

Approved: 3-7-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 13, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)
Senator Vancrum (excused)
Senator Oleen (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Pam Somerville, Kansas Auto Dealers Association
Pat Barnes, Attorney, Kansas Auto Dealers Association
John Frederico, Pete McGill and Associates
Dick Elmquist, Attorney, General Motors

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

SB 574--Cancellation of agreements between vehicle dealers and manufacturers.

Pam Somerville, Director of Governmental Affairs for Kansas Auto Dealers Association (KADA) testified in support of **SB 574**. Ms Somerville introduced Executive Vice-President Don McNeely and Legal Counsel, Pat Barnes. Ms Somerville also introduced auto dealers, J. B. Sharp, a Pontiac-Cadillac-Honda dealer, John Stubbs, a Nissan dealer, and Miles Schnaer, a Chevrolet-Toyota dealer.

The conferee stated that the section in the statute this bill proposes to amend contains the provisions for the cancellation, termination, or nonrenewal of a dealer's franchise agreement, and several states of like size have adopted these provisions. The conferee related the necessity of **SB 754** by referring to an industry term known as Project 2000 which is currently specific to General Motors. The conferee stated that other manufacturers are moving toward downsizing of the franchised dealer body nationwide. The result of the downsizing would limit multiple franchises particularly in rural areas. The conferee discussed two articles found in *Automotive Today*, November 20, 1995 and December 25, 1995 concerning termination of dealerships, and a second article found in (Attachment 1)

Ms Somerville related that proposed amendments were presented to the American Automobile Manufacturers Association's (AAMA), and that at a meeting today there has been agreement on six of the nine proposed amendments. The conferee referred to a tentative balloon containing those recommendations by AAMA, along with the recommendations of the KADA. (Attachment 2)

The conferee related that the changes on page 1 are basically technical, as well as the proposed changes on page 2, lines 5, 8-11 and 15-16 that further speak to the "good cause" provisions. The conferee stated that lines 17-32 containing the repayment provisions to the dealer have been stricken and reincorporated on pages 3-5 of the bill. The conferee stated that the major provisions of the bill begin with line 33 on page 2 and continue with the remainder of the bill. Ms Somerville discussed the provision defining "good cause," as well as the proposed amendment which defines what does not constitute good cause. The conferee stated that the dealers are asking that the current configuration of dealers' facilities be "grandfathered" into the statute, and that the dealer not be cancelled, terminated, or nonrenewed because they have the wherewithal to respond to customer demand, and predict marketing trends in their individual communities.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 13, 1996.

The conferee related that the Kansas Auto Dealers' Association has exerted good faith effort to compromise with the Auto Manufacturers Association. The conferee stated that the passage of **SB 574** would help auto dealers continue their commitment to consumers. The conferee referred to written material from auto dealers across the state offering support for **SB 574**. (Attachment 3)

In response to a Committee member's question, Mr. Pat Barnes explained that state involvement is necessary in the transactions of private corporations because a franchise agreement is an uneven contract. Laws were passed to make the playing field more equal. The conferee explained that when a dealer goes into these transactions, he/she may use all resources available, included in that are investors. The conferee continued by stating that a small dealer may have over a million dollars invested, and without having the state step in as a broker, in transactions with the manufacturer, particularly, in the environment of today (with the large manufacturers in this country and foreign manufacturers) the franchisee has limited negotiating power.

Mr. John Frederico of Pete McGill and Associates spoke on behalf of the American Manufacturers' Association. The conferee stated that representatives from AANA as well as General Motors, Ford, and a representative from the International Auto Manufacturers' Association were involved in discussing a compromise with KADA representatives. Mr. Frederico stated that his organization shares some of the concerns expressed by Committee members regarding the necessity of involving the state in business transactions.

Mr. Frederico stated that both sides have compromised considerably, and hopefully, agreement can be reached on the few remaining parts of the bill that are still in dispute. The conferee stated that there are legitimate concerns on both sides and a good faith effort in trying to resolve the last three portions of the bill will be made. Mr. Frederico introduced Mr. Dick Elmquist, an attorney with General Motors, he will be speaking on behalf of all the Automobile manufacturers.

Mr. Elmquist stated that all of the manufacturers desire to have a good working relationship with the dealers' organization, and that the manufacturers want to work with the dealers to reach a resolution. Mr. Elmquist stated that he appreciated meeting with the Dealers' Association to learn of their concerns and explain the manufacturers' concerns. The conferee stated that there are still some differences, but both sides are much closer. The conferee stated that the manufacturers like constancy, and like to manage change in a way that is fair. The manufacturers would like the opportunity to try to reach a resolution with the Kansas Auto Dealers' Association so a balance can be achieved that reflects concerns of both parties.

Responding to a Committee member's question, the conferee stated that much of what is in the bill is already covered by franchise agreements. The conferee attributed the decreasing number of dealers to evolutions in the industry and stated that the auto manufacturers are managing changes within the industry.

The Committee discussed with the conferee issues concerning the differences in the KADA position and the AAMA position. Issues concerning dual franchises were also discussed. The conferee explained features of a typical franchise contract in Kansas, and stated that issues concerning termination of a contract were ultimately decided by the State of Kansas. Issues concerning marketing strategies of auto manufacturers and performance measures for franchisees were discussed.

The Chair closed the hearings on **SB 574**, and suggested that after further discussion and agreement on the unresolved issues in **SB 574** between the Auto Dealers and Auto Manufacturers, the Committee will review this bill again.

Meeting adjourned at 10:50 a.m.

The next meeting is scheduled for February 14, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 13, 1996

NAME	REPRESENTING
MILES SCHNAER	KADA
John Stumas	KADA.
J.B. Sharp	KADA
John Stumas	KADA
Pat Barnes	KADA
Rain Smerinville	KADA
W. W. Wain Smith	RDA
LEIGH NICHOLS	AAMA
Tony Reinhart	Ford Motor Co.
John Whitley	AIAM
Ed Wallace	General Motors
JOHN FEDERICO	PETE McBill + Assoc
Richard Elmquist	General Motors
Richard Elmquist	General Motors
Pete McBill	AAMA
Betty McBride	KDOR - DMV
Rich Shiehe	KDOR - DMV
DAVID SCHLOSSER	Pete McBill Assoc

#7
Kansas Automobile Dealers Association

800 Jackson, Suite 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • Fax (913) 233-1462

TESTIMONY ON

**SENATE BILL 574 - AMENDMENTS TO THE FRANCHISE ACT
February 13, 1996**

Mr. Chairman and Members of the Senate Judiciary Committee:

Good morning. Thank you scheduling a hearing on Senate Bill 574, and for the opportunity to appear before you in support of this bill. I am Pam Somerville, Director of Government Affairs for the Kansas Automobile Dealers Association, our association represents 300 franchised automobile dealers in Kansas. Also with me today is our Executive Vice-President Don McNeely and our Legal Counsel, Pat Barnes. In addition, other dealers present are J.B. Sharp, a Pontiac-Cadillac-Honda dealer, John Stubbs, a Nissan dealer, and Miles Schnaer, a Chevrolet-Toyota dealer.

First, Mr. Chairman I would point out to the Committee that we are not re-inventing the wheel. The section in the statute we propose to amend contains the provisions for the cancellation, termination, or nonrenewal of a dealer's franchise agreement, and several states of like size have incorporated these provisions. To that end, I will share with you a little background on why we feel these amendments are critical to the well-being of the dealer body and the consumers in our state.

*Sen. Jud.
2-13-96
"Serving the franchised new car and truck dealers since 1932" Attach 1*

Specifically, there is an industry term known as Project 2000, and while Project 2000 is specific to General Motors, we are aware that other manufacturers are moving toward a downsizing of the franchised dealer body nationwide by as much as 20%. Project 2000 is more commonly known as the trend to realign certain line makes, with single points the preferred choice in urban areas. In rural areas only specific combinations of lines will be permitted. Many dealers in rural areas, as well as some urban areas do have multiple franchises. In many cases, additional lines were added to meet consumer demand and to provide a competitive market. It is simply unrealistic and cost prohibitive to eliminate lines from dealership facilities and force the dealer to build an additional facility.

In the fall of 1995, 7 Kansas dealers received termination notices from the manufacturer, 5 of which were Chevrolet-GMC Truck Dealers in predominately rural areas and two were Cadillac dealers in rural areas. The point Mr. Chairman is that General Motors would like Cadillac and GMC Truck out of the rural markets. General Motors has alluded that those two lines are too upscale for rural markets. Nevertheless, there are many consumers who drive those vehicles and we believe it is a disservice to those individuals to have their vehicles serviced in larger markets not to mention that consumers would then have to leave their local areas to purchase those products. In addition, according to the realignment that Project 2000 proposes, and taking into consideration our dealer body, we only have 24% of our entire dealer body that are single line dealers. Further, well over half of our dealer body is in what is considered rural markets, meaning populations of 15,000 or less. The dealer body

in Kansas has gone from 1200 in the mid '60s to 300 today. Just in the last five years, we have lost 40 dealers, primarily to attrition. I believe each of you can appreciate the concern we have, not only for our dealers, but also for the consumers across the state, particularly in smaller markets.

With those items in mind, I will explain the components of the bill. Before I begin, I would point out that Don McNeely met with industry representatives this past weekend during the National Automobile Dealers Association's Annual Convention. At that time, they presented the American Automobile Manufacturers Association's (AAMA) proposed amendments, and we met again this morning. We have agreed to 6 of their 9 proposed amendments, and we have a tentative balloon containing the those recommendations by AAMA, along with our own. I have incorporated the 6 recommendations in my explanation of SB 574.

As I stated earlier, we are not reinventing the wheel. Senate Bill 574 simply refines and expands the provisions of K.S.A. 8-2414, which addresses the cancellation, termination or nonrenewal of a dealers franchise agreement.

The amendments to current statute on the first page are more technical in nature to conform with realistic procedures. On page 1, line 19, 30 days has been changed to 90 days notice. The intent of this change is to provide a more reasonable time frame for the notification process so the vehicle dealer may respond appropriately. Also on page 1, lines 38 and 39, the term "reasonable justification" has been changed to read "good cause". It was difficult to define "reasonable justification" and it is our belief that the term "good cause", is a clearer definition.

On page 2, lines 5, 8-11, and 15-16 further speak to the "good cause" provisions. Lines 17-32, contained the repayment provisions to the dealer. They have been stricken and reincorporated on pages 3-4 of the bill.

The major provisions of the bill begin with line 33 on page 2 and continue with the remainder of the bill. The first subsection (e) defines good cause. I would like to point out that a manufacturer is still afforded the opportunity, as currently exists, to cancel, terminate or nonrenew for noncompliance. Therefore, the provisions set forth on page 2 lines 33-43 and page 3, lines 1-2 simply define good cause. AAMA requested the one year be changed to six months; however, our members believe it would be difficult to correct performance measures in six months, and that one year is a more reasonable time frame.

The next section is basically the "peanut" of the proposed legislation, which defines what does not constitute good cause contained on page 3, lines 3-33. To summarize, these areas would not constitute good cause: a) a change in ownership without the prior approval of the manufacturer; b) the refusal to accept delivery of products from the manufacturer without their consent; c) the fact the vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles regardless of whether that interest is in the existing dealership facilities. AAMA requested the language on line 22 after the word distributor be deleted, and we have complied with that recommendation. Basically this section means a dealer may have a franchise for another line, may or may not have a separate showroom, and also have

the ability to perform warranty and service work in an existing dealership facility. AAMA did request language on line 22 that requires prior approval by the manufacturer, after the word distributor. Our difficulty with that is that fact some dealers have received verbal authorization, and some have written authorization permitting other lines in the dealership facility; however, we have reached an agreement on this section to grandfather existing franchises.

The final subsection on page 3, lines 28-33 pertains to transfer of stock to a family member, with prior written consent of the manufacturer.

The remainder of the proposed legislation pertains to the repurchase of inventory from the dealer. Again, this section has been redefined. AAMA requested this whole section be deleted and their language inserted. We agreed to the majority of their language, and some modifications were made to conform to current statute. Vehicle inventory was the greatest concern and we did accept their language except for the time frame of the vehicle inventory. The original bill has 18 months, AAMA requested 120 days, and our dealers believed one year was more in line, particularly due to the fact that many dealers have more than one model year on their lot at any given time depending on how new models are introduced. For example, some dealers have inventory for '95's, and '96's, with '97 models on the way.

Beginning on Page 4, line 1, parts inventory repayment is addressed. We added to their language supplies and accessories listed in a current parts catalog issued within the last twelve months. The AAMA amendments recommended deleting (C) and (D) on page 4, lines 4-9 and combining them. We did not incorporate that

change, but chose to leave them separate. We did insert AAMA's trade-mark language along with the terms required or recommended. We also chose to retain all of (D), lines 7-9 on page 4 which contains provisions for special tools required by the manufacturer. In addition, we retained the one year lease provision, particularly for rural areas where that facility may no longer serve any purpose.

The final subsection contains provisions on the time frame the manufacturer shall pay the dealer subject to conveyance of clear title. That concludes my explanation of the provisions.

Our members believe they strive to provide the products and services demanded by customers in communities across the state of Kansas. Our dealers are very, very concerned about the strategy proposed by the manufacturers. Those dealers are involved in their communities, they have employees, they collect sales tax, they pay property taxes, and they service the products the consumer buys. More importantly, they are very dismayed at how this realignment will impact the consumer. Many of our dealers have not seen a factory representative in their dealerships for a very long time, much less anyone from Detroit; yet it is those very individuals who have now decided to realign the products in the dealerships--those same lines that manufacturers approved, and in many cases, wanted in those dealerships to increase sales.

Mr. Chairman, our dealers are simply asking that the current configuration of those facilities be "grandfathered" into statute, and that the dealer not be cancelled, terminated, or nonrenewed because they had the wherewithal to respond to customer demand, and predict marketing trends as they related to their individual communities.

If, in fact, the manufacturers are successful in eliminating dealers because they have another brand in their showroom or service department, that equates to less service and product in your communities. To further illustrate the hypocritical nature of this scenario, I have attached a listing of the manufacturers and the other vehicles lines they own or have interest. It's the old adage of "don't do what I do, but do what I say".

To further illustrate the dealer's concern, I have attached to my testimony are articles from Automotive News, which is the Auto Industry Trade Publication. These articles were distributed to each of you earlier. There are many, many available for your review if you would like additional articles on the issue.

Mr. Chairman, in any legislation there is compromise. We have exerted good faith effort to that end, and incorporated the majority of the requests by AAMA. In closing, our members want to continue to be competitive and provide the products and services that customers demand in each of our communities, regardless of whether they are rural or urban. We are fearful that without this legislation, there are parts of the state that would not be able to service the products that are currently available to the consumers. One of the requirements of being a franchised dealer is to provide service. Our members want to be able to continue that commitment. Senate Bill 574 is not going to break the manufacturers, but it will help Kansas dealers continue their commitment to consumers. Thank you again for the opportunity to appear. We ask for your support in passage of this legislation. We would also be happy to respond to questions.

Factory Duals

8-1

<u>Joint Venture</u>	<u>Participants</u>	<u>Shares</u>	<u>Plant Location</u>	<u>Vehicles Manufactured</u>
New United Motor Mfg. Co.	General Motors Toyota Motor Corp.	50% 50%	Fremont, Ca.	Geo Prizm Toyota Corolla
CAMI Automotive.	General Motors Suzuki Motor Co., Ltd.	50% 50%	Ingersoll, Ontario	Geo Metro, Geo Tracker Pontiac Firefly, Pontiac Sunrunner Suzuki Swift, Suzuki Sidekick
Subaru-Isuzu Automotive, Inc.	Fuji Heavy Industries, Ltd. Isuzu Motor, Ltd.	51% 49%	Lafayette, In.	Honda Passport Isuzu Rodeo Subaru Legacy Subaru Outback
Auto-Alliance International Inc.	Ford Motor Co. Mazda Motor Co.	50% 50%	Flat Rock, Mi.	Ford Probe Mazda MX6 Mazda 626
Diamond Star Motors Corp.	Mitsubishi		Normal, Il.	Chrysler Sebring Dodge Avenger Eagle Talon Mitsubishi Eclipse Mitsubishi Galant
	Ford Motor Co.		Avon Lake, Oh.	Mercury Villager Nissan Quest

Factory Ownership

<u>Manufacturer / Distributor</u>	<u>Estimated % of Ownership</u>	
Ford Motor Company	25%	Mazda Motor Co.
	100%	Jaguar
	5%	Kia
General Motors	36%	Isuzu Limited
	51%	Saab
	30%	Suzuki
Nissan Japan Corporation	33%	Subaru Japan
BMW	100%	Land Rover

General Motors: "Conformity"
Project 2000

City Population

Rural	0-15,000	Single Lines (except Cadillac, GMC Truck) Chevrolet/Oldsmobile/Pontiac/Buick
Hub	15,000-50,000	Single Lines Chevrolet/Oldsmobile/Cadillac Pontiac/Buick/GMC Truck
Metro	50,000+	Single Lines Chevrolet/Oldsmobile Oldsmobile/Cadillac Pontiac/Buick/GMC Truck

SENATE BILL No. 574

By Committee on Judiciary

1-31

Sen. J. J. ...
-13-76
Attach. 2

9 AN ACT amending the vehicle dealers and manufacturers licensing act;
10 relating to the cancellation of agreements between dealers and man-
11 ufacturers or distributors; amending K.S.A. 8-2414 and repealing the
12 existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 8-2414 is hereby amended to read as follows: 8-
16 2414. (a) No franchise agreement entered into between a vehicle dealer
17 and a first or second stage manufacturer or distributor may be cancelled,
18 terminated or not renewed by the first or second stage manufacturer or
19 distributor unless ~~30 days~~ 90 days notice has been given to the vehicle
20 dealer and the director, which notice must state in full the reasons and
21 causes for the cancellation, termination or nonrenewal of such franchise
22 agreement, except that in the event of a showing of fraud, insolvency or
23 failure to perform in the ordinary course of business, a notice of not less
24 than 15 days may be approved by the director, with notice thereof to such
25 vehicle dealer and upon written application by such first or second stage
26 manufacturer or distributor. A notice required under this subsection shall
27 be given by certified mail and the period of time given in the notice prior
28 to cancellation, termination or nonrenewal shall be computed from the
29 date of mailing thereof.

30 (b) A vehicle dealer, within a period of time equal to that provided
31 for in the notice filed pursuant to subsection (a), may file a complaint
32 with the director against a first or second stage manufacturer or distrib-
33 utor challenging the reasons and causes given for the proposed cancel-
34 lation, termination or nonrenewal of the franchise agreement. Upon a
35 complaint being filed, the director shall promptly set the matter for public
36 hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for
37 the purpose of determining whether there has been a violation of K.S.A.
38 8-2410, and amendments thereto, or whether reasonable justification
39 good cause exists for cancellation, termination or nonrenewal of the fran-
40 chise agreement. Notwithstanding the provisions of K.S.A. 8-2411, and
41 amendments thereto, the hearing may be set for a time which is not less
42 than the number of days provided in the notice given pursuant to sub-
43 section (a), from the date the director gives notice thereof.

—reinsert "promptly"

(c) The franchise agreement shall remain in full force and effect pending the determination by the director of the issues involved as provided by this act. If the director determines that the first or second stage manufacturer or distributor is acting in violation of this act or that no reasonable justification exists *good cause does not exist* for the proposed action, the director shall order for the franchise agreement to be kept in full force and effect.

(d) The burden of proof shall be on the dealer to show that the first or second stage manufacturer or distributor acted to show that it did not act arbitrarily or unreasonably and that *good cause did exist* for the proposed cancellation, termination or nonrenewal of the franchise agreement. The director shall order that the franchise agreement may be cancelled, terminated or not renewed if the director finds, after a hearing that the licensed vehicle dealer is acting in violation of this act or that the judgment of the first or second stage manufacturer or distributor is reasonable with *good cause* and the vehicle dealer's default is material.

(e) In the event of cancellation, termination or nonrenewal of a franchise agreement, the first or second stage manufacturer or distributor shall repurchase or otherwise reasonably compensate the vehicle dealer for all new, unused and undamaged vehicles, parts and accessories which are in salable condition and remain in such vehicle dealer's inventory at the time the cancellation, termination or nonrenewal becomes effective if such vehicles, parts and accessories were supplied to the vehicle dealer by such first or second stage manufacturer or distributor.

(f) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which would be conducting business in the same trade area and selling the same make of vehicles where the vehicle dealer in question was engaged in business.

(e) (1) In the event of cancellation, termination or nonrenewal of a franchise agreement, *good cause* as used in this section shall mean the failure of the new vehicle dealer to effectively carry out the performance provisions of the franchise agreement if all of the following have occurred:

(A) The new vehicle dealer was given notice by the first or second stage manufacturer or distributor of the failure prior to the notice of cancellation, termination or nonrenewal as required by subsection (a);

(B) the notification stated that the notice of failure of performance was provided pursuant to this article;

(C) the new vehicle dealer was afforded a reasonable opportunity to ~~exert good faith efforts to carry out the franchise agreement; and~~

—delete "exert good faith efforts to"

2-2

1 (D) the failure continued for more than one year after the date noti-
2 fication was given.

3 (2) In the event of cancellation, termination or nonrenewal of a fran-
4 chise agreement, good cause shall not exist where there has been a vio-
5 lation by the first or second stage manufacturer or distributor of K.S.A.
6 8-2410, and amendments thereto. Additionally, notwithstanding any
7 agreement, the following alone shall not constitute good cause for the
8 termination, cancellation or nonrenewal of a franchise agreement:

9 (A) A change in ownership of the new vehicle dealer's dealership. This
10 subparagraph does not authorize any change in ownership which would
11 have the effect of a sale or an assignment of the franchise agreement or a
12 change in the principal management of the dealership without the first or
13 second stage manufacturer's or distributor's prior written consent;

14 (B) the refusal of the new vehicle dealer to purchase or accept delivery
15 of any new motor vehicles, parts, accessories or any other commodity or
16 services not ordered by the new vehicle dealer;

17 (C) the fact that the new vehicle dealer owns, has an investment in,
18 participates in the management of or holds a franchise agreement for the
19 sale or service of another make or line of new motor vehicles, or that the
20 new vehicle dealer has established another make or line of new motor
21 vehicles or service in the same dealership facilities as those of the first or
22 second stage manufacturer or distributor; ~~provided that the new vehicle~~
23 ~~dealer maintains a reasonable line of credit for each make or line of new~~
24 ~~motor vehicles, and that the new vehicle dealer remains in substantial~~
25 ~~compliance with the terms and conditions of the franchise agreement and~~
26 ~~with the reasonable facilities requirements of the first or second stage~~
27 ~~manufacturer or distributor;~~

28 (D) the fact that the new vehicle dealer sells or transfers ownership
29 of the dealership or sells or transfers capital stock in the dealership to the
30 new vehicle dealer's spouse, son or daughter, except that the sale or trans-
31 fer shall not have the effect of a sale or an assignment of the franchise
32 agreement without the first or second stage manufacturer's or distributor's
33 prior written consent.

34 (f) (1) In event of cancellation, termination or nonrenewal of a fran-
35 chise agreement, the first or second stage manufacturer or distributor
36 shall pay the new vehicle dealer, at a minimum:

37 (A) ~~Dealer cost plus any charges by the first or second stage manu-~~
38 ~~facturer or distributor for distribution including delivery and taxes, less~~
39 ~~allowances paid or credited to the new vehicle dealer by the first or second~~
40 ~~stage manufacturer or distributor for new motor vehicle inventory that~~
41 ~~has been acquired from the first or second stage manufacturer or distrib-~~
42 ~~utor within 18 months, which has not been altered or damaged, and for~~
43 ~~which no certificate of title has been issued;~~

Line 22:

Delete "provided that the new vehicle" and all of
Line 22-27 after the semi-colon on Line 22, delete
the semi-colon, and then add the following: "which
exists on the date of enactment of this section or
is approved in writing thereafter by the first or
second stage manufacturer or distributor."

Dealer net acquisition cost
for any new, undamaged and unsold new motor vehicle
inventory purchased from the first or second stage
manufacturer or distributor within 12 months prior
to the receipt of notice of termination, cancellation
or nonrenewal, provided the new motor vehicle has
less than 500 miles registered on the odometer, not
including mileage incurred in delivery to the new
vehicle dealer or in transporting the vehicle
between dealers for sale or delivery, plus any
cost to the new vehicle dealer for returning the
vehicle inventory to the first or second stage
manufacturer or distributor.

4-2

1 (B) ~~dealer cost for supplies, parts inventory and accessories pur-~~
2 ~~chased from the first or second stage manufacturer or distributor or their~~
3 ~~approved sources;~~

4 (C) fair market value for equipment, furnishings and signs purchased
5 or leased from the first or second stage manufacturer or distributor, or
6 their approved sources;

7 (D) dealer cost for special tools required to be purchased or leased
8 by the first or second stage manufacturer or distributor within three years
9 of the date of termination, cancellation or nonrenewal;

10 (E) the cost of transporting, handling, packing and loading of new
11 motor vehicles, supplies, parts, accessories, signs, special tools, equipment
12 and furnishings.

13 (2) Upon termination, cancellation or nonrenewal of a franchise
14 agreement by the first or second stage manufacturer or distributor, the
15 first or second stage manufacturer or distributor shall also pay to the new
16 vehicle dealer a sum equal to the current fair rental value of its established
17 place of business for a period of one year from the effective date of ter-
18 mination, cancellation or nonrenewal, or the remainder of the lease,
19 whichever is less. If the new vehicle dealer owns the dealership facilities,
20 the first or second stage manufacturer or distributor shall pay the new
21 vehicle dealer a sum equivalent to the reasonable rental value of the deal-
22 ership facilities for one year.

23 (3) To the extent the franchise agreement provides for payment or
24 reimbursement to the new vehicle dealer in excess of that specified in this
25 section, the provisions of the franchise agreement shall control.

26 (4) The first or second stage manufacturer or distributor shall pay
27 the new vehicle dealer the sums specified in this subsection within 90 days
28 after the tender of the property, subject to the new vehicle dealer arrang-
29 ing or having clear title to the property which may be conveyed to the
30 first or second stage manufacturer or distributor.

31 Sec. 2. K.S.A. 8-2414 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.

the dealer price listed in the current list or cata-
log or, if unavailable, the list or catalog actual-
ly utilized within the 12 months previous to termi-
nation, cancellation or nonrenewal, as the case may
be, for any new, unused and undamaged parts,
supplies, and accessories acquired from a first or
second stage manufacturer, or distributor, or a
source approved or recommended by it, less appli-
cable allowances specified in advance of dealer
purchase, plus five percent of the catalog or list
price, as the case may be, for the cost of packing
and returning the parts, supplies and accessories
to the first or second stage manufacturer or
distributor. Parts, supplies or accessories which
are reconditioned or subject to reconditioning or
rebuilding or other return in the ordinary course
of business which are considered to be core parts
in the trade practice and usage of the industry
shall be valued for payment purposes at their core
value, the price listed in the catalog or list
referenced above or the amount paid for expedited
return of core parts, whichever is higher;

which bear the trademark or trade name of the
first or second stage manufacturer or distributor
which were required, recommended,

delete: "new motor vehicles, supplies, parts,
accessories."

SENATE BILL No. 574

By Committee on Judiciary

1-31

9 AN ACT amending the vehicle dealers and manufacturers licensing act;
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11 ufacturers or distributors; amending K.S.A. 8-2414 and repealing the
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19 distributor unless ~~30 days~~ 90 days notice has been given to the vehicle
20 dealer and the director, which notice must state in full the reasons and
21 causes for the cancellation, termination or nonrenewal of such franchise
22 agreement, except that in the event of a showing of fraud, insolvency or
23 failure to perform in the ordinary course of business, a notice of not less
24 than 15 days may be approved by the director, with notice thereof to such
25 vehicle dealer and upon written application by such first or second stage
26 manufacturer or distributor. A notice required under this subsection shall
27 be given by certified mail and the period of time given in the notice prior
28 to cancellation, termination or nonrenewal shall be computed from the
29 date of mailing thereof.

30 (b) A vehicle dealer, within a period of time equal to that provided
31 for in the notice filed pursuant to subsection (a), may file a complaint
32 with the director against a first or second stage manufacturer or distrib-
33 utor challenging the reasons and causes given for the proposed cancel-
34 lation, termination or nonrenewal of the franchise agreement. Upon a
35 complaint being filed, the director shall promptly set the matter for public
36 hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for
37 the purpose of determining whether there has been a violation of K.S.A.
38 8-2410, and amendments thereto, or whether ~~reasonable justification~~
39 *good cause* exists for cancellation, termination or nonrenewal of the fran-
40 chise agreement. Notwithstanding the provisions of K.S.A. 8-2411, and
41 amendments thereto, the hearing may be set for a time which is not less
42 than the number of days provided in the notice given pursuant to sub-
43 section (a), from the date the director gives notice thereof.

2-5

2-6

1 (B) dealer cost for supplies, parts inventory and accessories pur-
2 chased from the first or second stage manufacturer or distributor or their
3 approved sources;

4 (C) fair market value for equipment, furnishings and signs purchased
5 or leased from the first or second stage manufacturer or distributor, or
6 their approved sources;

7 (D) dealer cost for special tools required to be purchased or leased
8 by the first or second stage manufacturer or distributor within three years
9 of the date of termination, cancellation or nonrenewal;

10 (E) the cost of transporting, handling, packing and loading of new
11 motor vehicles, supplies, parts, accessories, signs, special tools, equipment
12 and furnishings.

13 (2) Upon termination, cancellation or nonrenewal of a franchise
14 agreement by the first or second stage manufacturer or distributor, the
15 first or second stage manufacturer or distributor shall also pay to the new
16 vehicle dealer a sum equal to the current fair rental value of its established
17 place of business for a period of one year from the effective date of ter-
18 mination, cancellation or nonrenewal, or the remainder of the lease,
19 whichever is less. If the new vehicle dealer owns the dealership facilities,
20 the first or second stage manufacturer or distributor shall pay the new
21 vehicle dealer a sum equivalent to the reasonable rental value of the deal-
22 ership facilities for one year.

23 (3) To the extent the franchise agreement provides for payment or
24 reimbursement to the new vehicle dealer in excess of that specified in this
25 section, the provisions of the franchise agreement shall control.

26 (4) The first or second stage manufacturer or distributor shall pay
27 the new vehicle dealer the sums specified in this subsection within 90 days
28 after the tender of the property, subject to the new vehicle dealer arrang-
29 ing or having clear title to the property which may be conveyed to the
30 first or second stage manufacturer or distributor.

31 Sec. 2. K.S.A. 8-2414 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book

greater

(5) Notwithstanding the provisions of this subsection, nothing in this subsection shall preclude or prohibit the first or second stage manufacturer or distributor or vehicle dealer from agreeing to other terms for additional payment or reimbursement, except that such terms shall include, at a minimum, the payment or reimbursement requirements contained in this subsection.

(g) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which would be conducting business in the same trade area and selling the same make of vehicles where the vehicle dealer in question was engaged in business.

Kansas register

Kansas Automobile Dealers Association

800 Jackson, Suite 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • Fax (913) 233-1462

To: The Honorable Tim Emert, Chairman Senate Judiciary
Members of the Senate Judiciary Committee

From: Lorne Schlatter, 1996 KADA President, Independence
John Schmid, KADA Legislative Chairman, Coffeyville
Paul MacDonald, Paul MacDonald Chevrolet, Hays
Tim Holm, Holm Automotive Center, Abilene
Brent Magouirk, Brent Magouirk Chevrolet-Olds, Dodge City
Jim Clark, Jim Clark Motors, Junction City
Jim McDaniel, Unruh Chevrolet, Quinter
Robert Brogden, Robert Brogden Auto Plaza, Olathe
Mike Steven, Steven Chevrolet, Inc., Arkansas City
Stu Emmert, Stu Emmert Automotive, Liberal
Paul Larsen, Hays Ford Toyota, Hays
Jim Hattan, Don Hattan Chevrolet, Wichita
Ed Ranz, Ranz Motor Company, Chanute
Chuck Schram, Ed Schram Dodge, Manhattan
Ray Shepherd, Shepherd Team Auto Plaza, Fort Scott
Merle Snider, Merle Snider Motors, Winfield
Les Jacobs, Les Jacobs Motors, Wellington
Joe Self, Joe Self Chevrolet, Wichita
Mike Steven, Steven Motor Group, Wichita
Vic Yarrington, Yarrington Oldsmobile, Topeka
Ed Zeller, Zeller Motor Co., Arkansas City

Re: Proponents of SB 574 - Amendments to K.S.A. 8-2414

Date: February 13, 1996

Mr. Chairman and Members of the Committee. We regret that we were unable to attend the hearing in person. We greatly appreciate the opportunity to provide written testimony in support of SB 574.

In the essence of time, and the mounds of paper you receive, we will not reiterate the remarks contained in the testimony presented by KADA's staff. Manufacturer's will allege this type of legislation impedes progress. However, Kansas dealers have already met, and continue to meet, the changing trends in today's marketplace by re-configuring our dealership facilities to provide the products and services in communities across the state.

In closing, we respectfully ask for your support of SB 574 in its entirety. Again, our thanks to each of you for the opportunity to express our support.

"Serving the franchised new car and truck dealers since 1932"

Sen Jud.
2-13-96
Attach 3