

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND TOURISM

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on February 21, 1997 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Emalene Correll, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian Holeman, Committee Secretary

Conferees appearing before the committee: Carla Stovall, AG
Steve Rarrick
Shawn Herrick
Gary Carpenter
Pat Barnes

Others attending: See attached list

SB 266 REGARDING MOTOR VEHICLES - CONSUMER PROTECTION

Attorney General Carla Stovall, following introduction of staff who have worked on this issue, presented background and reasons for proposed legislation contained in **SB 266** (Attachment 1). Staff introduced were Steve Rarrick, Deputy Attorney General Consumer Protection; and Jim Welch, Assistant Attorney General in Consumer Protection who handles the auto repair case load. Ms. Stovall briefly talked about some of their cases involving the "5 o'clock surprise," when people pick up their car and are hit with charges far larger than anticipated when the vehicle was left in the morning for repair or service.

Steve Rarrick briefly reviewed the technical aspects of the bill, explaining it is much less restrictive than the Florida bill on which it is modeled. Some industry members have proposed allowing a year long waiver on written estimates under certain circumstances and the Attorney General's Office does not object to that. The Attorney General's office believes the provisions of this bill will protect repair shops as well as consumers.

Shawn Herrick, Executive Director, Mid-America Tire Dealers Association, spoke in opposition to the detailed disclosure for general tire purchases and offered a balloon exempting certain aspects of the bill as related to tire dealers (Attachment 2). Steve Rarrick stated the AG's office has no objection to the page two amendment, but do object to the page one amendment, because if they start exempting out parts of the industry that will just lead to more requests; and secondly, they believe the same potential exists for the "5 o'clock surprise" related to tires, and the signing of a waiver is a very simple process.

Gary Carpenter a member of the Attorney General's Auto Repair Task Force and Vice-President of the Executive Board of Directors for the Automotive Service Association of Kansas, generally supports this bill, especially the "disclosure" section. He strongly urged that consideration be given to licensing for all Kansas automotive repair facilities and technicians (Attachment 3). Mr. Carpenter was urged to submit a separate bill for licensing if **SB 266** passes without certification or licensure being included.

Pat Barnes, Kansas Automobile Dealers Association, advised that his Association supports the concept of the bill but has some problems with various current portions. Mr. Barnes proposed some amendments which they believe necessary to clarify or modify several areas (Attachment 4).

Members received written testimony from Marcia McAllister, Insurance Auto Actions, expressing concern with respect to proposed new section 2 in the bill (Attachment 5).

Paul E. Davis, President. A-Plus Parts & Salvage, Inc. supplied written testimony requesting resolution of the licensing and certification questions before moving forward with the rest of the legislation in this bill (Attachment 6). The Chair asked Members to carefully consider materials provided in preparation for consideration of the bill at a later date.

SB 139: REGARDING MOTOR VEHICLES-SCHOOL BUSES - REGULATION THEREOF

Hearings were held February 17, 1997 on **SB 139**. The bill was considered on February 19th and 20th. Today members again returned to work the bill. Staff explained changes incorporated in proposed **Substitute SB 139**. This bill just puts the two plate policy on the books. Details of implementation can be worked out prior to 2001. This subject came up because the Division of Vehicles has a problem with having two different classes of vehicles - some with one tag and another with two tags. Member discussed and agreed to pass out the bill and work out an amendment for this problem. Senator Karr moved to amend suggested changes into a substitute bill. Senator Jordan seconded the motion. Motion carried. Senator Salmans moved to recommend **Substitute SB 139** favorable for passage. Senator Jordan seconded the motion. Motion carried. Senators Huelskamp and Tyson wished to be recorded as voting "nay" on favorable for passage.

Meeting adjourned at 10:10 a.m.

The next meeting is scheduled for February 24, 1997. The meeting will be held in 313-S - The Old Supreme Court Room.

SENATE TRANSPORTATION AND TOURISM
COMMITTEE GUEST LIST

DATE: FEBRUARY 21, 1997

NAME	REPRESENTING
JOHN C. BOTZENBERG	BOTZENBERG ASSOC
R. Lipsy	AP
REP LES DONOVAN	AUTO DIR
Ronald Kasper	Repair interest
Bill Watts	KDOT
Tom Whitaker	Ks Motor Carriers Assn
Gene Johnson	Ks ASAP Assn
Donald Hild	ATT GEN CON. PROT.
Jim Welch	Attorney General's Office
Kevin Showalter	Kansas Independent Electric Repair
Harold E. Walker	Automotive Svc Assn - Kansas
Shirley Carpenter	ASA
Cary Carpenter	Kansas Auto Repair
Rise Meyer	*KS Env. Consulting
Betty McBride	*KDOT
Roger Ed Barnes	Automotive Educators
Lee Wright	Farmers Ins Group
Steve Avis	Society of Collision Repair Specialist
CARLA STOVALL	A. C



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

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Testimony of
Carla J. Stovall, Attorney General
Before the Senate Transportation Committee
RE: SB 266
February 21, 1997

Chairperson Vidricksen and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in support of Senate Bill 266.

I have proposed the legislation in Senate Bill 266 to address five different problem areas that arise in the investigation of auto related complaints by my Consumer Protection Division. These five topics include: (1) a new statute requiring disclosure for auto repair; (2) a new statute requiring written disclosure when salvaged vehicles have been sold; (3) an amendment to the current odometer rollback statute increasing the penalties for criminal odometer fraud from \$2,000 to \$10,000; (4) an amendment to the Lemon Law to provide meaningful depreciation allowance provisions and make the lemon law part of KCPA; and (5) a new statute making the failure of the manufacturer to comply with the seatbelt warranty requirements of K.S.A. 8-2507 a violation of the KCPA.

The major topic of this bill is the new disclosure provision. In 1994, 214 of 725 auto complaints received by the Consumer Protection Division were auto repair complaints. In 1996, those auto repair complaints increased to 293 of 951 auto complaints. These numbers do not reflect complaints received by consumer protection divisions of county or district attorneys, and certainly do not reflect those who have chosen to pay for unauthorized or disputed repairs rather than to lose the use of their auto, pending resolution of the dispute. Many of these complaints involve issues of disclosure and authorization for repairs.

I'd like to explain the events leading up to this proposal, and why I have proposed this provision, then turn the explanation of the technical aspects of the bill over to Steve Rarrick, the Deputy Attorney General for the Consumer Protection Division.

In October, 1995, the National Association of Attorneys General (NAAG) issued its Auto Repair Task Force Report, which concluded a broad-based inquiry into auto repair practices through surveys, public forums, and other research begun in December, 1992. The NAAG Report, which I signed, determined that the reasons for many consumer complaints relate to the "Four C's": *communication* (lack of communication between the auto technician and the consumer); *competence* (inadequate training, the lack of continuing education, and the high cost or unavailability of

SENATE TRANSPORTATION & TOURISM
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ATTACHMENT 1

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appropriate equipment); *complexity* (technological advances and design changes in autos); and *consumer fraud* (repeated fraudulent, unfair, or deceptive practices). I believe these same reasons apply to auto repair disputes in Kansas.

Many states proposed legislation immediately following the NAAG Task Force Report. I could have proposed legislation last year, but I believed the State of Kansas would be better served by requesting and receiving input from the auto repair industry before proposing solutions to this nationwide and Kansas problem. As a result, I put together a task force made up of representatives of every segment of the auto repair industry that my staff could identify, and asked this group to study the problem and make recommendations for my consideration before I proposed legislation.

The task force made two recommendations to me in late 1996: one regarding disclosure, and one regarding licensing and certification. The licensing and certification proposal by the task force was constitutionally impermissible - they proposed the creation of a private association that would have the ability to suspend or revoke the licence of an auto repair shop or technician without due process. I advised the task force of the constitutional problems of their licensing and certification proposal and responded to the disclosure proposal by directing my Consumer staff to draft proposed legislation to implement the recommendation of the task force. During the last meeting of the task force, the disclosure provisions contained in Section one of this bill were gone over line-by-line with members of the task force, and compromises were made with regard to enforcement provisions to accommodate concerns raised by task force members. Those compromises are reflected in this bill.

Some task force members expressed displeasure that I was proposing disclosure legislation without any accompanying licensing and certification legislation. However, given the time constraints we were operating under, the potential (yet unascertained) cost of creating a new regulatory agency, and the failure to receive any constitutionally permissible licensing recommendation from members of the task force, I am not proposing any licensing legislation. I believe the disclosure proposal will address many of the problems present in auto repair complaints regularly received in my Consumer Protection Division, and do not believe the issue of licensing of auto repair technicians has been adequately studied to justify any proposed legislation at this time.

At this time, I will ask Steve Rarrick to briefly go over the technical aspects of the bill. I urge your favorable consideration of Senate Bill 266. Thank you.

SENATE BILL No. 266

By Committee on Transportation and Tourism

2-11

9 AN ACT concerning motor vehicles; relating to consumer protection;
10 amending K.S.A. 50-651 and K.S.A. 1996 Supp. 50-645 and repealing
11 the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) For purposes of this section:

15 (1) "Consumer" means any individual or sole proprietor who requests
16 repair work or an estimate of repair work on a motor vehicle;

17 (2) "final estimate" means the last estimate approved by the con-
18 sumer either in writing or orally, as evidenced by the written repair es-
19 timate;

20 (3) "motor vehicle" means a motor vehicle which is registered for a
21 gross weight of 16,000 pounds or less, but does not include a recreational
22 vehicle as defined by subsection (f) of K.S.A. 75-1212, and amendments
23 thereto.

24 (4) "motor vehicle repair shop" means any person or business which,
25 for compensation, engages in repairing, servicing or maintaining motor
26 vehicles owned by other persons and includes, but is not limited to, new
27 car dealers, used car dealers, garages, service stations, self-employed in-
28 dividuals, truck stops, machine shops, tire dealers, department stores,
29 retailers, paint and body shops, brake, muffler or transmission shops, and
30 shops doing upholstery or glass work;

31 (5) "repair work" includes mechanical repairs, alterations and main-
32 tenance services and any diagnostic work incident thereto, including, but
33 not limited to, body work, painting, warranty work and other work cus-
34 tomarily undertaken by motor vehicle repair shops, but does not include
35 towing services.

36 (b) Unless expressly waived in writing by the consumer as provided
37 in paragraph (c), when any consumer requests a motor vehicle repair shop
38 to perform repair work on a motor vehicle, the charge for which will
39 exceed \$150, excluding sales tax, the shop shall prepare a written repair
40 estimate, which is a form setting forth the estimated charge for repair
41 work, including diagnostic work, before effecting any diagnostic work or
42 repair. The written repair estimate shall include the following items:

43 (1) The name, address and telephone number of the motor vehicle

(2) "final estimate" means the last estimate approved by the consumer either in writing or orally, as evidenced by the written repair estimate

1 repair shop;

2 (2) the name, address and telephone number of the consumer;

3 (3) the date and time of the written repair estimate;

4 (4) the year, make, model, odometer reading and license plate num-
5 ber of the motor vehicle;

(4) the year, make, model, odometer reading, and license plate
number or vehicle identification number of the motor vehicle;

6 (5) a general description of the consumer's problem or request for
7 repair work or service relating to the motor vehicle;

8 (6) the estimated charge for repair work or the charge for performing
9 diagnostic work if a repair price estimate cannot be predetermined;

10 (7) the charge for making a repair price estimate;

11 (8) the name and telephone number of another person who may au-
12 thorize repair work, if the consumer desires to designate such person;

13 (9) a statement indicating what, if anything, is guaranteed in connec-
14 tion with the repair work and the time and mileage period for which the
15 guarantee is effective;

16 (10) a statement allowing the consumer to indicate whether replaced
17 parts should be saved for inspection or return, until the motor vehicle is
18 delivered to the consumer;

19 (11) a statement indicating the daily charge for storing the consumer's
20 motor vehicle after the consumer has been notified that the repair work
21 has been completed. However, no storage charges shall accrue or be due
22 and payable for a period of three working days from the date of such
23 notification.

24 (c) If the charge for repair work will exceed \$150, the motor vehicle
25 repair shop shall present to the consumer a written notice conspicuously
26 disclosing in a separate, blocked section, only the following statement, in
27 capital letters of at least 10-point boldface type:

28 PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW,
29 AND SIGN:

30 I UNDERSTAND THAT, UNLESS WAIVED BELOW, UNDER STATE LAW I AM
31 ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$150.

32 _____ I REQUEST A WRITTEN ESTIMATE

33 _____ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR
34 CHARGES DO NOT EXCEED \$_____ THE SHOP MAY NOT EXCEED THIS
35 AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

36 _____ I DO NOT REQUEST A WRITTEN ESTIMATE.

37 SIGNED _____

38 DATE _____

39 (d) The information required by paragraphs (6) and (7) of subsection
40 (b) need not be provided if the consumer waives in writing such consu-
41 mer's right to receive a written estimate.

42 (e) Except as provided in subsection (f), a copy of the written repair
43 estimate required by subsection (b) and the disclosure statement required

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1 by subsection (c) shall be given to the consumer before repair work is
2 begun.

3 (f) If the consumer leaves such consumer's motor vehicle at a motor
4 vehicle repair shop during hours when the shop is not open or if the
5 consumer permits the shop or another person to deliver the motor vehicle
6 to a motor vehicle repair shop, there shall be an implied partial waiver of
7 the written estimate; except that, upon completion of diagnostic work
8 necessary to estimate the charge for repair, the motor vehicle repair shop
9 shall promptly notify the consumer as required in subsection (g).

10 (g) (1) In the event that:

11 (A) The written repair estimate contains only an estimate for diag-
12 nostic work necessary to estimate the charges for repair work and such
13 diagnostic work has been completed;

14 (B) a determination is made by a motor vehicle repair shop that the
15 actual charges for the repair work will exceed the written estimate by
16 more than 10%; or

17 (C) an implied partial waiver exists for diagnostic work, as described in
18 subsection (f), and such diagnostic work has been completed, the con-
19 sumer shall be promptly notified by telephone, telegraph, mail or other
20 means of the additional repair work and estimated charges thereof. A
21 consumer so notified shall, orally or in writing, authorize, modify or cancel
22 the order for repair.

23 (2) If additional repair work or charges are authorized by the con-
24 sumer in accordance with paragraph (1) of subsection (g), the shop shall
25 legibly note such authorization on the written repair estimate. Such no-
26 tations shall specify the date and time of authorization and shall also
27 contain the additional amount of money authorized by the consumer to
28 be spent on the repairs, the name of the person who received the au-
29 thorization, the name of the person who made the authorization and a
30 description of the additional work authorized.

31 (3) If a consumer cancels the order for repair after being advised that
32 a repair which the consumer has authorized cannot be accomplished
33 within the previously authorized estimate, the shop shall expeditiously
34 reassemble the motor vehicle in a condition reasonably similar to the
35 condition in which it was received unless:

36 (A) The consumer waives reassembly; or

37 (B) the reassembled vehicle would be unsafe.

38 After cancellation of the repair order, the shop may charge for the cost
39 of teardown, the cost of parts and labor to replace items that were de-
40 stroyed by teardown, and the cost to reassemble the component or the
41 vehicle.

42 (4) The motor vehicle repair shop shall not charge more than the
43 written estimate plus 10%, unless the motor vehicle repair shop has ob-

(C) an implied partial waiver exists for diagnostic work, as described
in subsection (f), and such diagnostic work has been completed,

the consumer shall be promptly notified by telephone, telegraph, mail
or other means of the additional repair work and estimated charges
thereof. A consumer so notified shall, orally or in writing, authorize,
modify or cancel the order for repair.

1 tained authorization to exceed the written estimate in accordance with
2 paragraph (1) of subsection (g).

3 (5) Upon request made at the time the repair work is authorized by
4 the consumer, the consumer is entitled to inspect parts removed from
5 the vehicle or, if the shop has no warranty arrangement or exchange parts
6 program with a manufacturer, supplier, or distributor, have the parts re-
7 turned to the consumer.

8 (h) Nothing in this section shall be construed to require a motor ve-
9 hicle repair shop to give a written estimated price if the motor vehicle
10 repair shop does not agree to perform the requested repair.

11 (i) Any violation of this section is a deceptive and unconscionable act
12 or practice under the Kansas consumer protection act.

13 (j) This section shall be a part of and supplemental to the Kansas
14 consumer protection act.

15 New Sec. 2. (a) For purposes of this section:

16 (1) "Actual cash value" means the market value of a motor vehicle as
17 determined from publications commonly used by the automotive, finan-
18 cial or insurance industries to establish the retail value of motor vehicles;

19 (2) "motor vehicle" means a motor vehicle with a model year equal
20 to the then current calendar year or one of the five preceding calendar
21 years and is registered for a gross weight of 16,000 pounds or less;

22 (3) "person" means any individual, firm, corporation, company, part-
23 nership or other entity; and

24 (4) "salvageable motor vehicle" means a motor vehicle which has
25 been wrecked, damaged or destroyed to the extent that the total esti-
26 mated or actual costs of parts and labor to rebuild or reconstruct the
27 motor vehicle to its preaccident condition exceeds 75% of the actual cash
28 value of the vehicle.

29 (b) No person shall sell, exchange or transfer a motor vehicle without
30 first disclosing in writing, prior to consummating the sale, exchange or
31 transfer, the fact that the motor vehicle was previously a salvageable mo-
32 tor vehicle.

33 (c) It shall not be a violation of this section if the person can dem-
34 onstrate:

35 (1) The person made a reasonable effort and a reasonable inspection
36 to discover prior damage to the motor vehicle, but did not discover such
37 prior damage; and

38 (2) the person did not know or have reason to know the motor vehicle
39 was previously a salvageable motor vehicle.

40 (d) Any violation of this section is a deceptive act or practice under
41 the Kansas consumer protection act.

42 (e) This section shall be a part of and supplemental to the Kansas
43 consumer protection act.

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1 New Sec. 3. (a) The failure of a manufacturer to comply with the
 2 requirements of K.S.A. 8-2507, and amendments thereto, shall constitute
 3 an unconscionable act or practice under the Kansas consumer protection
 4 act.

5 (b) This section shall be a part of and supplemental to the Kansas
 6 consumer protection act.

7 Sec. 4. K.S.A. 1996 Supp. 50-645 is hereby amended to read as fol-
 8 lows: 50-645. (a) As used in this act:

9 (1) "Consumer" means the original purchaser or lessee, other than
 10 for purposes of resale, of a motor vehicle; and

11 (2) "motor vehicle" means a new motor vehicle which is sold or leased
 12 in this state, and which is registered for a gross weight of ~~12,000~~ 16,000
 13 pounds or less, and does not include the customized parts of motor ve-
 14 hicles which have been added or modified by second stage manufacturers,
 15 first stage converters or second stage converters as defined in K.S.A. 8-
 16 2401, and amendments thereto.

17 (b) If a motor vehicle does not conform to all applicable warranties,
 18 and the consumer reports the nonconformity to the manufacturer, its
 19 agent or its authorized dealer during the term of any warranties or during
 20 the period of one year following the date of original delivery of the motor
 21 vehicle to a consumer, whichever is the earlier date, the manufacturer,
 22 its agent or its authorized dealer shall make such repairs as are necessary
 23 to conform the vehicle to such warranties, notwithstanding the fact that
 24 such repairs are made after the expiration of any such term or such one-
 25 year period.

26 (c) If the manufacturer, or its agents or authorized dealers, are unable
 27 to conform the motor vehicle to any applicable warranty after a reasonable
 28 number of attempts, the manufacturer, *at the consumer's option* shall
 29 replace the motor vehicle with a comparable motor vehicle under war-
 30 ranty or accept return of the vehicle from the consumer and refund to
 31 the consumer the full purchase or lease price including all collateral
 32 charges, less a reasonable allowance for the consumer's use of the vehicle
 33 ~~as calculated from the most recent edition of *Your Driving Costs*, pub-~~
 34 ~~lished by the American automobile association.~~

35 *The reasonable allowance for use shall be calculated as follows:*

36 *Reasonable allowance = $\frac{\text{Purchase price} + \text{collateral charges} \times \text{miles driven}}{120,000 \text{ miles}}$*
 37

38 Refunds shall be made to the consumer, and lienholder if any, as their
 39 interests may appear. ~~A reasonable allowance for use~~ *The miles driven*
 40 ~~shall be that amount those miles~~ directly attributable to use by the con-
 41 sumer and any previous consumer prior to the first report of the noncon-
 42 formity to the manufacturer, agent or dealer ~~and during any subsequent~~
 43 ~~period when the vehicle is not out of service by reason of repair.~~ It shall

1 be an affirmative defense to any claim under this act that:

2 (1) An alleged nonconformity does not substantially impair such use
3 and value; or

4 (2) a nonconformity is the result of abuse, neglect or unauthorized
5 modifications or alterations of a motor vehicle by a consumer.

6 (d) If the manufacturer receives actual notice of the nonconformity,
7 it shall be presumed that a reasonable number of attempts have been
8 undertaken to conform a motor vehicle to the applicable warranties, if:

9 (1) The same nonconformity which substantially impairs the use and
10 value of the motor vehicle to the consumer has been subject to repair
11 four or more times by the manufacturer or its agents or authorized dealers
12 within the term of any warranty or during the period of one year following
13 the date of original delivery of the motor vehicle to a consumer, whichever
14 is the earlier date, but such nonconformity continues to exist;

15 (2) the vehicle is out of service by reason of repair for a cumulative
16 total of 30 or more calendar days during such term or period, whichever
17 is the earlier date; or

18 (3) there have been 10 or more attempts to repair any nonconform-
19 ities which substantially impair the use and value of the motor vehicle to
20 the consumer and such attempts to repair have been attempts by the
21 manufacturer or its agents or authorized dealers.

22 The term of any warranty, such one-year period and such thirty-day
23 period shall be extended by any period of time during which repair serv-
24 ices are not available to the consumer because of war, invasion, strike,
25 fire, flood or other natural disaster.

26 (e) If a manufacturer has established an informal dispute settlement
27 procedure which complies in all respects with the provisions of title 16,
28 code of federal regulations, part 703, as from time to time amended, the
29 provisions of subsection (c) concerning refunds or replacement shall not
30 apply to any consumer who has not first resorted to such procedure.

31 (f) ~~The attorney general shall have jurisdiction to enforce this section~~
32 *Any violation of this section by a manufacturer is an unconscionable act*
33 *or practice under the Kansas consumer protection act.*

34 (g) *This section shall be part of and supplemental to the Kansas con-*
35 *sumer protection act.*

36 Sec. 5. K.S.A. 50-651 is hereby amended to read as follows: 50-651.

37 (a) The commission of any act or practice declared to be a violation of
38 K.S.A. 21-3757 or K.S.A. 50-653, *and amendments thereto*, shall make
39 the violator liable to the aggrieved consumer, or to the state, for the
40 *following:*

41 (1) Payment of a civil penalty, recoverable in an individual action or
42 in an action brought by the attorney general in a sum set by the court of
43 not more than ~~\$2,000~~ \$10,000 per violation; *and*

3-1

1 (2) *reasonable expenses and investigation fees incurred by the attor-*
2 *ney general.*

3 (b) The remedies provided in subsection (a) are in addition to any
4 remedies available under federal odometer law.

5 Sec. 6. K.S.A. 50-651 and K.S.A. 1996 Supp. 50-645 are hereby re-
6 pealed.

7 Sec. 7. This act shall take effect and be in force from and after its
8 publication in the statute book.

b-1



Mid-America Tire Dealers Association

**STATEMENT
OF THE
MID-AMERICA TIRE DEALERS ASSOCIATION**

**BEFORE THE
SENATE
COMMITTEE ON TRANSPORTATION AND TOURISM**

Friday, February 21, 1997

SENATE TRANSPORTATION & TOURISM
2/21/97
ATTACHMENT 2

2-1

Mr. Chairman, and Members of the Committee:

My name is Shawn Herrick, Executive Director of the Mid-America Tire Dealers Association. I will submit testimony on behalf of the Board of Directors and the membership of the MATDA very briefly. The MATDA representative on the Attorney Generals Task Force is Gary DeShazer of D & D Tire Center in Scranton, Kansas. He apologizes and is disappointed that he can't be here today. He is in the hospital.

Thank you for allowing us to express our position. Attached to my testimony is a balloon with our requested language, as well as a copy of our Board of Directors Resolution relating to this issue.

First, the MATDA Board would like to applaud the Attorney General for seeking input from the industry. There have been a lot of hours dedicated to this project by the Attorney General and her staff and they have been very responsive to our concerns and questions.

As an industry, we do support the concept of disclosure, as you can determine by the Board Resolution. Our membership believes that disclosure is a good business practice. Most of our members, especially those dealers that engage in services more extensive than tire repair and sales, exercise some form of communication with customers throughout a repair procedure. That is the only way to prevent misunderstandings. Therefore, with some changes, independent tire dealers in Kansas can support Senate Bill 266.

For general tire purchases however, detailed disclosure is not necessary. A typical transaction includes the price of the tire (s), and the service charge for mounting and balancing. Tire purchases are not that similar to automotive repair and not too far removed from any other retail business. Tire purchases are not a source for consumer complaints. But, most tire purchases do exceed \$150.

In addition, most tire dealers are using point-of-purchase computers and software and it will cost a substantial amount of money to alter programs to read exactly as the language in this bill.

Also, a substantial amount of a tire dealer's business is from a sole proprietor's fleet management, for example, small construction companies, farmers, and small service stations. The dealers have ongoing business relationships with these individuals. It would be very cumbersome and add unnecessary paperwork to get a waiver of a written estimate every time they transact business.

Finally, businesses of all types are already buried in a flurry of paperwork. This bill would require tire dealers to keep on record, for an undetermined amount of time, a written estimate or waiver of a written estimate for every tire purchase. If this bill should become law, the dealers do have a choice not to keep the records especially for long term, trusted customers who may be offended when asked to sign more paperwork. Should a dispute arise, the burden of risk is squarely on the dealers. From the Consumer Protection Division's perspective, the dealer is at fault automatically for not having documentation.

For these reasons we would offer the attached balloons.

In subsection (a) (5), page 1, line 35 add, *or tire purchases and tire repair work.*

In subsection (c), page 2, between line 38 and 39 add, *(1) the motor vehicle repair shop may keep a waiver of written estimate on file for consumers valid for a period of one year.*

In conclusion, with these issues addressed, I would like to make it clear that the independent tire dealers, as an industry, do want to cooperate and help to be part of the solution to this problem. We are willing to work with the Legislature and the Attorney General to improve the image of the industry and eliminate consumer fraud.

SENATE BILL No. 266

By Committee on Transportation and Tourism

2-11

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21 gross weight of 16,000 pounds or less, but does not include a recreational
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24 (4) "motor vehicle repair shop" means any person or business which,
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26 vehicles owned by other persons and includes, but is not limited to, new
27 car dealers, used car dealers, garages, service stations, self-employed in-
28 dividuals, truck stops, machine shops, tire dealers, department stores,
29 retailers, paint and body shops, brake, muffler or transmission shops, and
30 shops doing upholstery or glass work;

31 (5) "repair work" includes mechanical repairs, alterations and main-
32 tenance services and any diagnostic work incident thereto, including, but
33 not limited to, body work, painting, warranty work and other work cus-
34 tomarily undertaken by motor vehicle repair shops, but does not include
35 towing services.

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37 in paragraph (c), when any consumer requests a motor vehicle repair shop
38 to perform repair work on a motor vehicle, the charge for which will
39 exceed \$150, excluding sales tax, the shop shall prepare a written repair
40 estimate, which is a form setting forth the estimated charge for repair
41 work, including diagnostic work, before effecting any diagnostic work or
42 repair. The written repair estimate shall include the following items:

43 (1) The name, address and telephone number of the motor vehicle

or tire purchases and tire repair work.

- 1 repair shop;
- 2 (2) the name, address and telephone number of the consumer;
- 3 (3) the date and time of the written repair estimate;
- 4 (4) the year, make, model, odometer reading and license plate num-
- 5 ber of the motor vehicle;
- 6 (5) a general description of the consumer's problem or request for
- 7 repair work or service relating to the motor vehicle;
- 8 (6) the estimated charge for repair work or the charge for performing
- 9 diagnostic work if a repair price estimate cannot be predetermined;
- 10 (7) the charge for making a repair price estimate;
- 11 (8) the name and telephone number of another person who may au-
- 12 thorize repair work, if the consumer desires to designate such person;
- 13 (9) a statement indicating what, if anything, is guaranteed in connec-
- 14 tion with the repair work and the time and mileage period for which the
- 15 guarantee is effective;
- 16 (10) a statement allowing the consumer to indicate whether replaced
- 17 parts should be saved for inspection or return, until the motor vehicle is
- 18 delivered to the consumer;
- 19 (11) a statement indicating the daily charge for storing the consumer's
- 20 motor vehicle after the consumer has been notified that the repair work
- 21 has been completed. However, no storage charges shall accrue or be due
- 22 and payable for a period of three working days from the date of such
- 23 notification.

24 (c) If the charge for repair work will exceed \$150, the motor vehicle
 25 repair shop shall present to the consumer a written notice conspicuously
 26 disclosing in a separate, blocked section, only the following statement, in
 27 capital letters of at least 10-point boldface type:

28 PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW,
 29 AND SIGN:

30 I UNDERSTAND THAT, UNLESS WAIVED BELOW, UNDER STATE LAW I AM
 31 ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$150.

32 _____ I REQUEST A WRITTEN ESTIMATE

33 _____ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR
 34 CHARGES DO NOT EXCEED \$_____ THE SHOP MAY NOT EXCEED THIS
 35 AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

36 _____ I DO NOT REQUEST A WRITTEN ESTIMATE.

37 SIGNED _____

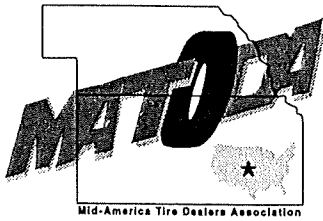
38 DATE _____

(1) The motor vehicle repair shop may keep a
 a waiver of written estimate on file for
 consumers, valid for a period of one year.

39 (d) The information required by paragraphs (6) and (7) of subsection
 40 (b) need not be provided if the consumer waives in writing such consu-
 41 mer's right to receive a written estimate.

42 (e) Except as provided in subsection (f), a copy of the written repair
 43 estimate required by subsection (b) and the disclosure statement required

h-c



Mid-America Tire Dealers Association

October 23, 1996

The Honorable Carla Stovall
Attorney General, State of Kansas
Kansas Judicial Center
Topeka, KS 66612-1597

Dear Attorney General Stovall:

Members of the Mid-America Tire Dealers Association (MATDA) are vitally concerned about consumer complaints and the public image of the automobile repair industry, specifically the tire industry.

In September, the MATDA Board of Directors met to discuss the issues brought forward in the report published by the National Association of Attorneys General (NAAG Report) and your Automotive Repair Task Force. The Board developed a resolution which is enclosed for your information. As you will see, they are aware of the need for some improvement in communication and education with consumers, but are not in favor of a mandated certification and licensure law in the near future.

For some time, in fact before the publication of the NAAG Report, it has been the goal of our association to promote a safety, repair training and certification program for our members and their employees.

There are a few danger areas that are particularly common in the tire industry. First of all, back injuries caused by lifting, pushing or pulling and reaching account for nearly 43% of all losses for tire dealers. Hand injuries, caused by using hand tools and machines, as well as slips and falls and automobile accidents are also high loss areas. In addition, tire explosions are life threatening to anyone within impact range.

The MATDA intends to design a tire certification program to address just such safety concerns. Safety is just one among other goals, such as to professionalize the industry, to promote high standards, and to provide a formalized avenue for continued education and certification for the tire industry.

With these goals in mind, the consumer can be assured of quality and dependable service.

The members of MATDA look forward to working with you toward our common goal of consumer confidence and trust in the automotive repair industry.

With best regards,

Shawn Herrick
Executive Director

Enclosure: MATDA Board Resolution, September, 1996

Mid-America Tire Dealers Association
Resolution September 1996

The Board of Directors of the Mid-America Tire Dealers Association, assembled for a regular meeting September 21, 1996 in Salina, Kansas, adopted the following resolution:

WHEREAS, the Mid-America Tire Dealers Association applauds the efforts of the Attorney General's Office and its Automotive Repair Task Force for studying this complex issue; and

WHEREAS, the Mid-America Tire Dealers Association realizes the tremendous amount of effort put forth by many members of the Automotive Services Association of Kansas and other interested parties, and commends those who have volunteered their time for the betterment of their industry; and

WHEREAS, the Mid-America Tire Dealers Association realizes that we all must cooperate to improve the perception of those hard-working individuals who service vehicles; and

WHEREAS, the Mid-America Tire Dealers Association concurs in part with concepts set forth in the "Draft Proposal"; and

WHEREAS, a mandated certification and licensing program increases the cost of already expensive repairs for the consumer; and

WHEREAS, a mandated certification and licensing program adds more regulations, paperwork and expense to the retailers who are already overburdened; and

WHEREAS, a mandated certification and licensing program for tire dealers is not appropriate for the level of technicality of these repair procedures; and

WHEREAS, consumer complaints are not a common problem within the tire industry; and

WHEREAS, a mandated certification and licensing program is complicated and impossible to enforce without the creation of a new agency funded by the equivalent of increased taxes; and

WHEREAS, despite laws intended to halt their behavior, the unscrupulous and uneducated technicians will continue to erode public trust and will not comply with such laws; and

WHEREAS, eventually, a business with a poor reputation will flounder, while competition by those who are better prepared will be assured good health in the industry; and

WHEREAS, the Mid-America Tire Dealers Association believes that lack of communication is the root of a majority of consumer problems and complaints;

THEREFORE BE IT RESOLVED, that the Mid-America Tire Dealers Association expresses, that although a volunteer certification program can educate, elevate, professionalize and ultimately improve the level and availability of service to the consumer, a mandated program will not solve the problems of any segment of the automotive industry. An industry-guided disclosure law can improve communication and restore consumer faith and understanding of their vehicle repairs. Furthermore, this industry recommends and encourages strong enforcement of current laws on those individuals who are acting in a fraudulent and deceptive manner when providing vehicle service to the consumer.

Senate Transportation and Tourism Committee
February 21, 1997
Testimony of Gary Carpenter

Senate Bill #266

Committee Chairman Senator Ben Vidricksen

Members of the Senate Transportation and Tourism Committee

Guests

I am Gary Carpenter, owner of Kansas Auto Repair in Newton, Kansas, Vice President of the Executive Board of Directors for the Automotive Service Association of Kansas (ASA-KS), an ASE Master Technician, an ASIA World Class Technician and a member of the Attorney General's Auto Repair Task Force, Licensing and Certification sub-committee, representing Kansas automotive service technicians.

Attorney General Stovall formed a Task Force as a response to the recommendations contained in the "Auto Repair Task Force Report", produced by the National Association of Attorneys General (NAAG), released October 1995. The NAAG report was developed in response to the number of consumer complaints regarding automobile repair.

Attorney General Stovall charged the Task Force with the responsibility to evaluate Chapter 7 of the NAAG Report, "The Role of State Governments", and to prepare recommendations from industry.

In general, I am in favor of SB266. Specifically SB266, page 1, lines 9 through 43; SB266, page 2, lines 1 through 43; SB266, page 3, lines 1 through 43, and SB266, page 4, lines 1 through 14 which contains the Disclosure section.

However, I am here to express the desire of the independent auto repair shop owners and service technicians that the law should require both disclosure and licensing for all Kansas automotive repair facilities and technicians. Disclosure combined with licensing will provide Kansas consumers with higher quality automobile repair service. The two elements provide a balanced approach that will reduce the number of consumer complaints received by the Attorney General's office.

By majority, the Attorney General's Task Force recommended that disclosure alone would not solve the consumer complaint problem. SB266 does not address the focal point of the NAAG Report, Chapter 1, "Unnecessary Repairs". Adding the dimension of licensing will raise the level of accountability resulting in higher levels of competency in our industry.

Therefore, I offer for your consideration the tabling of SB266 until the Attorney General's Task Force can further review and incorporate the licensing recommendations to provide the protection Kansas consumers deserve.

If SB266 passes as proposed, I request the opportunity to endeavor, with those Kansans I am representing at this hearing, to introduce a bill to require licensing of all technicians practicing automotive repair in the State of Kansas.

Thank you for your time and attention to this matter.

Attachments: Press Release July 24, 1996
National Trade Publication Editorial, "Motor Age" February 1997
Task Force License and Certification Sub-Committee Input

SENATE TRANSPORTATION & TOURISM
2/21/97
ATTACHMENT 3

3-1



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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

FOR IMMEDIATE RELEASE

Wednesday, July 24, 1996

CONTACT: MARY HORSCH
DIRECTOR OF COMMUNICATIONS

ATTORNEY GENERAL STOVALL FORMS AUTO REPAIR TASK FORCE

Attorney General Carla J. Stovall announced that the first meeting of her Auto Repair Task Force will take place on Wednesday, July 24, 1996 at 1:30 p.m. at the Kansas Judicial Center in Topeka. The task force, made up of representatives in all areas of the auto repair industry and members of the Attorney General's staff, will make recommendations to Attorney General Stovall concerning solutions to problems within the industry.

In October 1995, Attorney General Stovall joined Attorneys General from 42 other states in issuing a report compiled by a task force of the National Association of Attorneys General (NAAG) containing recommendations for numerous reforms to auto repair industry practices. At that time, Attorney General Stovall pledged to find solutions to the problem practices in Kansas. In December, Attorney General Stovall met with the Kansas Automobile Dealers' Association to discuss the details of the NAAG report. Members of the Attorney General's staff also have met with other industry groups to provide information about the report.

Many of the recommendations in the report focussed on improved education - of both consumers and technicians - to help curtail unnecessary automobile repairs. According to the report, the reasons for many consumer complaints relate to the "Four C's": communication (lack of communication between the auto technicians and the consumer); competence (inadequate training, the lack of continuing education, and the high cost or unavailability of appropriate equipment); complexity (technological advances and design changes in autos); and consumer fraud (repeated fraudulent, unfair, or deceptive practices).

"I will ask members of the Auto Repair Task Force to recommend to me, after a comprehensive and exhaustive examination of the issues raised in the NAAG report, legislation that will address the problems in the auto repair industry in Kansas," Attorney General Stovall said. "In addition, I would like the task force to look at requiring disclosure and certification that ultimately will protect consumers, while at the same time avoiding overly restrictive regulations that would be unfair to the auto repair industry."

Attorney General Stovall hopes to have a final report from the Auto Repair Task Force by November with an announcement of the task force findings and recommendations in December.

The associations represented on the task force include: Society of Collision Repair Specialists, Automotive Service Association of Kansas, Kansas Automobile Dealers Association, Kansas Independent Automobile Dealers Association, Kansas Independent Glass Dealers Association, Kansas Oil Marketers Association, Mid America Tire Dealers Association, Midwest Automotive Wholesalers Association, American Association of Oil Changers, Automobile Service Excellence, and Diversified Automotive Training Associates. At-Large Members include representatives of the undercar industry, frame/towing, electrical service specialists, machine shops, the salvage industry, dealer training and education, retail auto parts, vocational educators, the franchise repair industry and service managers/dealers.

Staff from the Attorney General's office includes Steve Rarrick, Deputy of the Consumer Protection Division; Jim Welch, Assistant Attorney General who is also a Certified Master Mechanic; Bob Hiatt, Assistant Attorney General; Rod Allen, Special Agent in the Consumer Protection Division; and Nancy Lindberg, Assistant to the Attorney General.

Do You Have Your License Yet?



Chuck Schoenberger is an ASE Master Technician with L1 certification, as well as being a Chrysler Master Technician with four skill categories—brakes, automatic transmission, electrical and driveability. He has worked for Marmie Motors Inc., a Chrysler dealership in Great Bend, KS, for 22 years. The shop has seven truck and '2 car/lift, duty service bays and a new and used car prep. dept. For more than 10 years, Chuck has been on the Kansas City Chrysler Zone Top 25 Technician list. He also teaches automotive technology at a local college, and has taught for the Allen Group and Sun/Snap-on Incorporated.

W

hy don't automotive technicians, truck techs, farm equipment techs and bus techs have to be licensed? I was told a startling fact last spring as I went to a technician licensing meeting. Do you realize that there are nine million people working for, in or around the automotive industry? Of those, there are only—according to an Aug., '96 Motor Age ASE article—392,316 certified. Such a small number for the amount of people in the industry as a whole. Why isn't the automotive industry regulated?

Licensing is coming, but I'm afraid not soon enough. In Kansas, we have been told that we are getting a choice of options from our Attorney General's office. Either we take the regulatory plan 'Uncle Sam' has for us, or we govern ourselves. The meeting that I attended dealt with the voluntary guidelines. Those rules spell out how the service industry will govern itself, just as doctors and lawyers do, when a complaint is filed.

When a customer has a complaint with a certified site, that complaint will go to a state office. Then, a peer board will be chosen, made up of three people from the industry in the shop's zone. These people will talk to the complainer, the shop owner and everyone else involved in the complaint. After this investigation, they will write their reports and send them into the state office. If two people agree with the complainer, he or she will win the dispute; if two agree with the shop owner, then he or she will win. If the shop owner is found to be in the wrong, a fine will be levied against him or her. Furthermore, if you lose one of these cases, you may lose your license! No more free advice to customers who walk into a dealership or service shop and ask how to do a certain procedure, or who need a spec for some other job they are doing at home.

Some will say this is a bad thing. But, if you stop to think about it, how much money do you have invested in tools? How much money do you have invested in technical manuals? How much do you have invested in equipment such as lifts, A/C recyclers and special pullers? You know what I'm getting at. Some people act like loaning out a tool or giving out of piece of information is not a big deal.

Another item. Moonlighting for pay will be out. If you know of anyone who moonlights for pay and you don't tell the board, you will lose your license and so will the moonlighter. According to the plan, you will not be able to perform any repair you're not certified to do.

ASE certification or OEM training will be the standard, whichever applies. And, ASE certification will need to be updated every three years—not every five.

Let's face it. In most states, a person can rent out any building, buy a set of tools and call him or herself a 'mechanic.' A plumber can't do that, nor can an electrician. And how about doctors and lawyers? Aren't we just as professional as they are? I am proud to be an automotive technician, aren't you? Aren't we capable of being held accountable for our work? I don't know about you. But I want my license!

Attorney General's Task Force on Automotive Licensing & Certification

I. Scope of regulation

A) Any facility providing service and repair to passenger cars and light trucks, one ton and under, and those persons employed in these businesses.

B) Specifically, but not limited to, the following categories:

1. Independent, full line repair facilities
2. New car dealer service departments
3. Used car dealer service departments
4. Transmission repair specialist
5. "Quick Lube"/ "Quick Service" facilities
6. Alignment, Suspension, Axle and Frame specialists
7. Machine shops providing automotive services
8. Fuel stations providing service and/or repair
9. Exhaust, Brake and Undercar specialists
10. Electrical service specialists
11. Tire dealers
12. Retailers providing service and/or repair
13. Vocational educators
14. Automotive glass installers
15. Collision Repair Facilities

II. Name of organization - Open at this time "The Board"

From the time of the passage of law, the Task Force, or a Task Force member's appointee, shall serve as the interim "Board," assuming funding is available but not to exceed two (2) years.

III. Administration-an Executive Director, from outside the industry, Executive secretary, office and clerical staff, as required to:

A) Process license applications and renewals

B) Database construction and maintenance

C) Revenue collection and administration

D) Consumer complaint reception, coordination and response

*Primary response to consumer complaint shall be directed to the shop owner named in the complaint with a twenty-one (21) day window for local action or resolution of complaint.

E) Administer peer review process

1. After failure of solution at the local level within 21 days:
 - a. Executive Director has 10 days to select a 3 member peer review board
 - b. Members shall not have a pecuniary interest, and they should be of like experience as the facility/technician in question
 - c. The peer review board members and their notes will have immunity or liability protection.
 - d. There will be one hearing in the appropriate geographic area for the parties to present their case.
 - e. The peer review board will have 10 days to present a report/judgment.

IV. State coverage - six geographic-based service areas

V. Grandfather provisions

- A) Grandfather all facilities and technicians for four (4) years to accommodate program implementation. The grandfather provision applies only if you have registered within the first 6 months after the passage of law.

VI. License fees and terms

- A) Initial fee structure
1. Service facilities: One hundred (\$100.00) each location, per year
 2. Technicians and apprentices: Fifty (\$50.00) each, per year.
- B) The license term shall be three (3) years. Changes, additions or upgrades can be implemented in three (3) year cycles.
- C) New technicians and apprentices into the industry shall have three (3) years to comply.

VII. Facility certification standards

- A) All technicians must possess one (1) ASE, or for areas where ASE is not offered, other board approved competency program certification, that is current
- B) The repair facility must carry adequate Garageman's Liability Insurance.
- C) The repair facility must maintain a Retail Sales Tax Identification Number.
- D) Agree to binding arbitration
- E) The facility shall display the appropriate signs, in the prominent fashion, as to indicate compliance.

VIII. Technician certification standards

- A) The technician must maintain one (1) ASE, or for areas where ASE is not offered, other board approved competency program certification, in good standing.
- B) The technician shall practice his/her licensed trade in a certified facility.

****IX. Funding shall be license revenue driven**

****X. Technical training and compliance support**

****XI. Consumer education and public awareness**

** As interim measures, the industry proposes that the Federal Trade Commission, (FTC) be approached to allow the funds allocated to the State of Kansas from the Sears and Roebuck settlement, to be redirected to provide support in these aspects of our proposed program during the roll out phase of this undertaking. Furthermore, the constituents involved in this industry feel strongly that the financial support of our efforts to self-regulate will net more positive, permanent, solutions to the concerns regarding our industry in Kansas than all of the "Sting Operations" and covert investigations could ever hope to produce.

XII. Enforcement

A) Twenty-one (21) days for local action or resolution

B) Peer review arbitration

1. Consumer settlements to be paid from "Board" funds in a timely fashion.

2. Facility license holder will repay the "Board" the settlement amount plus a fifty percent (50%) penalty as a fine within 30 days of the peer review board's judgment.

3. Failure to repay the "Board" shall result in a suspension of the facility license.

4. Repeat offenders and cases of suspected consumer fraud will be forwarded to the office of the Attorney General for investigation.

TESTIMONY BEFORE THE SENATE
COMMITTEE ON TRANSPORTATION AND TOURISM

By the Kansas Automobile Dealers Association
February 20, 1997

RE: Senate Bill No. 266

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Automobile Dealers Association which represents the franchised new car and truck dealers of Kansas. Thank you for allowing us to appear before you today to provide our views and support for this bill. We will probably concentrate on that portion dealing with repair disclosures. What is not apparent from the disclosure portion of the bill itself is the amount of work that went into it. Before going further we wish to compliment our Attorney General on the Task Force which she assembled and spearheaded for purposes of putting together New Section One of this bill which would be a new addition to our law setting forth basic requirements for disclosure language for those offering vehicle repairs to the motoring public.

Prior to this legislation, KADA had adopted disclosure language of a similar nature as a recommended business practice for those in our industry. We believe such practices will enhance communication and, hopefully, avoid misunderstandings and complaints, but at the outset we still must recognize it very well could raise unpredictable questions in its application as well. We are sure of one thing and that is that we cannot predict outcomes with respect to human conduct and attitudes. However, we do know that most, if not all, of our dealers are currently engaged in some

form of disclosure and communication practice with their repair customers on a daily basis which in most instances is similar to what this bill provides.

One of the reasons our members are already doing the types of disclosures set forth in this bill is because many standard repair authorization forms are set up in this fashion, but more importantly, because the sales and service agreements granting our dealers authority to operate under the various manufacturer's trademarks also require that the dealer meet certain consumer satisfaction indexes established by the manufacturer with respect to all operations of a dealership, whether they be financial obligations or the sale of repair services to consumers. If the consumer satisfaction index for a particular dealer is not met, then the dealer faces termination. Consumer satisfaction indexes or, as we know them, CSI, consist of preselected criteria which are fairly strict. These criteria are constantly monitored through consumer surveys and random studies of each dealer. Virtually all of the manufacturers follow these strict standards and virtually none of them will hesitate to terminate a dealer who falls below such standards.

Regardless, we think you should also know that we already operate in an industry which is over regulated when one considers all of the other regulations and laws we are required to comply with. These include the standard provisions of the Kansas Consumer Protection Act, environmental regulations, employment laws, tax laws, specific disclosure laws, and a host of other laws. (Some of

these are in this bill in terms of modifications being made to them.) While we may question whether it is really necessary to codify the practices dealing with disclosure, we nevertheless recognize there are many who feel there is a necessity for it and, therefore, we simply note its operation with respect to us.

We think there is a risk with the disclosure portion of this bill of perpetuating frivolous or unfortunate claims. We can foresee a hurried service writer forgetting to do something like mark a box or note a time, or failing to think of something the law strictly requires to be noted at a time when he is stressed with people backed up at the door eager to drop their cars off and get to work on, for example, a cold winter morning. The penalty for such a transgression is one of up to \$5,000.

New Section 2 of the bill deals with disclosing damage exceeding 75% of the cash value of a vehicle. We have always supported damage disclosure. There is nothing worse than an unhappy customer who has been sold a damaged vehicle and we feel this will help in that respect.

Before moving on, we also wish to make a few comments about the section of the bill strengthening the penalties on odometer fraud, Section 5 at page 6 of the bill. You will note a civil penalty is increased from \$2,000 to \$10,000 per violation. Keep in mind there are criminal penalties both under state and federal law, plus a federal penalty of \$10,000. We feel this is somewhat excessive, particularly if a clarification amendment I will note in a moment is not made.

With respect to the remaining provisions of the bill, we have endeavored to work toward clear language, including those sections not dealing with repair disclosure, but still believe that there are several areas of the bill which we would like to see clarified or modified. Attached to this testimony is a list of those areas by section, page and line number. I will go through each of those with you and will certainly be available for discussion or questions regarding the items noted or any other parts of this bill.

KADA SUGGESTED AMENDMENTS TO
SENATE BILL 266

New Section 1. Repair Work Disclosures

On page 1, line 17, subsection (a)(2) the terms referring to "final estimate" should be deleted as this term does not appear to be used in the bill.

On page 2, line 5, we would request that the words "or vehicle identification number" be added to that sentence as it refers to items the written repair estimate should include and many of our dealers log vehicles in by VIN number.

On page 2, lines 16 through 18 deal with returning parts to customers. On page 4, line 3, the same subject is covered. We feel these two sections conflict with one another in that the language on page 2 seems to require an election for return of parts, whereas the language on page 4 does not all cases. As such, we suggest the language on page 2 be modified so it reads as follows in terms of the language starting at line 16:

"...(10) Subject to subsection (g)(5), a statement allowing the consumer to indicate whether replaced parts should be saved for inspection or return, until the motor vehicle is delivered to the consumer;...."

On page 3, subsections (f) and (g) deal with vehicle drop offs where there is no face to face contact. In such instances the law implies that the written estimate has been waived, though it preserves contact about it. We think all references between lines 3 and 22 with respect to "implied partial waivers" should only read "implied waiver" since there is no partial waiver involved. You either have a written estimate or you do not have one. (Those changes would actually be on page 3, lines 6 and 17.)

Also, on subsections (f) and (g) on page 3 there is reference to what occurs after a customer drops their vehicle off and diagnostic work is completed. This deals, in part, with the partial waiver we discussed above, but the particular addition that is needed on lines 7 and 17 is one which would refer not only to diagnostic work with respect to estimates, but also estimated charges for repair work. In other words, for example, on line 7, the relevant part would read... "upon completion of diagnostic work necessary to estimate the charge for repair, or the completion of the estimate for the charge for repair, the motor vehicle repair shop..." would promptly notify the consumer. A similar change would be inserted on line 17 so the relevant portion would read "... diagnostic work, or the estimated charge for repair work..."

On page 3, lines 37 and 38, we think the following additions should be made to allow for and clarify situations where the vehicle is torn down with respect to a repair which is then canceled. The current subsection (B) would be followed with a new section (C), as shown below, in pertinent part:

"... (B) the reassembled vehicle would be unsafe; or

(C) the vehicle or its effected component parts is not likely to be restored with reassembly to the same level of functioning as when the shop received the vehicle, or cannot be restored to the same condition as when received without performing the repair canceled, or additional repairs."

Section 5. Odometer Rollbacks.

Page 6, line 38, refers to K.S.A. 50-653. This is a technical amendment which is probably a mistake in the current law. We believe that K.S.A. 50-648 and 50-650 should be substituted for K.S.A. 50-653. These are the actual odometer fraud sections.

Section 7. Effective Date of Act.

We believe the effective date of the act for New Section 1 with respect to vehicle repair disclosures will take some time to implement because of the need for industry education and to revise forms, use existing stocks of forms, and become informed about the law. Considerable time and expense will have to be expended to redesign and reorder forms and reprogram computers in businesses utilizing laser printed forms. As such, we would ask that Section 7 either read as follows, or be drafted to mean the following:

"Sec. 7. New Section 1 shall take effect and be in force from and after January 1, 1998. New Section 2, New Section 3, and Sections 4 through 6 shall take effect and be in force from and after their publication in the statute book."



February 21, 1997

To: The Senate Transportation Committee

From: Marcia McAllister

Re: Senate Bill 266

Dear Chairperson Vidricksen and Members of the Committee:

I am writing to express the concerns of Insurance Auto Auctions with respect to proposed new section 2 of Senate Bill 266.

On page 4 of the bill, lines 15 through 43 add this new section 2. This section, in subsection (4), defines a "salvageable motor vehicle" as a "motor vehicle which has been wrecked, damaged or destroyed to the extent that the total estimated or actual costs of parts and labor to rebuild or reconstruct the motor vehicle to its preaccident condition exceeds 75% of the actual cash value of the vehicle."

Subsection (b) then provides that "no person shall sell, exchange or transfer a motor vehicle without first disclosing in writing, prior to consummating the sale, exchange or transfer, the fact that the motor vehicle was previously a salvageable motor vehicle."

"Salvageable motor vehicle" is a new term and is not synonymous with the more common term "salvage vehicle". The term "salvage vehicle" is used in KSA 8-2401(hh) in the definition of "salvage vehicle pool". I know of no definition for "salvage vehicle" in Kansas statutes.

It is my understanding that, under the proposed section 2, a vehicle owner could have his vehicle damaged to 76% of its actual cash value, have the damage repaired by his insurance company, later trade the vehicle in and, even though a salvage title never was or had to be issued for the vehicle, the purchasing dealer would be required to disclose the previous damage (most likely, unknown to the dealer) when selling the trade-in. Although subsection (c) purports to provide some defense in this situation, the cost of litigation and the difficulty of demonstrating "reasonable effort" dictate that dealers would, in reality, settle many cases in which they had no knowledge of the previous damage.

SENATE TRANSPORTATION & TOURISM
2/21/97
ATTACHMENT 5

To use "salvageable motor vehicle" to impose a disclosure requirement, but to have different definitions for the issuance of salvage ownership documents will quickly lead to some very incongruous and unworkable results. For example, a vehicle could be declared a total loss by an insurer, have a salvage title issued and yet not meet the definition of "salvageable motor vehicle". In such a case, there would be no disclosure requirement under new section 2.

The ownership document of a salvage motor vehicle is typically a salvage title or a salvage certificate. Therefore, we would suggest amending new section 2(a)(4) to read as follows:

- (4) "salvage motor vehicle" means a motor vehicle for which a salvage title, salvage certificate of title, salvage certificate, non-highway certificate of title with a notation that the vehicle has been wrecked or damaged, or a comparable document issued by another state or jurisdiction is the current ownership document.

The term "salvageable motor vehicle" would then be replaced by "salvage motor vehicle" throughout new section 2.

Without such a change, we believe Senate Bill 266 will create significant confusion as disclosure requirements are imposed on vehicles which were never issued salvage ownership documents and vehicles which were issued salvage ownership documents are, in many cases, not subject to disclosure requirements.

Lastly, Congress is expected to consider this year federal legislation which would largely preempt state laws with respect to salvage vehicles. Last year's bill, H.R. 2900, had broad bipartisan support with approximately 177 co-sponsors. Supporters of such federal legislation are enthusiastic about the chances for passage during the current Congress.

The central reason for federal legislation is the abundance of different terms and definitions for "salvage" used throughout the nation and the confusion and opportunity for fraud such inconsistencies create in the marketplace. Unfortunately, Senate Bill 266 will add to this confusion by causing Kansas to itself have two inconsistent meanings for "salvage", one with respect to the issuance of salvage ownership documents and a different meaning with respect to disclosure obligations.

Thank you for your consideration.

Marcia M. Allister 5.2
Vice President

1 tained authorization to exceed the written estimate in accordance with
2 paragraph (1) of subsection (g).

3 (5) Upon request made at the time the repair work is authorized by
4 the consumer, the consumer is entitled to inspect parts removed from
5 the vehicle or, if the shop has no warranty arrangement or exchange parts
6 program with a manufacturer, supplier, or distributor, have the parts re-
7 turned to the consumer.

8 (h) Nothing in this section shall be construed to require a motor ve-
9 hicle repair shop to give a written estimated price if the motor vehicle
10 repair shop does not agree to perform the requested repair.

11 (i) Any violation of this section is a deceptive and unconscionable act
12 or practice under the Kansas consumer protection act.

13 (j) This section shall be a part of and supplemental to the Kansas
14 consumer protection act.

15 New Sec. 2. (a) For purposes of this section:

16 (1) "Actual cash value" means the market value of a motor vehicle as
17 determined from publications commonly used by the automotive, finan-
18 cial or insurance industries to establish the retail value of motor vehicles;

19 (2) "motor vehicle" means a motor vehicle with a model year equal
20 to the then current calendar year or one of the five preceding calendar
21 years and is registered for a gross weight of 16,000 pounds or less;

22 (3) "person" means any individual, firm, corporation, company, part-
23 nership or other entity; and

24 (4) ~~["salvageable" motor vehicle" means a motor vehicle which has
25 been wrecked, damaged or destroyed to the extent that the total esti-
26 mated or actual costs of parts and labor to rebuild or reconstruct the
27 motor vehicle to its preaccident condition exceeds 75% of the actual cash
28 value of the vehicle.]~~

salvage

for which a salvage title, salvage certificate
of title, salvage certificate, non-highway
certificate of title with a notation that
the vehicle has been wrecked or damaged, or
a comparable document issued by another state
or jurisdiction is the current ownership
document

29 (b) No person shall sell, exchange or transfer a motor vehicle without
30 first disclosing in writing, prior to consummating the sale, exchange or
31 transfer, the fact that the motor vehicle was previously a ~~["salvageable"]~~ mo-
32 tor vehicle.

salvage

33 (c) It shall not be a violation of this section if the person can dem-
34 onstrate:

35 (1) The person made a reasonable effort and a reasonable inspection
36 to discover prior damage to the motor vehicle, but did not discover such
37 prior damage; and

38 (2) the person did not know or have reason to know the motor vehicle
39 was previously a ~~["salvageable"]~~ motor vehicle.

salvage

40 (d) Any violation of this section is a deceptive act or practice under
41 the Kansas consumer protection act.

42 (e) This section shall be a part of and supplemental to the Kansas
43 consumer protection act.

5-3

Senate Transportation and Tourism Committee
February 21, 1997
Testimony of Paul Davis

Senate Bill #266

Committee Chairman Senator Ben Vidricksen

Members of the Senate Transportation and Tourism Committee

Guests

I am confident that by this time you are well versed on the N.A.A.G. report and in particular, chapter seven, which suggests the role of the states in improving the manner of transactions between service/repair providers and their customers.

As a member of the task force convened by Attorney General Stovall regarding the N.A.A.G. report, I would first like to clearly express my appreciation to Ms. Stovall and her staff for the opportunities that have been afforded the service/repair industry to work toward a meaningful set of regulations that should assure all Kansans of improvement in many of the transactions and procedures that constitute the automotive trades.

Having chose to serve on the disclosure sub-committee, I participated in discussions that led to a portion of the bill you now have before you. The disclosure sub-committee can take pride in the result of its deliberations. There was, however, another sub-committee on licensing and certification, and unfortunately several issues could not be resolved in the time thus far allotted. The N.A.A.G. report clearly defines in chapter seven the several elements that constitute the "Role of States". Disclosure alone does not satisfy chapter seven.

The only thing wrong with the portion of this bill that responds to the N.A.A.G. task force report is that it fails to complete the circle proscribed by chapter seven, and until a bill comes before the legislature that completes the work put before the state by the N.A.A.G. report, which Ms. Stovall signed onto, it will still be wrong.

I would therefore request that the referenced section of this bill be "put on hold" until the issues of licensing and certification can be agreeably resolved. These are complex issues, but they must be suitably addressed before we move forward with legislation and the regulations that legislation will surely require.

I hope you will agree with myself and others on the task force, that work started but not completed is less beneficial than work never started.

Respectfully

Paul E. Davis
President, A-Plus Parts & Salvage, Inc.

SENATE TRANSPORTATION & TOURISM
2/21/97
ATTACHMENT 6

6-1

**VOCATIONAL EDUCATORS REPORT
FOR
ATTORNEY GENERAL CARLA STOVALL
AUTOMOTIVE REPAIR TASK FORCE ON
CERTIFICATION AND LICENSING**

***TELEPHONE INTERVIEWS WITH
AUTOMOTIVE EDUCATORS
REPORT OF FINDINGS***



**PREPARED BY
ROGER BARNES
VOCATIONAL EDUCATION REPRESENTATIVE**

ACKNOWLEDGMENT

I wish to thank the instructors who took time to provide input for this report. Several returned my calls that were busy or not available when I first called. I appreciate the cordial and cooperative response given me.

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I

PURPOSE AND METHODOLOGY

PURPOSE

The purpose of this report is to ascertain the views and position of Vocational/Technical educators concerning certification and licensing of people who repair automobiles in dealerships or independent automotive business.

METHODOLOGY

Information in this report was obtained by telephone interviews with automotive instructors in technical/vocational programs throughout Kansas.

The opinions and positions listed within were written verbatim and read back to the interviewees for verification of accuracy. If their meaning was not clear they were asked to restate their response.

The names of the instructors and the schools in which they teach are listed in the Appendix.

II QUALIFICATION OF INTERVIEWEE

The preparation for vocational/technical automotive instructors include a minimum of two years experience working in the trade, eighteen credit hours of college courses on teaching practices within the first three years of teaching, plus both a written and performance test over the automobile. Many instructors have a college degree in education.

The instructors interviewed represent a majority of the technical automotive programs in Kansas and are considered a part of the automotive repair industry since they prepare people for job entry in the automotive repair trade.

Instructors have varying backgrounds but their perceptions and view points are based on contact with auto repair businesses as a part time or previous employee, business owner, representatives on trade advisory councils, on-the-job training programs, and placement of students in businesses.

III RESPONSES

The following are the responses verbatim given by the instructors, concerning certification and licensing for Automotive Technicians and Businesses in the State of Kansas.

- Yes, I am in favor of certification and licensing if there is valid criteria and testing done.
- Yes, I would be in favor of licensing and certification if it would improve employees pay. I am concerned that low pay is not attracting and keeping good people in this business. Advancing technology will eliminate the poorer techs in the future. ASE and others need to do more to promote this industry.
- Yes, certification and licensing would add creditability and professionalize this industry. It will mean an increase in price to the consumer but we need to raise the level of people entering the automotive repair industry.
- Everyone working on automobiles should be certified and licensed and the law should have teeth in it. Poor technicians cause injury to people and unnecessary expense. I would be willing to testify for this.
- Certification and licensing is long overdue. I wish it was here years ago because I would have more prestige and money than I now have. I know this will not guarantee everyone will be a good technician but it will improve some of the problems in our industry. I believe ASE testing would be good, but I would not be against other good tests. I would be willing to testify or work in any way for this.

III RESPONSES

- Yes, I am in favor of certification and licensing of technicians as long as they do not use ASE test for qualifying. I have seen too many people who pass it (ASE) and can not fix cars and some people who can fix cars but cannot pass the test. They should have a test similar to ones for Automotive Instructors which include both written and practical hand-on. Certification and licensing would assure repair people are competent and will do the repairs correctly.
- I have some reservations to certification and licensing. I would be in favor if it was not too expensive to the customer and it would have to be tied to ASE testing.
- As an automotive educator and owner of a eleven bay independent repair shop, I think this industry needs to be regulated somehow. It would be at least a good indicator for the public, like a Good House Keeping seal of approval. This would need to recognize ASE testing for independent shops and also dealership programs for certification. Some ASE tests are weak and the states need to better. I question how this would be administered and its cost.
- Yes, we need guidelines to measure all auto repair shops in this state. They should all meet some kind of minimum standards. This would help to improve the public perception of the auto repair tech.
- Not in favor of licensing. It would not guarantee correct work or competence. This would add cost to the technician or shop owner. Shop owners should have the right to determine if they want garage man's insurance.

III RESPONSES

- Yes, certification and licensing would add validity to the repair industry by improving quality of work and safety on the cars they repair. There should be uniform standards for the entire industry. This would be good for my students to help clarify expectations and to model after. My concern is it would become a bureaucratic and controlling.
- We are completely for certification and licensing. The standards be written or determined by people who work win the industry for assurance of quality. This would get rid of moonlighters and poorly prepared technicians who do unsatisfactory work and give the industry a bad name. We understand why customers are afraid to take their vehicles into a shop they do not know. We feel they would get more for their money if shops were licenced and this would improve the perception of the industry. The downside is that it will cost the customer more because of the equipment and education needed.
- Yes, something needs to be done to make customers feel better about going to a shop. We are a NATEF certificated shop and endorse ASE testing. We know this is more effort for the technicians but it gives them creditability for what they do and makes them proud doing it.
- We are in favor of some thing to show repair businesses are trying to be professional and be accountable to the public. Certification could be done by ASE, but others should be considered.
- I would be all for a good certification and licensing program. It must be far better than the dealership test for car sales. It must be tied to something that is recognized by the industry such as ASE test and last

III RESPONSES

around three years. This might improve ASE testing and add creditability for the tests. Technicians who are not “retired on the job” and want to see their trade improve would benefit from this. Money needs to be spent to educate both customers and businesses as to how this would work and the benefit of this.

- I think licensing would be good for the industry. There needs to be something done to improve the trust of businesses by the customers. If this is done, be sure everyone is being responsible alike. The small shops and dealerships should not be under different regulations. Licensing would give the customer something to look for and validate the repair facility.
- I would be in favor of a volunteer program but do not believe the government is able to do an adequate job. This would not be a guarantee. Self-regulation is effected by customers not going back to poor businesses and passing the word to other people. Customers can talk to family and friends, contact the Better Business Bureau or look for ASE certified technicians to improve their chances of quality work.
- Certification and licensing would be a great thing. Small businesses are more in touch with customers. I would be in favor of a board of peer review and not a judge who does not understand what is going on. The testing should be weighed on a balance of written and performance to be valid. This would help weed-out back yard repair jobs and people who are giving this business a bad name. We need to not only work on technician education but also customer education. They need to have some idea of the technicality of their vehicles but know what they need to do to take care of them.

III RESPONSES

- I feel that the auto repair industry needs to have licensed technicians. However, currently it is almost too easy for anyone who wants to call themselves a “mechanic”. Even though ASE is and has tried to bring a level of respect to the industry, too many unqualified and non-trained or poorly trained persons have entered into the field. It is my opinion that if Auto Repair Technicians are going to be required to be licensed then there needs to be an established required training regiment that has to be followed through out the career of a Technician. By instituting this and sticking to it, by mandating that those who are truly committed to the repair field, can and will continue to be able to supply competent and reliable and honest repair work for the public.

IV SUMMARY AND CONCLUSIONS

SUMMARY

Thirty instructors from eighteen automotive programs in schools throughout Kansas provided input for this report.

The following reflects their position concerning licensing and certification plus needs they think should be met to improve the automotive repair trade.

The reasons for and against licensing and the number of respondents for each are:

- **Seven** respondents would improve the public's opinion of the automotive repair industry. "Creditability - Validity - Trust - Accountability".
- **Six** respondents favor the ASE test as criteria for certification and licensing.
- **Three** respondents favor testing that includes "hands-on" as well as written test.
- **Two** respondents believed testing and licensing would promote professionalism and pride in work among technicians.
- **Two** respondents would like to see testing and licensing improve employee pay.
- **Three** respondents believe licensing and testing would encourage poor technicians (or ones retired on the job) to improve or leave the trade, who cause unsafe vehicles and add cost to the customers and businesses.

IV SUMMARY AND CONCLUSIONS

- **Two** respondents believe standards should be set for all people entering or now working in the automotive trade.
- **One** respondent believes this would clarify industry's needs and expectations for people looking at this trade for a vocation and for technical schools to use as a guide in developing curriculum.
- **Three** were not in favor of certification or licensing.
- **Three** believed it would be an added cost to the customer.
- **Two** did not want added bureaucracy.
- **Two** did not believe licensing would guarantee good work for the customer.
- **One** believed the government should not force businesses to carry liability insurance to cover customer's vehicles.
- **One** person was undecided and considered neutral on the issue.

Additional input was voiced which did not reflect on certification and licensing but indicates concern for:

1. Need to establish more continuing education for technicians working in the industry.
2. Need to raise the level of people entering the repair industry.

IV

SUMMARY AND CONCLUSIONS

3. More education for customers about their automobiles and the repair industry.
4. Promote the automotive repair industry and recruit good prospects to become technicians.

CONCLUSIONS

1. Automotive instructors who prepare technicians for the automotive repair trade were overwhelmingly in favor of some type of certification and licensing.
2. Their primary reason was to improve how people perceive technicians in the trade. They want to be better able to attract people who are capable of being successful thus having better satisfied customers, more profitable businesses, and prospects of earning a good wage for technicians.
3. The primary concerns are; methods for achieving this, cost to the customer, and fairness to all involved.

V PROPOSALS FOR STUDY

1. Programs designed to utilize technical schools and the automotive repair business more effectively to prepare future technicians.
2. Resources to promote technical training programs for business and technicians at an affordable price.
3. Sources of and promotion for consumer education programs (vehicle selection, care, and maintenance.)

INTERVIEWEES AND SCHOOL LOCATIONS

1. Mr. Steve McGee
Salina Area Vocational School
Salina, Kansas
2. Mr. Calvin Hodges
Manhattan Area Technical School
Manhattan, Kansas
3. Mr. Charles Ebmeier
Hutchison Community College
Area Vocational Technical School
Hutchison, Kansas
4. Mr. Jewell Hartell
S.E. Kansas Area Vocational
Technical School
Coffeyville, Kansas
5. Mr. Warren Milks
Labette County High School
Altamore, Kansas
6. Mr. Bill Shipman
Flint Hills Technical College
Emporia, Kansas
7. Dr. Kenneth Gordon
Dr. Roger Adams
Kansas State University
Pittsburg, Kansas
8. Mr. Tom Purvis
Mr. Jim Kennedy
Mr. Gary Ginther
Mr. Rick Jorgenson
Northwest Kansas Technical School
Goodland, Kansas
9. Mr. Stan Sanko
Dodge City Community College/
Area Technical School
Dodge City, Kansas
10. Mr. Charles Holler
Mr. George McNeill
Liberal Area Vocational School
Liberal, Kansas
11. Mr. Kenneth Boyd
Mr. John Hattok
Kansas City Area Vocational School
Kansas City, Kansas
12. Mr. Terry Tedman
Mr. Ricky Young
Mr. George Hull
Wichita Area Technical College
Wichita, Kansas
13. Mr. Bob Gibbons
Mr. Dennis Stewart
North Central Kansas Area
Vocational Technical School
Beloit, Kansas
14. Mr. Charles Schmidt
Mr. Don Christer
Northeast Kansas Area Vocational
School
Atchison, Kansas
15. Mr. Stan Abrahamson
Longview Community College
Kansas City, Kansas

**INTERVIEWEES AND
SCHOOL LOCATIONS**

16. Mr. Steve Carr
Mr. Richard Fort
Mr. Roger Stone
Johnson County Community College/
Area Vocational School
Overland Park, Kansas

17. Mr. John Klick
Crawley County Community College
Area Vocational Technical School
Arkansas City, Kansas

18. Mr. Larry Schall
Mr. Jack McCall
Mr. Jim McParland
Mr. Jim Armstrong
Kaw Area Technical School
Topeka, Kansas