

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:35 p.m. on March 23, 1998 in Room 526-S of the Capitol.

All members were present except: Representative Clay Aurand

Committee staff present: Hank Avila, Legislative Research Department
Reed Holwegner, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
J. Patterson, Committee Secretary

Conferees appearing before the committee: Leslie Kaufman, Assistant Director Public Affairs Division
Kansas Farm Bureau
Don McNeely, Kansas Automobile Dealers Association
Executive Vice President
John Federico, Pete McGill and Associates

Others attending: See attached list

HB 3014 - Transportation of hazardous materials; federal exemptions.

Leslie Kaufman opened the hearing on **HB 3014**. She testified on behalf of Kansas Farm Bureau. The bill provides that Kansas, rather than the federal government, will make decisions on exemption vehicles from federal "hazmat" (hazardous materials) transportation and hauling requirements. (Attachment 1) Tom Whitaker, Kansas Motorcarriers Association, stated that under current law farmers are not subject to hazardous regulations. Kansas Motorcarriers has no problem with the bill. Representative Pauls noted that there is no date certain on the regulations. Bruce Kinzie suggested putting it in line 15 and make the date certain on the effective date of the bill. Representative Powers questioned Mr. Whitaker what "non-specification bulk packaging" is. They are the non-spec tanks that don't meet the requirements of the federal regulations.

There were no opponents to the bill and the hearing was closed.

SB 593 - Licensure of vehicle dealers and manufacturers

Don McNeely, Kansas Automobile Dealers Association, testified as a proponent for **SB 593**. With the bill being amended is a compromise agreement between the franchised new vehicle dealers of Kansas and the domestic and import automobile manufacturers. (Attachment 2) Revisor Bruce Kinzie explained the technical amendment to Section 4. He suggested a new sub section stating "The provision of this section shall be a part of and supplemental to the vehicle dealers and manufacturers licensing act. Also the sections 4 through 6 need to be renumbered 3 through 5.

John Federico, testified on behalf of the American Automobile Manufacturers Association. They do support the amendments to the bill, but they do not support the bill itself. They don't want to leave the impression that the manufacturers are corporate villains. Raney Crawford, Ford Motor Company answered questions regarding locations of dealerships and their problems.

There were no opponents to the bill and the hearing was closed.

THE FOLLOWING BILLS WERE WORKED BY THE COMMITTEE.

HB 3014 - Transportation of hazardous materials; federal exemptions

Representative Shore asked Mr. Kinzie if the bill needed amended.

Representative Shore made a motion to amend **HB 3014** by inserting "on effective date of this act", Representative Pauls seconded.

Representative asked Mr. Kinzie where the new language would be inserted. He explained down in line 15 after transportation.

The motion was carried.

Representative Shore made a motion to pass the bill out favorably as amended, Representative Howell seconded and the motion carried.

HB 593 - Licensure of vehicle dealers and manufacturers.

Revisor Bruce Kinzie suggested some technical amendments to the bill.

Representative Dillon made a motion to add the technical amendments to the bill, Representative Shore seconded and the motion carried.

Representative Dillon made a motion to pass the bill out favorably as amended, Representative Shore seconded and the motion carried.

HB 2993 - Repeal of obsolete statutes concerning KCC regulation of railroads and motorcarriers.

Representative Mckinney made a motion to pass the bill out favorably, Representative Correll seconded and the motion carried.

The meeting was adjourned at 2:30 p.m

The next meeting is scheduled for March 24, 1998.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON TRANSPORTATION

**RE: HB 3014 - Agricultural Exemption From Intrastate
Hauling of Hazardous Materials**

**March 23, 1998
Topeka, Kansas**

**Prepared By:
Leslie Kaufman, Assistant Director
Public Affairs Division
Kansas Farm Bureau**

Mr. Chairman and members of the Committee:

Thank you for this opportunity to appear before you today in support of HB 3014, which provides that Kansas, rather than the federal government, will make decisions on exemption of vehicles from federal "hazmat" (hazardous materials) transportation and hauling requirements.

I am Leslie Kaufman and I serve Kansas Farm Bureau as the Assistant Director of the Public Affairs. Our members want to have decisions made as close to home as possible. HB 3014 is an example of this desire.

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Attachment 1

By passage of this bill, you take advantage of an opportunity given to states to exempt certain intrastate shipments of hazardous materials from USDOT (United States Department of Transportation) regulations.

We have discussed this proposal with the Kansas Motor Carriers Association. KMCA has no problem with this bill. We appreciate their understanding.

Mr. Chairman and members of the Committee, we want to express our appreciation to others, as well. First, to Majority Leader Jennison for bringing this matter to your attention. Secondly, to Representative Melvin Neufeld for presenting a bill to the Appropriations Committee for referral to your Committee. Finally, our thanks to you for moving expeditiously on this measure in order to assure state legislative action prior to the October 1, 1998 deadline set forth by USDOT. Those states that do nothing prior to October 1 are telling their farmers and ranchers to deal directly with the federal government on yet another federal regulation.

We will appreciate your favorable Committee action on this bill. I would be pleased to try respond to questions, if there are any. Thank you.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable Gary Hayzlett, Chairman
and Members of the House Transportation Committee

FROM: Don L. McNeely, KADA Executive Vice President

RE: Senate Bill 593 as Amended - Revisions to Motor Vehicle Dealers and
Manufacturers Licensing Act.

DATE: March 23, 1998

Good Afternoon Chairman Hayzlett and Members of the House Transportation Committee. My name is Don McNeely and I serve as the Executive Vice President of the Kansas Automobile Dealers Association (KADA) representing the franchised new car and truck dealers in Kansas. With me today is Mr. Pat Barnes, General Counsel for KADA and Mr. Whitney Damron, Legislative Counsel for the Association. I appear before you this afternoon in support of SB 593 which addresses proposed amendments to the Kansas Dealers and Manufacturers Licensing Act.

Kansas new vehicle dealers operate under sales and service agreements which are defined to be franchise agreements under Kansas law. These agreements and the policies instituted under them are offered on a take it or leave it basis and often result in onerous obligations unilaterally placed upon new vehicle dealers resulting in yet further inequities, inefficient operations, increased costs, and in some instances, the loss of local business altogether. These agreements are referred to as "adhesion contracts" and are periodically amended unilaterally by the manufacturers. It is the Kansas Dealers and Manufacturers Licensing Act which provides some protection to new car and truck dealers against overreaching by the manufacturers. It is due to certain business practices of the manufacturers, both in Kansas and throughout the country, that we are here before you today asking for revisions in our dealers and manufacturers licensing act.

Many members of the legislature, and the House Transportation Committee will remember that KADA proposed changes to our franchise act during the 1996 session. That particular legislation was introduced in order to address the issue of dealership terminations and the non-renewal of the sales and service agreements by manufacturers. KADA met with the manufacturers and their representatives and crafted a bill which ultimately was supported by both sides of this issue.

I am pleased to inform the Committee that Senate Bill 593 as amended, is also a compromise agreement between the franchised new vehicle dealers of Kansas and the domestic and import automobile manufacturers. The legislation is a work product of seven weeks of extensive and

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comprehensive meetings between the Kansas new vehicle dealers and the manufacturers, which were held for the purpose of defining the parties' similarities and differences and made it possible for an agreeable negotiated compromise to be reached.

Senate Bill 593 as amended would require:

1. Manufacturers to offer their franchise dealers the opportunity to sell all models manufactured for that franchise without the imposition of requiring the dealer to pay unreasonable fees, purchasing unreasonable advertising displays or requiring the dealer to remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles.

The allocation issue is the principal reason we are before you. In our industry, this is also called the "Navigator Issue" in reference to Lincoln-Mercury who originally refused to allow their dealers to sell their new luxury sport utility vehicle if they did not have at least 70 luxury vehicle registrations within their area of responsibility. For Kansas that meant that only dealers located within four geographical areas could stock and sell this new vehicle. Furthermore, Lincoln-Mercury also informed their dealers that this restriction would apply to any future new vehicles.

This program was subsequently amended last fall to require a dealer to stock at least two vehicles offered for sale by Lincoln-Mercury, one for sale and another for demo purposes for a period of time ranging from four to six months. While this may be a reasonable requirement or prudent business practice in larger markets in the country, the same cannot be said for many of our dealers in Kansas, particularly in rural areas. Is it reasonable to require a Ford-Lincoln-Mercury dealer in a small town in Kansas, to stock two Lincoln Town Cars, two Lincoln Mark VIII's, two Lincoln Continentals and two Lincoln Navigators, as well as the rest of Lincoln-Mercury models and tie up \$500,000+ in inventory in order to be able to sell Lincoln-Mercury products?

To illustrate our point by example, we have a dealer located in a southwest Kansas market who was precluded from selling the Navigator due to insufficient luxury car registrations in his area of responsibility and then had no less than eight Navigators sold into his market, which were purchased elsewhere due the initial program requirement of Lincoln-Mercury.

2. Allow a franchised new vehicle dealer to sell or transfer their dealership to designated qualified family members or to a qualified manager, a trust arrangement or similarly situated parties, exempt from the manufacturers' "first right of refusal clauses."

KADA members want the ability to allow their children and other close family members to succeed them in business for estate planning purposes and continuation of service to their respective communities. Manufacturers have used their "First Right of Refusal" clauses contained in dealer contracts to prohibit such transfers of ownership. This exercise can have several consequences, including:

- Effectively closing the dealership upon retirement, death or incapacity of a dealer.
- Prohibit qualified family members from continuing in the family business.

- Discourage key management employees from taking an equity interest in a business and continuing in service with a dealership with an intent to own and operate the dealership at a future date. This is an important incentive to hiring and retaining qualified personnel in smaller markets when larger markets can afford higher salaries and benefits.

3. Prohibit a manufacturer from discriminating unreasonably between dealers of the same franchise in the sale of vehicles or the availability of incentive programs or sales promotion plans or other similar programs, unless justified by vehicle obsolescence.

4. Prohibit a manufacturer from requiring a dealer to submit or otherwise transfer confidential customer information to the manufacturer which is not materially related to the business obligations between the consumer, dealer and the manufacturer, without the consent of the consumer.

Under certain programs required by manufacturers, dealers are required to submit third-party financial information to the manufacturer without any kind of release or notice to the vehicle purchaser. Under a particular program, if a vehicle purchaser finances their car through a local bank and not a manufacturer's finance company, such as GMAC, the manufacturer requires the dealer to submit the terms of the loan, including interest rate, length and amount financed. KADA believes this is a breach of our customer's trust and should not be submitted to a manufacturer without the approval of the purchaser.

5. Prohibit a manufacturer from requiring a dealer to accept delivery of any new motor vehicle, part or accessory, equipment or any other commodity not necessary for the repair or service of a new motor vehicle which was not ordered by the dealer.

Under current law, dealers can be required to purchase motor vehicles, specialty tools and diagnostic equipment and similar items which they may never be in a position to sell or use, let alone make cost-effective for purchase due to a likely lack of use or demand in their area of responsibility.

6. Refrain a manufacturer from prohibiting a dealer from materially changing the capital structure of a dealership, as long as the dealer maintains reasonable capital standards as determined by the manufacturer and in accordance with uniformly applied criteria.

On behalf of the Kansas Automobile Dealers Association, I would like to thank the Members of the Committee for allowing me to appear this afternoon, and I would stand for any questions the Committee may have.