

Approved 3-19-91
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:02 a.m./~~pm~~ on March 7, 19 91 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Tom Whitaker, Kansas Motor Carriers Association
Pam Somerville, Kansas Motor Car Dealers Association
Mike Severn, President, Steven Motor Group, Wichita
Dan Bailey, Attorney, Motorcycle Industry Council, Inc., Topeka

Action on S.B. 169 - Highway control act, nonconforming signs, penalty.

The committee discussed the bill and felt it should apply only to portable signs. The others are well regulated. They also felt the time period should be shortened to seven days for removal of the sign and the bill should pertain only to highway signs. A conceptual motion to this effect was made made by Sen. Rock. Motion was seconded by Sen. Hayden. Motion carried. A motion was made by Sen. Rock to recommend S.B. 169 as amended, favorably for passage. Motion was seconded by Sen. Hayden. Motion carried.

Action on S.B. 265 - Railroads rehabilitation loan and loan guarantee fund.

Sen. F. Kerr said the committee was trying to bring in something that could be passed this year. This bill and S.B. 266 should be suggested for interim study. These two bills could be combined into one bill for the loan guarantee assistance only. He had a balloon copy of S.B. 265 and Bruce Kinzie went through the bill and explained it to the committee. (Attachment 1). Bruce said the open records part of the bill would be included.

There was discussion over what controls the legislature would have over the loans. In this respect, the legislature would have control over the rules and regulations.

A motion was made by Sen. F. Kerr to have a substitute bill for S.B. 265 and amend it as in the balloon copy. It would also include the confidentiality clause from S.B.266, page 7. Motion was seconded by Sen. Hayden. Motion carried. A motion was made by Sen. F. Kerr to recommend Sub. S.B. 265 favorably for passage. Motion was seconded by Sen. Vidricksen. Motion carried.

S.B. 266 - Establishing the rail service improvement program.

A motion was made by Sen. Hayden to strike New Section 1 of S.B. 266. The motion did not receive a second.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:02 a.m./~~p.m.~~ on March 7, 1991

Hearing and action on S.B. 346 - Wrecking or towing services, personal property liens.

Tom Whitaker said tow truck operators are experiencing problems with current provisions of the law. Tow services performed on low value vehicles remain unpaid. Personal property must be released to the vehicle owner regardless of whether the towing charges have been paid. Vehicles are often "dumped" on the tow operators. This bill would offer some protection to tow truck operators. A copy of his statement is attached. (Attachment 2).

A motion was made by Sen. Sallee to recommend S.B. 346 favorably for passage. Motion was seconded by Sen. Hayden. Motion carried.

Hearing and Action on S.B. 267 - Motor vehicle dealers establishment or relocation of new vehicle dealers.

Pam Somerville said this bill would establish criteria for a dealer's response when a manufacturer intends to place a new dealership within an existing dealer's market area. This legislation is important to the franchised dealer to preserve their personal investment and the investment they make to the individual communities in which they reside. A copy of her statement is attached. (Attachment 3).

Mike Steven said this legislation would simply require the manufacturer to notify the affected dealer of the intent to place a new dealership in the existing dealer's territory. He said he has been a franchised Subaru dealer since 1975 and last spring another dealer was appointed within three miles of his dealership and he had received no prior notice. A copy of his statement is attached. (Attachment 4).

Dan Bailey said although the bill makes reference to "car registrations" motorcycles are included within the definition of a motor vehicle. He said this bill would discourage competition and result in higher prices for vehicles, parts and service. The Motorcycle Industry Council opposes S.B. 267. A copy of his statement is attached. (Attachment 5). He said he would not oppose the bill if motorcycles were taken out of the bill.

A motion was made by Sen. Rock to recommend S.B. 267 favorably for passage. Motion was seconded by Sen. Hayden.

A substitute motion was made by Sen. Martin to take motorcycles out of the bill. Motion was seconded by Sen. Hayden. Motion carried.

The committee discussed amending the bill by putting in a 10 mile radius around an existing new vehicle dealer and also using population for criteria for dealerships. A conceptual motion to this effect was made by Sen. Rock and seconded by Sen. Vidricksen. Motion carried.

A motion was made by Sen. Rock to recommend S.B. 267 as amended, favorably for passage. Motion was seconded by Sen. Martin. Motion carried.

Some members were opposed to this bill and questioned whether state government should get into this.

A motion was made by Sen. Sallee and was seconded by Sen. Rock to approve the Minutes of March 5 and 6, 1991. Motion carried.

Meeting was adjourned at 10:00 a.m. Next meeting March 8, 1991.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-7-91 Place 254-E Time 9:02

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Ken Clark

Topeka

Ks. Division of Vehicles

Kevin Wilhelm

Marion

Marion High School

Mike Kline

Marion

Marion High School

Steph Burkholder

Marion

Marion High School

Mike Swift

Florence

Marion High School

Chris Hett

Marion

Marion High School

Justin Drimmett

Florence

Marion High School

Matt Hatfield

Marion

Marion High School

Chris Sturdevant

Marion

Marion High School

Michael Bruner

Florence

Marion High School

John Griffith

Florence

MARION High School

Glenn Krispenso

Marion

Marion High School

Matt Brenzkofer

Florence

Marion High School

Dein Plummer

Marion

Marion High School

Quoty Stalub

Marion

Marion High School

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-7-91 Place 254-E Time 9:02

GUEST LIST

NAME	ADDRESS	ORGANIZATION
John Lee Mills	Drylo Place Lawrence, Ks	Senior Class - Marion High
Eric Kennedy	RR3 Box 49A Marion, Ks	Senior Class - Marion High
Karen Moody	Rt. 1 Holton, Ks	Towing Division - KMCA
Gary R. Brown	Topeka	Towing " KMCA
Don Buckley	Overland Park	TOWING DIV. KMCA.
Chris Fowler	2824 Westlake Dr. Emporia, Ks	Flt. H.H. Towing KMCA
Bob Totten	3131 Creston Topeka	Ks Contractors Assoc.
Jacque Dattes	Topeka	Ks. Ind. Auto Dealers Assn.
Tom Whitaker	Topeka	Ks Motor Carriers Assn.
Jenny Taylor	Lawrence	Ks Motor Carriers Assn.
Dean Trimmell	Council Grove	Ks Mfr Car Dec. Assn.
BARRY COUGHLIN	FORD MOTOR CO.	LEAWOOD KS.

SENATE BILL No. 265

By Committee on Transportation and Utilities

ATT. 1
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8 AN ACT relating to railroads; ~~concerning the railroad rehabilitation~~
9 ~~loan and loan guarantee fund; amending K.S.A. 75-5029~~ and re-
10 pealing the existing section.

establishing the rail service assistance program;

1990 Supp. 45-221

creating the rail service assistance

11 *Be it enacted by the Legislature of the State of Kansas:*

12 ~~New Section 1.~~ (a) The secretary of transportation is hereby au-
13 thorized upon application by a qualified entity and its lender to enter
14 into an agreement to guarantee the repayment of loans made for
15 the purpose of facilitating the financing, acquisition or rehabilitation
16 of railroads in the state of Kansas.

Insert A

New Sec. 7.

17 (b) Such agreement may contain such terms and conditions as
18 the secretary of transportation may deem appropriate to carry out
19 the purposes of this section, except that the aggregate unpaid prin-
20 cipal amount of obligations guaranteed thereby shall not exceed
21 \$20,000,000 of which not more than \$5,000,000 may be available
22 each fiscal year.

23 (c) The secretary of transportation may adopt rules and regula-
24 tions consistent with and for the purpose of implementing the pro-
25 visions of this section.

26 (d) "Qualified entity" means any interstate commerce commission
27 certificated railroad, a port authority established in accordance with
28 Kansas laws, or any entity meeting the rules and regulations estab-
29 lished by this section.

30 ~~Sec. 2. K.S.A. 75-5029 is hereby amended to read as follows:~~
31 ~~75-5029. The railroad rehabilitation loan and loan guarantee fund is~~
32 ~~hereby established in the state treasury which shall be for the pur-~~
33 ~~pose of facilitating the financing, acquisition, rehabilitation of rail-~~
34 ~~roads in participation conjunction with the federal government, or~~
35 ~~otherwise to provide rail service in Kansas and for the refinancing~~
36 ~~thereof. The secretary of transportation shall administer the railroad~~
37 ~~rehabilitation loan and loan guarantee fund. All expenditures from~~
38 ~~the railroad rehabilitation loan and loan guarantee fund shall be made~~
39 ~~in accordance with appropriations acts upon warrants of the director~~
40 ~~of accounts and reports issued pursuant to vouchers approved by~~
41 ~~the secretary of transportation or by a person or persons designated~~
42 ~~by the secretary.~~

Insert B

1990 Supp. 45-221

- 1 Sec. 3. K.S.A. ~~75-5029~~ is hereby repealed.
- 2 Sec. 4. This act shall take effect and be in force from and after
- 3 its publication in the Kansas register.

1-2

INSERT FOR S.B. NO. 265

New Section 1. The legislature finds and determines that integrated systems, including railways, highways and airways, are necessary in order to meet the economic and energy needs of the citizens of the state, both now and in the future. The legislature finds that a portion of the present railroad system in the state does not provide adequate service to citizens of the state. The legislature further finds and determines that it is in the best interest of the state to establish a rail service assistance program in order to preserve and revitalize essential rail service in the state.

New Sec. 2. There is hereby established the rail service assistance program to provide assistance for the preservation and revitalization of rail service in the state, including the guarantee of loans pursuant to section 7 of this act.

New Sec. 3. There is hereby established the rail service assistance program advisory committee hereinafter referred to as the advisory committee. The advisory committee shall be advisory to the secretary of transportation.

New Sec. 4. The advisory committee shall consist of nine members appointed by the governor as follows:

- (a) Two shall be rail shippers;
- (b) two shall be representatives of railroad management, one shall represent a class I railroad and one shall represent a regional or short line railroad;
- (c) two shall represent railroad labor, one shall be an employee of a class I railroad and one shall be an employee of a regional or short line railroad; and
- (d) three shall represent the general public. A person appointed to fill a vacancy which occurs prior to the expiration of a term shall be appointed for the unexpired term. Each member of the advisory committee shall be appointed for a three-year term.

New Sec. 5. (a) The advisory committee shall organize annually by the election from its membership of a chairperson and a secretary. The advisory committee may adopt such rules of procedure as the committee deems necessary for the conduct of business.

(b) The advisory committee shall meet at least four times a year. The chairperson may call additional meetings. A majority of members shall constitute a quorum.

(c) Members of the advisory committee attending meetings of such committee shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

New Sec. 6. The advisory committee shall have the following functions, powers and duties:

(a) To assist the secretary of transportation in setting priorities under the rail service assistance program;

(b) to assist in the development of criteria for eligibility and approval of projects under the rail service assistance program, such criteria shall include, but not be limited to, the anticipated economic and social benefits to the state and to the area being served and the economic viability of such projects;

(c) to assist in the establishment of criteria for loan guarantees under the rail service assistance program; and

(d) to provide such advice and assistance as the secretary of transportation deems necessary in carrying out the provisions of the rail service assistance program.

New Sec. 8. (a) The rail service assistance program loan guarantee fund is hereby established in the state treasury which shall be for the purpose of facilitating the financing, acquisition and rehabilitation of railroads pursuant to the rail service assistance program in sections 1 through 8 and for the refinancing thereof. The secretary of transportation shall administer the rail service assistance program loan guarantee fund. All expenditures from the rail service assistance program loan guarantee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or by a person or persons designated by the secretary.

(b) The secretary of transportation shall pay from the rail service assistance program loan guarantee fund to a lender of a qualified entity, the amounts for any loan which is in default, which is for the financing, acquisition or rehabilitation of railroads pursuant to the provisions of section 7.

STATEMENT

By The

TOWING AND RECOVERY DIVISION
KANSAS MOTOR CARRIERS ASSOCIATION

- - - - -

In support of Senate Bill No. 346
which amends the Towing and Recovery
Possessory Lien Law.

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Presented to the Senate Transportation and Utilities
Committee, Sen. Bill Morris, Chairman; Statehouse,
Topeka, Thursday, March 7, 1991.

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association. I appear here today representing the Towing and Recovery Division of our Association for which Mr. Chris Bowyer of Flint Hills Towing, Inc. of Emporia is Chairman. Mr. Ron Blackley, Overland Tow Service in Overland Park; Mr. Gary Brown of Brown's Super Service in Topeka; Mr. Jerry Taylor of Hillcrest Wrecker and Garage in Lawrence; and Mrs. Karen Moody of Moody's Salvage and Auto Sales in Holton; also are here this morning.

We are here to support Senate Bill No. 346 which amends the Towing and Recovery Lien Law adopted by the 1987 Session of the Kansas Legislature.

Tow truck operators have experienced two major problems with the current provisions of the law.

1. Tow services performed on low value (less than \$500) vehicles remain unpaid. Current law requires the tow truck operator to store such low value vehicles for a minimum of 60 days before a public sale can be held, thus adding additional costs to an uncollectible account.
2. Personal property (if any) remaining with towed vehicles currently must be released to the vehicle owner upon request regardless of whether the towing charges have been paid.

Senate Bill No. 346 offers two amendments. The first amendment provides that a vehicle with a total value of less than \$500 may be sold at any time, after giving the notices required by this act, unless a court order has been issued to hold such vehicle for the purposes of a criminal investigation or for use as evidence at a trial.

The second amendment would allow the tow operator to withhold any personal property, except personal medical supplies, remaining in the vehicle until the reasonable or agreed charges for transportation, recovery, or storage of a vehicle have been paid or satisfactory arrangements for payment have been made.

The low value vehicles (less than \$500) have created a major financial burden for the towing and recovery operators. Most vehicle owners who have required towing and recovery services claim their vehicle, pay the recovery and storage cost (if any) and go on their way.

The low value vehicle owner too often simply "dumps" the vehicle on the tow truck operator and leaves the tow operator with an uncollectible account. The possessory lien then becomes necessary and a sale at public auction eventually must be conducted for these vehicles with little value. For instance, Don's Car Care of Hutchinson, Kansas, reported that he has sold 37 vehicles under the towing and recovery lien law. Of the 37 vehicles sold, 36 had a value of less than \$500. The average price paid per vehicle was \$75.00. Similar experiences can be found in communities large and small as reported by tow truck operators.

Tow operators have estimated that the cost of a sale at public auction, including notification requirements, run from \$50 to \$75 per vehicle depending on the cost of publication in different areas of the state.

The notification requirements in the Act do not change. Current law requires tow operators to meet the following notification requirements:

- If the owner of the vehicle is known, the tow operator must notify the owner of the vehicle within 15 days that the vehicle is being held subject to satisfaction of the lien.
- Within 60 days of taking possession of such vehicle, the tow operators must request verification from the Division of Vehicles of the last registered owner of the vehicle and any lienholders. For a vehicle with a value of \$500 or more, the request for VIN verification must be made between the 45th and the 60th day.
- 10 days after receipt of the information from the Division of Vehicles, the tow operator must notify, by certified mail, that the vehicle will be sold to satisfy the lien if payment is not received within 15 days.
- Notice of the public auction must be published once a week for three consecutive weeks in the local newspaper.

Tow truck operators, under the proposed amendments in Senate Bill No. 346, could offer the low value vehicles at public auction within a minimum of 21 days.

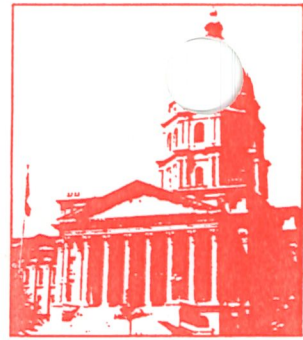
The amendment which would permit the tow truck operator to withhold personal property left with the vehicle simply is a requirement which would help the tow operator collect his unpaid towing charges. We believe the tow operator is entitled to this option.

We will appreciate your consideration of these amendments to make a good law work even better. We ask your favorable consideration of Senate Bill No. 346 and will respond to any questions you may have.

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KANSAS MOTOR CAR DEALERS ASSOCIATION
800 Jackson • Suite 808 • Topeka, Kansas 66612 • (913) 233-6456 • (800) 825-0169 (KS only)



LEGISLATIVE TESTIMONY

SENATE BILL 267

RELEVANT MARKET AREA

March 7, 1991

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before you this morning on Senate Bill 267. My name is Pam Somerville, Governmental Affairs Director for the Kansas Motor Car Dealers Association. I would also like to introduce Mike Steven, Steven Motor Group, Wichita; Dean Trimmell, KMCDA Legislative Chairman; and Pat Barnes, KMCDA Legislative Counsel.

The Kansas Motor Car Dealers Association is a trade association representing 329 franchised new car and truck dealers in Kansas. Senate Bill 267 proposes to establish a relevant market area law for the state of Kansas. Simply stated, a relevant market area law would establish criteria for a dealer's response when a manufacturer intends to place a new dealership within an existing dealer's market area. Senate Bill 267 would require the manufacturer to notify the Director of Vehicles in the event the

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manufacturer proposed placing a new same line-same make dealership within the existing automobile dealer's territory. The Director of Vehicles would then notify the affected dealer(s), and the Director would also be required to publish the notice in the Kansas Register. The dealer would then have thirty days to respond to the Director of Vehicles, in writing, to protest. A hearing would be held based on established criteria, as defined on Page 2 of Senate Bill 267, lines 27 through 43, and Page 3 lines 1 through 8. Following the hearing a decision would be rendered.

The subject of Relevant Market Area legislation is not new to the automobile industry. To date, thirty-eight states have enacted legislation to preserve an automobile dealer's primary area of responsibility contained in their respective Sales and Service agreement. While a dealer is not "guaranteed" a primary area of responsibility, the geographical area is traditionally defined in their agreement. This legislation is important to the franchised dealer to preserve their personal investment and the investment they make to the individual communities in which they reside.

Section 2 of Senate Bill 267 provides an exemption for a manufacturer who has a dispute resolution mechanism for the establishment of an additional new motor vehicle dealer or the relocation of an existing new motor vehicle dealer. I would point out that we have conferred with General Motors and the Ford Motor Company and both manufacturers support this language.

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Mr. Chairman, I would like to stress to the committee that our proposal is not an attempt to prevent new dealers in our state, but rather we are simply proposing that the manufacturer be required to notify an existing dealer of the intent to place a new dealer in their relevant market area and prove good cause for that additional dealership.

Once again, thank you for the opportunity to appear today. I would be happy to respond to questions.

**STATEMENT BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
BY MIKE STEVEN, PRESIDENT, STEVEN MOTOR GROUP, WICHITA
IN SUPPORT OF SENATE BILL 267**

March 7, 1991

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before you this morning in support of SB 267. My name is Mike Steven, President of the Steven Motor Group in Wichita. I am also an officer of the Kansas Motor Car Dealers Association.

Senate Bill 267 is an issue important not only to myself, but also to my fellow dealers; particularly because of the huge investment we, as franchised dealers, make to the manufacturers to market their products. The intent of this legislation is simply to require the manufacturer to notify the affected dealer of the intent to place a new dealership in the existing dealer's territory. The legislation requires the manufacturer to give notice and prove good cause.

I would like to take just a moment to relate my own personal situation to each of you.

Steven Motors has been a franchised Subaru dealer since 1975. Last spring, I received a letter from Subaru stating that they had appointed another

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dealer within three miles of my existing dealership with absolutely no previous notice. To make a long story short, I then contacted Subaru and asked if their personnel had conducted a market study to determine if a new dealership was warranted. Subaru's reply was "NO" -- they had not conducted a market study, and furthermore, their attorney had advised them there were no laws in Kansas that required them to do so. PERIOD.

As a businessman, I believe this legislation is important to our industry. I respectfully ask for your favorable support of Senate Bill 267. Again, thank you for the opportunity to appear before you. I would be happy to respond to questions.

ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

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MEMORANDUM

TO: MEMBERS OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

FROM: DANIEL B. BAILEY, ATTORNEY, MOTORCYCLE INDUSTRY COUNCIL, INC.

RE: SENATE BILL NO. 267

DATE: MARCH 7, 1991

The Motorcycle Industry Council is a national trade association which represents the manufacturers and distributors of motorcycles and nearly 100 other companies involved in allied trades. Although Page 2, Line 34 of the bill makes reference to "car registrations" the Dealers and Manufacturers Licensing Act includes motorcycles within the definition of a motor vehicle. Consequently, the M.I.C. wishes to express its opposition to SB 267 which would regulate the establishment or relocation of a motor vehicle franchise.

SB 267 is anti-competitive legislation which would adversely affect competition in the sale and servicing of new vehicles in Kansas. If enacted, the legislation would unnecessarily insulate established dealers from intra-brand competition and result in higher prices to the consumer for motor vehicles, parts and services.

The bill gives any existing dealer the right to delay the establishment of a new dealership of the same line-make within that dealer's "relevant market area" simply by filing a protest with the director. This automatically delays any opening or relocation until a hearing has been held and a decision rendered. In the event of an appeal, the delay could be indefinite.

The "relevant market area" would be the area within a radius of 20 miles around the proposed site, regardless of the population in the area. This constitutes a 1256 square mile area in which existing dealers are allowed to impede and attempt to lock out competition. One motorcycle dealer with a small facility cannot provide adequate and convenient sales and service to the public in an area of 1256 square miles. Motorcycle dealerships are typically much smaller in size than car dealerships in terms of service facilities and personnel.

The protest and hearing process permits existing dealers to delay the opening of a new dealership, leaving the prospective dealer with a large amount of capital unprofitably invested in the new venture (or, in the case of a relocating dealer, keeps that dealer for a longer period in a less desirable location). Additionally, in the case of a motorcycle dealership where the facility is well suited to many types of businesses, the prospective dealership site may not still be available by the time the protest is resolved. The protest process also causes the potential dealer or manufacturer to incur high legal fees during the proceedings.

The ability of an existing business to delay the operation of a competitor constitutes very strong economic power. Other types of

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businesses or utilities which enjoy such power are typically subject to stringent economic regulation in exchange for territorial protection.

This bill could also serve to distort competition. A "relevant market area" law may encourage circumventive tactics by hopeful new dealers wishing to avoid the costs and delays inherent in the procedure. For example, a new dealer might select a new location just beyond the perimeter of a "relevant market area" to avoid a protest, while passing up a location that might better serve the public, or a new dealer might select a new location across state lines in order to avoid anti-competitive laws. This could be the case in the Kansas City Metropolitan area, since Missouri does not have anti-competitive legislation of this nature.

The language of the bill suggests that new dealerships are opened by "manufacturers." However, the bill also adversely affects the entrepreneur, typically a small businessperson, who is risking his own capital in a new business venture. Under the "relevant market area" provisions, this businessperson's opportunities to compete and profit are subordinate to those of the dealer or dealers who started their ventures earlier. Any decision to insulate the first arrivals from competition from later entrants raises fundamental questions of fairness and equality of opportunity. While established dealers can now voice their views on the merits of the bill, the persons wishing to become members of the Kansas motor vehicle dealer community in the future cannot be heard now. Their position would undoubtedly favor the freedom of open competition in selecting locations.

This bill seeks to protect a specific class of businesses from competition at the expense of others — the consumers, the potential new motor vehicle dealers, and the motor vehicle manufacturers.

The provisions of SB 267 shelter established dealers from direct competition and sustain higher prices for vehicles, parts, and service. Restrictive legislation such as the proposed can only adversely affect the public by discouraging competition, preserving higher prices, and generating protracted and costly protest proceedings whose costs ultimately are passed on to consumers. The Motorcycle Industry Council urges you to vote against S.B. 267.

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