill No. 115 provides:

"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."

Thus, section 2(q) would have the effect of outlawing automobile brokers in the State of Kansas if 1987 Senate Bill No. 115 is passed into law.

The State, through the exercise of its police power, may enact laws to promote the health and welfare of its citizens. However, a law which is unreasonable and arbitrary is not a proper and valid exercise of that police power, and may violate constitutional equal protection guarantees.

The Fourteenth Amendment to the federal constitution prevents the states of the union from denying to any person within their jurisdiction the equal protection of the laws. The Kansas Supreme Court has held that the provisions of the

Kansas Constitution declaring that all men are possessed of equal and inalienable natural rights and that all free governments are instituted for the equal protection and benefit of the people are the Kansas counterparts to the equal protection guarantees found in the Fourteenth Amendment. Kan. Const., Bill of Rights, §§1, 2; Stephens v. Snyder Clinic Association, 230 Kan. 115 (1981).

The basic principles which must be applied in determining the constitutionality of a statute are set forth in City of Baxter Springs v. Bryant, 226 Kan. 383, 385-86 (1979);

"The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. [Citations omitted.]

"In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done. [Citations omitted.]

"Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt. [Citations omitted.]

. . . .

"The propriety, wisdom, necessity and expedience of legislation are exclusively matters of legislative determination and courts will not invalidate laws, otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject is wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere. [Citations omitted.]'

State ex rel. Schneider v. Kennedy,
225 Kan. 13, 20-21 (1978)."

The fixed rule and basic standard by which the validity of all exercises of the police power is tested is set forth in State v. Pendarvis, 181 Kan. 560, 566 (1957), in which the court states,

"The police power of the state extends only to such measures as are reasonable and . . . all police regulation must be reasonable under all circumstances."
See also City of Junction City v. Mevis, 226 Kan. 526, 535, 535 (1979).

In Delight Wholesale Co. v. City of Overland Park, 203 Kan. 99, Syl. ¶4 (1969), the limitation on the police power was stated as follows:

"While the police power is wide in its scope and gives a governmental body broad power to enact laws to promote the health, morals, security and welfare of the people, and further, a large discretion is vested in it to determine for itself what is deleterious to health, morals or is inimical to public welfare, it cannot under the guise of the police power enact unreasonable and oppressive legislation or that which is in violation of the fundamental law." See also Gilbert v. Mathews, 186 Kan. 672, 677 (1960); Little v. Smith, 124 Kan. 237 (1927).

Later, in Delight Wholesale Co. v. City of Prairie Village, 208 Kan. 246, Syl. ¶2 (1971), the Kansas Supreme Court said,

"The police power is wide in scope and gives the governmental body broad powers to enact laws to promote the health, morals, security, and welfare of the people. Broad discretion is vested in the governing body to determine for itself what is deleterious to the health or morals, or which is inimical to public welfare. However, the governing body does not possess plenary power to pass

legislation that is arbitrary, oppressive, and capricious, and which bears no substantial relationship to the public safety and welfare."

In the above mentioned Delight Wholesale Co. cases, city ordinances which had the effect of prohibiting a legitimate business operation were struck down as being unreasonable and arbitrary. The prohibitive ordinances were not proper and valid exercises of police power and were held to violate the 14th Amendment to the Constitution of the United States and Section 1 of the Bill of Rights of the Constitution of the State of Kansas.

The brokering of vehicles, specifically automobiles, has been a legitimate business in Kansas for several years. However, the right of doing business is not absolute and may be regulated or withheld, if necessary, for public safety and welfare. In the present case it is necessary to determine whether the prohibition of a legitimate business, automobile brokering, is reasonably necessary to protect the general welfare of the citizens of Kansas.

The proponents of 1987 Senate Bill No. 115 feel that the prohibition on automobile brokers is necessary to combat fraud and to protect consumers from such things as odometer tampering. These proponents also feel that possible sales tax revenue could be lost due to the brokering of automobiles. See Attachment #1 of the March 30, 1987 House Transportation Committee minutes. These concerns, however, do not appear to be substantiated as there is no documented evidence contained in the legislative history of 1987 Senate Bill No. 115 which supports these conclusions.

As mentioned earlier, the brokering of automobiles has been, and is currently, a legitimate business. Brokers are licensed and regulated pursuant to the Vehicle Dealers' and Manufacturers' Licensing Act, K.S.A. 8-2401 et seq. Within K.S.A. 8-2402 is a declaration of public policy pertaining to this Act. K.S.A. 8-2402 provides:

"It is hereby declared to be the public policy of this state to provide for fair and impartial regulation of those persons engaged in manufacturing, distributing or selling of vehicles or mobile homes. The provisions of this act which are applicable to such activities shall be

administered in such a manner as will continue to promote fair dealing and honesty in the vehicle industry or the mobile home industry and among those engaged therein without unfair or unreasonable discrimination or undue preference or advantage. It is further declared to be the policy of this state to protect the public interest in the purchase and trade of vehicles and mobile homes, so as to insure protection against irresponsible vendors and dishonest or fraudulent sales practices." (Emphasis added.)


This declaration of public policy seeks to put all parties concerned on equal footing. A plain reading of K.S.A. 8-2402 would seem to weigh against a total ban or prohibition which is imposed only on one particular market participant, such as the automobile brokers. This type of prohibition would be compatible with K.S.A. 8-2402 only if such a ban is truly to protect consumers against "irresponsible vendors and dishonest or fraudulent sales practices." Based on the available evidence, it does not appear that automobile brokers present any more of a threat to consumers than do any other persons or entities who facilitate the sale of automobiles. This type of total prohibition of a legitimate business would seem to be an arbitrary exercise of the State's police power since it clearly discriminates against one market participant while aiding another, and since the adoption of further regulatory statutes could satisfy the consumer protection goals of the legislature. Furthermore, in the case of Fairmont Creamery Co. v. Minnesota, 274 U.S. 1, 47 S.Ct. 506, 71 L.Ed. 893, 897 (1926), it was said:

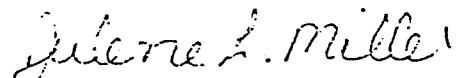
"It is not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody upon the chance that, while the innocent will surely be entangled in its meshes, some wrongdoers also may be caught."

In conclusion, it is our opinion that 1987 Senate Bill No. 115, Section 2(q) would be an invalid exercise of the State's police power because, based on the available information, the prohibition on automobile brokers does not appear to be reasonably related to the protection of the public welfare. Rather, the provision is arbitrary and unreasonable in that it

is so oppressive that it prohibits the conduct of a lawful business, i.e. automobile brokers, for stated purposes that may be achievable by less oppressive means. Thus, it is our opinion that 1987 Senate Bill No. 115 in its current form violates the Constitution of the United States and the State of Kansas.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

KANSAS AUTOMOBILE DEALERS LEGISLATIVE COALITION

HOUSE TRANSPORTATION COMMITTEE

March 12, 1990

STATEMENT OF MIKE GROGAN

Mr. Chairman; Members of the Committee – My name is Mike Grogan, Director of the Wichita New Car Dealers Association and Director of the Kansas Automobile Dealers Legislative Coalition, the following statement is respectfully submitted for your consideration.

Automobile dealers do not operate in a free market. To be licensed as a new car dealer, one must, by virtue of the Kansas vehicle code, operate a service facility in connection with its required new car franchise. The state of Kansas has recognized for years the importance to the consumer for a dealer to be able to service the new cars and trucks that it sells. The Kansas vehicle code also limits the dealer's business to the county in which it is licensed.

Under the guise of competition, new players seek to establish a foothold in the retail automobile business. Unlicensed, and a few licensed brokers, soap distributors and even discount stores all want to deal in new automobile and truck sales. However, they wish to do so: without any investment; without any risk; without any responsibility to the customer; and, without any obligation to service the product.

However, what is now occurring in the retail automobile business is unfair competition which will lead to the destruction of the vigorous competition in the automobile business. Automobile dealers do not oppose, nor do they fear, healthy competition. Any person or company who secures a franchise and is willing to make the investment of time and capital to enter the marketplace is welcome as a competitor.

The broker does not make the financial commitment, or undertake the other commitments necessary to provide this range of professional services to the consumer. Brokers are essentially "free riders" upon the franchise system established by the manufacturers, and do not serve the consumers' best interests.

Unfair competition from companies with no stake in, nor knowledge of, the automobile business will rapidly bring the demise of personal, convenient and satisfactory customer service in Kansas. Therefore, on behalf of 17,000 plus Kansans who are in the front lines of the automobile industry, including your hometown dealers, I respectfully urge your passage of Senate Bill 486 to the full House. At this time, I would like to introduce Mr. Jeff Longbine, of Longbine Chevrolet, who will give you his first-hand knowledge of the problem.

LEGAL OPINION

TO: Dealer Licensing Bureau

FROM: Eugene Lueger
Legal Services Bureau

RE: Brokers of New Vehicles

DATE: February 8, 1990

This opinion is in response to inquiries asking whether a "broker", as defined by K.S.A. 1989 Supp. 8-2401(ff), ~~can broker new vehicles without having a bona fide franchise agreement with the first or second stage manufacturer or distributor of the vehicle.~~

"Broker" is defined by K.S.A. 1989 Supp. 8-2401(ff) as:

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, . . .

The definition of a broker is identical to K.S.A. 1989 Supp. 8-2410(a)(2) and (3), which is part of the definition of a "vehicle dealer". Brokers by definition are "vehicle dealers".

K.S.A. 1989 Supp. 8-2404(q) provides that:

Any dealer selling, exchanging or transferring or causing to be sold, exchanged or transferred new vehicles or new mobile homes in this state must satisfactorily demonstrate to the director that such vehicle dealer or mobile home dealer has a bona fide franchise agreement or mobile home sales agreement with the first or second stage manufacturer nor distributor of the vehicle or mobile home manufacturer, to sell, exchange or transfer the same or to cause to be sold, exchanged or transferred.

KANSAS AUTOMOBILE DEALERS LEGISLATIVE COALITION

March 8, 1990

Mr. Marc Woods, Chief
Dealers Licensing Bureau
Division of Vehicles

Dear Mr. Woods:

In order to have a clear understanding of the problems facing the new car dealers brokers, I need to have answers for the following points:

A & J Auto Plaza

At this time, Mr. Tracy Allen Jessup d/b/a/ A & J Auto Plaza of Wichita, does not have a brokers license but according to your department records has a used car salesman license. One would assume that Elizabeth Jessup, if she is indeed the owner of A & J Auto Plaza as indicated in her application, is the party who has a brokers license. We are of the opinion that does not allow Tracy Allen or anyone else the right to operate as a broker on her license. Is this correct?

All-State Auto Sales - D-2289

No brokers license has been issued to anyone at this firm, but rather a retail vehicle dealers license has been issued. Please note attached letterhead stating otherwise.

Auto of American National Realty

No retail license to operate in this state has been issued to this firm. Mr. Herm Langston does not have a brokers license but rather a used vehicle license. Is this correct?

Again for the record, brokers must also be registered with the Division of Taxation Business Tax Bureau to collect and remit sales tax. Is this correct?

Brokers Definition

KSA 1989 Supp. 8-2404(9) requires brokers to have a bona fide franchise agreement if they are selling new vehicles. Is this correct?

"Broker" is defined by KSA 1989 Supp. 8-2401(ff) as:

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.

I would assume that in your letter of February 15 you indicated that any and all infractions of the Dealers Licensing Law will immediately be brought to the attention of the Director of Vehicles for Administrative Actions against the above individuals. Has anything changed from that position?

Sincerely,

Mike Grogan



KANSAS DEPARTMENT OF REVENUE

Division of Vehicles

Robert B. Docking State Office Building
Topeka, Kansas 66626-0001

March 12, 1990

Mike Grogan
Kansas Automobile Dealers Legislative Coalition
P.O. Box 2804
Topeka, Kansas 66601-2804

Dear Mr. Grogan:

In response to your letter, at this time, Mr. Tracy Allen Jessup, d/b/a A & J Auto Plaza of Wichita, does not have a brokers license, but does hold a used car salesman license. D-2027, A & J Auto Plaza West was issued 2/15/90, owner Elizabeth Jessup. D-4579, A & J Auto Plaza West has not been issued as of 3/12/90, owner Elizabeth Jessup.

Since D-4579, broker license has not been issued as of 3/12/90, Tracy Allen or anyone else does not have the right to operate under this brokers license.

D-2289, All-State Auto Sales has not been issued as of this date for a retail license, No brokers license under All-State Auto Sales has been issued as of 3/12/90.

Auto of American National Realty does not have a retail or brokers license in the State of Kansas. Mr. Herm Langston does not a license to operate in Kansas.

For the record, brokers must also be registered with the Division of Taxation Business Tax Bureau to collect and remit sales tax.

Any infractions of the Dealer Licensing Law will immediately be brought to the attention of the Director of Vehicles for Administrative Actions against the above individuals.

If you have any further inquiries, please do not hesitate to contact

*Director of Vehicles (913) 296-3601 • Titles & Registration Bureau (913) 296-3621
Driver License Examination Bureau (913) 296-3963 • Driver Control Bureau (913) 296-3671
Motor Carrier Services Bureau (913) 273-8192
Dealer Licensing Bureau (913) 296-3626*

KANSAS DEPARTMENT OF REVENUE
DIVISION OF VEHICLES
1990 RENEWAL APPLICATION FOR A VEHICLE
OR MOBILE HOME DEALER'S LICENSE

JAN 04 1990

DO NOT WRITE IN THIS

D-

Date Issued

1 D 200642

Firm Name A J'S AUTO PLAZA WEST

Dealer No. D-4579 (4579)

Address 1210 E CENTRAL

Bond / Eff. Date
Surety / Expires

City WICHITA

County SG

State KS

Zip Code 67214

Type of Dealer's License VEHICLE BROKER DEALER

Business Type INDIVIDUAL

Supplemental Locations:

Firm Owners
JESSUP ELIZABETH M

% of Ownership

Franchises

Business Phone _____

FOR OFFICE
USE ONLY

ANNUAL VEHICLE DEALER LICENSING FEES

CHECK MONEY	First Stage Manufacturer	\$200.00	Used Mobile Home Dealer (Mobile Home)	
DAILY LEDGER	Second Stage Manufacturer		Used & Salvage Dealer	
INCOMING LEDGER	Mobile Home Manufacturer		Salvage Only	\$50.00
SALES REPORTS	Factory Branch		Broker	
FRANCHISES	Distributor		Auction Motor Vehicle Dealer	
CHECK RENEWAL	Mobile Home Distributor		Wholesale Vehicle Dealer	
SOURCE SHEET	Distributor Branch			
ISSUE	New & Used Vehicle Dealer	\$50.00	First Stage Converter	
ORDER TAGS	(Autos, Trucks, Motorcycles, Trailers)		Second Stage Converter	\$25.00
CERTIFICATE	New & Used Mobile Home Dealer (Mobile Home)		Lending Agency	
	Used Vehicle Dealer		Supplemental Dealer Location within the same County.	\$10.00
	(Autos, Trucks, Motorcycles, Trailers)			
	Insurance Company	\$50.00		

REMITTANCE SECTION

Please note your firm has qualified for 0 dealer plates. If you do not wish to order all of the dealer plates your firm has qualified for in 1990, please make adjustments in the plate fee and total remittance indicated as being due below. Make remittance payable to "Director of Vehicles".

LICENSE FEE DUE \$ 50.00
 SUPPLEMENTAL LICENSE FEE \$ _____
 MOTOR VEHICLE DEALER 1ST PLATE ... \$ 275.50
 ADDITIONAL PLATES @ \$25.50 EACH ... \$ _____
 MOBILE HOME/TRAILER PLATES
 ALL \$25.50 EACH \$ _____
 TOTAL REMITTANCE DUE \$ 50.00

INDICATE NUMBER OF PLATES FOR EACH of the following:

Auto, Truck _____
 Trailer _____
 Motorcycle _____
 Mobile Home _____

FOR OFFICE USE ONLY

ORDER NO.	AUTO/TRUCK	TRAILER	MOTORCYCLE	MOBILE HOME	FULL PRIVILEGE PLATES

IMPORTANT: REVERSE SIDE OF THIS APPLICATION TO BE COMPLETED AND SIGNED.

2-5-90



Corporate Office:
707 N. WACO - SUITE 101
WICHITA, KANSAS 67203
PH (316) 263-1961

FOR IMMEDIATE RELEASE

ATTENTION: NEWS DIRECTORS
(SEE ATTACHED "SENATE BILL WOULD BAN CAR BROKERS")

THIS BILL CAN'T PASS !

IT IS NOT A "CONSUMER-PROTECTION" MEASURE AS FRANCHISE DEALERS WOULD LIKE YOU TO BELIEVE, BUT IT IS A "DEALER-PROTECTION" MEASURE THAT WILL INCREASE THEIR PROFITS AND CONTROL THE CONSUMER BUYING AND SELLING OPTIONS.

FOR MORE INFORMATION CONTACT: 263-1961

HERM LANGSTON
PRESIDENT

AUTOS OF AMERICA NATIONAL REALTY, INC.
AUTHORIZED BROKER: ALL STATE AUTO SALES

NEW AND USED CARS AND TRUCKS

CCTS
CHASE COUNTY TRUCK SALES

121 Cottonwood Street.
P.O. Box 177,
Strong City, Kansas 66869
Business Phone (316) 273-6384
or (316) 273-6385

1978 Mercury Grand
Marquis - Auto, V8
1988 Ford F150 Super
Cab XLT - Auto, V8
1982 Dodge Charger -
Auto, 4 Cyl.
1985 Ford **SOLD** II 4x4 -
Auto, 6 Cyl.
1985 Ford Crown Victoria -
Auto, V8
1981 Ford Fairmont -
Auto, 6 Cyl.
1982 Chevrolet C-60 2 Ton
Truck - 454 V8, 4 Speed
with 2 Speed Axle, PS, PB
1982 Chrysler LeBaron -
Auto, 4 Cyl.
1980 Mercedes 2 Ton
Truck - PS, PB, Diesel, 5
Speed with 2 Speed Axle

Special Note:
New Vehicles all makes
and models \$100.00 over
FACTORY INVOICE.

*"If we don't have it,
we can get it!"*
Stop in today and let us
know what your vehicle
needs are!

**TRADE-INS
WELCOME!**

BROKER vs. DEALER

1990 Ford Taurus
208 A Package

\$20,032 - Window sticker price less \$750 rebate

(A) Mid-Continent Credit Union - Donald Steele	\$18,523.43
John North Ford - Emporia	\$18,078.29
Don Trentham Ford - Hugoton	\$18,108.14
* Helmers Ford - Scott City	\$18,087.00
Dick Edwards Ford - Manhattan	\$17,793.99
Elkhard Ford-Mercury - Elkhart	\$17,538.00

*5 1/4% sales tax - all others 4 3/25%



Amway *Motoring Plan*

7401 Metro Blvd., Suite 185, Edina, Minnesota 55435
1-800-AUTONET/(1-800-288-6638)

Dear Fleet Manager:

This fall, we're changing the Amway Auto Network to make it better for you. **ON OCTOBER 1, THE AMWAY AUTO NETWORK WILL BECOME THE AMWAY MOTORING PLAN.**

Here's how the **Amway Motoring Plan** is more effective and profitable for you as a participating domestic dealership:

It's more effective. Each week we will send you a computer list of the names and phone numbers of **Amway Motoring Plan** members we referred to you that week.

It's more profitable. You sell the new factory order vehicle for \$50 over invoice...and you keep the \$50. No more need to include \$150 in the purchase price on each transaction. No more phone calls from us looking for \$150.

What's your cost?

The **Amway Motoring Plan** will bill you each quarter for an administrative fee. Your initial quarterly rate is \$300. Sign up, and we will bill you starting September 1. This administrative fee each quarter is the only charge for participating, no matter how many cars you sell.

Will you get inquiries?

We believe you will, for a couple of reasons: For one, your dealership serves a significant population area with plenty of potential customers.

For another, there are the Amway distributors - hundreds of thousands of them in North America. Wherever there are people, there are Amway distributors. Your first inquiries will likely be distributors from your area who will take advantage of the **Amway Motoring Plan**.

But what if you don't get inquiries?

We want you as a participating dealership, and we want it to be a "no-lose" arrangement for you:

If you do not get any inquiries from the **Amway Motoring Plan** during any billing period, we'll waive payment of further administrative fees until you get an inquiry.

If you never get an inquiry, the **Amway Motoring Plan** will refund your original participation fee at your request.

Enclosed is a new dealer agreement. After reviewing the agreement, you can sign and return it to us either by mail or telecopier. Our telecopier number is 612-895-8766.

Feel free to call with your questions. Just dial 800-288-6638 and ask to speak with a Dealer Development representative.

Thank you for your time. I look forward to your continued participation with the **Amway Motoring Plan**.

Sincerely,

Glenn E. Hendrix
Director of Dealer Development

**AMWAY MOTORING PLAN
DEALER AGREEMENT**

The purpose of this letter is to set forth our agreement, which shall be effective October 1, 1989, whereby you agree to participate in the AMWAY MOTORING PLAN ("Program") as a member dealership. The terms of our agreement are as follows:

PROVISIONS APPLYING TO NATIONAL FLEET NETWORK

1. National Fleet Network, Inc. ("NFN") administers the Program. NFN will refer to your dealership interested Program registrants ("Registrants") in your area and will provide to you on a weekly basis a computer generated list of all Registrants that were referred.
2. NFN provides these services for an Administration Fee in an amount set out under the "provisions applying to participating dealership". NFN will waive payment of any bill for the quarter following a quarter where no referrals have been sent to you. The amount of the Quarterly Administrative Fee may be adjusted by NFN beginning three months from the date of this Agreement and every three months thereafter. Adjustments will be based on the amount of administrative service that is supplied to your dealership. The Administrative Fee shall be in consideration for the services to be provided by NFN under the Agreement including, the referral of Program Registrants and the provision of account representatives to assist in the implementation of the Program, and other expenses, facilities, equipment, supplies, services and other costs required to provide you with this service.

PROVISIONS APPLYING TO PARTICIPATING DEALERSHIP

1. You agree to sell any Registrant, on a factory order basis, any new American made automobile or light duty truck, (one ton or less), that your dealership offers, for a price not to exceed \$50 over your factory invoice price which will include any "dealer preparation fees". The purchase price of a vehicle out of your existing inventory (stock units) is to be negotiated by you and the Registrant. If asked to, you agree to show the Registrant a copy of your factory invoice at the time of delivery of any factory-ordered domestic model.
2. You agree to sell any Registrant any new import model that your dealership sells for a price which is at a designated percentage less than the manufacturer's suggested retail price (which price shall not include any additional dealer mark-up). The designated percentage shall be included on the Dealer Data Sheet attached hereto.
3. You may charge less than these prices based on your direct negotiations with a particular Registrant. The amount you charge for any "dealer installed items" and other add-ons is to be negotiated between you and the Registrant.

Limited production cars (either domestic or import) may be excluded from the Program provided that you designate all models so excluded on the Dealer Data Sheet and provided further that you inform any Registrant interested in such model that the model cannot be purchased under the Program at the fleet price but may still be purchased through the Program at a higher price.

4. You agree to pay an Administration Fee of \$300.00, to be billed quarterly commencing September 1, 1989. You understand that it may be adjusted as described in the "provisions applying to National Fleet Network".

5. Your dealership will designate one or more employees who are to serve as contacts for Registrants and who will be responsible for the management of your dealership's participation in the Program. You shall notify us in writing of any changes in the persons so designated.
6. You agree to accept trade-ins against the purchase price of a vehicle. The value of trade-ins is to be negotiated by you and the Registrant.
7. You agree that when a Registrant signs a sales agreement, your designated Program contact must call the Program at 800/288-6638 for an authorization number to be written on your buyer's order.
8. If a sales agreement is cancelled prior to a scheduled production date for factory orders or delivery date on units out of stock, you agree to refund all deposit monies to the Registrant within three (3) business days.
9. You agree that the Registrant is entitled to any factory paid portion of any retail incentive that is in effect at the time of delivery.
10. You agree that any and all retail sales agreements are between you, the dealer, and the Registrant only. Neither the Program, NFN or any party affiliated with the Program or NFN will be a party to the retail sales agreement or has been included in any negotiations attendant to the sale or lease of a particular vehicle.
11. You are an authorized motor vehicle dealer in compliance with all applicable federal and state requirements.
12. You agree that either party to this agreement may terminate this agreement without cause or reason upon seven (7) days written notice to the other. Any sales in progress with a Registrant at the time this Agreement is terminated shall be completed. If either party terminates, any unused portion of fees already paid (calculated on the number of weeks remaining in the paid quarter) will be returned.
13. You agree that you will not use the Program's name, trademarks or trade names or those of any party affiliated with the Program, without prior written permission. You agree not to use any such name, trademark or trade names in any advertisement, public announcement or press release without prior written approval of the Program and NFN.
14. This document contains the entire agreement between the parties hereto and supersedes all previous negotiations, agreements, conversations and discussions.

If you agree to the terms set forth herein, please sign this letter, make a copy, and return it to us either by FAX or by mail.

(Dealership Name)

(Street Address)

(City, State, ZIP)

(Owner/General Sales Manager)

(Fleet Manager)

AMWAY MOTORING PLAN

By: NATIONAL FLEET NETWORK, INC.
12235 Wood Lake Drive
Burnsville, MN 55337

By: _____
(President)

800/288-6638; FAX 612/895-8766

Dated: _____



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
201 EAST MARKHAM STREET
HERITAGE WEST BUILDING
LITTLE ROCK, ARKANSAS 72201

(501) 371-2007

September 24, 1987

RECEIVED
SEP 25 1987

J. Scott Melton
Corporate Counsel
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716

ARKANSAS MOTOR
VEHICLE COMMISSION

RE: Sam's New Motor Vehicle Referral Service

Dear Mr. Melton:

This letter is written at the request of the Arkansas Motor Vehicle Commission in response to your letter of September 14, 1987 to J. H. Burnside, Director, Arkansas Motor Vehicle Commission. The Commission considered your proposals at its September 17th meeting and appreciates your concern with the Motor Vehicle Commission Act.

Based upon its understanding of the facts, the Commission believes that Sam's could not qualify for a motor vehicle dealer's license at the present time as you propose. This conclusion is based upon Ark. Stat. Ann. §75-2305(C) and §75-2310(A) which require a dealer to hold a manufacturer's franchise and Commission license for each line of vehicles to be sold. Also, the dealer must have proper facilities for the sale and repair of the line of new vehicles to be sold. However, if you believe that Sam's locations qualify for a dealers license, please let us know so we can forward an application.

Secondly, you propose to eliminate the \$100 fee so Sam's would not be considered a broker. Ark. Stat. Ann. §75-2303(18). The Commission has several concerns with this proposal. The elimination of the \$100.00 fee does not preclude Sam's from being a broker. That term includes a person who acts for a fee, commission or "other valuable consideration". It would appear that Sam's would receive other valuable consideration in benefits from new customers being attracted to Sam's and additional business from new and old customers.

J. Scott Melton
Page 2
September 24, 1987

Third, even if Sam's were not a broker, Sam's would appear to be an agent or representative of the dealer. Commission Regulation 1(17) prohibits the use of advertising containing the terms "cost", "percent or dollars over or under cost", "invoice or profit", "profit" or "invoice" or terms of similar import. This regulation is founded in part upon the statutory prohibition against false advertising. Ark. Stat. Ann. §75-2305(A)(2)(C). Sam's use of these terms would appear to place Sam's and the dealer at risk of being found to be in violation of the Commission's Act and regulations. Conduct in violation of the Commission's Act can be enjoined, Ark. Stat. Ann. §75-2312, or result in criminal prosecution. Ark. Stat. Ann. §75-2308. Finally, a licensee injured as a result of willful violation of the Act or regulations can recover damages: Ark. Stat. Ann. §75-2309.

Other sections of the licensing act may be applicable depending upon the specific details of any undertaking. Ark. Stat. Ann. §75-2305(A)(1) requires a license for each place of business. Ark. Stat. Ann. §75-2305(k) provides a procedure for protesting the location of a new dealership within a dealer's relevant market area. Regulation 1(29) and (30) prohibit sales activity at off premises displays except approved auto trade shows.

Finally, it appears that as originally proposed in the documents we have reviewed, Sam's was to solicit the sale of or offer for sale new motor vehicles. As such, Sam's would seem to be an unlicensed dealer as defined in Ark. Stat. Ann. §75-2303(2). Consequently, we request your response addressing what action Sam's intends regarding its motor vehicle referral plan.

If you need anything further in this regard, please let me know.

Sincerely,


THOMAS S. GAY
Deputy Attorney General

ISG:dc
cc: Arkansas Motor Vehicle Commission
0572S

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 12, 1987

Tom Gay
Deputy Attorney General
State of Arkansas
201 East Markham Street
Heritage West Building
Little Rock, Arkansas 72201

Mr. J. H. Burnside
Director
Arkansas Motor Vehicle Commission
1515 West 7th Street
Suite 300
Little Rock, Arkansas 72201

Re: Sam's Wholesale Club ("Sam's")-New Motor
Vehicle Referral Service
Arkansas Motor Vehicle Commission Notice

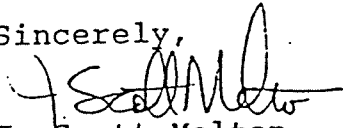
Gentlemen:

Pursuant to your recent written correspondence in regard to the above referenced matter, let this letter set forth the intent of Sam's in regard to the continuance of its new motor vehicle referral service in Arkansas.

Please be advised that Sam's has elected to discontinue this service and is currently cancelling its agreements with the appropriate Arkansas dealers.

It is hoped that this notification of discontinuance disposes of this matter. Should additional information or action be required by the Commission please direct such requests to my attention.

Sincerely,


J. Scott Melton
Corporate Counsel

91/111287/1-2x

cc: Bill Campbell

RECEIVED
NOV 15 1987

ARKANSAS MOTOR
VEHICLE COMMISSION

The Case AGAINST New-Car Brokering

■ Brokering Harms the CONSUMER

- The consumer has no recourse against a broker regarding misrepresentations as to price, financing, service, warranty, or lemon law applicability.
- The consumer receives no notice of retail incentive programs, such as factory and dealer finance programs, including rebates, interest rates and special accessory packages at discount prices.
- Brokers emphasize price, to the exclusion of quality and service, with no assurance that the brokered price is in fact lowest.
- To the extent that brokering impairs the ability of the dealer to sustain his service facilities, the consumer may eventually be deprived of accessibility to factory-standard warranty and non-warranty service.

■ Brokering Harms the FRANCHISE SYSTEM

- Brokering constitutes unfair competition with traditional franchised new-car dealers.
- A dealership represents a substantial investment in parts, service facilities, equipment, and personnel, which the broker does not have.
- Dealers are subject to government mandates which brokers are not:
 - Automobile Franchise Law
 - Service Facility Requirements
 - Warranty Provisions
- Dealers are required to provide facilities and personnel to perform warranty service; brokers do not.
- Dealers are evaluated daily on C.S.I. (Customer Satisfaction Index) by the manufacturers; brokers have no such self-correcting mechanism.

■ Brokering Harms the MANUFACTURER

- In a brokered sale, the manufacturer has no influence over the representations made to the customer.
- Brokering disrupts the manufacturer's vehicle allocation and distribution system.

■ Brokering Harms the CAR SALESMAN

- Brokering deprives the salesman of commission income which is the basis of his livelihood.

Summarizing the Anti-Brokering Bill

ISSUE

■ AN ACT amending the vehicle dealers' and manufacturers' licensing act; concerning brokers; amending K.S.A. 8-2402 and K.S.A. 1989 Supp. 8-2401 and 8-2404 and repealing the existing sections.

WHAT'S AT STAKE

The integrity and viability of the auto industry's franchise/distribution system.

- Accountability for representations made by brokers to consumers regarding price, financing, service, warranty and the applicability of lemon laws.
- Stable service prices for all car-owners.
- Customer satisfaction after the sale.
- Access to adequate service facilities in less populated regions for Kansas.
- The livelihoods of 5,000 plus new-car dealership sales people.
- New-car dealers, their 12,000 Kansas employees.

ACTION

An amendment to ban brokering is set for a January introduction and hearing before the Senate Transportation and Utilities Committee.

DEFINITIONS

■ **BROKERS** are unaffiliated third parties in new-car sales who can act between dealers and between dealers and customers. Their profit, or fee, is the difference between a dealer's sales price, including that dealer's profit, and the price a broker charges the customer. The broker's profit effectively substitutes for commissions earned by the dealership sale personnel. General Motors Corporation regard brokers as "FREE RIDERS" on the manufacturers' franchise system who "do not serve the consumers' best interest."

■ Manufacturers have used the FRANCHISE system to sell their product to the consumer ever since the birth of the industry in the early 1900's. Dealers paid cash in advance for the product and were contractually liable to serve them. Today, new-car dealers continue to be the vital distribution and service link between manufacturers and consumers. Brokering corrupts the integrity system, undermining the manufacturers' quest for customer satisfaction.

WINNERS

When Kansas joins other states in banning, beneficiaries will include:

- Manufacturers and their employees because brokering runs absolutely counter to industry's drive to guarantee customer satisfaction.
- Car-owners who depend upon new-car dealers to service their vehicles because unimpeded brokering will likely lead to higher service costs for all car-owners.
- New-car dealers, their 12,000 Kansas employees and 5,000 dealership sales personnel who depend upon new-car sales for their livelihood.

Attach. 3

Statement Before The
HOUSE TRANSPORTATION COMMITTEE
By The
KANSAS MOTOR CAR DEALERS ASSOCIATION
Monday, March 12, 1990

Re: SB 486, Motor Vehicle Brokering

Good afternoon and thank you Mr. Chairman and members of the committee. I am Kevin Allen, Executive Vice President of the Kansas Motor Car Dealers Association, a 330 member trade organization representing Kansas franchised new car and truck dealers.

Present Kansas law provides for brokering of automobiles and other vehicles. By definition [pg. 2, (b) lines 8-15], though it appears (and we have always been of the opinion) that new vehicle brokering is unlawful without a franchise. This ambiguity has prevented enforcement of the law which, we feel, needs to be cleared up. SB 486 would solve the problem by deleting automobile brokering from present law such that it can no longer take place.

A "new vehicle" is one which is sold on a "manufacturers statement of origin" rather than a title. Kansas regulations require Brokers to appear in the chain of title on any vehicle they sell, but often they do not. Thus, a person does not technically buy a "new vehicle".

This clarification in the law is necessary because the use of brokering has developed in form to the point where the original purposes for licensing those engaged in the auto industry, and auto retailing, has now progressed to the point where our licensing law is quickly becoming obsolete, or an obstacle to enforcement such that the goals of licensing are not accomplished.

These goals include the delivery of a safe and reliable product and the preservation of a system which can locally address problems which arise when the product is not so good.

On March 2, 1990, Attorney General's issued an opinion indicating that SB 486 would be unconstitutional. The premise for that conclusion is that the legislature cannot place arbitrary and unreasonable limitations on the conduct of a legitimate business unless it is to protect the public health, safety and welfare. We believe that brokering of new vehicles does affect the public welfare in that brokered sales create an inaccurate record of the true retail

Att. 4

purchaser. In the event of a safety recall or product defect notification, the manufacturer has inaccurate information on the owners true identity exposing the Kansas consumers to serious risk and time delay in resolving any problems they might have with the new vehicle and also increases the manufacturers exposure to product liabilities.

Brokered sales also create unreliable delivery records which can make it difficult for the consumer to obtain appropriate warranty service of the vehicle, as does the following owner if the warranty is transferable.

Lemon law or arbitration rights on a vehicle may be lost depending on how a sale is handled because such rights are generally applicable only to the first purchaser in the chain of title. All of these situations, we believe, creates significant harm to public health, safety and welfare.

The AG's opinion also alludes to the possibility that the problems that we mention could be accomplished in a less restrictive manner. The only way to insure such problems are avoided without eliminating the license would be to require that new car brokers maintain service facilities, factory communication networks, and trained technicians.

The presence of brokering also creates the likelihood of losing control of auto marketing, if not the marketing system as we know it. The Kansas broker can deliver the automobiles of an out-of-state dealer, new or used, at little or no overhead cost to himself.

This is money that leaves our borders to support a lucrative business elsewhere. In sufficient quantity, such sales deprive the local businessmen of the sale because that businessman - paying taxes, insurance, employees, meeting state regulations, and all the other things an established retailer needs - simply cannot compete with the volume price that no or low overhead brokers, or mass marketers can provide.

I have also included with my written testimony some examples of "brokering" for your review. I believe you can see for yourself the problem this practice creates for our marketing system. Also attached are letters from Chrysler Corporation and Buick Division of General Motors Corporation opposing brokering.

The Kansas Motor Car Dealers Association feels strongly that SB 486 is important to

maintain the automobile distribution system as we know it. New motor vehicle dealers are getting fewer and far between. Four years ago, there were 433 new car and truck dealers licensed in Kansas, now there are 373. There are 13 counties in Kansas that have no new car dealers; 14 counties with just one new car dealer; and 25 with just two. That means almost 50% of Kansas counties have two or less new car dealers. The Kansas consumer will be the one who pays the price as these numbers get lower.

The first question you are probably going to ask 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 February 23, 1990, there are currently 44 licensed brokers in Kansas. While SB 486 would delete this one class of dealer, you would not be deleting all 44 operations. Of those brokers, seven are mobile home dealers or parks and one is a real estate company that deals in mobile homes. Since SB 486 allows for the brokering of mobile homes, these eight businesses would be able to acquire licenses and conduct business as usual. 11 of those 44 brokers are new car dealers, 13 used car dealers, one in an automobile leasing company, and one a credit union. So the total of businesses that would cease to exist would, at the most, be four. It is also important to mention that any of these businesses could sell vehicles by obtaining a "normal" dealers license. Alternatively, there would be nothing to prevent a broker from obtaining a salesman license and selling cars as an outside salesman. Many brokers already have a relationship with an automobile sales agency, so this would not be difficult.

The Kansas Credit Union League opposes SB 486. I don't see why since only one credit union is a licensed broker. It is also interesting to note that, in the 1989 session, the League was successful in lowering the cost of their dealers licenses from \$50 to \$25 because they are only incidently involved in the sale of motor vehicles. I believe their opposition to SB 486 demonstrates the fact that they are involved in the business of selling cars. One of the attachments to my testimony is a copy of a credit union pamphlet detailing their New Car Buying Service, which further demonstrates the fact.

We respectfully request that you give this matter your strongest consideration and that when you take action, you recommend SB 486 favorable for passage. With me here today is John Schmid, a new car dealer from Coffeyville, KS who would like to make a few comments. But before I turn it over to John, I would be happy to stand for any questions.



P.O. Box 1016
Trumbull, CT 06611-1016

Dear New Sears Auto Discount Service Member:

Welcome to Sears Auto Discount Service — your total car ownership savings program. As a Sears Auto Discount Service member, you now have access to exclusive Sears Auto Discount Service maintenance, and new and used car deals. But you have to use your membership to take advantage of all these great savings. It's easy — here's how:

Sears Auto Discount Service helps protect you from skyrocketing auto maintenance prices.

Sears Auto Discount Service is doing something to help you control maintenance costs. As a member, you'll receive 10% discounts on all parts and labor performed on your car at the 1,100 New Car Dealers participating nationwide in the Sears Auto Discount Service. (With labor costs alone averaging \$35 an hour*, you can see how quickly your savings can add up.)

Just call 1-800-999-7545 for the participating New-Car Dealership nearest you and present your membership card when you bring your car in for repairs. That's it! You'll receive a 10% discount on the cost of the service being done, because you are a valued Sears Auto Discount Service member!

CASH BONUSES on preventive maintenance services.

Enclosed you'll find Cash Bonus Certificates good for rebates on selected services at any garage or dealer in your area. For instance, we'll send you a 10% rebate on your next oil change, a \$20 rebate on a set of tires, and up to \$25 back on your next brake servicing at any dealer, mechanic or garage you choose! These bonuses are in addition to the 10% discount you'll receive when you use one of our participating dealerships. Just follow the directions on the back of each certificate and we'll mail your bonus within a few weeks.

If you prefer, take your car to any of over 750 Sears Automotive Centers nationwide for these routine maintenance services and we'll increase the amount of your discount by an additional 5%.*

Our Sears Auto Discount Service specialists are negotiating for more money-saving deals like these, and we'll be sending you additional cash-bonus opportunities on a periodic basis. Watch your mail and take advantage of these great savings.

Isn't it time you bought that new car you've been wanting?

Maybe price got in the way. Or confusion over which new car to buy. Perhaps it was just the fear of walking into the showroom without the facts you need to make a smart decision.

Sears Auto Discount Service eliminates all these obstacles, quickly and easily. And all it takes is a single toll-free phone call to 1-800-999-7545. Give us your membership number and the make and model of the new car you're interested in. We'll take care of the rest, providing you with a comprehensive multi-page New Auto Summary on the vehicle you are interested in, including:

(over, please)

4-4

Examples of:

- discount prices
- complete specifications
- performance data
- comparable models
- estimated yearly operating expenses
- EPA fuel economy
- body styles
- standardized equipment
- available options
- and more

Included in your Summary will be examples of Sears Auto Discount Service prices (off the window-sticker price) for the automobile and options, showing you how much your savings will be (up to thousands of dollars, in many instances).

No more haggling. Sears Auto Discount Service has already located low, discount prices for you.

If you're interested in buying the car for which you've requested information — or already know the car you'd like to buy — call 1-800-999-7545 for the name of the participating Sears Auto Discount Service dealer nearest you and we will arrange a fast, convenient purchase. The dealer will either have a car that matches your description, or can order one for you — direct from the factory with exactly the options you desire, and full warranties in force. You will pay the low Sears Auto Discount Service price for the car, plus you will keep any manufacturers' rebates being offered.

How to strike the best deals when buying or selling a used car.

It starts with a toll-free phone call to 1-800-999-7545. Give us the make and model of the used car you're interested in buying or selling, along with some important information like year, make, model, mileage, and options.

Your Sears Auto Discount Service telephone consultant will provide you with current market prices for the automobile, based on our nationwide database which tracks thousands of used car sales annually. Then we'll follow up in writing (the next business day), so you have a stronger bargaining position with your buyer or seller.

Enjoy your new kit — and your new Sears Auto Discount Service membership.

Take a few minutes now to review the enclosed materials. If you have questions about any of the services or your membership in general, call us at 1-800-999-1668. We'll be happy to assist you. For your convenience, we will continue to provide the money-saving Sears Auto Discount Service benefits to you by automatically renewing your annual membership upon expiration. Members will be notified prior to each renewal and given the opportunity to cancel for a full refund at the current annual fee. Of course, as always, Satisfaction Guaranteed or Your Money Back. If you are ever dissatisfied with Sears Auto Discount Service, for any reason, just contact us in writing or call, toll-free, 1-800-999-1668.

Welcome to Sears Auto Discount Service. We're looking forward to serving you.

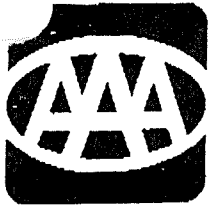
Sincerely,



S.F. Singleton
Sears Auto Discount Service

* Source: The Car Book 1988

**Does not include new tire purchases.



AUTO CLUB

12901 NORTH FORTY DRIVE • SAINT LOUIS, MISSOURI 63141 • 314-576-7350

DUPLICATE

September 14, 1989

Subject: AUTO CLUB LAUNCHES LEASING PROGRAM

This is to announce that AAA - Auto Club of Missouri, has launched a new leasing division as a service to its Midwest members. The club represents some 575,000 motorist/members in Missouri, Illinois, Kansas and Arkansas. As of this month we are members of the National Vehicle Leasing Association and Missouri Auto Dealers Association.

The Club maintains a fleet of approximately 100 company units for its officers and representatives in the four state territory. These units formed the base for Auto Club's Leasing program.

Due to the strong initial response we've received from our area members, we have decided to accelerate our plans to activate the program in Kansas City. Although most of the support activities will continue in our home office in St. Louis, we plan to locate a satellite office at our 3245 Broadway location.

Enclosed is a dealership information sheet which we would appreciate your personnel taking a few minutes to complete and return. In addition to prices and services offered, the Auto Club is very interested in your dealership's C.S.I. rating as provided by your respective manufacturer.

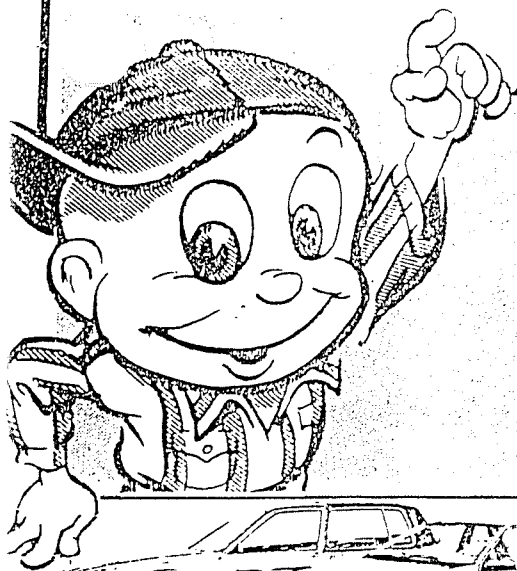
I fully realize that market demand for hot units, in short supply, will play a factor in your pricing quotes. Don't necessarily consider these prices you reflect as "locked in stone".

In closing let me again thank you for your prompt attention in providing us with your information sheet at the earliest opportunity. We look forward to beginning a continuing mutually beneficial relationship.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "A. H. Burling".

A. H. "Buzz" Burling, Manager
AUTO CLUB LEASING



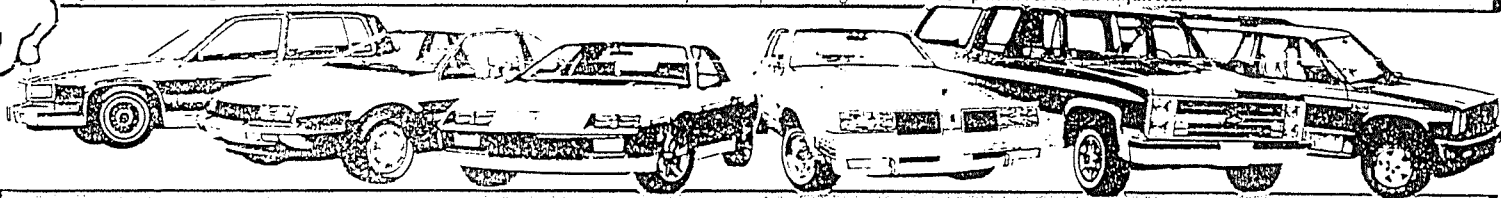
ATTENTION SAM'S MEMBERS!

Any New Chevrolet, Cadillac, Oldsmobile, Jeep, Eagle

\$100 Over Dealer Invoice on Factory Orders!

Price out of stock depending on availability.

Must be a current Sam's Wholesale Club (or Wall-on Wholesale Club) member and present membership card in person or give membership number for all inquiries.



ON THE SPOT FINANCING and DELIVERY AVAILABLE.

FRIENDLY CHEVROLET



EDDINS

SPECIAL FINANCING FOR THE FIRST TIME BUYERS & COLLEGE GRADUATES

CHEVROLET - CADILLAC - OLDSMOBILE - JEEP - EAGLE

Sales Hotline: 1-214-526-8811 Ask for our Sam's Representative

The Heartbeat of Texas - Friendly Chevrolet

When Roy Eddins bought Friendly Chevrolet back in 1969, he knew it was going to be a success; after all, all it was going to take was dedication, long hours, hard work and a commitment to excellence. Luckily, Roy put all of that and more into the Dallas Chevrolet dealership, and the tradition continues today with his son, Mark Eddins, now President of Friendly Chevrolet. But is it really friendly? "Our whole concept, even before we took over Friendly, was a concept of friendliness," Roy affirms. "Mark and I demand a very personal and friendly atmosphere throughout the whole place of business."

Friendly's corporate statement sets an objective to have fun while achieving goals, a somewhat unusual policy for a large corporation. "That's a basic founding premise of the Eddins' philosophy of business and life," explains Mark Eddins. "Fun is the way to tell if you like what you're doing. I tell our people, 'If you don't feel good about coming to work, if you're not enthusiastic, we both have a problem.'"

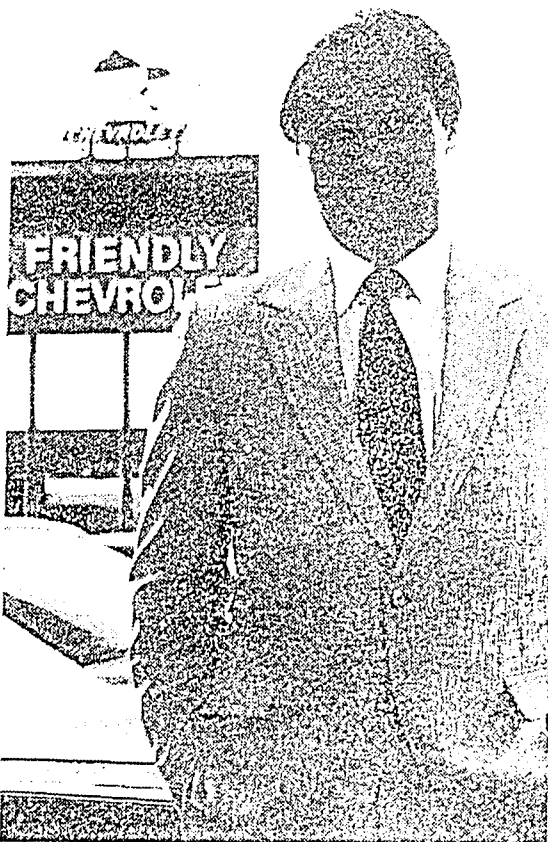
"Our goal here at Friendly", explains Roy Eddins, "was to be the best, not necessarily the biggest." But even though that may not have been the intention, Friendly Chevrolet is not only the best, but the biggest too. As a matter of fact, over the past 30 years, Friendly Chevrolet has sold more cars and trucks than any other Texas dealer. Friendly has just been named the #1 retail truck dealer in the United States, according to the Chevrolet Motor Division. In fact, Friendly's truck business has grown so much that they have opened a separate showroom for your truck shopping convenience, staffed by truck specialists, who can assist each customer in finding the perfect truck for their needs. With the popularity of custom vans and trucks on the rise, Friendly has built the largest van conversion center in America offering the latest in custom vans and trucks, and Suburbans. "It's just another way to offer our customers the very best in quality, price and selection,"

explains Eddins. Selection is not just limited to automobiles, however. Friendly Chevrolet has the largest GM parts department in the southwestern United States. "Our service and parts department is legendary in itself," says Eddins. "It's really something to be proud of."

Mark Eddins, spokesman for his family's company, is proud of Friendly's reputation of excellence. "Our customer satisfaction program gives me the most pride," explains Eddins. "It's a fully autonomous in-house function that pools all departments on how customers perceive us." Even though Friendly is considered a "Big" dealership, customers can expect the same concern a smaller dealer can give. "Bigger dealers should delegate more attention to customers, but it depends on the dealer's philosophy. We don't believe in the more hard-sell techniques. That's a rarity, especially with dealer conglomerates. But if you can't do it right, you won't get any bigger."

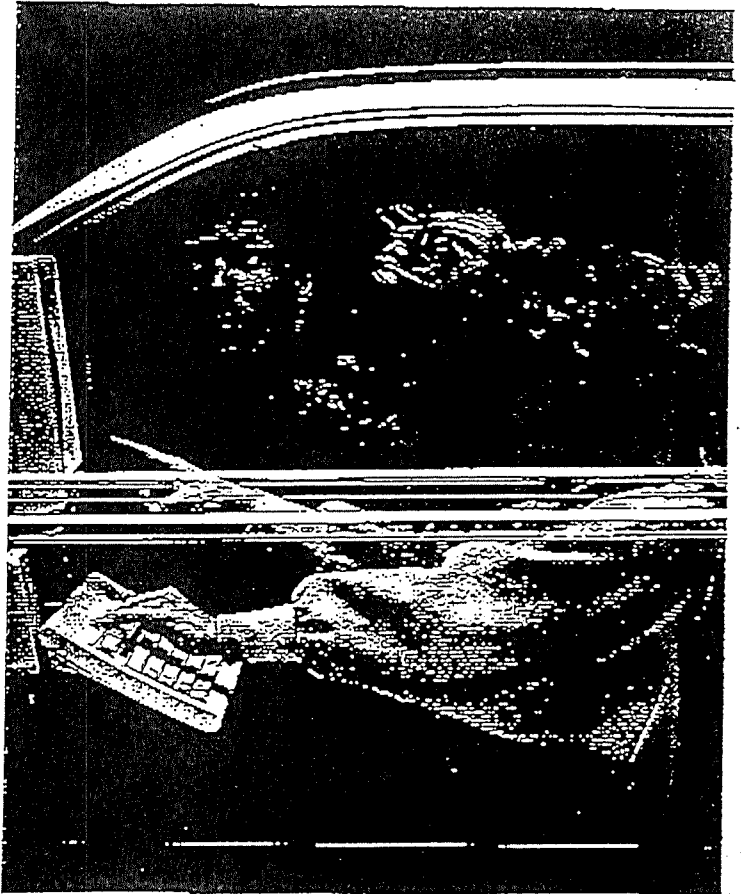
Getting bigger is, indeed, what the Eddins dealerships are doing. They developed the North Texas Autoplex in 1986 right outside of Denton, offering seven franchises located at one location, including Mazda, Volkswagen, Cadillac, Jeep and Eagle. The autoplex concept is considered the future trend in the automobile industry. "All of the industry is moving towards fewer and bigger mega-dealers. It creates a much better economy of scale. When we bring costs down, we can pass that on to customers."

Satisfied customers are the foundation of Friendly Chevrolet's business. "We know the only way to stay as large as we are and to have earned the reputation we have, and we feel it's a good one, is to satisfy customers and always be available. It has been said that we're a legend in our own town," says Mark Eddins, "and we're building that legend, one happy customer at a time."



MARK EDDINS
President

NEW CAR BUYER'S PACKAGE



Mid American
Credit Union

West Wichita Office
8404 West Kellogg
Wichita, Kansas 67209
(316) 722-3921

Challenger K.C. Office
720 Simpson
Kansas City, Kansas 66101
(913) 281-0226

East Wichita Office
1717 South Rock Road
Wichita, Kansas 67207
(316) 688-0593



Mid American
Credit Union

Getting a good deal on your new car should have always been this easy!

Your credit union has an easier, lower cost way for you to purchase your next new car. It's called the New Car Buyer's Package, and you can use it to arrange your entire purchase (to avoid all the negotiating,) or use any combination of these services that will help you save money:

1. Computerized New Car Pricing.
2. New Car Purchase Service.
3. Used Car Trade-In Service.
4. New Car Financing.
5. Pre-Approved New Car Loans.

Computerized New Car Pricing

With this service, factory dealer invoice information is available to you on any American made automobile or light truck. The credit union has a P.C. (personal computer) available, programmed to provide you with factory dealer invoice information and the suggested retail price on any vehicle you select.

To get the most from this computerized pricing service, shop around first. Once you have chosen the vehicle and the options you want, contact the credit union for a computer print out. (A \$10.00 deposit, which will be refunded when you obtain our financing, is required for using this service.)

Knowing the invoice price should make it easier for you to negotiate a good deal. Better yet, avoid the negotiating at the dealership with our New Car Purchase Service.

New Car Purchase Service

(\$100 over factory invoice)

You can order your new car at \$100 over factory invoice through our New Car Purchase Service. This price applies to all new Ford, GM, and Chrysler cars, light trucks and vans built in the U.S.A. No models are excluded. Sales tax, State Document Stamp Fee and 30 day permit is not included in this price.

With this service, you choose the exact car you desire. You only pay for the options you want. You get an excellent price on your vehicle, you benefit from all rebates and free options offered by the factory, and you don't have to do any negotiating.

New Car Financing

Your credit union offers competitive, easy to understand, "no strings attached" new car financing. Whether you are looking for the lowest interest rate, the smallest monthly payment, or no money down financing, chances are, your credit union has the best deal available.

When you use our financing with our New Car Purchase Service, you benefit from our excellent purchase price, you get all the factory rebates available, you receive competitive financing, and you don't have to do any negotiating.

Pre-Approved New Car Loans

A pre-approved new car loan can help you shop for your new car with confidence, knowing that financing that fits within your budget has already been arranged. Pre-approved new car financing is available through the credit union at no obligation to you. Contact us for a quick, new car loan pre-approval.

Used Car Trade-In Service

An important part of getting a good deal on a new car is receiving the maximum amount for your trade-in. The credit union can help you do that. We will arrange for independent appraisers to bid on your vehicle. This gives you the option of selling your vehicle yourself, or selling it to the highest bidder when your new car arrives.

It's Easy To Use The New Car Buyer's Package Services

Whether you use these services as a package, or individually, to suit your own needs, getting a good deal on your next new car will be easy with our New Car Buyers Package. To use these services, just contact the credit union for more details.



BUICK

January 23, 1990

Buick Motor Division
General Motors Corporation
Flint, Michigan 48550

TO: All Buick Dealers
SUBJECT: Auto Brokers Policy

During the 1989 Buick National Dealer Council, Council members expressed concern regarding the problems arising from the sale and distribution of Buick automobiles by auto brokers. It is in response to concerns for Buick customers and dealers that this clarification of Buick policy, with respect to auto brokers, is directed.

Buick has determined that the movement of new Buick automobiles through auto brokers may have a significant detrimental impact upon consumers, dealers and Buick Motor Division. Some of the problems created by these transactions are:

- . Distortion or oversight of warranty, and safety recall information used in relation to our mutual customer satisfaction efforts.
- . Creation of unreliable car distribution records; thereby, potentially distorting vehicle allocations.
- . Creation of unreliable delivery records which undermines the ability of the consumer to secure appropriate warranty servicing of the vehicle.

In response to the situations created by sales to brokers, Buick Motor Division may take the following actions toward dealers and fleet accounts, as appropriate:

- . Cancellation of fleet code numbers.
- . Adjust car distribution where it has been improperly influenced by sales to brokers.
- . Pursue indemnification from dealers where Buick incurs liability in a product liability lawsuit which could have been avoided if proper notice of the recall had been given to the customer.

The proper ordering and reporting of sales is of utmost importance to Buick Motor Division and Buick dealers, as underscored by the Buick National Dealer Council. It is for this reason that Buick requests compliance by all Buick dealers.

January 23, 1990

Although Buick Motor Division can and will react promptly when it discovers abuses in the car distribution system, all Buick dealers must take it upon themselves to manage this process.

To the degree that difficulties exist, with respect to broker sales, they could be substantially reduced or eliminated through the exercise of good business judgement by individual dealers.

Sincerely,



R. E. Coletta
General Sales and Service Manager

REC:r11

cc: Asst. Gen. Sales Mgrs.
Zone Managers
Asst. Zone Managers*
Car Distributors*
District Sales Managers
D.A.C. All
H. O. Sales/Service Dept. Heads

*Zones please copy



ET Pappert
Vice President
Sales

May 16, 1989

TO: ALL CHRYSLER MOTORS CORPORATION DEALERS

At the Executive Council sessions, Council members expressed great concern about the sale and distribution created by auto brokers. Dealers who move product through brokers cause problems for Chrysler Motors Corporation (CMC) as well as problems for other dealers.

First, these sales distort vehicle allocations. Second, brokered sales prevent CMC from having accurate records of the true retail purchaser. These records are necessary for warranty, safety recall, and customer satisfaction purposes.

In response to the problems created by sales to brokers, CMC will take the following actions toward dealers and fleet accounts, as appropriate:

- (a) Cancellation of fleet code numbers;
- (b) Adjust earned allocation if it has been improperly inflated by sales to brokers;
- (c) Pursue indemnification from dealers if Chrysler were to incur liability in a product lawsuit which could have been avoided if proper notice of recall had been given to the customer.

We want to emphasize that the proper ordering and agreed reporting of sales is of utmost importance to both CMC and its dealers.

Although CMC can react when it discovers abuses in the system, dealers must have sufficient internal controls to help prevent these problems. To the extent that broker sales cause problems for the dealer body, those problems could be substantially reduced, if not eliminated, if the dealers themselves exercised restraint.

If you have any questions regarding this matter, please contact me.

Sincerely,

Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION
by
John Schmid, Perl Chevrolet-Buick, Coffeyville
Monday, March 12, 1990

SB 486

GOOD AFTERNOON. MY NAME IS JOHN SCHMID AND I OPERATE THE CHEVROLET-BUICK-GEO DEALERSHIP IN COFFEYVILLE, KANSAS.

I APPEAR BEFORE YOU TO ASK YOUR SUPPORT OF THIS BILL. IT PRESENTS A REASONABLE, WORKABLE SOLUTION TO A GROWING PROBLEM OF CONSUMER MISREPRESENTATION, CHRONIC VIOLATION OF EXISTING POLICIES OF THE DEPARTMENT OF MOTOR VEHICLES, FRAUDULENT OR FACETIOUS SALES TAX COLLECTIONS, AND MINIMIZES VEHICLE SAFETY AND PRODUCT FAILURE EXPOSURE TO THE CITIZENS OF OUR STATE.

THE CITIZENS OF KANSAS ARE NOT ALLOWED TO PRACTICE LAW, CUT HAIR OR SELL MCDONALDS HAMBURGERS WITHOUT PROPER TRAINING, TESTING AND LICENSING. AND WHILE THIS DOES RESTRAIN US FROM HANGING OUT A SIGN AND PRESENTING OURSELVES TO THE PUBLIC AS PROFESSIONALS IN THESE AREAS, THE CONCEPT OF PROTECTING THE PUBLIC FROM THE UNTRAINED, UNSCRUPULOUS OR ILL-EQUIPPED IS A LONG ESTABLISHED AREA OF RULE MAKING AND ADJUDICATION.

THIS IS EXACTLY THE ISSUE BEFORE US WITH THE BROKERING OF NEW VEHICLES. TO PROVIDE A KNOWN QUALITY OF PRODUCT, PROVIDE CONTROL OF THE CONDITION IN WHICH IT IS OFFERED TO THE PUBLIC, SUPPORT THE MOST EFFICIENT MEANS OF DISTRIBUTION AND ENHANCE THE ABILITY TO STAY IN A MARKET THROUGH GOOD TIMES AS WELL AS BAD, MANY PRODUCERS OF GOODS AND SERVICES HAVE RELIED ON THE FRANCHISE SYSTEM TO DELIVER PRODUCTS AS DIVERSE AS HAMBURGERS AND HONDAS.

A HAMBURGER THAT'S COLD AND A NEW AUTOMOBILE THAT DOES NOT RUN PROPERLY ARE BAD NEWS FOR THE MAKER, THE FRANCHISE HOLDER, AND THE POOR CUSTOMER WHO HAS TO EAT OR DRIVE THE PRODUCT. TO PREVENT THAT POOR PRODUCT FROM BEING DELIVERED, THE PRODUCER AND RETAILER ENTER INTO AGREEMENTS DETAILING THE CARE, PREPARATION, SERVICING, AND TERMS OF SELLING THE PRODUCT WITH ONE SELFISH GOAL IN MIND: THE SATISFIED CUSTOMER WHO WILL RETURN AND BUY ANOTHER PRODUCT IN THE FUTURE.

MY STORE HAS A FRANCHISE AGREEMENT TO SELL PRODUCTS MADE BY GENERAL MOTORS CORPORATION. THEY, AND OTHER MANUFACTURERS, DISTRIBUTE THEIR NEW MOTOR VEHICLES THROUGH INDEPENDENT FRANCHISED DEALERS SUCH AS MYSELF. DEALERSHIPS ARE INDEPENDENTLY OWNED BUSINESSES AND THE DEALERS RELATIONSHIP WITH THE MANUFACTURER IS THROUGH THE SALES AND SERVICE AGREEMENT. IT ESTABLISHES THE APPROPRIATE DEALER NETWORK WITH THE OBJECTIVE OF ESTABLISHING THE PROPER NUMBER OF DEALERS AT THE RIGHT LOCATIONS TO MOST EFFICIENTLY MEET THE DEMANDS OF THE CONSUMING PUBLIC.

THE MANUFACTURER IMPOSES CERTAIN OBLIGATIONS UPON ITS DEALERS THROUGH THE DEALER SALES AND SERVICE AGREEMENT. THIS INCLUDES REQUIRING DEALERSHIP PREMISES THAT ARE SATISFACTORY AS TO APPEARANCE AND LAYOUT, PROPERLY EQUIPPED FOR THE CONDUCT OF DEALERSHIP OPERATION, AND SUBSTANTIALLY IN ACCORDANCE WITH THEIR RECOMMENDED SPACE GUIDES. WE DEALERS ARE REQUIRED TO MAINTAIN AN ADEQUATE FORCE OF TRAINED SALES PERSONNEL THAT CAN PROVIDE CONSUMERS WITH ACCURATE INFORMATION ABOUT THE OPERATING CHARACTERISTICS OF THE VEHICLES, EXPLAINING THE OPTIONAL EQUIPMENT AVAILABLE FOR DIFFERENT VEHICLES, AND HELP THE CONSUMER SELECT A VEHICLE WHICH MEETS THE CONSUMERS PARTICULAR NEEDS. ONCE A CONSUMER DECIDES TO PURCHASE A VEHICLE, THE DEALER IS EXPECTED TO MAKE PRE-DELIVERY INSPECTIONS AND ANY NECESSARY ADJUSTMENTS.

FURTHERMORE, DEALERS ARE REQUIRED TO PERFORM WARRANTY REPAIRS ON QUALIFIED MOTOR VEHICLES WHEN REQUESTED BY AN OWNER AND ANY CAMPAIGN INSPECTIONS AND CORRECTIONS THAT MAY BE REQUIRED ON PRODUCTS. SIMILARLY, DEALERS ARE REQUIRED TO MAINTAIN A SERVICE AND PARTS ORGANIZATION WITH TRAINED TECHNICIANS, ADEQUATE SERVICE TOOLS AND EQUIPMENT, AND SUFFICIENT PARTS AND ACCESSORIES TO MEET CUSTOMER DEMANDS. BROKERS DO NOT HAVE THESE OBLIGATIONS, BUT CUSTOMERS OF BROKERS STILL NEED - AND EXPECT - THESE SERVICES.

THE BROKER DOES NOT PROVIDE THE SAME LEVEL AND QUALITY OF SERVICE TO THE RETAIL CONSUMER, NOR DOES HE CONTRIBUTE TO CONSTANT EFFORTS BY ALL MANUFACTURERS TO IMPROVE CUSTOMER SATISFACTION. THE DEALER AND THE MANUFACTURER HAVE NO KNOWLEDGE OR EFFECTIVE RECOURSE IF A BROKER MISINFORMS A RETAIL CUSTOMER ABOUT A PRODUCT. THIS MISINFORMATION MAY RESULT IN A DISSATISFIED OR INJURED CUSTOMER THROUGH NO FAULT OF THE DEALER OR MANUFACTURER. THE DEALER, IN CONTRAST, IS REQUIRED TO PURCHASE AND PROVIDE EXTENSIVE TRAINING TO THEIR PERSONNEL AND ARE TOTALLY ACCOUNTABLE TO THE CONSUMER AND MANUFACTURER THROUGH THE SALES AND SERVICE AGREEMENT.

THERE ARE TWO ABSOLUTE TRUTHS ABOUT THE RETAIL AUTOMOBILE BUSINESS WE SHOULD KEEP IN MIND:

1. NO MATTER HOW BIG OR HOW SMALL, ALL FRANCHISED NEW CAR DEALERS OF THE SAME BRAND PAY EXACTLY THE SAME PRICE FOR THEIR PRODUCTS.
2. NO MATTER HOW BIG OR HOW SMALL, THE FRANCHISED DEALER MUST BUY SPECIAL TOOLS, AND PROVIDE SPECIAL TRAINING TO ENSURE THAT THE CUSTOMERS VEHICLE CAN BE SERVICED PROPERLY.

HERE'S HOW THE SYSTEM WORKS:

WHEN A NEW CAR DEALER DELIVERS A CAR HE OR SHE REPORTS THE NAME,

ADDRESS, VIN#, ETC. TO THE MANUFACTURER OVER THE MANUFACTURERS COMMUNICATION SYSTEM. THIS STARTS THE WARRANTY CLOCK TICKING AND PUTS THE OWNERS NAME IN THE MANUFACTURERS "OWNER OF RECORD" FILE WHICH IS NEEDED IN THE EVENT OF A PRODUCT SAFETY RECALL, WARRANTY EXTENSION, POLICY ADJUSTMENT OR OTHER. THE DEALER FILLS OUT THE MANUFACTURERS STATEMENT OF ORIGIN, WHICH IS ESSENTIALLY THE BIRTH CERTIFICATE OF A NEW VEHICLE, COLLECTS THE SALES TAX ON THE TRANSACTION, PREPARES THE CAR TO THE MANUFACTURERS STANDARDS, DELIVERS THE VEHICLE AND STANDS READY TO PERFORM ANY NEEDED WARRANTY WORK OR SERVICE WORK THE CUSTOMER REQUIRES OR WANTS.

ALONG COMES THE BROKER, MOST OF WHOM DON'T EVEN BOTHER TO GET A LICENSE FOR THEIR "BUYING SERVICE", BUT GO OUT, ADVERTISE, AND APPROACH CONSUMERS AND SAY, "I CAN GET IT FOR YOU CHEAP, I HAVE A CONNECTION." THE BROKER GOES TO A DEALER, OFTEN HUNDREDS OR THOUSANDS OF MILES AWAY WHO, WE MUST REMEMBER, IS PAYING EXACTLY THE SAME PRICE FOR THE CAR AS THE HOMETOWN KANSAS CAR DEALER LIKE ME. MR. BROKER, AN EXCELLENT SALESMAN, AND NOT WORKING FOR FREE, CONVINCES HIS BUYER THAT ALL THIS IS HUNDREDS, NO THOUSANDS LESS THAN YOU WOULD HAVE TO PAY AT THE DEALERS BECAUSE I HAVE THE CONNECTION...HE GETS THE BUYERS MONEY AND TURNS OVER A CAR.

HOW LONG HAS THE BROKER HAD THE CAR? WHO KNOWS, THE DEALER SOLD IT TO THE BROKER, AS OFTEN AS NOT THINKING IT WAS FOR HIS OWN USE, NOW HERE COME SEVERAL VIOLATIONS. THE BROKER PROBABLY DOES NOT APPEAR ON THE MANUFACTURERS STATEMENT OF ORIGIN, AND THAT VIOLATES THE REGISTRATION LAW, AND THE FEDERAL ODOMETER LAW. IF HE DOES APPEAR ON THE CERTIFICATE OF ORIGIN AND IS NOT A FRANCHISED NEW VEHICLE DEALER FOR THAT BRAND, HE IS THE RETAIL BUYER, HE GETS THE WARRANTY, HE GETS THE LEMON LAW PROTECTION, HE GETS THE ARBITRATION PROTECTION AND HE MUST TITLE IT IN HIS NAME.

OTHERWISE, HE IS BREAKING THE LAW (KSA 8-2402 [Q]).
SO WHO CARES?

I CARE, YOU SHOULD CARE AND THE POOR KANSAS CONSUMER WHO THOUGHT HE BOUGHT A BRAND NEW CAR WILL CARE THE FIRST TIME HE TAKES IT IN FOR "FACTORY AUTHORIZED SERVICE". HE THOUGHT THE CAR WAS SIX MONTHS OLD. BOUGHT IT IN OCTOBER FROM THE BROKER, BROKER GOT IT FROM A BUDDY BROKER IN ST. LOUIS, WHO BOUGHT IT IN CHICAGO IN FEBRUARY FOR A "CUSTOMER" WHO BACKED OUT AT THE LAST MINUTE. WELL, THE MANUFACTURER HAS IT ON THEIR BOOKS AS BEING SOLD TO THE MAN IN ST. LOUIS IN FEBRUARY, NOT JOE KANSAS IN OCTOBER AND THAT TWELVE MONTH WARRANTY IS UP AND THE AIR CONDITIONER IS GOING TO COST YOU \$650. SIR....YOU'RE THE SECOND OWNER, AND THE CAR IS OUT OF WARRANTY, DIDN'T YOU KNOW?

WELL, JOE KANSAS TRIES TO CALL THE BROKER, WHO SIMPLY NEEDS A PHONE AND RENTED OFFICE SPACE, AND WHAT DO YOU KNOW - HE'S NO LONGER THERE AND HIS FRIEND AT THE LOAN COMPANY SAID THEY'RE USING A DIFFERENT BUYING SERVICE NOW.

BETTER YET, TRY THIS REAL WORLD SCENARIO. IT'S JOE KANSAS AND HIS STATION WAGON AGAIN...TROUBLE FREE CAR, BOUGHT IT FROM THE BROKER - A PRODUCT MODIFICATION THEY CALLED IT - BOLT CAN COME LOOSE FROM CRUISE CONTROL, CAN MAKE THE THROTTLE STICK, CAN MAKE IT STICK OPEN - THE FACTORY WILL FIX IT FREE...AND HAS SENT REGISTERED LETTERS, THREE OF THEM IN FACT, TO EVERY OWNER OF RECORD FOR THE MODEL THEY CAN FIND... THEY CAN'T FIND JOE, HE'S NOT ON THE RECORD, THE MAN IN ST. LOUIS IS, BUT IS HE GOING TO CALL JOE. WHAT DO YOU THINK? NOW WHEN THEY SCOOP JOE AND THE KIDS UP OFF THE INTERSTATE WHO DO YOU THINK IS GOING TO GET SUED FOR FAILURE TO NOTIFY UNDER A FEDERAL PRODUCT SAFETY CAMPAIGN? NO WONDER THE MANUFACTURER WANTS TO KNOW WHO SOLD WHAT TO WHOM.

ONE MORE PROBLEM WITH BROKERS... NOW I'M ASSUMING EVERY ONE SPEAKING IN OPPOSITION TO THIS BILL IS A LICENSED BROKER, IT COSTS \$50, SAME AS A NEW OR USED CAR LICENSE, EXCEPT YOU DON'T NEED A SIGN, A SHOW ROOM, A LOT OR A GARAGE. BUT, NOT ALL BROKERS ARE LICENSED, BECAUSE IN KANSAS, ENFORCEMENT, AS MR. ALLEN WILL SHOW, IS QUITE LAX.

HERE, THE LAST REAL WORLD SCENARIO...JOE KANSAS AND THE BROKER AGAIN...BROKER ISN'T LICENSED. "I JUST DO THIS FOR FRIENDS, HAVE A LOT OF FRIENDS". HE GETS THE CAR FROM A DEALER IN SAY OKLAHOMA, (BROKERING IS ILLEGAL THERE BUT YOU CAN STILL BUY CARS) THE OKLAHOMA DEALER MAKES THE CERTIFICATE OF ORIGIN OUT TO "JOE KANSAS" BECAUSE THAT'S WHO THE BROKER TOLD THE DEALER HE WAS, THE BROKER PAYS THE DEALER WITH JOE'S MONEY, STICKS HIS COMMISSION, OR PROFIT IN HIS POCKET, AND BRINGS THE CAR BACK TO KANSAS, REAL TIDY SO FAR... NOW FOLLOW CLOSELY; YOU'VE GOT TO PAY SALES TAX IN KANSAS. BUT WE DON'T SHOW HOW MUCH WE PAID FOR THE CAR. MR. BROKER GIVES "JOE " A PURCHASE AGREEMENT SHOWING THAT THE CAR THAT JOE PAID \$15,000 FOR ONLY COST \$10,459... JOE SAVED OVER \$281 IN SALES TAX. MAYBE THAT'S HOW THE BROKER SAVES THE BUYER MONEY. AND NOBODY CAN PROVE OTHERWISE. THE BROKER HAS NO TAX RECORDS TO AUDIT, HAS NOTHING WITH HIS NAME ON IT AND, UNLESS THE DEALER IN OKLAHOMA TESTIFIES, THE ONLY LOSERS ARE THE LAW ABIDING CITIZENS AND NEW AND USED VEHICLE DEALERS IN KANSAS THAT DO PAY AND COLLECT TAXES.

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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



March 12, 1990

TO: House Committee on Transportation

SUBJECT: Senate Bill 486

Mr. Chairman and Members of the Committee:

My name is Tommy McGeeney. I am a Board member of the Kansas Independent Automobile Dealers Association representing 332 Used Car Dealers in the State of Kansas. Today I am here to address the concerns we have for Senate Bill 486, the Broker Bill. We appear in favor of this bill.

Brokering is a definite threat to the licensed used car dealer in the State of Kansas. The concern that we have is that licensed used car dealers must meet a number of requirements. They must have a used car dealer's license and be bonded. The dealer must have a place of business that meets state requirements and have proper insurance. Finally, a dealer must collect and pay local and state taxes that are vital to our economy. The used car dealer's involvement in the local community is a long term one. Used car dealers are somewhat dependent on new car dealers because they purchase their trade ins for their own inventory.

On the other hand, a broker can with little investment-- just an agreement to acquire vehicles to offer for sale-- make no long term investment and make unfair competition. A number of the vehicles that a broker sells are out of state or outside of the area vehicles, which completely destroys the local market place. The low profit margin on sales of brokered vehicles eliminates many jobs such as the commissioned salesperson.

Therefore, the Kansas Independent Automobile Dealers Association believes that the passage of this bill would clear up some of the problems in the industry.

Thank you for the opportunity to speak to you today.

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

Att. 6

Dirk Bloemendaal

**TESTIMONY OF AMWAY CORPORATION IN THE MATTER OF SENATE BILL 486
BEFORE THE KANSAS HOUSE TRANSPORTATION COMMITTEE**

My name is Dirk Bloemendaal and I am an attorney in the Corporate Government Affairs Department of Amway Corporation in Ada, Michigan. I stand before you today representing nearly 20,000 independent Kansas Amway distributors who live and work within Kansas in opposition to Senate Bill 486. My views represent those of these Amway distributors only, and I do not speak on behalf of the Kansas Retail Council.

As you may know, Amway offers a full-service motoring plan through its Kansas distributors called the Amway® Motoring Plan (AMP) which provides valuable services to the motoring traveler. The Plan is provided through Signature's Nationwide Auto Club® and provides services which include trip routing, road service and towing protection, emergency travel expenses, arrest bond and bill service protection, car and truck rental discounts, locksmith service and a toll-free 24-hour help line. Further, the Plan contains an incidental benefit which gives the members the right to purchase a new domestic car or truck from a participating Kansas licensed motor vehicle dealer for a price not to exceed \$50 over the dealer's factory invoice price, or, for import vehicles, at a percentage off the dealer's retail price. The suggested retail cost to become a member of the Amway Motoring Plan is \$99.95. The Amway Motoring Plan is fully covered under the Amway Satisfaction Guarantee, which provides for a full refund of any unused portion of the Plan.

In a nutshell, the Amway Motoring Plan has agreements with licensed new car and truck dealers in Kansas who agree to sell new cars and trucks to Plan members as just described. Amway does not buy or sell vehicles, nor does it negotiate or arrange sales. The member simply goes into a participating Kansas new vehicle dealer, identifies him or herself as a member of AMP and negotiates the terms of purchase with the right to buy the vehicle at not more than \$50 over the dealer's factory invoice price or up to a certain percentage off the dealer's retail price for import vehicles. Amway Motoring Plan members buy their cars and trucks directly from participating Kansas licensed dealers. Selection of the desired model and options, financing, and vehicle delivery are all matters worked out exclusively between the dealer and the customer. All warranty and service work is performed by the dealer. Amway's program merely gives the member the right to purchase a new vehicle at a guaranteed maximum price.

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Senate Bill 486 would prohibit this vehicle buying service for no reason. The Amway program is an excellent program and currently operates in 47 states. It is considered to be a vehicle buying service of an informational nature which has proven very popular with consumers. It is not motor vehicle brokering, for which a state license is already required.

The interested customer who is a member of the Amway Motoring Plan is simply referred to a participating, licensed Kansas dealer upon request by being given the dealer's name, address and telephone number. The customer then decides if he or she wishes to explore the possibility of purchasing a vehicle through the Plan. The information is given to the consumer through a toll-free telephone line. No fee passes to the referring party at any time, either before, during, or after a sale.

Under the Plan, neither Amway Corporation nor any of its independent Amway distributors buy or sell motor vehicles, nor do they negotiate or arrange sales. Members instead buy their vehicles directly from participating Kansas licensed motor vehicle dealers. The bottom line is that a buyer purchasing a motor vehicle through the AMP is given the full protection of Kansas state law dealing with licensed motor vehicle dealers.

Car buying services like Amway's are extremely popular with consumers. They take the stress out of car shopping and give the consumer confidence that he or she is paying a fair price. Car buying services are offered through such membership organizations as the American Association of Retired Persons, teacher organizations, credit unions, and other auto clubs such as Amoco and AAA.

The proponents of SB 486 have put forth several points which are misleading and untrue: First, arguments have been made inferring that motor vehicles could be purchased under Amway's program from Amway Corporation or its distributors. Nothing could be further from the truth. Amway's program, as well as others mentioned like Wal-Mart's and Sears Roebuck's are operated strictly through licensed motor vehicle dealers who voluntarily participate in the programs. All sales, all after-market income, financing, insurance, and all future service work represent benefits to these licensed Kansas dealers and those persons who work for them. The consumer is protected under Kansas law relating to licensed motor vehicle dealers as well as Kansas Consumer Protection Law.

Second, Amway has been painted as a company which may fail to stand behind its program. This is utterly false. Amway's program has been in existence in Kansas since 1987, working with licensed Kansas dealerships to enable consumers to purchase cars and

trucks at a guaranteed maximum price in a comfortable atmosphere, saving them time and money. Amway hopes to continue operating its program in Kansas successfully for years to come.

SB 486 is a bill which will only hurt consumers by eliminating healthy competition in the marketplace. During the last two legislative sessions, similar bills to ban auto brokering have been rejected in Arizona, Illinois, Michigan and Oregon. In Michigan in 1988, the Federal Trade Commission filed formal comments in opposition to a bill to ban auto brokering. In its comments, the FTC stated:

Section 248 prohibits the brokering of automobiles within the State of Michigan and limits the sale of new automobiles to auctioneers and licensed new car dealers. The purported purpose of this section of the bill is to protect the dealers with substantial investment and physical plants and facilities from competition by no-frills dealers with little investment in facilities. We believe that the bill could reduce competition, by entrenching one group of business owners at the expense of new entrants and possible innovations, and to the detriment of car buyers (emphasis added).

The FTC concluded by stating:

The automobile industry is dynamic with an ever increasing number of dealers offering a greater variety of sales and service choices to consumers. Automobile brokering is a sales innovation that increases customer choices. Section 248 would prevent consumers from benefiting from this innovation, while encouraging automobile dealers to avoid competitive adjustments. The probable net affect of Section 248 will be to reduce consumer choices and increase automobile prices (emphasis added).

Similarly, in 1989, the FTC filed formal comments in opposition to amendments added to Illinois Senate Bill 1978 to ban automobile brokering. The FTC concluded that:

The proposed amendments would restrict the ability of licensed car dealers to conduct automobile sales to credit unions or buying clubs and to employ other innovative marketing techniques that result in substantial savings to consumers. We believe that the amendments to the Illinois vehicle code

provided for in Senate Bill 1978 are not likely to benefit consumers or competition. Instead, this legislation may limit competition among automobile dealers and increase the prices that consumers pay for automobiles (emphasis added).

Governor James Thompson subsequently vetoed SB 1978.

In summary, the bill before you in Kansas, SB 486, simply represents an instance of a special interest attempting to have government legislate what it cannot accomplish in the open marketplace—the elimination of competition. Kansas Attorney General Robert T. Stephan has held SB 486 invalid on the grounds that it places arbitrary and unreasonable limitations on the conduct of a legitimate business. Further, proponents of the bill have failed to carry their burden of demonstrating that the consumer will not be injured by this bill through decreased choices and increased prices. The bill will simply reduce competition and raise your car prices by entrenching one group of business owners at the expense of Kansas consumers.

We respectfully urge you to vote against Senate Bill 486.

DCB853:gt

March 13, 1990

To: House of Representative Transportation Committee

From: Allen Jessup (DBA) A. J.'s Auto Plaza West

file
§ 3486

TESTIMONY

- 1) HB486 is not a consumer protection act--it is a new car dealer protection act. The new car dealers want their way to be the only way to buy a new car. If this bill is passed, it will allow new car dealers to continue to over-charge the consumer.
- 2) Consumers deserve the right to hire a professional negotiator. Brokers are totally unbiased as to make and model; thus, the consumer gets what they want.
- 3) The new car dealer already holds the power to put new car brokers out of business by simply not selling to brokers. There is no need to pass an unconstitutional bill.
- 4) Used car brokers protect the consumer. When one private owner sells to an individual, there is no warranty. When a broker is involved, by law, the broker must warranty the private owner's vehicle.
- 5) The broker collects the sales tax for the state; therefore, an individual purchasing from a private owner cannot defraud the state out of their sales tax monies.

QUESTIONS TO COMMITTEE

- 1) How can you pass a bill that places arbitrary and unreasonable limitations on a legitimate business?
- 2) How can you pass a bill that eliminates one facet of brokering and not brokering in general?
- 3) How can you pass a bill that is unconstitutional? If it truly is, we are prepared to take this issue to the Supreme Court for a ruling.

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Jerel

TESTIMONY ON SB 486
AN ACT concerning brokers
Presented to the
HOUSE COMMITTEE ON TRANSPORTATION
March 12, 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 550,000 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 SB 486.

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.

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Over the years, credit unions have evolved and many now offer a wide variety of services.

Traditionally, credit unions have provided low cost consumer loans to members. A major portion of the loans are made to finance automobiles. Because of the credit union's commitment to provide auto financing to credit union members, the credit unions have accepted the responsibility of educating members by providing car buying information. Examples of our educational materials include a publication called "Everybody's Money" (sample distributed) and an information program called AUTOFACTS (Attachment I).

You may wonder why credit unions feel it is important to make so much information available to car buying members. It is common knowledge that even if a person is an experienced car buyer, that person will never know as much about buying, selling and financing of automobiles as do car dealers. Consumer education is important because of confusing financing techniques like the one found on Attachment II, a computer program which "proves" that it is cheaper to borrow the money to finance a car rather than to pay cash out of your savings.

CREDIT UNIONS REFER MEMBERS TO BROKERS

Part of our interest in SB 486 stems from the working relationship between several Kansas credit unions and a few motor vehicle brokers. As a service to their individual members, credit unions

are working with brokers to help the individual members save money when purchasing a motor vehicle. The system works because the brokers have established a working relationship with motor vehicle dealers who provide the vehicles to the individual credit union members.

The broker provides the member (consumer) many advantages such as savings on the car price, a choice of vehicles, convenience, plus no pressure from dealers to purchase credit life insurance, rustproofing, extended warranty, etc. The broker provides the dealers with buyers for their cars. Passage of SB 486 would eliminate an entire industry (brokering of motor vehicles) which is providing a valuable service to car buyers and sellers.

ANTI-BROKERING LEGISLATION IS NOT NEW

As you have been told, brokering activities have already been prohibited in other states, so this legislation is not a new idea. The state of Michigan considered and defeated this type of legislation in 1988 and as you can see from Attachment III which represents a summary of the anti-brokering bill and presents the case against new-car brokering, even the materials being used to promote passage of SB 486 are not new.

In Michigan, opponents to the anti-brokering legislation organized a coalition of business and consumer groups (Attachment IV). In addition, several newspapers wrote editorials criticizing the

dealers' efforts to ban brokering activities.

PUBLIC POLICY CONSIDERATIONS

Dealers view this bill as necessary to protect the distribution of automobiles in Kansas, to provide a system for tracking the flow of vehicles and their parts and to preserve supporting services for consumers purchasing or acquiring vehicles. In other words, to make sure the consumer will be able to purchase cars and get them serviced in Kansas. These protections already exist under the Kansas Vehicle Dealers' and Manufacturers' Licensing Act.

Consumers view this bill as an elimination of a car purchasing option (brokering) which is currently regulated under the same vehicle licensing act.

Credit unions view this bill as anti-consumer, anti-competitive and stifling to free trade in the marketplace.

ADDITIONAL OPPOSITION TO THE ANTI-BROKER BILL

The Kansas Attorney General's office has issued two separate opinions which conclude that a bill prohibiting the practice of automobile brokering is unconstitutional and invalid.

On August 28, 1987, The Attorney General's office issued Opinion #87-126 (Attachment V) which states that prohibiting vehicle brokers from conducting business in Kansas is so oppressive that

it prohibits the conduct of a lawful business for stated purposes that may be achievable by less oppressive means. While the state has the police power to protect the public welfare of Kansas citizens, 1987 SB 115 would be an invalid exercise of the State's police power because the prohibition on automobile brokers does not appear to be reasonably related to the protection of the public welfare.

On March 2, 1990, the Attorney General's office issued Opinion #90-22 (Attachment VI) which states that prohibiting the practice of automobile brokering is invalid in that it places arbitrary and unreasonable limitations on the conduct of a legitimate business. Brokers are licensed, regulated and are required to maintain a bond under vehicle licensing laws. Any potential problems associated with the business of brokering vehicles, such as the ability to trace brokered vehicles in the event of safety recall, may and should be achieved by less drastic means, ie, additional regulations but not prohibition.

On September 29, 1988, the Cleveland Regional Office of the Federal Trade Commission, in comments to the General Assembly of the State of Michigan (Attachment VII), stated that prohibiting brokering could reduce competition, retard innovation and injure consumers by entrenching one group of business owners at the expense of new entrants. The net effect of prohibiting brokering would be to reduce consumer choices and increase automobile prices.

On March 21, 1989, a comment letter from the Chicago Regional Office of the Federal Trade Commission concerning an anti brokering bill was sent to the Illinois Senate. This comment letter related that the prohibition of auto brokering is anti-competitive and likely to cause auto prices to increase for consumers.

KS DMV IS NEITHER PROMOTING NOR OPPOSING THIS BILL

The Kansas State Department of Revenue, Division of Motor Vehicles is the agency which regulates brokers. The Division is not asking for this prohibition nor is it asking for increased regulatory authority over brokers. If there is a problem with auto brokering, the Division should further regulate the business but brokering should not be eliminated.

DEALERS ARGUMENTS FOR THE PROHIBITION

1. Brokers are not regulated the same way as dealers.
2. Brokers do not have to comply with vehicle licensing laws
3. Brokers disrupt the distribution system
4. Dealers have a large investment in buildings and inventory
5. Dealers provide jobs in their communities
6. Unfair to require dealers to service cars that they have not sold

ADDITIONAL CONCERNS

Are the prohibitions on brokering activities so broad that they will restrict a credit union's participation in an Off-Site Auto Sale?

Would the credit union be bringing the buyer and seller together or arranging or offering to arrange a transaction when they participate in an Off-site Auto Sale?

Will the credit unions be able to advertise the sale in a newsletter or send promotional materials to members?

Mr Chairman, we urge the committee to oppose the passage of SB 486.

Ladies and Gentlemen of the Committee:

My name is Paul Zeh. My wife and I live in Wichita and are members of Mid-American Credit Union. I am here to briefly relate our very satisfactory experience, about a year ago, in buying a new car through Mid-American.

It was a satisfactory experience for two reasons: First, we saved a substantial sum of money; Second, it was the most pleasant, stress-free car-buying experience we have ever had. It was not an ordeal, without stressful negotiating over the price, no arguing or haggling with high-pressure salesmen at dealerships. Briefly, here is what we experienced.

Several months before we made a buying decision, we went to Mid-American and inquired about four different cars we were considering. A nice lady offered to make computer printouts of each, inviting me to observe the computer screen with her and select each specific feature we would want on our car. The cost---invoice cost as well as suggested retail cost---of each item going onto the cost of each car was listed. At the bottom of each printout was a total cost figure---to the penny---under the "invoice cost" column. We were able to take these four printouts home and carefully compare the four cars, which was extremely helpful in making our selection. How different this was from car-shopping at a dealer! Here we had before us the actual, precise cost of what we would buy, just like a price tag on a suit of clothes or an appliance.

Before we ordered the car we chose, we spent much time visiting new car dealers. The car we eventually bought was rather new on the market, and we were given conflicting information or wrong information from salesmen at each of the three dealerships we visited. All three were vague as to price, but it was obvious that all were considerably higher. The one which came closest to the price on our printout, when we pinned him down to a specific figure, was still about \$300 over our cost from Mid-American.

When we decided to purchase from Mid-American, the contract was for the exact amount shown on the printout months earlier. They were knowledgeable about the car (an Eagle Premier), and completely open about how the transaction would be handled. We actually purchased the car from Zeller Motor Company of Arkansas City, which took delivery direct from the manufacturer. They did an excellent job of prepping the car for us, and a highly competent man from Zeller delivered the car to our home at an appointed time and did a marvelous job of orienting my wife and I on its features. Since then we have had four occasions to get service under the factory warranty at two different Wichita dealerships, and have had no problem at all.

My wife and I strongly urge you to kill the bill you are considering against auto brokering so that we can continue to

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purchase cars in the future from our credit union---which we fully intend to do.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul G. H.", written in black ink.

Thank you Mr. Chairman.

My name is Ed Martin. I am Director of the Division of Architectural Services for the State of Kansas, but I am here to testify today as a private citizen and consumer. The thoughts I wish to express are my own and are not connected in any way with my job or with any member of the administration.

I am here to testify in opposition to Senate Bill 486 because I believe this bill was conceived by the automobile dealers for their own private interest and is not in the best interest of the Kansas consumer. I intend to briefly review how cars are sold and to show that a dealer's financial interest in this bill goes well beyond merely earning a fair percentage of the manufacturer's suggested retail price. Through the example of my recent personal experience, I intend to show that new car dealers have no desire to use normal consumer-oriented retailing methods, and have created the consumer demand for automobile brokering services as a result. This bill is an attempt by the automobile dealers to preserve a way of selling which is closer to the old techniques of horse trading than to modern merchandising.

First, let's look at how cars are sold. As you know, all new automobiles have a window sticker which shows the manufacturer's suggested retail price. Also, there is a second sticker which lists extra charges added by the dealer. These extra charges will include items such as Dealer Prep, undercoating,

special striping or other accessories which the dealer has already installed. All of these are priced at a high mark-up. As if all this were not enough, one added charge which is most offensive to me is what happens on car models which are in high demand. This is when the dealer adds hundreds of dollars to the price in what is called a "Price Adjustment". This means the dealer feels he can charge more for the car than the sticker shows, so he merely raises the price to whatever the market will bear. In addition, when a dealer sells a car and is able to provide the financing, he earns commission income from the finance company. If the customer will purchase the credit life insurance which is always offered, the dealer earns more money. If the customer purchases the extended warranty package, which is also always offered, the dealer makes more money still. Of course, the dealer is planning to make additional profit when he sells the car the customer traded in. And finally, something which many people don't know, is that the American automobile manufacturers provide additional income to their dealers in the form of a volume bonus at the end of each year. This amounts to several hundred dollars for every car the dealer sold that year, and can amount to a great deal of money. A dealer has a lot of reasons for wanting to maintain the current marketing system and none of them are for the benefit of the consumer.

An automobile salesman has quoted industry statistics to me which say that 65% of all customers who walk into a new car showroom will purchase an automobile within the next 48 hours. Two out of every three people who enter a new car showroom are qualified customers, but if a customer leaves without purchasing an automobile, the chance of that person returning to buy is less than 10%. (Quote) "That is why we put as much pressure on them as we can while they are here." (Unquote)

The sale of new automobiles is a process involving hidden profits which relies on placing an uninformed consumer into a controlled environment. That consumer is then pressed into making quick decisions based on emotion. For dealers who are skilled in this area, and they are trained in these techniques, there is much money to be made.

This type of selling is not in the best interest of the consumer. The entire process is designed to keep the customers from knowing if they are getting a good deal or not. The new car brokerage concept is a direct result of the way dealers sell automobiles. It provides a fair and reasonable alternative to the consumer.

You, the members of this committee, can go into virtually any retail outlet in this state, and immediately find out the purchase price of any merchandise they have. The price that's

shown is the price you pay. But you all know that is not the case on new automobiles. No one but the uninformed or gullible expects to pay full sticker price for a new car.

I challenge any member of this committee to walk into any new car showroom, ask the salesman what is the bottom dollar for a straight cash purchase of any particular car he has. You will not get a direct answer.

Let me tell you my own experience in January of this year. As a state employee, I am in Topeka all week, but my family lives in Wichita. Therefore, I go home to Wichita on weekends.

On a Friday morning, my wife called and said her old car had finally died, and I needed to buy a car that weekend. I needed to make a quick decision, and I had a lot of options to consider.

As an architect responsible for building construction, I am accustomed to getting quotes on any major purchase I make. That is part of being an informed consumer. I had 24 hours to buy a car, and I needed information. I decided to talk to some dealers.

First, I went to Dale Sharp Honda here in Topeka and asked for their bottom dollar for a cash purchase of a particular model car. No trade in. I said I needed to know right away because I was leaving for Wichita. I was told they couldn't tell me. I went out in their lot and selected a specific car, but was told

they could only quote a range of prices. I persisted, and after 20 minutes, I was quoted the exact sticker price. I left.

I went to John Hoffer Chrysler Plymouth on South Topeka and told the salesman my story. I told him I could either buy in Topeka or Wichita. I selected an exact model mini-van and asked for their bottom cash price. I was told they could not tell me that price, or I would go to Wichita and try to beat it. I said I was definitely going to be buying a car from someone, but they said I wasn't a serious customer. They couldn't help me until I was willing to sit down and spend at least an hour with their sales manager. Again I left, and then I drove to Wichita.

The problem with these two dealers was that I wanted to buy a car, just like I was buying a major appliance. They refused to talk seriously with me unless I was willing to submit to their standard procedure of negotiations which is designed to give them the upper hand in dealing with a customer.

That evening in Wichita, I went to Rusty Eck Ford to price a mini-van. I sat with a salesman in his office, explained my situation, and asked for his bottom dollar for a cash purchase. He asked, "How much are you willing to pay?" I asked again. He said, "Make me an offer which I can write up for my supervisor to review." I refused. Finally, the sales manager came in. He suggested that we shouldn't even talk price until my wife has

seen the van and told me to drive it home over night. I protested, but got nowhere.

On Saturday, I went to Steven Chrysler Plymouth in Wichita to get a price on their mini-van. After selecting a particular model and much conversation with a salesman, I asked if we could determine what a lease payment would be. I had to sign a paper saying I would lease the car if the payment was to my satisfaction. And, I had to write a \$20 check to prove my sincerity. Then I had to sit in a lounge full of cigarette smoke for an hour while I waited for my turn to see the only person who could tell me the lease payment. I was so angry by the time my turn came to see him that I refused to deal with him.

That afternoon, my wife was talking to a fellow school teacher and told the friend of our car shopping frustrations. The friend asked if we knew the credit union had a service for its members where they could get cars at \$100 over dealer invoice. She said she had gotten her new car from a local dealer who had matched the price.

I went back to both Steven Chrysler Plymouth and to Rusty Eck Ford and told them about our ability to get a vehicle at \$100 over dealer invoice. Both dealers said they sell a lot of cars to people who have access to such a service and they would sell

to us at the price too. They said if they had known earlier, they could have saved everyone a lot of time.

Anyone who is a skilled negotiator and has a lot of time can buy a car at a price only slightly above dealer cost. Books are published every year that can be used by the public to calculate dealer cost on most car models. I have purchased a new car at \$100 over cost in the past and know others who have also. However, most people are unable or unwilling to put up with the hassle, yet if you have access to a broker, the dealer will cooperate immediately.

Think of the members of your own family. If your spouse, or your son, or your daughter were to go alone to purchase a new car, which system would you want for them? You can have the traditional dealer's sales strategy designed to earn the maximum profit possible on each sale. Or, you can have the brokerage service designed to save the customer money by selling at a fixed mark-up over invoice. I would like to know they had the choice.

The automobile dealers say this bill is needed to protect them from unfair competition and to maintain the current automobile distribution system. I believe that if the current system were open and fair with consumers, there would not be a need for brokers. The brokerage system is a direct response to the automobile industry's lack of concern for the needs of consumers.

I recently read of a Pontiac dealer in Detroit who decided to be consumer oriented and advertised cars at a fixed mark-up over dealer invoice. GM began to delay shipping him cars and ruined his sales business. After a year of no new cars to sell, he merged his service department with that of a Ford dealer. GM then revoked his dealership. In the article, it said GM has been found liable in a court case and a large settlement was ordered.

Just as the manufacturer in this example tried to kill a consumer-oriented dealership, the automobile dealers in Kansas are now trying to kill a consumer-oriented service provided by the brokerage companies. There is no reason why the dealers cannot exist with, and even compete with, the brokerage services if they are only willing to change. After all, even the brokers must work through dealers to provide cars, and dealers' service departments still are paid for all the service work they perform.

I respectfully urge you to please think of the needs of Kansas consumers and to not support Senate Bill 486.

WAL-MART

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J. Scott Melton *Sallie Stroud Varner*
Ronald A. Williams

March 9, 1990

The Honorable Rex Crowell, Chairman
Committee on Transportation
Kansas House of Representatives
State House
Topeka, KS 66612

RE: Senate Bill 486/Motor Vehicle Brokers

Dear Chairman Crowell:

We have been informed that Senate Bill 486, a bill prohibiting the business of brokering new and used automobiles in the State of Kansas, has been assigned to the Transportation Committee of the House. With this letter and on behalf of Wal-Mart and its Sam's Wholesale Division (Sam's), I would like to clarify any misconception which may exist regarding the automobile buying service offered to Sam's members and to express our company's opposition to the bill.

From the outset of this proposed legislation, there seems to have been a misconception regarding the auto buying service offered to the Sam's member. Accordingly, for the record, a more accurate description would seem appropriate. On a periodic basis, a brochure is printed by American Fleet Dealers, Inc., an Arkansas corporation, which contains the advertising of local dealers setting forth fleet prices offered by the dealers to the Sam's membership. Sam's members then contact the dealers and purchase their cars or trucks directly from the participating Kansas-licensed dealer. The selection of the desired model and options, financing and vehicle delivery are matters worked out solely between the dealer and the Sam's member. All warranty and service work is performed by the dealer.

The auto buying service is simply a means by which local Kansas dealers present fleet prices to the Sam's membership. In the auto buying service offered to Sam's Wholesale Club members, neither Wal-Mart Stores, Inc. nor Sam's Wholesale Club Division nor any representative thereof buy or sell motor vehicles, nor do they negotiate or arrange the sales. The Sam's Wholesale members, instead, buy their vehicles directly from participating Kansas-licensed motor vehicle dealers. Therefore, the consumer purchasing the motor vehicle through this buying service is already afforded full and complete protection provided by Kansas law regulating licensed motor vehicle dealers. Additionally, it is our feeling that such legislation is directed solely towards reducing the competition that such programs bring to certain dealers within the state. This reduction of competition, we feel, would be to the detriment of the Kansas consumer, who would be precluded from purchasing an automobile at the most competitive price.

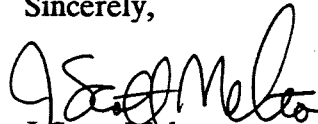
The Honorable Rex Crowell
March 9, 1990

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Therefore, in summary, Wal-Mart and Sam's Wholesale Club Division oppose Senate Bill 486. We feel that the bill is overbroad and anti-competitive. If this bill passes, it would eliminate one avenue through which the Kansas consumer may purchase a motor vehicle at the lowest possible price.

We appreciate your attention to our concerns. If you have any further questions, please don't hesitate to contact me at the above-referenced number.

Sincerely,



J. Scott Melton
Corporate Counsel

JSM:mt