

Approved March 11, 1991  
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Lana Oleen at  
Chairperson

1:10 ~~xxx~~/p.m. on March 5, 1991 in room 531-N of the Capitol.

~~1~~ members ~~present~~: Senators Oleen, Bogina, Doyen, Francisco, Kanan, Moran, Strick and Vidricksen.

Committee staff present:

Julian Efird, Kansas Legislative Research Department  
Fred Carman, Revisor of Statutes  
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Dan Carlson, Kansas Independent Automobile Dealers Association  
Pat Barnes, Kansas Motor Car Dealers Association  
Bob Parrish, Dealer Review Board  
Pat Wiechman, Kansas Automotive Dismantlers and Recyclers Association  
Terry Humphrey, Kansas Manufactured Housing Association and R.V. Council  
Joe Dick, Division of Motor Vehicles  
Senator Ben Vidricksen, Kansas Senate  
Jack McCord, Department of Administration

The meeting of the Senate Committee on Governmental Organization was called to order by the Chairman, Senator Lana Oleen, at 1:10 p.m.

Senate Bill 237 - Hearing before dealer review board; sunset.

The Chairman asked staff to review the provisions of SB 237. Julian Efird, Kansas Legislative Research Department, said that the bill pertains to the Dealer Review Board and establishes that Board as a quasi-judicial body which can review decisions of the Director of Motor Vehicles in the Department of Revenue. SB 237 would allow any aggrieved party to first appeal an order of the Director to the Board rather than to the District Court. If the aggrieved party is unsatisfied with the Board's decision, the party could then appeal to the District Court. Noting that the Board is scheduled for sunset in 1991, he pointed out that SB 237 provides for continuation of the Board until July 1, 1995, at which time it would again be subject to abolition under the provisions of the sunset law.

Chairman Oleen called for testimony from proponents of SB 237.

Dan Carlson, Chairman of the Board of the Kansas Independent Automobile Dealers Association, appeared to request that the Committee vote to extend the sunset of the Dealer Review Board and to return the appeals authority, held by the Board before the 1988 enactment of the Kansas Administrative Procedures Act, to the Board as provided in SB 237. He explained that the Board, which was created in 1974, consists of nine members: two new car dealers, two used car dealers, one salvage dealer, two public members, one manufactured housing member, and one manufacturer. He stated that the Board, which meets once a month, is self sustaining using salesman license fees for operation costs. Mr. Carlson said that his association believes that a dealer should be able to be reviewed before a group of his peers if he wishes to appeal a decision of the Director of Motor Vehicles on a violation of the Dealers Licensing Act. He pointed out that attached to his testimony is a list of the current Dealer Review Board members and a list of states around Kansas whose dealer boards provide an appeals process. (Attachment 1)

The second conferee to speak in support of SB 237 was Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association. Mr. Barnes reviewed the history of the Dealer Review Board and noted that it was originally established as a buffer between dealers and manufacturers with regard to franchise contracts and as a self-regulating industry board with regard to reviewing violations of

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MINUTES OF THE Senate COMMITTEE ON Governmental Organization

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the Dealer Licensing Act; however, he pointed out that with the passage of the Kansas Administrative Procedures Act in 1988, the Board lost a great deal of its power. Mr. Barnes requested that the Dealer Review Board once again be given the power to act as a participant in any administrative appeal process regarding violations of the Dealers and Manufactures Licensing Act, or other issues raised under that Act for Dealer Review Board action. Mr. Barnes told the Committee that he has addressed the issue of the constitutionality of SB 237 in an opinion attached to his testimony and that he is on record as believing that the provisions of the bill are constitutional. (Attachment 2)

Bob Parrish, Chairman of the Kansas Dealer Review Board, testified in support of SB 237. Mr. Parrish listed the members of the current Board and discussed some of its accomplishments in recent years. He observed that the function of the Board would be better if restored to more authority, such as provided in SB 237. He stated that this proposal would maintain consistency in the hearing process and would provide the new car dealers and the manufacturers with a fair review by a jury of both parties' peers who understand the technicalities of the business. (Attachment 3)

The next conferee in support of SB 237 was Pat Wiechman, Executive Secretary of the Kansas Automotive Dismantlers and Recyclers Association. Ms. Wiechman stated that having dealers review purported violations of the other dealers, as provided in SB 237, is no different than having other professions police their peers. She pointed out that having the Dealer Review Board review purported violations of dealers would certainly not prevent Court appeals but, in many cases, it would produce a result that would provide dispute resolution at reduced costs to the parties and Kansas taxpayers. (Attachment 4)

A member asked how many decisions of the Division of Motor Vehicles have been appealed to the District Court in the past year. Pat Barnes answered that the number of such appeals is from 90 to 99.

Terry Humphrey, Executive Director of the Kansas Manufactured Housing Association (KMHA), told the Committee that the KMHA supports the provisions of SB 237. In anticipation of the passage of SB 11, which removes the manufactured housing statutes from the motor vehicles statutes and eliminates the manufactured housing representative from the Dealer Review Board, she requested that SB 237 be amended to include an R.V. representative on the Dealer Review Board. (Attachment 5)

Chairman Oleen called for testimony in opposition to SB 237.

Joe Dick, Director of Motor Vehicles for the Department of Revenue, appeared before the Committee to state that the Division of Motor Vehicles opposes SB 237 for the statutes currently provide for an appeal to the District Court by those who feel aggrieved by a decision of the Director. The Division feels that this provides an adequate appeal process. He noted that the passage of this bill would result in a duplication of services for the staffs of the Dealer Licensing Bureau and his Division are in place to perform the services which the Dealer Review Board would provide. He observed that there were 526 hearings in 1990 which resulted in 27 license suspensions. Director Dick requested that SB 237 be amended to provide for the abolishment of the Dealer Review Board effective July 1, 1991. (Attachment 6)

A member of the Committee requested that Director Dick provide information concerning the number of dealers whose licenses were suspended or revoked in 1990, who, as a result of the suspension or revocation, filed appeals in the District Court.

Staff provided a chart to the Committee entitled "Summary of Costs and Revenues for Dealer Licensing Function, Actual FY 1990 and Budgeted FY 1992 (rounded)". (Attachment 7)

Chairman Oleen declared the hearing on SB 237 closed.

Senator Strick moved that the minutes of the Committee for February 18, 1991,

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February 19, 1991, and February 21, 1991, be approved. Senator Kanan seconded the motion. The motion carried.

Senate Bill 4 - Study of use of acid-free paper for certain state records.

The Chairman reminded the Committee that the provisions of SB 4 had been incorporated into SCR 1614 and that this Concurrent Resolution was referred to the Federal and State Affairs Committee for hearing.

Senator Francisco moved that SB 4 be recommended unfavorably for passage. Senator Strick seconded the motion. The motion carried.

The Chairman opened the hearing on SB 138.

Senate Bill 138 - Authorizing secretary of administration to lease space and facilities in the capitol to news services.

Senator Ben Vidricksen, sponsor of SB 138, informed the Committee that for-profit organizations do not pay rent for office and equipment space in the Statehouse. Noting that the press space in the Statehouse has been newly decorated and newly carpeted, he observed that these organizations should now be paying rent. He told the Committee that estimates on total rent revenue of between \$18,000 to \$20,000 per year have been made. He stated that he does not wish to include public television or public radio in the bill for those organizations should not pay rent in the Statehouse. Senator Vidricksen said that, under the provisions of SB 138, the Department of Administration would be the agency to determine what rent per square foot should be paid. This rent, he said, would include utilities and telecommunication services.

Senator Vidricksen moved that SB 138 be amended to include the Lobbyist Message Center as an organization which should pay rent for space in the Statehouse. Senator Kanan seconded the motion. The motion carried.

Jack McCord, Director of the Division of Facilities Management for the Department of Administration, told the Committee that the Legislative Coordinating Council (LCC) currently assigns space in the Statehouse to sixteen news media organizations and the Lobbyist Message Center. He observed that three of these organizations are not-for-profit, the Associated Press, public radio and the Lobbyist Message Center. He said that these organizations, in total, including the not-for-profits, occupy 1,617 square feet of office space and 35 square feet of storage space. He discussed telecommunications and noted that private lines are paid for by individual organizations. Mr. McCord told the Committee that SB 138 is workable and could be administered. He projected a total yearly rent revenue of \$20,280.40 if the bill were passed.

Chairman Oleen called the Committee's attention to SB 68 which was heard by the Committee at a previous meeting.

Senate Bill 68 - Barbers and barbering, cleanup.

Senator Francisco moved that SB 68 be recommended favorable for passage. Senator Kanan seconded the motion. The motion carried.

Senator Oleen announced that the next meeting of the Committee would be Monday, March 11, 1991. The meeting was adjourned at 2:20 p.m.

GUEST LIST

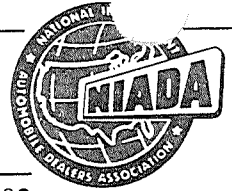
COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE March 5, 1991

NAME	COMPANY / ORGANIZATION	ADDRESS
Pat Barnes	Ks Motor Car Dealer Assn	Topeka
Pam Somerville	Ks Motor Car Dealers Assn	TOPEKA
Dale Winkley	Dale Winkley Pontiac	Lawrence
Bob Parrish	Retired	Great Bend
Kevin Allen	Ks Motor Car Dlrs Assn	TOPEKA
Dean Trimmell	<del>FR</del> Ks Motor Car Dlrs Assn	Municipal Grove
Joe Beck	Ks Motor Vehicles	Topeka
Jack McCord	DEPT OF ADMIN	TOPEKA
BARRY CORES	DIA	Topeka
Harriet Lange	Ks Assn Broadcasters	Topeka
L. Ferguson	AP	"
Tom Kelly	Ks. Press Association	Topeka



# KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION



Citizens Bank & Trust Building • 6th & Humboldt • Manhattan, Kansas 66502  
Phone: 913-776-0044 FAX: 913-776-7085

March 5, 1991

TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

SUBJECT: SB 237--DEALER REVIEW BOARD

Madam Chair and Members of the Committee:

My name is Dan Carlson, Chairman of the Board, of the Kansas Independent Automobile Dealers Association. I represent 270 used car dealers in the state of Kansas.

I am here today asking you to extend the sunset on the Dealer Review Board and to return the appeals authority to the Board.

The Board as it stands now confers with the Director of Vehicles on regulations to improve vehicle dealer practices, makes recommendations for changes in current law on vehicle sales and trade, acts as a resource for industry problems, and provides expertise to create a balance between operating problems and public interest.

It is made up of nine members: two new car dealers, two used car dealers, one salvage dealer, two public, one manufactured housing, and one manufacturer. They meet once a month. The Board is self sustaining using salesman license fees. The cost is about \$5,000 a year. A list of the members is attached.

The Dealer Review Board was created in 1974. The Director heard violations. Then the Board was empowered to review the decisions of the Director upon request of appeal. If the violator was not satisfied, then it could be taken to court. During the revision of Kansas Administrative Procedures Act, this review power was left out. A staff person of the Judiciary Council has examined this bill and believes there to be no conflict with the Act. He has made a technical change and states there is a possibility that a mistake was made in leaving the appeals out exemplified by some language that was still in statute.

*Senate Committee on Governmental Organization*  
3-5-91

*Attachment 1*

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

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SB 237--Dealer Review Board

The four states around Kansas--Colorado, Nebraska, Missouri, and Oklahoma--all have an appeals process. In fact they do much more than appeals. They are empowered to issue license instead of the Department of Vehicles.

The state of Kansas has many Boards which use the appeals process, such as: Board of Technical Professions, Board of Healing Arts, Behavioral Sciences Regulatory Board, Real Estate Commission, Public Employees Retirement Board, and Employment Claims Board of Review.

Attached is a list of the four states with their organization and a list of the Boards with their processes. Also you will find the amount of dealer violations and hearings for 1989 and 1990.

Questions have been considered in the past on the constitutionality of the Board's construction. California cases have been cited due to their Board consisting of nine members made up of five members of the public and four members of new motor vehicle dealers and the fact they dealt with only new vehicle dealers and manufacturers. It was believed it deprived the manufacturer due process. Our Dealer Review Board consists of many different licensees including public members. California never invalidated the structure of the Board. Pat Barnes, Attorney for Kansas Motor Car Dealers Association, has researched this question and his findings will be included in KMCD's testimony.

We believe that a dealer not satisfied with the decision of the Director should be able to be reviewed before a group of his peers who are more familiar with the problems of the industry. This would possibly keep decisions out of the courts which can be long and costly.

This Board could be one of the dealer's last line of defenses against losing his dealership and his investment.

The Board is to sunset on July 1 of this year, and we are asking to extend the sunset to July 1, 1995 when the Department of Revenue is reviewed.

Please give your serious consideration to this bill. Thank you.

**DEALER REVIEW BOARD MEMBERS  
(REVISED 10/24/90)**

Gil Broxterman  
1706 Arrowhead Road  
Topeka, Kansas 66604  
(913) 272-6186

*Vice-Chairman* (10-19-90)  
Public-at-Large Member

Jack Cassell  
331 S. Shefford  
Wichita, Kansas 67209  
(316) 722-6304

Public-at-Large Member

Ron Collins  
3001 E. 11th, Box 2799  
Hutchinson, Kansas 67504-2799  
(316) 663-9991

Factory Representative Member

Glenn Frye  
Box 45  
Haddam, Kansas 66944  
(913) 778-2074

Used Vehicle Member

Dale Lehning  
A-One Auto Slvg of Wichita, Inc  
7335 South Broadway  
Haysville, Kansas 67060  
(316) 524-3273

Salvage Dealer Member

Walt Lesline  
2160 N. Riverside Blvd.  
Wichita, Kansas 67203  
(316) 681-1211

New Vehicle Member

Bob Parrish  
1911 McKinney Drive  
Great Bend, Kansas 67530  
(316) 793-7723

*Chairman* (10-19-90)  
New Vehicle Member

Rod Taylor  
Doug's Mobile World Inc  
4919 South Topeka Blvd  
Topeka, Kansas 66609  
(913) 862-0321

Mobile Home Mfg Member

John Young  
Salina Auto Auction  
2845 Centennial Rd  
Salina, Kansas 67401  
(913) 827-8784

Used Vehicle Member



Missouri Motor Vehicle Commission

Issues licenses as well as makes decisions on violations.

7 members

Meets every 2 months

Hearings are held by commission staff attorney. The commission makes a decision from the report on the hearing.

Executive director

Colorado Motor Vehicle Dealer Licensing Board

Issues licenses as well as makes decisions on violations.

9 members

Meets every month

Hearings are held after investigation by the Department of Revenue.

Executive director

Oklahoma Motor Vehicle Commission

Issues licenses as well as makes decisions on violations.

9 members

Meets every month

Hearings are held by the commission.

Executive Director

Nebraska Motor Vehicle Industry Licensing Board

Issues licenses as well as makes decisions on violations.

9 members

Meets every month

Attorney General acts as attorney and renders an opinion on violations.

Hearings are held by the Board.

Executive director

Board of Technical Professions

Hearing panel of three people other than Board members.

Panel makes a recommendation to the Board

Board makes a decision.

Board of Healing Arts

Attorney or staff sends out an investigator.

It then can be sent three ways for hearing:

1. Review Committee--not Board members
2. Disciplinary Counsel hired outside of the Board
3. Board

Attorney renders the decision to the Board

Board makes a decision

Behavioral Sciences Regulatory Board

Board can revoke or suspend license

Real Estate Commission

Commission makes a decision on violations

Public Employees Retirement Board  
Hearing officer reports to the Board.  
Board determines the matter.

Employment Claims Board of Review  
Examiner hears the case and makes a decision.  
Referee hears the case  
Board of Review hears the case-three members

The total number of dealer hearings are as follows:

1989--192 sent to Legal for hearings  
48 hearings held  
1990--222 sent to Legal for hearings  
93 hearings held so far this year

The most common violation is the 30 day temporary permit.

Statement Before The  
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
by  
KANSAS MOTOR CAR DEALERS ASSOCIATION

Tuesday, March 5, 1991

RE: Senate Bill 237

Restoring Dealer Review Board Appeal Authority

Madam Chairman and Members of the Committee, I am Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association representing franchised new car and truck dealers in Kansas. I appear before you to support SB 237, an issue important to us on a long-term basis. This bill would reestablish the Kansas Dealer Review Board which is presently scheduled to sunset this July 1, but would also once again restore its appellate powers.

For many years Kansas has had the Dealer Review Board acting as an advisory, investigatory and, to a certain extent, judicial body within the framework of the dealer licensing laws. The board was originally established by K.S.A. 8-2412 which sets forth the criteria for its makeup, membership and other agency requirements. The board originally had eight members established by law which consisted of two public at large representatives, two new vehicle dealers, two used vehicle dealers, a manufacturer representative and a salvage vehicle dealer representative. Last

*Senate Governmental Organization Committee*  
*3-5-91*

*Attachment 2*

year a manufactured housing representative was added. The members are all now appointed to serve three-year terms which are staggered. The board was never intended to assume a full-time operating function, but only meets when needed. As such, it is a very efficient body for the State to have. Under this proposal, we do not anticipate that this would change.

The Dealer Review Board was originally established as a buffer between dealers and manufacturers with regard to franchise contracts and as a self-regulating industry board with regard to reviewing violations of the Dealer Licensing Act. In fact, their primary responsibility was reviewing and fact-finding with regard to violations of the Dealer Licensing Act. They also investigated unconscionable acts and practices by manufacturers directed against dealers and by dealers directed against the general public. The board lost a great deal of its power with the voluminous revisions in the Administrative Procedures Act adopted several years back. With this bill the board is fully incorporated back into the administrative framework in the form of an experienced appellate body.

Currently the Dealer Review Board still serves an important function for the Kansas automotive industry. The board's construction is a balance of public representatives and all segments of the automotive industry. Its members are a useful

resource for the Department of Motor Vehicles in establishing regulations that improve dealer practices and they are also a sounding board for industry problems. This board has the expertise necessary to ferret out operating problems created by current law and balance these problems against the greater public interest.

In short, this board keeps the State of Kansas informed as to the continually changing automotive business environment. This is a complex industry which at times cannot be fully understood without a working knowledge of practices within the industry, whether those practices be legitimate or illegitimate. For example, do you understand the terms, curb-stoning, C.S.I., fleet subsidy, bird-dog, and travel rate, to name a few? I think you would find most members of the board are familiar with these and other terms or practices and could certainly explain them to their counterparts who may not.

When the amendments to accommodate the Administrative Procedures Act were made, the board lost its function of refereeing and balancing out the disparity of bargaining power between dealers and manufacturers and addressing other administrative disputes. Without the Dealer Review Board there is very little court relief available to address strong arm practices by manufacturers wielding the powers of their boiler plate

franchise contracts or to fairly review administrative decisions. This function would be reestablished by this bill without disrupting the present administrative framework or amending the Administrative Procedures Act. We do ask that the Dealer Review Board once again be given the power to act as a participant in any administrative appeal process regarding violations of the Dealers and Manufacturers Licensing Act, or other issues raised under that Act for Dealer Review Board action.

In restoring that function, all you would be doing with this bill is providing an aggrieved party the ability to appeal a decision of the Director of Vehicles to the board and appeal a decision of the board to the judicial system. This provides one other advantage to all of us. It provides continuity of practice. Policies and decisions don't change from administration to administration because of the staggered terms of board members.

There is little or no difference in concept between what is here proposed and what takes place when a person files an unemployment compensation claim, or a charge is brought under another type of governing board, whether it be the Board of Technical Professions, the Board of Healing Arts, the Behavioral Sciences Regulatory Board or a host of other regulated industry or professional boards. While we have not found it necessary to

master the details of how all other state boards operate, our examination does reveal that, again, the system we propose is as meritorious as those, and probably at least as efficient, if not more so.

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

The cost of this board is nominal. Historically, it was self-funded by salesmen licensing fees. The cost in 1989 to operate the board was under \$5,000.00. With the restoration of the board's power, we do not anticipate the cost would substantially increase based upon our understanding of the number of appeals that are now being heard by the Director of Vehicles.

Most importantly, however, is the fact that this board would operate different from the present system with the inherent conflict where state attorneys, or other employees, sit as both advocates and decision-makers in the hearing process. It is interesting to note that one of the criticisms leveled in the

past is that this board would not provide due process. However, can you tell me exactly how due process is insured in the best traditions of the United States and its people when the state sits both as judge and executioner?

Last year some of you may recall the predecessor to this bill was first reviewed in this Committee. The Revisor's office, myself, the other interested parties to this bill, and various legislators have spent most of the 1990 legislative session and the past year working through past criticisms and providing provisions which are, without question, compatible with the administrative framework. It is my understanding that staff from the Judicial Council also provided the Revisor's Office with some input. The result is the bill you have before you.

Make no mistake, our dealers want and need this board with a binding review authority. (And when I say "dealers," I am not speaking just about new car dealers.) Although they may not master each exacting detail of the process, like their individual legal counselors might, they do understand the authority requested, and extent thereof, and do want it.

We have also reviewed the procedures our neighboring states use and have found the system we propose here to be, if anything, less restrictive and less powerful than those states. In many states, the board or commission has the full regulatory



function, not just an advisory function coupled with a review or appellate function. Keep in mind, we are seeking to insure a fair review process which is more inclined to produce due process and fairness, rather than lessen or block it. To do anything else is of no more of an advantage to us than to anyone else, and we certainly have a degree of credibility to maintain when we make proposals of this nature.

We have also examined the issue of constitutionality as some questions were raised in that area. It would serve no purpose to have a law passed which isn't constitutional. We are on record that the law is constitutional and my opinion is attached. The issue of constitutionality is an argument only recently advanced. There was no problem raised when the board was originally established, and none while it functioned in appellate matters in the past. (Surely, if that would have been a threat, it would have come up before.) The fact of the matter is this scheme is common and accepted both in law and fact.

In closing, I would say to you this is one of the better examples of a cost-effective board which actually has a beneficial impact on the regulatory affairs of the industry and public with which it deals. This board had merit when the legislature first created it, and it has merit now. We feel we have paid for this board, and continue to pay for it, and it should be given the opportunity to serve as an improvement upon the system under which we operate.

LAW OFFICES OF  
**SCOTT, QUINLAN & HECHT**

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GEORGE A. SCOTT (1979)

ROBERT D. HECHT  
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JAMES S. WILLARD

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DEBORAH L. HUGHES  
MICHAEL S. GREIVING

JACK A. QUINLAN  
of Counsel

February 4, 1991

Mr. Kevin Allen  
Executive Director  
Kansas Motor Car Dealers Association  
808 Merchants National Bank Bldg.  
Topeka, KS 66612

Re: Proposed Dealer Review Board Bill

Dear Kevin:

Under the present bill submitted to the legislature to empower the Dealer Review Board to rule upon various issues as an appellate body within the confines of the Dealers and Manufacturers Licensing Act, questions continue to surface about the constitutionality of the Board's construction. As you know, California cases have been cited for the proposition that a licensing board consisting of dealers to hear disputes arising under the Act is unconstitutional. We are of the opinion that the California cases on this subject, though persuasive, are sufficiently distinguishable so that the evils subject to criticism in California are not present in the proposed bill in this State.

California established a board consisting of nine members: five members were from the public at large and four members were new motor vehicle dealers. A number of cases ruled upon the constitutionality of this design in California. They are: American Motor Sales Corporation v. New Motor Vehicle Board, 69 Cal.App.3d 986, 138 Cal.Rptr. 594 (1977); Chevrolet Motor Division v. New Motor Vehicle Board, 146 Cal.App.3d 533, 194 Cal.Rptr. 270 (Cal.App.1 Dist. 1983); Nissan Motor Corporation v. New Motor Vehicle Board, 202 Cal.Rptr. 1 (Cal.App.1 Dist. 1984); University Ford, etc. v. New Motor Vehicle Board, 179 Cal.App.3d 800, 224 Cal.Rptr. 908 (Cal.App.4 Dist. 1986); American Isuzu Motors, Inc. v. New Motor Vehicle Board, 186 Cal.App.3d 464, 230 Cal.Rptr. 769 (Cal.App.2 Dist. 1986); and British Motor Car Distributors, Ltd. v. New Motor Vehicle Board, 194 Cal.App.3d 85, 239 Cal.Rptr. 280 (Cal.App.1 Dist. 1987).

Mr. Kevin Allen  
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These cases are important in terms of what they didn't do, as well as in what they did do. They are very narrow opinions in certain respects, including the fact that the California Board appears to only deal with new vehicle dealers and manufacturers, unlike the Kansas Board. It is important to note that California never invalidated the structure of the Board itself. A summary of the cases is that participation of dealer board members in manufacturer-dealer disputes deprived the manufacturer of due process because there was no manufacturer representative on the Board and the dealer members had a possible strong likelihood of financial interest in the outcome of their decision. The procedure in such an instance was unconstitutional, but only as to that fact situation. Also, the Court was not presented with a balanced board, even though there were public members on the Board. (In Kansas, we will have a board made up of a number of different licensees, including public members.)

California reacted by adding a section requiring the dealer board members not to vote on dealer-manufacturer disputes, but allowing them to be present and discuss the issues. This was found to be too close to full participation to cure the ill noted above. California's board members then started to voluntarily recuse themselves in dealer-manufacturer disputes. One court then said this was insufficient as contrary to the legislative intent and struck this practice down. Apparently, the legislature added a mandatory recusal policy to match what the Board had been doing for dealer-manufacturer disputes while the case that had criticized the process earlier was being decided, because six months later the same procedure was then upheld as reflective of what the legislature intended. Remanding the case would have accomplished little, so the process was allowed to stand.

The British Motor Car Distributors case noted above is the last California case to deal with the issue. The Board is now constitutional in dealer-manufacturer disputes where the dealer members recuse themselves. In all other respects, it was always constitutional anyway.

Turning to Kansas, our Board is much more diversified and has a manufacturer representative. This form of board was considered by Tennessee courts in Ford Motor Company v. Pace, 335 S.W.2d 360 (1960), where their regulatory commission consisted solely of dealers picked from a list submitted by that state's Automotive Trade Association. The Court upheld this Board as constitutional and noted ". . . practically all the regulatory boards which cover most everything today in the state are made up of members of the profession which that board governs."

Mr. Kevin Allen  
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All of the following states in our neighborhood have vehicle "commissions" which convene for the enforcement of their vehicle codes. All are partially comprised of new vehicle dealers. There have been no challenges to the make-up of these commissions. Those states examined are Kentucky, Arkansas, Oklahoma and Colorado. Nebraska and Missouri were examined, but not researched for challenges. Nebraska's board is similar to that of Kansas in terms of construction. Missouri's board does not appear to receive or specify industry-related experience or licensure for appointment to any of the positions.

Overall, our opinion is that our scheme, like any other law, could be subject to challenge given the right circumstances, but we have found no board similar to ours which has been invalidated. California's system is a unique jurisdiction and seems to have dealt with a unique situation which resulted in constitutional concepts which cannot necessarily be said to apply in another state and certainly cannot be said to be mandatory or anything more than persuasive. The form of board KMCDCA proposes appears diversified and acceptable. If challenged successfully, it is unlikely the whole board would be invalidated, based on the California experience, as the complaint could be cured with a recusal section similar to that used in California.

Very truly yours,

SCOTT, OBINLAN & HECHT



Patrick R. Barnes

PRB/clk

**STATEMENT BEFORE THE SENATE COMMITTEE ON  
GOVERNMENTAL ORGANIZATION IN SUPPORT OF SB 237.**

THANK YOU MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM BOB PARRISH, CHAIRMAN OF THE KANSAS DEALER REVIEW BOARD, AND A FORMER NEW CAR DEALER IN GREAT BEND, KANSAS. I APPEAR BEFORE YOU TODAY IN SUPPORT OF SB 237.

ONE OF THE REASONS I AM HERE TODAY IS BECAUSE I FELT IT IMPORTANT THAT YOU KNOW THE PRESENT MEMBERS OF THE DEALER REVIEW BOARD. THESE MEMBERS WERE APPOINTED UNDER THE PRESENT STATUTORY GUIDELINES. INCLUDING MYSELF, THE MEMBERS CONSIST OF:

MR. GIL BROXTERMAN, FORMER EXECUTIVE VICE PRESIDENT OF  
THE KANSAS MOTOR CAR DEALERS ASSOCIATION (PUBLIC AT  
LARGE);

MR. WALT LESLINE, PLAZA BUICK, WICHITA;

MR. DALE LEHNING, A-ONE AUTO SALVAGE OF WICHITA;

MR. GLEN FRYE, USED VEHICLE MEMBER, HADDAM;

MR. RON COLLINS, FACTORY REPRESENTATIVE, HUTCHINSON;

MR. JACK CASSEL, PUBLIC AT LARGE, WICHITA

MR. ROD TAYLOR, MANUFACTURED HOUSING, TOPEKA; AND

MR. JOHN YOUNG, SALINA AUTO AUCTION.

*Senate Governmental Organization Committee  
3-5-91  
Attachment 3*

THESE INDIVIDUALS HAVE MANY YEARS OF EXPERIENCE IN ALL PHASES OF THE AUTOMOBILE INDUSTRY INCLUDING SALES, SERVICE, MANUFACTURING AND INSURANCE. THEY ALSO REPRESENT THE PUBLIC PERSPECTIVE TO PROTECT THE CONSUMER.

ALL MEMBERS HAVE A GENUINE INTEREST IN THE FUTURE OF THIS REGULATORY BOARD. THIS IS EVIDENCED BY OUR WILLINGNESS TO SERVE FOR VERY LITTLE COMPENSATION. THE BOARD HAS ACCOMPLISHED MUCH IN RECENT YEARS EVEN WITHOUT THE POWER TO CONDUCT HEARINGS WHILE LIVING WITHIN A SMALL BUDGET.

THE BOARD-

SERVED AS THE AD-HOC COMMITTEE IN REVIEWING THE CURRENT D-TAG LAWS AND PROVIDES FOLLOW UP INFORMATION ON ITS EFFECTIVENESS;

- PROVIDES THE VEHICLE DIRECTOR WITH INDUSTRY EXPERTISE IN AN EVER CHANGING BUSINESS AND GUIDANCE IN LEGISLATIVE MATTERS;
- POLICES ITS OWN RANKS FOR MISCONDUCT;
- ACTS AS AN ARBITRATOR BETWEEN THE MANUFACTURERS AND DEALERS ON MANY ITEMS, ESPECIALLY WARRANTY CLAIMS;
- AND ACTS AS A DETERRENT TO UNFAIR PRACTICES BY THE DEALERS AND MANUFACTURERS.

THE ONLY PLACE FOR A DEALER TO GO WITHOUT THE BOARD WOULD BE DISTRICT COURT, WHICH IS TIME CONSUMING AND VERY EXPENSIVE. WITHOUT THE BOARD, THE VEHICLE DIRECTOR WOULD BECOME THE JUDGE AND JURY ON ANY DEALER PROBLEMS BROUGHT BEFORE HIM. THE BOARD DOES NOT COST THE STATE ANY MONEY, SINCE THE ORIGINAL DEALER AND SALES LICENSING FEES WERE TO DEFRAY THE COST OF THE BOARD. THESE FEES HAVE SINCE BEEN RAISED TO MORE THAN ACCOUNT FOR INFLATION.

THE BOARD'S VERY PRESENCE INSURES OUR KANSAS CONSUMERS AND KANSAS AUTOMOBILE DEALERS FAIR TREATMENT.

THE FUNCTION OF THE BOARD WOULD BE BETTER IF RESTORED TO MORE AUTHORITY, SUCH AS PROVIDED IN SB 237. THIS PROPOSAL WOULD PROVIDE THE NEW CAR DEALER AND THE MANUFACTURER WITH A FAIR REVIEW BY A JURY OF BOTH PARTIES PEERS WHO UNDERSTAND THE TECHNICALITIES OF THE BUSINESS.

SB 237 WOULD ALSO MAINTAIN CONSISTENCY IN THE HEARING PROCESS. DIRECTORS COME AND GO, AS DO INTERPRETATIONS OF RULES AND REGULATIONS, WHILE THE DEALER REVIEW BOARD IS MORE "LONG TERM".

THAT CONCLUDES MY TESTIMONY. I APPRECIATE THE OPPORTUNITY

TO APPEAR BEFORE YOU TODAY AND SHARE MY SUPPORT OF THE  
DEALER REVIEW BOARD. I WOULD BE HAPPY TO ANSWER ANY  
QUESTIONS.



*Kansas Automotive Dismantlers  
& Recyclers Association*

1101 West 10th  
Topeka, KS 66604

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913-233-1666  
FAX 913-233-8893

**SENATE COMMITTEE ON  
GOVERNMENTAL ORGANIZATION**

March 5, 1991

**SENATE BILL NO. 237**

Madame Chairman, Members of the Committee:

I am Pat Wiechman, Executive Secretary for the Kansas Automotive Dismantlers and Recyclers Association. K.A.D.R.A. appears today in support of SB 237, the Dealer Review Board Bill. Our association has long supported the concept of self-regulation. The very existence of a board such as the Dealer Review Board sets forth a declaration of public policy which states, in part, that it is the policy of this state to provide "fair and impartial regulation;" to promote "fair dealing and honesty" in an industry, among those engaged in the industry, without unfair or unreasonable discrimination or undue preference or advantage; to protect the public interest in the purchase and trade of vehicles and to protect against irresponsible vendors and dishonest or fraudulent sale practices.

Meaning no disrespect to the Department, but you will hear that having vehicle dealers sit on a dealer review board is like "having the fox watch the chicken coup." We submit that having dealers review purported violations of other dealers is no different than having the law profession police their peers; or having doctors sit on a medical review board; or having the real estate industry pass judgment on the indiscretions of their own industry. It is an established pattern in practice that has been endorsed by many fields.

You may hear that there is no need to have decisions of the director reviewed. Frankly, whether or not the Dealer Review Board is retained, with whatever duties, will have less impact on my salvage vehicle dealers than it will have on the new car dealers because of their problems in dealing with vehicle manufacturers and their franchise agreements. However, my dealers ask me and perhaps you should be asking yourself, why would the Department attempt to kill a board that watches the activities of that department? The second question I have been asked is what is the Secretary of Revenue and the Director of Vehicles afraid of the taxpayers knowing? Why should the Department fear having a board that has the ability to over turn decisions of the director? Are you aware that in dealer hearings the Department operates as prosecutor, judge and jury? In someplaces that's called a "Kangaroo Court!" And, that has my dealers feeling very apprehensive. They feel that there is no way they can receive a truly fair and impartial hearing under those circumstances.

What about the issue of expense? How much of the bill does the taxpayer have to foot? The means to fund the Dealer Review Board have been

in place for years. The revenue from the licensing of vehicle salesmen was supposed to provide that funding; and, in fact, will more than adequately do so.

Perhaps you will hear that the Dealer Review Board is a "do nothing" board. If you look at its most recent history, you might jump to that conclusion. However, if you look at the way the board operated prior to the changes in the appeal process brought about through the Administrative Procedures Act, you will find a board that met monthly, conducted hearings and was considered a very viable compliment to the Department. (I might add, parenthetically, that K.A.D.R.A.'s Evelyn Fateley sat as chairman of the Board during part of that time). During the Board's recent past, post Administrative Procedures Act, the Board, working with the Department and the trade associations, recommended sweeping legislative changes to the Dealer Licensing Act. Those changes were passed into law. Additionally, the Board has continued to meet regularly, acting as advisor to the Director. These are not "do-nothing" activities.

There are programs across the state created for alternative dispute resolution to relieve the Court system of the burden of new cases. We submit that the continuation of the Dealer Review Board and the restoration of the powers of the Dealer Review Board is a way for alternative dispute resolution. It is better than one person acting as the decision maker as there is a broader span of knowledge to draw upon to resolve disputes, short of the Court. While the existence of the Dealer Review Board will certainly not prevent Court appeals, in many cases, it will produce a result that will provide dispute resolution at reduced costs to the parties and Kansas taxpayers. There is no one harder on a vehicle dealer or manufacturer who is dishonest, deceptive, fraudulent or simply

unfair, than another vehicle dealer. To be otherwise reflects on the dealer's own way of life.

The very fact that the business men who sit on the Dealer Review Board have continued to come to Topeka in hopes that the needed authority and appeals process of the Board could be restored should suggest to you the importance of its continuation. If these gentlemen did not believe that there does exist a real need for the appeals process, they would never have taken the time from their businesses and gone to so much personal expense. Oh, but, their expenses were reimbursed, you may hear. Members of the Committee, those gentlemen lose money every time they take time away from their businesses to try to ensure this board continues. The small amount they are reimbursed for actual expenses in no way makes up for what it actually costs them; and yet, they have been willing to endure the hardship of that expense in the belief that there is a need and the Dealer Review Board is worth saving.

It's no secret that the vehicle industry in Kansas, like so many other industries, has suffered from today's economy. Your dealers, your constituents, your taxpayers and voters need the Dealer Review Board. Don't leave us hanging out there with no place to go for our appeals except to an already overburdened court system. K.A.D.R.A. urges your favorable passage of Senate Bill 237. If you have any questions, I will be happy to try to address them.

Respectfully submitted,

Patricia M. Wiechman  
Executive Secretary

KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY BEFORE THE SENATE

COMMITTEE ON GOVERNMENTAL ORGANIZATION

TO: Senator Lana Oleen, Chairwoman and  
Members of the Committee

FROM: Terry Humphrey, Executive Director

DATE: March 5, 1991

RE: Senate Bill 237

Madam Chair and members of the Committee, I am Terry Humphrey, Executive Director of the KMHA and today I am representing our associate members the Recreational Vehicle Council. The R.V. Council is made up of R.V. retailers from across the state and three Kansas R.V. manufacturers.

The Kansas R.V. Council supports the provisions of SB 237 that allows a person aggrieved by a decision of the Director of Motor Vehicles to appeal that decision to the Dealer Review Board. It is our opinion that this board provides a needed check and balance system to the regulatory process.

However, because the R.V. dealer is governed under Article 24 of Chapter 8, we would ask that SB 237 be amended to specifically include a representative of the R.V. Industry on the Dealer Review Board. At this time there is no representative from the R.V. Industry on this board.

If you remember last year this Committee expanded the board by one to include a representative of the Manufactured Housing Industry. However, in this Session, SB 11 which passed the Senate last week, removes the manufactured housing statutes from the motor vehicles statutes and eliminates the manufactured housing representative from the Dealer Review Board since there is no longer a need.

In anticipation of the passage of SB 11, the R.V. Council would suggest that the ninth seat on the Dealer Review Board be filled by an R.V. representative.

Therefore, we respectfully request that SB 237 be amended to include an R.V. representative on the Dealer Review Board.  
Thank you.

*Senate Governmental Organization Committee*  
*3-5-91*



## KANSAS DEPARTMENT OF REVENUE

*Division of Vehicles*

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

Senate Bill 237 amends K.S.A. 1990 Supp. 8-2410, 8-2411, 8-2428, and 74-7276. This bill would make a hearing before the Dealer Review Board mandatory before the director of vehicles could revoke, suspend or refuse to renew a dealer license. This bill also provides for an appeal to the Dealer Review Board when a dealer believes that the decision of the director was arbitrary or capricious.

Currently there is no mandatory hearing before the board and appeals are heard before the district court.

This bill also extends the life of the board until 1995.

The division of vehicles does not support passage of this bill for the following reasons:

1. This bill could double or triple the workload of the Dealer Review Board, which currently meets between eight and ten times a year. Each board member is paid a \$35 fee for each meeting, in addition to mileage at \$.27/mi. This represents an annual cost to the division of between \$4,000 and \$5,000. The Board currently serves only in an advisory capacity.
2. In addition to board member fees and mileage, the department believes that in order to avoid the criticism of ex parte communication with the Board, it would be necessary to retain an independent counsel to advise the Board. The exact cost is unknown.
3. The division believes that passage of this bill would result in a duplication of services. At present, the staff of the Dealer Licensing Bureau and the division provide the necessary research and documentation prior to holding an administrative hearing. Additional hearings by the Board would result in an unnecessary duplication of research and documentation.
4. The current function of the Board--making recommendations on matters pertaining to vehicle dealers--can be continued through contact with associations such as the Kansas Motor Car

*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*

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Dealers Association (KMCDCA), Kansas Independent Automobile Dealers Association (KIADA), and the Kansas Dismantlers and Recyclers Association (KADRA).

5. The statutes currently provide for an appeal to the district court for those dealers who feel aggrieved by the decision of the director. The division feels that this is an adequate appeal process.

Furthermore, the division would like to amend Senate Bill 237 to discontinue the Dealer Review Board effective July 1, 1991.

## Summary of Costs and Revenues for Dealer Licensing Function, Actual FY 1990, and Budgeted FY 1992 [rounded]

	FY 1990	FY 1992
Salaries (including percentage fringe benefits and GHI)		
Legal Services Bureau, Paid from VD & M Fee Fund [2.0 F.T.E.]	54,300	55,500
Dealer Board of Review	1,100	2,100
Dealer Licensing Bureau [12.0 F.T.E.]	320,300	351,100
<b>Subtotal, Salaries</b>	375,700	408,700
Other Operating Expenditures		
Postage [est.]	69,800	75,800
Telephone (Centrex & KANS-A-N) [Centrex charges budgeted & paid under 0102]	9,700	9,100
Repairs to Investigators' Vehicles	3,200	2,500
Travel:		
Dealer Review Board	2,100	2,200
Special Investigators	1,900	600
Conferences (Air Fare, Subsistence, Registration fees; funded in Governor's Rec. under 0101)	0	800
Supplies:		
Forms printed by Duplicating (est.)	1,400	1,400
Supplies from Stockroom	2,300	2,300
Other Stationery & Office Supplies (Books & supplements, envelopes, temp. registration permits, dealer handbook)	7,300	7,300
Data Processing Supplies	2,000	2,000
Film for investigators	1,100	1,100
Credit Checks	700	700
Copier Rental	3,100	3,100
Gasoline & other supplies for State Cars	6,500	6,900
Dealer License Plates and Decals (est.)	3,100	4,500
<b>Subtotal, O.O.E.</b>	114,200	120,300
<b>Total Costs</b>	489,900	529,000
Revenues		
Dealer Licenses, to State Highway Fund	1,885,400	#N/A
Full Privelege Tags, to Vehicle Dealers & Manufacturers Fee Fund	82,200	#N/A
Full Privelege Tags, to Co. Treas. Vehicle Licensing Fee Fund	82,200	#N/A
Dealers Fines	11,400	#N/A
<b>Total Revenues</b>	2,061,200	#N/A