Approved 2-13-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative John Solbach at
Chairperson

3:30 ~~a.m.~~/p.m. on February 11, 1992 in room 313S of the Capitol.

All members were present except:

Representatives Hamilton and Snowbarger, excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County & District Attorneys Association
Ron Smith, Kansas Bar Association
Pat Barnes, Legislative Counsel, Kansas Motor Car Dealers Association
Tommy McGeeney, President, Kansas Independent Automobile Dealers Association
Mike Miller, Kansas Independent Automobile Dealers Association
Richard Hayse, Kansas Independent Automobile Dealers Association

The Chairman called the committee meeting to order.

Jim Clark, Kansas County & District Attorneys Association, appeared before the committee in regards to several written bill requests he had made to the committee. The Chairman said the committee had already voted to introduce requested legislation which the Revisor is drafting.

Hearing on HB 2646, cleanup to the perjury statute was opened. Ron Smith, Kansas Bar Association, testified in favor of HB 2646. (Attachment #1) He explained why this cleanup bill was needed. Representative Heinemann moved to report HB 2646 as amended favorable for passage. Representative Everhart seconded the motion. Motion carried.

Continued hearing on HB 2792, creation of the Kansas advertised sales code was opened. Pat Barnes, legislative counsel for Kansas Motor Car Dealers Association, testified in opposition to HB 2792. (Attachment #2) He gave specific reasons why his organization opposed the bill. In answer to a committee member's question, he said most support for this bill was coming from Wichita. The hearing on HB 2792 was closed.

Continued hearing on HB 2793, concerning used vehicle warranties was opened.

Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, testified in favor of HB 2793. (Attachment 3) He said although he was a proponent of the bill he thought the bill should be recommended for study by an interim committee. He proposed several amendments.

Tommy McGeeney, President, Kansas Independent Automobile Dealers Association, testified in opposition to HB 2793. (Attachment #4) He answered committee members questions.

Mike Miller, Board Member, KIADA, testified in opposition to HB 2793. (Attachment #5)

Richard Hayse, attorney for KIADA, testified in opposition to HB 2793. (Attachment #6) In answer to a committee member's question, he said KIADA members were not backed by factory warranties like new car dealers, therefore creating hardships.

Hearing on HB 2793 was closed.

Meeting adjourned at 4:40 P.M.

GUEST LIST

COMMITTEE: ~~Ways~~ Judiciary DATE: 2-1-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
Jim Clover	Topeka	KCDAA
Jacque Oates	Topeka	KIADA
Tommy McGreevey	TOPEKA	KIADA
Richard Hayse	"	"
Pam. Somerville	TOPEKA	KS Motor Car Dlrs Assn
Don McNeely	TOPEKA	KMCDA
Pat Barnes	TOPEKA	KMCDA
L.N. Collier	Topeka	KDOR

KANSAS BAR ASSOCIATION

POSITION STATEMENT

TO: House Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2646

DATE: February 11, 1992

Mr. Chairman, and members of the House Judiciary committee. KBA supports this cleanup legislation.

In 1989, KBA sponsored legislation to allow Kansans to use unsworn declarations as part of many legal affidavits and verification forms. Part of that legislation included an amendment to the perjury statute to make the false swearing on an unsworn declaration perjury just the same as false swearing in a court of law.

Unfortunately, we left out a "(1)" in the position in HB 2646 where you now see it. Leaving out that "(1)" literally means that the "false swearing" applies only to courtroom swearing, not unsworn declarations. Under the statute the way it reads, the mere signing of an unsworn declaration makes a person a felon. That certainly was not our 1989 intent.

I'll answer questions if I can.

HJC
2-11-92
Attach #1

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

STATEMENT BEFORE THE HOUSE COMMITTEE

ON JUDICIARY

BY

THE KANSAS MOTOR CAR DEALERS ASSOCIATION

Thursday, February 6, 1992

Re: Senate Bill No. 2792 creating the Kansas advertised sales code

Mr. Chairman and Members of the Committee, I am Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association. Our Association represents most of the new automobile and truck dealers in the state of Kansas.

House Bill No. 2792 would make it a deceptive act or practice in violation of the Consumer Protection Act to fail to advertise or make price offerings in a manner required by the catalog of information contained in this bill. This bill would make failure to comply with its cumbersome terms a violation of the Consumer Protection Act "regardless of whether or not a consumer has been mislead." (See § 11[i], p. 7.) We oppose this bill for a number of reasons.

First, and foremost, we have promoted good advertising practices within our own industry. We believe any abuses which exist may be addressed under current law, both state and federal. More importantly, however, is the fact that our Association, sat down with the Attorney General's office in the spring and fall of 1988 and developed fair and reasonable advertising and price offer guidelines. Some of these were based upon FTC guidelines, some on just common sense and fair play. Additionally, in conjunction with the National Automobile Dealers Association, we are developing a Salesman Training Manual which will incorporate sections on advertising from the both the state and federal law. A copy of these Attorney General Guidelines and a portion of the Salesman Training Manual is attached to this testimony. We think it is questionable to now ask the legislature to codify an advertising code since the guidelines themselves indicate how complex this area can be.

Second, this proposal would in effect require people to hire and train a person to serve solely as an advertising officer for the retailer. No matter how small or how large you are you will have to essentially have a compliance officer. This is the only way that you can digest and carry out the terms of this law. It will take tedious hours to interpret and apply this law for most people. It will impinge upon the flexibility and ingenuity of some

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forms of advertising and it is almost certain that it will eventually draw constitutional challenge if enforced. We question whether it can be enforced on anything other than a selective basis.

Third, because we are a visible group, dealers will no doubt be pursued under this statute as compared with others. Our cases will simply be easier to prosecute because they will be more obvious due to the nature of our advertising. If the present law on such practices is not being enforced, we see little sense in enacting yet another law.

Despite this law, there will still be advertising from outside our state's borders. Television and radio stations dot our borders. Newspapers circulate freely in Kansas, particularly in metropolitan areas. How is this law expected to accomplish anything given the nature of media advertising today?

Fourth, price offers from surrounding states can continue to mislead customers (if that is, in fact, happening), but Kansas dealers will be required by law to present their material in a certain manner, thus appearing to make them less competitive with their brethren across the state line. The point, again, is simply that these matters should be dealt with elsewhere through current law, the attached advertising guidelines, and dealer groups operating in several states.

The "dealer groups" to which I have referred are group organized by the manufacturers within their own dealer networks. These groups are self-regulating and help develop advertising programs with factory support. They generally consist of dealers from several states within a region. some groups are advertising cooperatives, some to the extent that there are several within a state targeting a certain brand of automobile. They should not have to operate with staff lawyers just to advertise their products.

This law will have another affect, too. Dealers rely upon national factory advertising since the funds necessary for the more highly appealing formats you sometimes see are beyond most dealer budgets. The quality of these productions is generally better than what the average dealer can produce. With this law, such ads would either have to be discontinued or no regulation would take place due to their interstate character. Either way, the dealer is the loser, both financially and in terms of good will. Customers viewing those national ads will relate them to their local Kansas dealer who will be expected to honor them when he may not be able to do so because of variable costs, such as freight charges or model availability.

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Attach #2
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Next, there is a question about federal pre-emption in this area. The FTC currently has advertising or price offer guidelines. Obviously, national advertising is in interstate commerce. Some of these broadcast ads may also be subject to FCC regulation. Whatever the case, it seems to us to be a highly questionable bill when one considers the complexities presented by cable television, radio and other media advertising from outside our borders.

These are only the basic conceptual components of our argument against this bill. Turning to the bill itself, we have many more questions. Overall, it seems to shift the burden of proof of lack of a violation to the advertiser, even in cases where the state is the prosecuting authority. An example is Section 2 where a supplier may claim a savings from its own former price only if it can demonstrate it was a bonafide or genuine price.

Another example is Section 3. It has other problems, too. For example, it deals with price comparisons between competing outlets "in the market area". The market or trade area is defined as the area with the same customer base shared by the advertiser and its competitor. How do you tell what that base consists of and what are its limits? How does radio, television and national advertising affect this?

Some of the requirements are not reasonable. For example, Section 4 states you can claim a savings by comparison with similar but not identical merchandise sold by others only if it can be shown the merchandise is comparable in all material aspects. What is a material aspect? Shouldn't that be left to the judgment of an individual shopping for the best product available? Shouldn't that individual make that inquiry himself?

Another example would be the prohibition of "factory to you" advertising such as that shown in Section 7. In part (a) factory direct prices cannot be used unless the advertiser produces the merchandise. Why not? If you can give somebody merchandise on that basis why do you need to be the manufacturer? Some merchandise sold by third parties is by direct shipment from the factory to the consumer.

Section 8 allows advertising a reduction of a price applicable prior to the ad if there is a "significant reduction" from the former price. What is a significant reduction? Is it a $1.00, $10.00 or $1,500.00? The mere fact that this question can be avoided by the language in the bill allowing advertising of sales in terms of percentages off does not answer the question in the event that form of ad is not used.

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Advertisers also must immediately increase their price following a sale. The problem that arises is that sometimes sales stimulate the market in such a manner that competitors follow the retailer's price down and, as such, the original advertiser cannot afford to increase his price. The price doesn't remain low because of deceptive practices, but because of market realities. The auto industry is particularly susceptible to this, especially in times of recession.

Another example of an onerous provision is that on page 6 with respect to Section 12(b). It deals with business termination sales. Occasionally, a dealer sells his franchise or otherwise goes out of business. When he does that there are a number of ways he can eliminate unsold inventory. If you are going out of business, it would seem fairly easy to determine that fact after the liquidation. This law requires records which would appear to be required prior to or at the time of the sale. In the case of a dealership, the business liquidation may be by auction. This may involve thousands of parts and other items. In many cases manifests are available of the items by way of inventory. However, sometimes they are not available due to age or the nature of the business. Sometimes it is not worth developing those records as they will be developed in the course of the sale itself. The point here is that this is an onerous and unnecessary burden to place upon a business owner given the fact one may normally expect the local authorities to take little note of such a liquidation.

We understand the reason is to get around situations where fake quitting business sales are held and the store opens the next day under another name. However, how does this section effect those instances where someone buys into a retail establishment or, in a pure sense, a change in ownership occurs, but not business location, name or line? This law would appear to cover that situation even though there really has been a termination of business as conducted by the previous owner.

"Sales" as used in this law are not defined to be limited in any particular manner. As such, auctions and other transactions of whatever form would presumably rise to the level of a sale. It isn't clear whether the use of the term "advertiser" is the same as "supplier" as used in various places in the bill and, thus, if different requirements are imposed.

Even so, the most notorious aspects of this matter are the interpretation requirements that will be placed upon the average citizen. Rather than viewing this act from the standpoint of lawyers, it needs to be considered from the standpoint of the average business person who neither has the time, resources or expertise to sift through a law of this nature and comply with it

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100%. We would ask that this bill not be approved by this committee or the legislature.

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STATEMENT BEFORE THE HOUSE COMMITTEE

ON JUDICIARY

BY

THE KANSAS MOTOR CAR DEALERS ASSOCIATION

Thursday, February 6, 1992

Re: Senate Bill No. 2793 dealing with used vehicle warranties

Mr. Chairman and Members of the Committee, I am Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association. We appear here today as a proponent of House Bill No. 2793, but after reviewing the bill in its entirety and giving it careful consideration we see a number of inconsistencies, descriptions and possible conflicting or vague interpretations which need to be further examined, clarified or eliminated. For this reason, as more specifically detailed later, we think the wiser course of action at this time would be to recommend this measure for interim study.

Some of you may be surprised that we can be supportive of a used vehicle warranty. However, from our point of view the current practice of using implied warranties in combination with the Consumer Protection Act subjects our membership to perceived in equities and, most importantly, the inability to determine on a day-to-day basis our liabilities, responsibilities and exposure. We see this bill as an opportunity to define that responsibility and exposure in as near an exact manner as possible. This is why we appear here today in support of a used vehicle warranty. Even so, you must understand that this is a novel and unique approach which will represent an expense to dealers.

I am going to try to touch on some of the major revisions we think are necessary to the bill. This is by no means an exhaustive list, but only those problems which are easy to reference in the course of committee testimony such as this. I am going to number these for easy reference.

1. Cover Dealer and Individual Sales.

It is our position that this law would be too narrow if it covers only vehicle dealers. We think the time has come for the law to be expanded to cover everyone. Many sales occur on an isolated and occasional basis by individuals. Such sales are a fruitful ground for fraud, including fraud against dealers. An excellent way of washing yourself of a vehicle is to trade it through another person or a dealer. On many occasions individuals

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will buy from another individual simply because it is perceived as more affordable to do so. This isn't to say there are other reasons, but it is another factor in justifying the expansion of this law to all vehicle sales which, presumably, would provide a sounder product for everyone and require everyone to deal with their own problem vehicles rather than foisting them on unsuspecting others.

2. "[T]he motor vehicle is mechanically operational and sound".

Section 2 of the bill deals with the actual "express warranties" this law would provide. The warranty is that "the motor vehicle is mechanically operational and sound and will remain so" for the period designated. We think the meaning of this terminology is too vague and will lead only to further argument, and moreso than under the current implied warranty standards. Good transportation is the key and, as such, we would suggest a definition be added to Section 1 in order to interpret the meaning of this phrase. This definition could state:

> "'Mechanically operational and sound' shall mean the following parts of the engine, transmission/transaxle, and axle and drive systems on the motor vehicle are fit for the ordinary purposes for which such items are used and will be covered by the warranty provided by the respective express warranty set forth in Section 2 under the applicable sub-sections thereof: (a) engine parts covered are the camshaft timing drive components and cover; cylinder block, heads, and all internal parts; diesel fuel injection pump and lines; engine sealing; flywheel; manifolds; oil pump and pan; supercharger and associated parts; turbocharger and associated parts; valve cover; valve train; and water pump; (b) transmission/transaxle parts are the casing, all internal parts, seals and gaskets; clutch cover and housing; torque converter and converter housing; and (c) axle and drive parts are the drive shaft and universal joints; front and/or rear drive axles and all internal parts; transfer case and all internal parts on 4-wheel-drive vehicles."

3. "Automobile accident."

Section 2 also makes reference throughout to items which would not justify the warranty recovery. The warranty would not apply if there was "an automobile accident" or misuse of the vehicle. You absolutely have to have such escape clauses, but we are unsure of exactly how one may twist the meaning of the term "automobile accident", whether it be for or against coverage.

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While the word "misuse" following the reference to accident may close the gap in some areas, there are still others which remain open. What would one consider an accidental event, but not one arising from misuse? We think there should be clarification such as the following:

> "The express warranty provided by Section 2 does not cover: (a) the parts and labor that are needed to generally maintain the motor vehicle; (b) the parts of the motor vehicle that are subject to normal wear; (c) damage to the motor vehicle that results from fire, accident or conditions in the environment; (d) damage that results from someone other than the dealer altering the vehicle, misusing the vehicle, tampering with the vehicle, tampering with the emissions systems or with other parts that could affect these systems, making improper adjustments, using improper fuel, improperly maintaining the vehicle, or failing to maintain the vehicle, provided such failures are by the consumer."

4. Section 8 - Misleading Statements.

Section 8 states no dealer may make any misleading or deceptive statements about the condition or history of any used motor vehicle offered for sale. We think this particular part of the proposed law would be nearly unintelligible to the average dealer and would foment argument between consumers and dealers alike. Particularly, the use of the term "misleading" is too broad to interpret. Under current law, even in light of the Consumer Protection Act, salesmen "puffing" is allowed. With this particular section, such "puffing" could be interpreted as misleading, particularly if you have an unreasonable person as your customer. What may be misleading to one person is not necessarily misleading to another. You have all heard people brag about their cars while you were growing up with statements that no one could necessarily disprove and, in fact, may not even necessarily be incorrect, but nevertheless could be construed as misleading. While part (b) of Section 8 requiring promised repairs to be in writing is acceptable, we think (a) has no place in this bill and any misleading or deceptive statements should be left to be defined by the application of the general Consumer Protection Act as they are now.

5. Section 10 - Penalties and Relief.

I understand this section is merely to specifically define what areas of the used car warranty the authorities will enforce for a consumer and those which will not be enforced. However, my reading of the statutes referenced in Section 10, particularly K.S.A. 50-634 and K.S.A. 50-636, would lead me to conclude that (b) and (c) are essentially saying the same thing and

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are incorporating all of the penalties and relief of the Consumer Protection Act. If that is not the intent, then I think we need to restate that section.

Additionally, part (c) of this section reserves all applicable private remedies under the law and, when combined with part (e) of Section 6 (line 15, page 6 of the bill), we feel the effects of this bill may be somewhat illusory in that it could be interpreted to expose us to the full range of liabilities dealers have at the present time, as well as the effects of this bill. This would be unreasonable because this law is intended to make a statutory settlement. At the same time it appears the dealer could carry out the settlement only to be taken to court for more than is necessary to make the customer whole. A method to back out the transaction without difficulty or further liability is the intent of the bill.

6. As Is Disclaimer.

We also have a concern about the much needed "as is" disclaimers provided in Section 7 of the bill. At the present time the Federal Trade Commission has what is known as the "used car rule" which requires a window sticker with certain information. Under the present format, Kansas requires a form which tells consumers they are either getting an express warranty, and the limitations thereon, or the warranties implied by law. Other states which have implied warranties, but allow them to be disclaimed with "as is" sales, have a different window form. The point is that the FTC should be consulted with respect to the type of form that dealers would be expected under the federal law to observe in light of this particular law so that compliance with both can occur.

7. Section 4 v. Section 6.

Part (c) of Section 4 seems to say one may enter an agreement waiving, limiting or disclaiming the rights in a certain manner as provided in the Act. However, Section 6 seems to say such agreements cannot be entered at all. How is this to be construed? Clarification is needed.

8. Section 5 - A Purchase Obligation.

In certain respects this is similar to the new car lemon law, but there is no allowance for mileage. There should be an allowance for mileage in accordance with an identifiable measures, such as that which the Internal Revenue Service allows for self-employed individuals for tax purposes. Additionally, part (b) could result in a situation where the consumer actually gets more money back than he exchanged in value in the transaction in the first place.

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With respect to determining the value of the trade-in vehicle, which is set forth in part (b) of Section 5, reference is made to the NADA Used Car Guide or Department of Revenue regulations. Part (c) seems to say the trade-in value and manner of refund will be determined by the Department of Revenue regulations. Also, it isn't clear that part (c) is merely providing a written notice to the consumer or if it is to somehow correspond and enter into the refund mechanism. I think it probably does both, but there seems to be a need to create a little more conformity between the various provisions of Section 5.

9. Allowable Deductible.

Section 1(f) allows a $50.00 deductible for each problem being repaired. We think a deductible may serve to actually improve on eliminating problems which are not too severe, thus avoiding some other questions of interpretation which might otherwise come about. We think a $50.00 deductible is too low and a $100.00 deductible would be more reasonable.

At the beginning of my testimony I indicated I would hit some of the major points. I am sure that other questions have arisen with other people. I have heard some of them. Our intent is merely to get the law fine tuned to the point where we can tell people as near as possible what to expect. This is why we have suggested that this bill be referred to interim study. Nothing would be lost by doing so and we think the end result may be good law rather than confusion, anger and expense for all concerned.

Thank you for your consideration.

H JC
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SB 5

MEMBER K.I.A.D.A. SYMBOL OF INTEGRITY

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

NIADA

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

February 11, 1992

TO: HOUSE COMMITTEE ON JUDICIARY

SUBJECT: HB 2793--CONCERNING USED CAR WARRANTIES

FROM: KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Tommy McGeeney, President, of the Kansas Independent Automobile Dealers Association, representing over 200 used car dealers. Thank you for allowing me to appear before the committee in opposition to HB 2793. I have been in this business since 1974. I was a salesman, a used car sales manager, and I have been a licensed independent used car dealer since 1983.

The independent used car dealer is just that. He is independent of any franchise for any new car manufacturer. We are licensed and approved by the State to conduct business. We work under the same rules and regulations as the new car dealer. We buy our own inventory; re-condition for resale; and then sell on an open market. We work hard and put in long hours. There are very few overnight successes in this business. The dealer I originally worked for has been in business for 29 years. It was while working for him that I decided I also wanted to become an independent dealer. I accomplished that goal as part of the American dream -- to have your own business.

There is a saying that goes like this -- "If it ain't broke, don't fix it!" The system, the way it is now, is working. It may not be perfect, but it is one that both consumer and dealer can live with.

We have done some research through the National Independent Automobile Association for information on the states that have passed similar laws to this one. Only four states, Massachusetts, Connecticut, New York and Minnesota, have a similar law. Since 1990, Georgia, Washington, Pennsylvania, Indiana, Florida, Maryland, and Delaware have defeated a similar bill.

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The way the bill is written is so vague, yet so demanding. If this was put into effect, it would wipe out a majority of smaller independent dealers like myself. It shrieks of discrimination against the smaller independent dealer by some who would try to eliminate competition from the marketplace by the passage of this bill. Imagine, over the long run, what this could cost the consumer when all that is left out there in the marketplace are new car dealers. They could price their used cars at whatever they want, and probably get that price because they would control the market.

Thank you for your time, and I urge you to oppose HB 2793.

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MEMBER K.I.A.D.A. SYMBOL OF INTEGRITY

KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

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February 11, 1992

TO: HOUSE COMMITTEE ON JUDICIARY

SUBJECT: HB 2793--CONCERNING USED CAR WARRANTIES

FROM: KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Mike Miller, Board Member, of the Kansas Independent Automobile Dealers Association, representing over 200 used car dealers in the State of Kansas. Thank you for allowing me to appear before the committee in opposition to HB 2793. I have been in the used car business here in Topeka more than nine (9) years operating a sole proprietorship which I call Innovative Auto Marketing.

I have been in business to make a living; to earn a profit. But I have known for a long time that to do this I have to have new customers and repeat business. In order to do that, I have to sell them a vehicle that is worth the selling price or else they would not buy the vehicle.

My opposition, and that of many used car dealers to HB 2793, deals with the respective warranty periods and the covering of the full cost of parts and labor for vehicles which would apply to this bill.

Because all used vehicles are mechanical by design, their parts and components will break down or wear out over a period of time by normal use, neglect, or abuse. New cars will have less tendency to have mechanical problems, but they have factory warranties backing the cars' parts or defects.

Used vehicles having already been normally used, neglected, or abused will have defaults or defects that will become apparent after the time of the sale. This may explain why there is a great number of automobile parts stores in business in this state.

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

The problem lies in the repairing of the defective part or component of the used vehicle.

A recent example of a typical repair problem I encountered on a used vehicle I am offering for sale shows how hard it is to know what to do to repair problems encountered on used vehicles.

The car I encountered the problem with was a 1984 Chevrolet Corvette. This car would sell for more than $6,000.00 and fall under the proposed warranty period of three (3) months -- 3,000 miles.

The recent problems encountered were as follows:

A. The car would not start. The battery was dead. A local battery business said the battery was bad. I had them put in a new battery. Cost: approximately $50.00 and one hour time.

B. Four days later the car would not start. The battery was dead.

C. I took the car to a local automotive electrical business to get it fixed. They advised that the alternator had a short. I had it repaired. Cost: approximately $45.00 and two days time.

D. Three days later the car would not start. I called the automotive electrical business, and they had me bring the car back. They rechecked the alternator and said it was fine. If I would leave it, they would check to see what was draining the battery. What was draining the battery was diagnosed as a bad power seat switch. Cost: $125.00 and five days time.

The car has been fine since the last repair.

This brings up these questions in anyone's mind; either a car dealer or a consumer:

1. Was the battery really bad that the battery company replaced? Probably not.

2. Was the alternator really shorted out? Probably not, as the overall problem of the car not starting continued to happen.

3. Was the power seat switch bad? This likely was the reason for the car not starting, as the car has been starting fine since the switch was replaced.

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The frustration on my part as a dealer is just as great as that of a retail buyer due to these kinds of problems with the repair of a used vehicle.

I have to rely on the expertise of the parts store or the repair facility to employ people competent enough to diagnose the problems accurately, fairly and in a timely manner. This would eliminate these situations from occurring as in the above example of the repair of the Corvette.

Herein lies the problem with HB 2793. Used vehicle dealers are at the mercy of the repair shops and parts stores to do a good job in diagnosing the correct problem and giving a fair price for the work being done.

Thank you for your time, and I urge you to oppose HB 2793.

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REMARKS BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN OPPOSITION TO HB 2793
February 11, 1992

1. There is a fundamental flaw in the approach taken by this bill to the problem of used car reliability: the bill makes the used car dealer become a surety for a vehicle with which the dealer has little or no experience. If a consumer trades a vehicle to a dealer, and the consumer does not disclose a problem which prevents the car from being "mechanically operational and sound," the dealer will get stuck with the cost of repairs when he gives the warranty required by this bill to his customer. Why not require the last user-owner of the vehicle to disclose all known defects to the dealer, and require any information about defects to be passed through the auto distribution system to the next "end user"?

2. What does "mechanically operational and sound" mean: must a dealer replace the knob on the window crank of a car with 98,000 miles? What about the cassette player which was added after-market two owners back and finally gives out on the last day of the warranty period? Section 5 of this bill refers to the value of the motor vehicle or "its components"--presumably a cassette player is a component, whose use or value is substantially impaired if it is seized up from cola spilled on the dashboard by the last owner's child.

3. The mandatory refund provisions of this bill do not allow for a deduction from the refund price for use of the vehicle by the consumer before return. The new car Lemon Law does; why should this be any different? (See K.S.A. 50-645(c).)

4. Consumer Reports magazine recognizes that there are big differences among makes in "frequency of repair," yet this bill makes no allowance for such differences. A car with a poor frequency of repair record and a car with an excellent record are covered by the same warranty if they fall within the same price category, according to this bill. This demonstrates the real purpose of the bill: Blue Cross-Blue Shield for used vehicles.

5. Who will pay the premium for such health insurance? Members of this committee should have no illusions about that: the car dealer will be forced to raise his prices to the consuming public to pay this insurance cost. Unlike the new car dealer, there is no manufacturer standing behind the warranty on older cars, and even extended warranties on new cars are not as all-inclusive as the language of this bill: try to find a new car warranty which extends to 100,000 miles.

6. I must confess to a conflict of interest. As a representative of the Kansas Independent Automobile Dealers Association, I am here to oppose this bill for the reasons mentioned above, among others. But as a practicing attorney, I love this bill. I think it will do more to breed legal work and litigation than any piece of legislation in recent memory.

Thank you for considering these points.

HJC
2-11-92
Attach #4