

Approved: March 18, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 3:10 p.m. on March 10, 1998 in Room 527S of the Capitol.

All members were present except: Senator Oleen (excused)
Senator Petty (excused)
Senator Feleciano (excused)
Senator Gilstrap (excused)

Committee staff present: Mike Heim, Legislative Research Department
Mary Blair, Committee Secretary

Conferees appearing before the committee: Nancy Lindberg, AG's Office
Don McNeely, Kansas Automobile Dealer's Association (KADA)
Pat Barnes, General Counsel, KADA
John Federico, American Automobile Manufacturing Association

Others attending: see attached list

SB 598 - An act concerning crime and punishment; relating to children; endangering a child and abuse of a child

Conferee Nancy Lindberg briefly reviewed **SB 598** and discussed language changes in the bill as discussed at the 2/20/98 meeting.

SB 615 - An act concerning the Kansas code for care of children

Mike Heim discussed the essence of **SB 615** addressing language changes reviewed by Conferee Lindberg. Following discussion regarding mandatory reporting of child abuse by private providers, there was general consensus to consult with Melissa Ness, Kansas Children's Service League, who will be a conferee at the 3/11/98 meeting. There was discussion regarding language changes that address a time frame for reports to be made by mandatory reporters in regard to a child who has been a victim of abuse whereupon Senator Goodwin made a motion to amend SB 615 as proposed by Judge Graber at the 2/20/98 meeting. Senator Bond seconded. Carried.

SB 671 - Civil commitment of sexually violent predators

The Chair discussed concerns he had with several amendments to **SB 671**, made proposals to address these concerns, and stated that the bill would be considered following these changes.

Since it was necessary for the Chair to testify at another meeting at 3:45 p.m., Senator Schraad assumed position of the Vice-Chair in his absence.

SB 593 - An act concerning the vehicle dealers and manufacturers licensing act

Following the Chair's brief review of the progress of **SB 593**, Conferee McNeely, testifying as a proponent of the bill, presented it's history and gave an overview of proposed changes, changes which "provide some protection to new car and truck dealers against overreaching by manufacturers". (attachment 1)

Conferee Barnes, testifying in favor of **SB 593**, detailed the balloon amendments to the bill explaining the purpose of each change. (attachment 2)

Conferee Federico stated that he endorsed changes in **SB 593** but opposed passage of the bill. (no attachment)

Conferee McNeely discussed a proposed amendment to **SB 593** by the Recreational Vehicle Dealer Association which states that the allocation provision in the bill should not apply to the RV industry. (attachment 3)

The Chair returned at 3:55 p.m. Following discussion, Senator Harrington made a motion that SB 593 be passed as amended, Senator Goodwin seconded. Carried.

The meeting adjourned at 4:02 p.m. The next scheduled meeting is March 11, 1998.

2nd try

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-10-98 PM

NAME	REPRESENTING
Rick Scheibe	KDOR
Betty Wheeler	KDOR
Mary Hillion	SRS-CFS
John Federico	AAMA
James Clark	KCOAA
Garreth Lamb Brown	KS Group Consulting
Heather Randall	Whitney Dawson, PA
Whitney Dawson	KS Auto Dealers Assn.
Drew May	KS Auto Dealers Assn.
PAT BARNES	K. Auto Dealers Assn.



552nd
3-10-98
att 1

KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable Tim Emert, Chairman
and Members of the Senate Committee on Judiciary

FROM: Don L. McNeely
Executive Vice President
Kansas Automobile Dealers Association

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

DATE: March 10, 1998

Good morning Chairman Emert and Members of the Senate Committee on Judiciary. 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 morning 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.

KADA is following the lead set most recently by Texas, North Carolina and Maine in addressing and correcting these inequities by amending their dealer franchise acts. Most of the proposed changes in current law before you today have been drafted in an attempt to address concerns our members have brought to our attention, primarily through firsthand experiences. In addition, other sections of the bill are proposed to address issues we have seen raised in other states which can or will eventually affect our dealers.

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Senate Judiciary
3-10-98 PM
att 1

Many members of the legislature, and the Senate Committee on Judiciary 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. When KADA began reviewing additional changes to our franchise act which have arisen since that time, we again were optimistic that we could reach another "negotiated settlement" which would benefit the new car and truck dealers in Kansas as well as the manufacturers. To that end, we forwarded our proposed changes to the manufacturers seven weeks ago and have maintained a regular exchange of ideas and comments with them since that time. We have held four separate face-to-face meetings, three in Topeka and one in New Orleans at the National Automobile Dealers Association Annual Convention, and one conference call with representatives from the manufacturers in efforts to reach agreement on this legislation as well as numerous one-on-one telephone calls. All meetings were extensive and comprehensive exchanges of ideas which more clearly defined our similarities and differences.

It is unfortunate that we could not have had a more productive dialogue early on in regard to this issue as it was only two weeks ago that we saw a concerted effort to reach agreement on these issues which we believe are critical to the viability of our industry in Kansas. When we first brought this issue to the manufacturers, after their cursory review, we were informed that there was no reason to discuss this legislation any further because it was patently unacceptable in any form and could not be corrected through amendment or alteration. Subsequent meetings resulted in extensive discussions regarding language, verbiage, word usage and terminology. I am pleased to inform the members of the Committee that we have finally reached an agreement with the manufacturers regarding our legislative proposal. I recite this history only to point out to the Committee that we have worked extensively in efforts to address the concerns expressed by the manufacturers, in order to reach an agreeable negotiated compromise.

An illustration of this give-and-take effort is evidenced by our proposed changes to SB 593 as originally introduced before this Committee. With our testimony we have distributed a summary of statutory changes inclusive of proposed compromise language and a ballooned revision of SB 593 which incorporates the agreed changes to our original draft which is a result of our negotiations with the manufacturers. I would now like to highlight the changes we are proposing to our franchise act and would ask that we work from the summary of changes and the ballooned version rather than SB 593 as originally introduced.

Specifically:

1. Allocation.

Manufacturers would be required to offer their dealers the opportunity to sell all models manufactured for that line-make.

The allocation issue is the principal reason we are before you today and is what put this train on the track. 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 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. Right of First Refusal in Sale of Dealership.

Provisions are contained in our proposal which would allow a dealer to sell or transfer their dealership to designated family members or to a qualified manager, a trust arrangement or similarly situated parties.

KADA members want the right 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 discrimination between same-line dealers with respect to programs and purchases.

All dealers should be on a level playing field with regards to purchasing vehicles from their respective manufacturers and in the participation of incentive and sales programs offered by manufacturers unless justified by vehicle obsolescence or discontinuation of a product line.

4. Confidentiality.

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 relationship between the consumer, dealer and the manufacturer.

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 this program, if a vehicle purchaser finances their car through a 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 or pay anything of value for anything they have not voluntarily agreed to order or contracted to accept.

Under current law, dealers can be required to purchase 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 from prohibiting a dealer from materially changing the capital structure of a dealership.

This section would allow a dealer to change the capital structure of a dealership or the means by which the dealer finances the business operation as long as the dealer maintains reasonable capital standards as determined by the manufacturer and in accordance with uniformly applied criteria.

At this time, I would like to introduce our General Counsel, Mr. Pat Barnes, who will walk through the statutory changes to our Dealers and Manufacturers Licensing Act which I have just highlighted.

March 9, 1998

NONCOMPREHENSIVE SUMMARY OF STATUTORY
CHANGES INCLUSIVE OF PROPOSED COMPROMISE LANGUAGE

STATUTORY REFERENCE	EXPLANATION OF CHANGE
8-2410(a)(13)	-- Compromise language streamlines existing subsection and prohibits requiring a dealer to buy goods or place products with the dealer which weren't ordered.
8-2410(b)	Adds new sections stabilizing dealer-manufacturer relations: (1) Requires the dealer be allowed the opportunity to obtain and sell all products the manufacturer makes for sale, unless it is unreasonable. -- The manufacturer can't create a new franchise agreement just to avoid giving the dealer the products it was agreed could be sold. -- Dealer can't be required to pay a fee to obtain product it was agreed the dealer could sell, or to continue to sell it, and can't require the purchase of items not needed to sell the goods. -- The manufacturer can't require the dealer to make unreasonable modifications to a dealer's facilities before receiving product. (2) A dealer can't be required to change its capital structure if it meets manufacturer requirements uniformly applied to all dealers of that nature. (3) The manufacturer can't unreasonably treat one dealer more favorably than another in vehicle sales or available programs. (4) A dealer can't be required to forward customer information without the customer's consent, unless needed to meet customer, dealer and manufacturer obligations to one another, or the law.
8-2416	Replaces existing section with new approach to same subject matter, i.e., the transfer and planning for dealer business succession, and approval of it. (1) Continues a requirement of dealer notice to the manufacturer and resolution mechanism on whether sale or transfer of the business should occur. (2) Requires "good cause" to deny sale or transfer. (3) Sets forth time frame the manufacturer is to meet if it seeks to deny approval of the dealer's sale or transfer of its business. (4) Among other things, considers whether manufacturer requirements are met for the franchise, whether the proposed dealer can operate it and impact to the dealer investment without transaction approval. (5) Now governs when a manufacturer may use a right of first refusal to avoid a transaction requiring: (a) notification to the dealer; (b) equal terms to transaction proposed; (c) no use to avoid transfer to family members or certain management; (d) compensation for proposed buyer's lost expenses. (6) Provides approval and objection procedure for dealer estate planning as well as criteria to be met for continuation of a successor dealer. (7) Prohibits a manufacturer from using its right of first refusal as a means to deter the sale or affect the price of a dealer's business.
Other New Sections	-- Makes it clear that all dealers, including manufacturers, by licensure agree to be bound by the act and not seek to avoid it. -- Makes this matter effective with license renewal.

5 JTB
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att #2

*Successor
refuse*

*Senate Judiciary
3-10-98 PM
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March 9, 1998

COMPARATIVE HIGHLIGHTS OF PROPOSED FINAL VERSION OF SB 593 WITH CURRENT LAW

STATUTORY REFERENCE	CURRENT LAW	PROPOSED LAW
8-2410(a)(13)	<ul style="list-style-type: none"> -- Can't <u>coerce or intimidate</u> a dealer to accept vehicles, parts, accessories or other goods. -- Unfairly cancel a dealer arrangement. -- Force one to enter a franchise agreement or do something unlawful. 	<ul style="list-style-type: none"> -- Can't require the dealer to accept delivery of such items not necessary to do anything but service vehicles actually ordered. -- Unchanged. -- Unchanged.
8-2410(a)(15)	<ul style="list-style-type: none"> -- Fail to provide reasonable supply of product. 	<ul style="list-style-type: none"> -- Unchanged.
New 8-2410(b)	<ul style="list-style-type: none"> -- None. 	<ul style="list-style-type: none"> -- Prohibits failing to allow dealer to sell all product manufacturer offers for sale or placing certain impediments to the right to do so, such as requiring dealer to enter a new agreement to get product already agreed. -- Prohibits changes in dealer capital structure if the manufacturer's standards under uniformly applied criteria are met. -- Prohibits unreasonable discrimination by manufacturer among dealers in vehicle sales and availability of programs. -- Prohibits making the dealer provide customer information to the manufacturer over the objection of the customer, unless needed to meet legal or contractual requirements of the noted parties
8-2416 Replacement on Sale/Transfer	<ul style="list-style-type: none"> -- If sale/transfer is unapproved or manufacturer refusal, then dealer elects hearing within 30 days. -- Burden of proof on reasonableness of refusal to approve on manufacturer. -- Director of Vehicles has 90 days to decide the issue. -- Manufacturer cannot arbitrarily/unreasonably withhold approval of sale/transfer of dealership. -- Material factors to consider specified, but not limited. 	<ul style="list-style-type: none"> -- Restates existing law in different format with greater clarity. -- Extends time for manufacturer refusal to 60 days and absent response by manufacturer automatically approves a sale/transfer, thus avoiding the need for a complaint/hearing with the Director of Vehicles. -- Extends from 30 to 60 days the period in which dealer may request hearing following refusal by manufacturer to approve sale/transfer. -- Removes time constraints on Director for issuing a decision. -- Adopts a "good cause" standard before may turn down sale/transfer. -- Nonexclusive material factors now include the effect on dealer investment denial of approval will have. -- Gives manufacturer right of purchase from dealer on same terms and conditions as sale/transfer, except in family/management transaction. -- Manufacturer required to repay buyer's expenses due to sale avoided by exercise of manufacturer's right of first refusal on the deal. -- Provides new successor provisions to assist with greater estate planning stability and business continuity, and provides greater guidance on the denial of the right of a successor to take over the business.
New Section	<ul style="list-style-type: none"> -- None. 	<ul style="list-style-type: none"> -- Deems licensees to have included the requirements of the Dealers and Manufacturers Licensing Act, by implication, in their agreements, prohibits provisions seeking to avoid the law.

2-2

**SUPPLEMENTAL NOTE TO AMENDMENTS
PROPOSED TO SB593**

The Secretary of Revenue asked that in instances referring to administrative hearings by the director of vehicles that a follow up provision be inserted in the bill making it clear that the director's designee may also hear cases. The language typically would be:

"the director, or its designee,"

While reference to specific lines wasn't mentioned, it would appear the reference would be to the director's powers in proposed new section 3, page 8 of the balloon bill, in subparagraphs (c), last line, and (d), third line.

K.S.A. 77-514 (which is part of the Administrative Procedures Act) presently implies such provisions, but it appears the agency wishes to make it perfectly clear in the context of this bill.

Kansas Automobile Dealers Association

March 9, 1998
SUMMARY OF AMENDMENTS TO
SENATE BILL NO. 593

After consideration of the arguments and rationale proposed by various automobile manufacturers with respect to Senate Bill No. 593, and after considering proposed language and its sufficiency in addressing certain industry problems encountered by new vehicle dealers in relationship with the various manufacturers with whom they do business, the Kansas Automobile Dealers Association provides the following list of amendments to Senate Bill No. 593 which represent an industry compromise between automobile dealers and manufacturers with respect to the various competing interests to be addressed as they now stand. The amendments are referenced by page number and line number followed by language which either substitutes for that which currently exists in the bill, amends that which is already present or otherwise explains the result. We feel the proposed language fairly strikes a balance. Alternatively, these amendments could be accomplished with a substitute bill doing the same thing.

Pages 1 and 2 of SB 593 would be amended by deleting lines 42 and 43 of page 1 and lines 1-15 of page 2 such that the following language is left in replacement of current language:

- (A) Required any new vehicle dealer to order or accept delivery of any new motor vehicle part, or accessory thereof, equipment or any other commodity not required by law, or not necessary for the repair and/or service of a new motor vehicle which was not ordered by the new vehicle dealer;

The remaining subdivisions of subsection 13 on page 2 of the bill would be relettered as "B" and "C" as with the existing statute, and new section "E" would also be deleted from current language.

On page 4, lines 24-43 would be substituted with the following language which would become subsection (b)(1):

- (1) Through the use of a written instrument or otherwise, unreasonably fail or refuse to offer to its same line-make new vehicle dealers all models manufactured for that line-make, or unreasonably require a dealer to (1) pay any extra fee, (2) purchase unreasonable advertising displays or other materials, or (3) remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles;

On page 5, lines 1 through 4 of new subsection (b)(3) would be deleted and renumbered so as to become subsection (b)(2), and lines 1 through 4 would then read as follows:

- (2) require a change in the capital structure of the new vehicle dealership, or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer and in accordance with

standards determined by the manufacturer and in accordance with uniformly applied criteria;

Subsections (b)(4) and (5) on page 5 of the bill would be entirely deleted.

Current subsections (b)(6) and (7) on page 5 would also be combined and renumbered as subsection (3) and the language beginning at line 30 would be changed so that this subsection would then read as follows:

- (3) discriminate unreasonably among competing dealers of the same line-make in the sale of vehicles or availability of incentive programs or sales promotion plans, or other similar programs, unless justified by obsolescence;

Subsection (b)(8) on page 5, starting at current line 38, would be deleted in its entirety.

Likewise, on page 6, commencing at line 1, subsections (b)(9)(A) and (B) would be deleted in their entirety through line 15 of that page.

On page 6, KADA proposes that current subsection (b)(10) at line 16 would become subsection item (4) and would be edited so as to read as follows:

- (4) unless required by subpoena or as otherwise compelled by law, require a new vehicle dealer to release, convey or otherwise provide customer information if to do so is unlawful, or if the customer objects in writing to doing so, unless the information is necessary for the first or second stage manufacturer of vehicles, factory branch or distributor to meet its obligations to consumers or the new vehicle dealer, including vehicle recalls or other requirements imposed by state or federal law; or release to any unaffiliated third party any customer information which has been provided by the dealer to the manufacturer, except under subpoena or as otherwise compelled by law.

On page 6, current subsection (b)(11) would be deleted.

The next revisions would be found on page 7 at lines 10 through 43, and page 8, lines 1 through 3 where all of "Sec. 2" would be removed, thus leaving current law unchanged.

Starting on page 8, Section 3 would be replaced in its entirety by substitute provisions which would delete all of that section except what is currently subsection (h) on line 36 of page 10 of the bill (which would be re-lettered (g) and edited to match the language noted herein). The replacement sections would read as follows. K.S.A. 8-2416 would be replaced with the following provisions:

- (a) A vehicle dealer shall not transfer, assign, or sell a franchise agreement or interest in a dealership to another person unless the dealer first gives written notice to the first or second stage manufacturer or distributor of the dealer's decision to

make such transfer, assignment, or sale. The dealer shall provide the first or second stage manufacturer or distributor with any completed application forms and related information generally utilized by the first or second stage manufacturer or distributor to conduct its review of prospective new vehicle dealers, and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The first or second stage manufacturer or distributor shall send a letter by certified mail to the dealer within sixty days of receipt of the information specified in subsection (a). The letter shall indicate any disapproval of the transfer, assignment, or sale and shall specifically set forth the reasons for the disapproval. If the first or second stage manufacturer or distributor does not respond by letter within the sixty-day period, its consent to the proposed transfer, assignment, or sale is deemed to have been granted. A first or second stage manufacturer or distributor shall not arbitrarily or unreasonably withhold approval of the transfer, assignment, or sale of a franchise agreement or an interest in a dealership.

(c) Within ninety days after receipt of a notice of disapproval as provided in subsection (b), the new vehicle dealer may file a complaint with the director with respect to the first or second stage manufacturer or distributor's failure to approve the proposed transfer, assignment or sale. When such a complaint has been filed, the director shall inform the first or second stage manufacturer or distributor that a timely complaint has been filed and a hearing is required in accordance with the provisions K.S.A. 8-2411, and amendments thereto, to determine whether good cause exists to disapprove the transfer, assignment or sale. A disapproval shall not be final until the director makes a final determination as to good cause.

(d) A first or second stage manufacturer or distributor shall not fail or refuse to approve the transfer, assignment or sale of the business and assets of a new vehicle dealer, or refuse to continue the franchise agreement with the prospective transferee after the holding of a hearing on the complaint if the director determines that good cause does not exist for the first or second stage manufacturer or distributor to fail or refuse to approve such transfer, assignment or sale. The burden of proof shall be on the first or second stage manufacturer or distributor to show that the disapproval of the transfer, assignment or sale was with good cause. Material factors to be considered may include, but are not limited to: (1) whether the basic financial and facility requirements of the franchise agreement will be met by the proposed transfer, assignment or sale; (2) whether the proposed purchaser, transferee or assignee is capable of operating, managing and supervising such business; (3) the extent to which the refusal to approve will have a substantial and adverse effect upon the dealer's investment or return on investment.

(e) The first or second stage manufacturer or distributor shall have a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all or substantially all of the dealer's ownership, or the

of those expenses within twenty days of the dealer's receipt of the first or second stage manufacturer or distributor's written request for such an accounting. Such an expense accounting may be requested by a first or second stage manufacturer or distributor before exercising its right of first refusal.

(f) A new vehicle dealer and its owners may appoint by trust, will, or any other valid written instrument a successor to the owner's interest in the franchise agreement upon the owner's death or incapacity, subject to the following procedures:

1) Unless the first or second stage manufacturer or distributor has good cause to refuse to approve the succession, the successor may succeed to the ownership of the new vehicle dealer under the existing franchise agreement if:

a) Within ninety days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the new vehicle dealer and its franchise agreement; and

b) The successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior new vehicle dealer.

2) Upon request, the successor shall promptly provide the first or second stage manufacturer or distributor evidence of the successorship appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be approved by the first or second stage manufacturer or distributor.

3) If a first or second stage manufacturer or distributor believes that good cause exists to refuse to approve the intended succession under subsection (f)(1), then the first or second stage manufacturer or distributor shall serve the new vehicle dealer and named successor written notice of refusal to approve the intended succession within sixty days of its receipt of the notice of the intended succession, or within sixty days of receiving the information requested under paragraph (f)(2) above, whichever is later. The notice must contain specific grounds for the refusal to approve the succession. In the event of such a refusal the new vehicle dealer or successor may file a complaint as provided under subsection (c) above, and the matter shall then proceed to hearing in the manner and on the same basis as the disapproval of a transfer, assignment or sale.

4) If notice of refusal to approve the intended succession is not served within sixty days upon the intended successor, the successor may continue the franchise agreement and the successor shall thereby be deemed approved by the first or

second stage manufacturer or distributor.

(g) It shall be a violation of this act for a first or second stage manufacturer or distributor, or anyone on their behalf, to exercise a right of first refusal or other right to acquire the business of the new vehicle dealer or a franchise agreement as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the business or franchise agreement or to influence a person to refrain from entering into, or to withdraw from negotiations for the acquisition of the business or franchise agreement.

New Section 4 would be modified by deleting the first 8 lines through the end of the sentence concluding on line 8. On line 12 the words "contain provisions which" would be deleted as well after the word "shall" on that line.

Section 5 deals with statutes to be repealed and replaced. K.S.A. 8-2413 and K.S.A. 1997 Supp. 8-2431 would be removed from that list.

210

New Section 4 would be modified by deleting the first 8 lines through the end of the sentence concluding on line 8. On line 12 the words "contain provisions which" would be deleted as well after the word "shall" on that line.

Section 5 deals with statutes to be repealed and replaced. K.S.A. 8-2413 and K.S.A. 1997 Supp. 8-2431 would be removed from that list.

1 ~~hicle dealer.~~
2 New Sec. 4. No person, entity, licensee or their agents or employees
3 shall require or take action causing the relocation, cancellation or ter-
4 mination of an existing dealer or otherwise take any action to penalize or
5 retaliate against any dealer who exercises the rights provided under the
6 vehicle dealers and manufacturers licensing act, or undertake such action
7 for the purpose of preventing or avoiding exercise by a dealer of the rights
8 provided under the vehicle dealers and manufacturers licensing act. Any
9 licensee receiving or renewing its license after the effective date of this
10 act in all respects agrees to be bound by its provisions and shall comply
11 with it, and no franchise agreement made, entered or renewed after the
12 effective date of this act shall contain provisions which avoid or circum-
13 vent the requirements of this act, or violate its provisions, and no franchise
14 agreement shall be performed after the date the licensee's license is is-
15 sued or renewed in such a manner that the licensee avoids, circumvents
16 or otherwise does not conform or comply with the requirements of this
17 act. Notwithstanding the effective date of any franchise agreement, all
18 licenses and renewals thereof are issued subject to all provisions of the
19 dealers and manufacturers licensing act and any regulations in effect upon
20 the date of issuance, as well as all future provisions of this act and any
21 regulations which may become effective during the term of the license.
22 Sec. 5. K.S.A. ~~8-2413~~ and 8-2416 and K.S.A. 1997 Supp. 8-2410 ~~and~~
23 ~~8-2431~~ are hereby repealed.
24 Sec. 6. This act shall take effect and be in force from and after its
25 publication in the statute book.

SENATE BILL No. 593

By Committee on Judiciary

2-4

9 AN ACT concerning the vehicle dealers and manufacturers licensing act;
10 relating to denial, suspension or revocation of license; ~~liability for dam-~~
11 ~~ages; prohibited acts; amending K.S.A. 8-2413 and 8-2416 and K.S.A.~~
12 1997 Supp. 8-2410 and repealing the existing sections; ~~also repealing~~
13 ~~K.S.A. 1997 Supp. 8-2431.~~
14

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

16 Section 1. K.S.A. 1997 Supp. 8-2410 is hereby amended to read as
17 follows: 8-2410. (a) A license may be denied, suspended or revoked or a
18 renewal may be refused by the director on any of the following grounds:

- 19 (1) Proof of financial unfitness of the applicant;
- 20 (2) material false statement in an application for a license;
- 21 (3) filing a materially false or fraudulent tax return as certified by the
22 director of taxation;
- 23 (4) negligently failing to comply with any applicable provision of this
24 act or any applicable rule or regulation adopted pursuant thereto;
- 25 (5) knowingly defrauding any retail buyer to the buyer's damage;
- 26 (6) negligently failing to perform any written agreement with any
27 buyer;
- 28 (7) failure or refusal to furnish and keep in force any required bond;
- 29 (8) knowingly making a fraudulent sale or transaction;
- 30 (9) knowingly engaging in false or misleading advertising;
- 31 (10) willful misrepresentation, circumvention or concealment,
32 through a subterfuge or device, of any material particulars, or the nature
33 thereof, required by law to be stated or furnished to the retail buyer;
- 34 (11) negligent use of fraudulent devices, methods or practices in con-
35 travention of law with respect to the retaking of goods under retail in-
36 stallment contracts and the redemption and resale of such goods;
- 37 (12) knowingly violating any law relating to the sale, distribution or
38 financing of vehicles;

39 (13) being a first or second stage manufacturer of vehicles, factory
40 branch, distributor, distributor or factory representative, officer, agent or
41 any representative thereof, who has:

42 ~~(A) Required or attempted to require any dealer to place at such~~
43 ~~dealer's established place of business or supplemental place of business.~~

Pages 1 and 2 of SB 593 would be amended by deleting lines 42 and 43 of page 1 and lines 1-15 of page 2 such that the following language is left in replacement of current language:

- (A) Required any new vehicle dealer to order or accept delivery of any new motor vehicle part, or accessory thereof, equipment or any other commodity not required by law, or not necessary for the repair and/or service of a new motor vehicle which was not ordered by the new vehicle dealer:

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1 ~~or order, accept delivery of or pay anything of value for, directly or in-~~
 2 ~~directly, any vehicle or vehicles, appliances, parts, tools or accessories,~~
 3 ~~therefore, or any form of advertisements, goods or other commodities~~
 4 ~~which shall not have been voluntarily ordered or contracted by the dealer,~~
 5 ~~including affiliation with, participation or contribution to any kind of~~
 6 ~~advertising campaign program or entity;~~

7 ~~(B) induced or has attempted to induce, by coercion, intimidation or~~
 8 ~~discrimination, any dealer to involuntarily place at such dealer's estab-~~
 9 ~~lished place of business or supplemental place of business, or order, accept~~
 10 ~~delivery of or pay anything of value for, directly or indirectly, any vehicle~~
 11 ~~or vehicles, appliances, parts, tools or accessories therefor, or any form~~
 12 ~~of advertisements, goods or other commodities which shall not have been~~
 13 ~~voluntarily ordered or contracted by the dealer, including affiliation with,~~
 14 ~~participation or contribution in or to any kind of advertising campaign~~
 15 ~~program or entity;~~

16 ~~(B)~~ ~~(B)~~ ~~(C)~~ unfairly, without due regard to the equities of the vehicle
 17 dealer, and without just provocation, canceled, terminated or failed to
 18 renew a franchise agreement with any new vehicle dealer;

19 ~~(C)~~ ~~(C)~~ ~~(D)~~ induced, or has attempted to induce, by coercion, intima-
 20 dation or discrimination, any vehicle dealer to involuntarily enter into any
 21 franchise agreement with such first or second stage manufacturer, factory
 22 branch, distributor, or any representative thereof, or to do any other act
 23 to a vehicle dealer which may be deemed a violation of this act, or the
 24 rules and regulations adopted or orders promulgated under authority of
 25 this act, by threatening to cancel or not renew a franchise agreement
 26 existing between such parties; or

27 ~~(E) unilaterally or otherwise add to, modify or replace the existing~~
 28 ~~franchise agreement between the parties prior to expiration of the existing~~
 29 ~~terms and conditions of the franchise agreement without the prior free~~
 30 ~~and voluntary consent or agreement of the dealer to the terms to be added,~~
 31 ~~modified or replaced;~~

32 (14) being a first or second stage manufacturer, or distributor who
 33 for the protection of the buying public fails to specify in writing the de-
 34 livery and preparation obligations of its vehicle dealers prior to delivery
 35 of new vehicles to new vehicle dealers. A copy of such writing shall be
 36 filed with the division by every licensed first or second stage manufacturer
 37 of vehicles and the contents thereof shall constitute the vehicle dealer's
 38 only responsibility for product liability as between the vehicle dealer and
 39 the first or second stage manufacturer. Any mechanical, body or parts
 40 defects arising from any express or implied warranties of the first or sec-
 41 ond stage manufacturer shall constitute the product or warranty liability
 42 of the first or second stage manufacturer. The first or second stage man-
 43 ufacturer shall reasonably compensate any such dealer who is held liable for

The remaining subdivisions of subsection 13 on page 2 of the bill would be relettered as "B" and "C" as with the existing statute, and new section "E" would also be deleted from current language.

- 1 the performance of delivery and preparation obligation;
- 2 (15) being a first or second stage manufacturer of new vehicles, fac- 2-13
3 tory branch or distributor who fails to supply a new vehicle dealer with a
4 reasonable quantity of new vehicles, parts and accessories, in accordance
5 with the franchise agreement. It shall not be deemed a violation of this
6 act if such failure is attributable to factors reasonably beyond the control
7 of such first or second stage manufacturer, factory branch or distributor;
- 8 (16) knowingly used or permitted the use of dealer plates contrary to
9 law;
- 10 (17) has failed or refused to permit an agent of the division, during
11 the licensee's regular business hours, to examine or inspect such dealer's
12 records pertaining to titles and purchase and sale of vehicles;
- 13 (18) has failed to notify the division within 10 days of dealer's plates
14 that have been lost, stolen, mutilated or destroyed;
- 15 (19) has failed or refused to surrender their dealer's license or
16 dealer's plates to the division or its agent upon demand;
- 17 (20) has demonstrated that such person is not of good character and
18 reputation in the community in which the dealer resides;
- 19 (21) has, within five years immediately preceding the date of making
20 application, been convicted of a felony or any crime involving moral tur-
21 pitude, or has been adjudged guilty of the violations of any law of any
22 state or the United States in connection with such person's operation as
23 a dealer or salesperson;
- 24 (22) has cross-titled a title to any purchaser of any vehicle. Cross-
25 titling shall include, but not by way of limitation, a dealer or broker or
26 the authorized agent of either selling or causing to be sold, exchanged or
27 transferred any vehicle and not showing a complete chain of title on the
28 papers necessary for the issuance of title for the purchaser. The selling
29 dealer's name must appear on the assigned first or second stage manu-
30 facturer's certificate of origin or reassigned certificate of title;
- 31 (23) has changed the location of such person's established place of
32 business or supplemental place of business prior to approval of such
33 change by the division;
- 34 (24) having in such person's possession a certificate of title which is
35 not properly completed, otherwise known as an "open title";
- 36 (25) doing business as a vehicle dealer other than at the dealer's es-
37 tablished or supplemental place of business, with the exception that deal-
38 ers selling new recreational vehicles may engage in business at other than
39 their established or supplemental place of business for a period not to
40 exceed 15 days;
- 41 (26) any violation of K.S.A. 8-126 *et seq.*, and amendments thereto,
42 in connection with such person's operation as a dealer;
- 43 (27) any violation of K.S.A. 8-116, and amendments thereto;

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- 1 (28) any violation of K.S.A. 21-3757, and amendments thereto;
- 2 (29) any violation of K.S.A. 79-1019, 79-3294 *et seq.*, or 79-3601 *et*
- 3 *seq.*, and amendments thereto;
- 4 (30) failure to provide adequate proof of ownership for motor vehi-
- 5 cles in the dealer's possession;
- 6 (31) being a first or second stage manufacturer who fails to provide
- 7 the director of property valuation all information necessary for vehicle
- 8 identification number identification and determination of vehicle classi-
- 9 fication at least 90 days prior to release for sale of any new make, model
- 10 or series of vehicles; or
- 11 (32) displaying motor vehicles at a location other than at the dealer's
- 12 established place of business or supplemental place of business without
- 13 obtaining the authorization required in K.S.A. 1997 Supp. 8-2435, and
- 14 amendments thereto.

15 (b) *In addition to the provisions of subsection (a), and notwithstand-*
 16 *ing the terms and conditions of any franchise agreement, including any*
 17 *policy, bulletin, practice or guideline with respect thereto or performance*
 18 *thereunder, no first or second stage manufacturer of vehicles, factory*
 19 *branch, distributor, distributor or factory representative, officer or agent*
 20 *or any representative thereof, or any other person may do or cause to be*
 21 *done any of the following acts or practices referenced in this subsection,*
 22 *all of which are also declared to be a violation of the vehicle dealers and*
 23 *manufacturers licensing act, and amendments thereto:*

24 ~~(1) Fail or refuse to offer to its same line-make new vehicle dealers~~
 25 ~~any or all models of vehicles, parts and accessories for that line-make,~~
 26 ~~require or create an additional, different or separate franchise agreement~~
 27 ~~from that existing between the parties as a prerequisite or requirement to~~
 28 ~~receive and sell additional models of vehicles, parts and accessories, or~~
 29 ~~require or attempt to require a dealer to remove or discontinue any~~
 30 ~~line-make it may sell or seek to sell, any service facility, pay any extra fee,~~
 31 ~~make a refund, withhold funds, purchase advertising displays or other~~
 32 ~~materials, or add to, remodel, renovate or recondition the facilities of the~~
 33 ~~dealer as a prerequisite to receiving a model or series of vehicles or con-~~
 34 ~~tinuing under or receiving renewal of the franchise agreement;~~

35 ~~(2) fail or refuse to offer to its same line-make new vehicle dealers any~~
 36 ~~or all models of vehicles, parts and accessories for that line-make on the~~
 37 ~~basis that the dealer has not complied with, or participated in any stan-~~
 38 ~~dard, plan, program or other requirements established without the vol-~~
 39 ~~untary agreement of the dealer, or on the basis of demographic factors or~~
 40 ~~assumptions, or vehicle registrations for the assigned market area of the~~
 41 ~~dealer, or on any other basis which is arbitrary or without reasonable~~
 42 ~~justification after due consideration for the financial or other adverse~~
 43 ~~impact upon the dealer or public,~~

On page 4, lines 24-43 would be substituted with the following language which would become subsection (b)(1):

(1) Through the use of a written instrument or otherwise, unreasonably fail or refuse to offer to its same line-make new vehicle dealers all models manufactured for that line-make, or unreasonably require a dealer to (1) pay any extra fee, (2) purchase unreasonable advertising displays or other materials, or (3) remodel, renovate or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles;

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On page 5, lines 1 through 4 of new subsection (b)(3) would be deleted and renumbered so as to become subsection (b)(2), and lines 1 through 4 would then read as follows:

(2) require a change in the capital structure of the new vehicle dealership, or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer and in accordance with uniformly applied criteria;

Subsections (b)(4) and (5) on page 5 of the bill would be entirely deleted.

Current subsections (b)(6) and (7) on page 5 would also be combined and renumbered as subsection (3) and the language beginning at line 30 would be changed so that this subsection would then read as follows:

(3) discriminate unreasonably among competing dealers of the same line-make in the sale of vehicles or availability of incentive programs or sales promotion plans, or other similar programs, unless justified by obsolescence;

Subsection (b)(8) on page 5, starting at current line 38, would be deleted in its entirety.

1 ~~(3) prohibit, prevent or attempt to prohibit or prevent, by contract~~
 2 ~~or otherwise, any dealer from changing the capital structure of its business~~
 3 ~~or the means by or through which it finances the operation thereof, pro-~~
 4 ~~vided the dealer meets reasonable capital requirements or standards;~~
 5 ~~(4) require a dealer to submit to arbitration on any issue unless the~~
 6 ~~dealer and all other parties to the matter in issue and their respective~~
 7 ~~counsel agree to arbitrate the issue after it is in controversy, and on terms~~
 8 ~~and conditions the parties may thereafter agree to rely upon in engaging~~
 9 ~~in arbitration. Notwithstanding the requirements in any other statute, law~~
 10 ~~or rule of court, the arbitrator shall apply the provisions of the vehicle~~
 11 ~~dealers and manufacturers licensing act and any other general or specific~~
 12 ~~principles of law which are otherwise applicable to resolving the pertinent~~
 13 ~~issues and disputes, unless waived in writing by the parties. Notwithstand-~~
 14 ~~ing any other statute, law or rule of court with respect to arbitration,~~
 15 ~~arbitrators conducting proceedings under this subsection need not rely~~
 16 ~~upon strict rules of evidence in receiving facts for consideration. Fur-~~
 17 ~~thermore, within 30 days of the decision of the arbitrator, any party may~~
 18 ~~appeal the decision to the director of vehicles by using the same procedure~~
 19 ~~provided by the Kansas administrative procedure act which is utilized for~~
 20 ~~instituting an action thereunder and, thereafter, the Kansas administra-~~
 21 ~~tive procedure act shall control the conduct of proceedings. The director~~
 22 ~~of vehicles shall have the same scope of authority in reviewing the issues~~
 23 ~~and rendering a decision as did the arbitrator, or may choose to accept~~
 24 ~~and affirm the decision of the arbitrator after hearing with or without~~
 25 ~~additional evidence;~~
 26 ~~(5) except as otherwise allowed by this act, engage in acts or practices~~
 27 ~~which, as applied to any dealer, are unequitable, unreasonable, arbitrary~~
 28 ~~or unconscionable sales or service practices, standards, plans, indexes or~~
 29 ~~programs, whether direct or indirect;~~
 30 ~~(6) directly or indirectly discriminate against the dealer or otherwise~~
 31 ~~treat dealers differently as a result of incentive programs, purchasing and~~
 32 ~~sales volume, a formula or other calculation or process intended to gauge~~
 33 ~~the performance of a dealership;~~
 34 ~~(7) discriminate unreasonably in the sale of vehicles or the use or~~
 35 ~~application of purchasing, sales and incentive programs or other appli-~~
 36 ~~cation of performance requirements between or among parties to fran-~~
 37 ~~chise agreements;~~
 38 ~~(8) pay, give or otherwise award money, goods, services or any other~~
 39 ~~thing of value or benefit to any new vehicle dealer employee, either di-~~
 40 ~~rectly or indirectly, unless such thing of value or benefit is approved by~~
 41 ~~the new vehicle dealer and the new vehicle dealer is reimbursed for any~~
 42 ~~tax, penalty or interest incurred by the dealer, or assessed against the new~~
 43 ~~vehicle dealer, arising out of or as a result of the sale of a vehicle.~~

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Likewise, on page 6, commencing at line 1, subsections (b)(9)(A) and (B) would be deleted in their entirety through line 15 of that page.

On page 6, KADA proposes that current subsection (b)(10) at line 16 would become subsection item (4) and would be edited so as to read as follows:

(4) unless required by subpoena or as otherwise compelled by law, require a new vehicle dealer to release, convey or otherwise provide customer information if to do so is unlawful, or if the customer objects in writing to doing so, unless the information is necessary for the first or second stage manufacturer of vehicles, factory branch or distributor to meet its obligations to consumers or the new vehicle dealer, including vehicle recalls or other requirements imposed by state or federal law; or release to any unaffiliated third party any customer information which has been provided by the dealer to the manufacturer, except under subpoena or as otherwise compelled by law.

On page 6, current subsection (b)(11) would be deleted.

1 ~~(9) (A) refuse to disclose to any new vehicle dealer which is handling~~
2 ~~the same line make of vehicle, the basis, manner and mode of distribution~~
3 ~~of that line make to dealers or others; or~~
4 ~~(B) change its own method of distribution of its products in this state~~
5 ~~or that of its distributor, or its business structure or ownership in a man-~~
6 ~~ner that results in direct or indirect cancellation, termination or nonre-~~
7 ~~newal of a line make of vehicle, franchise agreement or dealer without~~
8 ~~either the consent of the dealer or first complying with the provisions of~~
9 ~~K.S.A. 8-2414 and amendments thereto, which shall be deemed and con-~~
10 ~~strued applicable under the circumstances noted. For such purposes, the~~
11 ~~director shall have the same authority to address the issues arising here-~~
12 ~~under as it has with respect to franchise agreements under K.S.A. 8-2414~~
13 ~~and amendments thereto. Mere preference of the party seeking the change~~
14 ~~sought to be implemented is insufficient proof that the change is not ar-~~
15 ~~bitrary, unreasonable or with good cause;~~
16 ~~(10) require a new vehicle dealer to publish, release, convey or oth-~~
17 ~~erwise provide information obtained with respect to any customers, con-~~
18 ~~tracts, products, services or other transactions of the new vehicle dealer~~
19 ~~which is not necessary for the first or second stage manufacturer of ve-~~
20 ~~hicles, factory branch or distributor to meet its obligations to consumers~~
21 ~~or the new vehicle dealer or for complying with the duties or obligations~~
22 ~~of the respective parties under the franchise agreement; and~~
23 ~~(11) require that the dealer or any nonprevailing party to any civil~~
24 ~~or administrative proceeding, including arbitration or mediation, wherein~~
25 ~~the dealer asserts any claims, rights or defenses compensate the first or~~
26 ~~second stage manufacturer, factory branch, distributor, distributor or fac-~~
27 ~~tory representative, officer or agent, any representative of the aforemen-~~
28 ~~tioned or prevailing party for any court costs, attorney fees or other ex-~~
29 ~~penses incurred in litigation, except that the parties may agree to share~~
30 ~~the expenses and costs of any arbitration or mediation proceeding on a~~
31 ~~specified basis after the issue has arisen. An agreement is then made as~~
32 ~~to costs and expenses, or by way of any settlement agreement on issues~~
33 ~~the parties may seek to resolve.~~
34 (c) The director may deny the application for the license within 30
35 days after receipt thereof by written notice to the applicant, stating the
36 grounds for such denial. Upon request by the applicant whose license has
37 been so denied, the applicant shall be granted an opportunity to be heard
38 in accordance with the provisions of the Kansas administrative procedure
39 act.
40 (e) (d) If a licensee is a firm or corporation, it shall be sufficient cause
41 for the denial, suspension or revocation of a license that any officer, di-
42 rector or trustee of the firm or corporation, or any member in case of a
43 partnership, has been guilty of any act or omission which would be good

1 cause for refusing, suspending or revoking a license to such party as an
 2 individual. Each licensee shall be responsible for the acts of its salesper-
 3 sons or representatives while acting as its agent.

4 ~~(d)~~ (e) Any licensee or other person aggrieved by a final order of the
 5 director, may appeal to the district court as provided by the act for judicial
 6 review and civil enforcement of agency actions.

7 ~~(e)~~ (f) The revocation or suspension of a first or second stage man-
 8 ufacturer's or distributor's license may be limited to one or more munic-
 9 ipalities or counties or any other defined trade area.

10 Sec. 2. K.S.A. 8-2413 is hereby amended to read as follows: 8-2413.

11 (a) Upon application of the board, the director or any person having any
 12 interest in the subject matter, the district courts of this state may enjoin
 13 any person from violating any of the provisions of this act or any order or
 14 rule and regulation issued or adopted pursuant thereto.

15 (b) ~~The commission by the first or second stage manufacturer or dis-~~
 16 ~~tributor, or any person on its behalf, or by its direct or indirect action of~~
 17 ~~any act or practice against a new vehicle dealer which is declared to be~~
 18 ~~a violation of any of the provisions of this act governing the relationship~~
 19 ~~between the parties shall render the violator liable to the aggrieved new~~
 20 ~~vehicle dealer for actual damages caused the new vehicle dealer, plus three~~
 21 ~~times the amount of actual damages payable as a civil penalty to the new~~
 22 ~~vehicle dealer, in addition to costs and attorney fees incurred by the new~~
 23 ~~vehicle dealer in enforcing its rights under the vehicle dealers and man-~~
 24 ~~ufacturers licensing act.~~

25 (c) ~~Notwithstanding any other statute, law or rule of court, any first~~
 26 ~~or second stage manufacturer or distributor or new vehicle dealer which~~
 27 ~~has entered a franchise agreement with the other under which a dispute~~
 28 ~~has arisen with respect to the conduct of business or the business rela-~~
 29 ~~tionship between the parties may file a complaint with the director of~~
 30 ~~vehicles for resolution of the issue or issues in dispute between the parties~~
 31 ~~which shall be resolved by hearing which shall be conducted in ac-~~
 32 ~~cordance with the Kansas administrative procedure act and such other~~
 33 ~~law applicable to the matters in issue. The director shall have the authority~~
 34 ~~to receive and evaluate the facts in the matter in controversy and resolve~~
 35 ~~it by entering an order which shall thereafter become binding and en-~~
 36 ~~forceable with respect to the parties, subject to the right of each party to~~
 37 ~~appeal or as otherwise provided by the Kansas act for judicial review and~~
 38 ~~civil enforcement of agency actions.~~

39 (d) ~~No franchise agreement with a new vehicle dealer may specify the~~
 40 ~~jurisdiction or venue in which disputes arising with the franchise agree-~~
 41 ~~ment or with the first or second stage manufacturer or distributor and~~
 42 ~~new vehicle dealer may or may not be brought, or specify a requirement~~
 43 ~~that such disputes be resolved and determined by the law of any juris-~~

The next revisions would be found on page 7 at lines 10 through 43, and page 8, lines 1 through 3 where all of "Sec. 2" would be removed, thus leaving current law unchanged.

except what is currently subsection (h) on line 36 of page 10 of the bill (which would be re-lettered (g) and edited to match the language noted herein). The replacement sections would read as follows. K.S.A. 8-2416 would be replaced with the following provisions:

(a) A vehicle dealer shall not transfer, assign, or sell a franchise agreement or interest in a dealership to another person unless the dealer first gives written notice to the first or second stage manufacturer or distributor of the dealer's decision to make such transfer, assignment, or sale. The dealer shall provide the first or second stage manufacturer or distributor with any completed application forms and related information generally utilized by the first or second stage manufacturer or distributor to conduct its review of prospective new vehicle dealers, and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The first or second stage manufacturer or distributor shall send a letter by certified mail to the dealer within sixty days of receipt of the information specified in subsection (a). The letter shall indicate any disapproval of the transfer, assignment, or sale and shall specifically set forth the reasons for the disapproval. If the first or second stage manufacturer or distributor does not respond by letter within the sixty-day period, its consent to the proposed transfer, assignment, or sale is deemed to have been granted. A first or second stage manufacturer or distributor shall not arbitrarily or unreasonably withhold approval of the transfer, assignment, or sale of a franchise agreement or an interest in a dealership.

(c) Within ninety days after receipt of a notice of disapproval as provided in subsection (b), the new vehicle dealer may file a complaint with the director with respect to the first or second stage manufacturer or distributor's failure to approve the proposed transfer, assignment or sale. When such a complaint has been filed, the director shall inform the first or second stage manufacturer or distributor that a timely complaint has been filed and a hearing is required in accordance with the provisions K.S.A. 8-2411, and amendments thereto, to determine whether good cause exists to disapprove the transfer, assignment or sale. A disapproval shall not be final until the director makes a final determination as to good cause.

(d) A first or second stage manufacturer or distributor shall not fail or refuse to approve the transfer, assignment or sale of the business and assets of a new vehicle dealer, or refuse to continue the franchise agreement with the prospective transferee after the holding of a hearing on the complaint if the director determines that good cause does not exist for the first or second stage manufacturer or distributor to fail or refuse to approve such transfer, assignment or sale. The burden of proof shall be on the first or second stage manufacturer or distributor to show that the disapproval of the transfer, assignment or sale was with good cause. Material factors to be considered may include, but are not limited to: (1) whether the basic financial and facility requirements of the franchise agreement will be met by the proposed transfer, assignment or sale; (2) whether the proposed purchaser, transferee or assignee is capable of operating, managing and supervising such business; (3) the extent to which the refusal to approve will have a substantial and adverse effect upon the dealer's investment or return on investment.

(e) The first or second stage manufacturer or distributor shall have a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all or substantially all of the dealer's ownership, or the transfer of all or substantially all of the new vehicle dealer's assets, if all of the following are met:

(1) The first or second stage manufacturer or distributor notifies the dealer in writing within the sixty-day limit established under subsection (b) of this section of its intent to exercise its right of first refusal;

(2) The exercise of the right of first refusal will result in the dealer and dealer's owners receiving consideration, terms and conditions that either are the same as or greater than that which they have contracted to receive in connection with the proposed change of all or substantially all of the dealer's ownership, or the transfer of all or substantially all of the new vehicle dealer's assets;

1 *diction other than Kansas, or prohibit the new vehicle dealer from bring*
2 *ing an action in a particular forum, exercising a selection of trial by jur*
3 *or otherwise utilizing a legal right available under the law of this state.*

4 Sec. 3. K.S.A. 8-2416 is hereby amended to read as follows: 8-2416

5 (a) A vehicle dealer desiring to sell, transfer or assign all or any portion
6 of such dealer's business, and to assign any agreement to the purchase
7 thereof, shall submit a written proposal of such sale, transfer or assign
8 ment to the first or second stage manufacturer or distributor, and ap
9 proval of such proposal shall not be arbitrarily or unreasonably withheld
10 The proposed purchaser of such dealership also shall furnish to the fir
11 or second stage manufacturer or distributor all of the information cus
12 tomarily required of applicants for an agreement.

13 (b) The refusal of the first or second stage manufacturer or the dis
14 tributor to approve a proposed sale, transfer or assignment shall be sub
15 ject to review by the director if a written application therefor is filed with
16 the director by the vehicle dealer desiring to sell, transfer or assign, with
17 notice thereof to the first or second stage manufacturer or distributor,
18 within 30 days of the date of such refusal. For the purposes of this section
19 the failure of the first or second stage manufacturer or distributor to
20 approve the request, in writing, within 30 days of a request to sell, transfer
21 or assign, shall be deemed to be a refusal. *Such an approval of the sale,*
22 *transfer or assignment, and the first or second stage manufacturer or*
23 *distributor shall thereafter recognize the successor who shall then be li*
24 *censed as a new motor vehicle dealer upon otherwise meeting the require*
25 *ments for licensure under the vehicle dealers and manufacturers licensing*
26 *act. In such cases, the director shall enter an order approving the sale,*
27 *transfer or assignment and requiring it be recognized and implemented*
28 *by the first or second stage manufacturer or distributor, as the case may*
29 *be. A refusal shall not be considered final until the director, after a hearing*
30 *has been held in accordance with the provisions of K.S.A. 8-2411 and*
31 *amendments thereto has determined that the approval was not arbitrarily*
32 *or unreasonably withheld. The director shall make such determination*
33 *within 90 days after the application for review has been filed.*

34 (c) The burden of proof shall be on the first or second stage manu
35 facturer or distributor to show that the approval of the sale, transfer or
36 assignment of any interest in the franchise agreement was not withheld
37 arbitrarily or without reasonable justification. Material factors to be con
38 sidered may include, but are not limited to: (1) Whether the basic finan
39 cial and facility requirements of the franchise agreement will be met by
40 the proposed sale, transfer or assignment; and (2) whether the proposed
41 purchaser, transferee or assignee is capable of operating, managing and
42 supervising such business; (3) *whether a city, county or region will be*
43 *deprived of significant tax revenue or a viable business enterprise; and*

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(3) The proposed change of all or substantially all of the dealership's ownership or the transfer of all or substantially all of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated family member or members, including the spouse, child, or grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer owner, or one or more dealer owners, or to a qualified manager, or to a partnership or corporation controlled by any such person; or to a trust arrangement established or to be established for the purpose of allowing the new vehicle dealer to continue to qualify as such a dealer, so long as said new vehicle dealer continues to qualify as such pursuant to the first or second stage manufacturer or distributor's standards, or provides for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners;

(4) The first or second stage manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the first or second stage manufacturer or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all or substantially all of the dealer ownership, or the transfer of all or substantially all of the new vehicle dealer's assets. However, no payment of expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within twenty days of the dealer's receipt of the first or second stage manufacturer or distributor's written request for such an accounting. Such an expense accounting may be requested by a first or second stage manufacturer or distributor before exercising its right of first refusal.

(f) A new vehicle dealer and its owners may appoint by trust, will, or any other valid written instrument a successor to the owner's interest in the franchise agreement upon the owner's death or incapacity, subject to the following procedures:

1) Unless the first or second stage manufacturer or distributor has good cause to refuse to approve the succession, the successor may succeed to the ownership of the new vehicle dealer under the existing franchise agreement if:

a) Within ninety days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the new vehicle dealer and its franchise agreement; and

b) The successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior new vehicle dealer.

2) Upon request, the successor shall promptly provide the first or second stage manufacturer or distributor evidence of the successorship appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be approved by the first or second stage manufacturer or distributor.

1 ~~(4) whether a material loss will result to the new vehicle dealer, or oth~~
 2 ~~erwise prevent the new vehicle dealer from receiving the amount or valu~~
 3 ~~of its business which is in issue, or prevent it from receiving fair and~~
 4 ~~reasonable compensation for the value of its existing business, as estab-~~
 5 ~~lished. If the reason that the first or second stage manufacturer or dis-~~
 6 ~~tributor refused the approval is or was a violation of any provision of the~~
 7 ~~vehicle dealers and manufacturers licensing act, then approval of the sale~~
 8 ~~transfer or assignment may not be withheld.~~

9 (d) Failure of the first or second stage manufacturer or distributor or
 10 any officer or agent thereof to abide by the final order of the director, or
 11 to continue the agreement pending the final determination of the issues
 12 shall be cause for the director to refuse to issue a subsequent license in
 13 the same trade area to an applicant who will be selling the same vehicles
 14 as the former vehicle dealer for the same first or second stage manufac-
 15 turer or distributor.

16 (e) The provisions of this section shall apply to the personal repre-
 17 sentative, executor or administrator or the heirs at law of the estate of an
 18 individual who had an interest in an agreement, or to the trustee, guardian
 19 or conservator or other personal representative of an individual who has
 20 such an interest for one year following appointment.

21 (f) Notwithstanding the other provisions of this subsection, no first or
 22 second stage manufacturer or distributor may prevent, prohibit or refuse
 23 to approve the operation, transfer or succession of the franchise agreement
 24 and business of a new motor vehicle dealer to any surviving spouse, trust-
 25 tee, guardian, conservator, executor, administrator, beneficiary, legal
 26 heir, devisee or legatee under the will, or beneficiary of a trust of a dealer,
 27 including its principal participants or owners, under the statutory and
 28 common laws of this state governing estate ownership, planning, admin-
 29 istration, succession, descent and distribution, unless it first applies to the
 30 director of vehicles within 30 days of receiving notification of the arrange-
 31 ment and, after notice of hearing pursuant to the Kansas administrative
 32 procedure act, meets its burden of proof under subsection (c) and, further,
 33 demonstrates the proposed arrangement will be detrimental to the public
 34 interest and to representation of the line-make of the first or second stage
 35 manufacturer or distributor, as the case may be.

36 (g) No first or second stage manufacturer or distributor may exercise
 37 an option to purchase or right of first refusal, or require a new vehicle
 38 dealer to offer the sale, transfer or assignment of its business to the first
 39 or second stage manufacturer or distributor, its nominee, designee or
 40 other third party as a precondition or requirement prior to approval of
 41 such transaction if the proposed sale, transfer or assignment is proposed
 42 to be to a member or members of the principal management of the new
 43 vehicle dealer, its shareholders, or any one of them or the personal rep-

3) If a first or second stage manufacturer or distributor believes that good cause exists to refuse to approve the intended succession under subsection (f)(1), then the first or second stage manufacturer or distributor shall serve the new vehicle dealer and named successor written notice of refusal to approve the intended succession within sixty days of its receipt of the notice of the intended succession, or within sixty days of receiving the information requested under paragraph (f)(2) above, whichever is later. The notice must contain specific grounds for the refusal to approve the succession. In the event of such a refusal the new vehicle dealer or successor may file a complaint as provided under subsection (c) above, and the matter shall then proceed to hearing in the manner and on the same basis as the disapproval of a transfer, assignment or sale.

4) If notice of refusal to approve the intended succession is not served within sixty days upon the intended successor, the successor may continue the franchise agreement and the successor shall thereby be deemed approved by the first or second stage manufacturer or distributor.

(g) It shall be a violation of this act for a first or second stage manufacturer or distributor, or anyone on their behalf, to exercise a right of first refusal or other right to acquire the business of the new vehicle dealer or a franchise agreement as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the business or franchise agreement or to influence a person to refrain from entering into, or to withdraw from negotiations for the acquisition of the business or franchise agreement.

1 representative of the new vehicle dealer, or its principal owners, including
 2 any trustee, spouse, child, partner, brother, sister or parent of any person
 3 with an ownership interest in the new vehicle dealer.

4 In all other instances of the sale, transfer or assignment of the business
 5 of the new vehicle dealer, no first or second stage manufacturer or dis-
 6 tributor may exercise an option to purchase or right of first refusal or
 7 require a new vehicle dealer to offer the sale, transfer or assignment of
 8 its business to the first or second stage manufacturer or distributor, its
 9 nominee, designee or other third party as a precondition or requirement
 10 prior to approval of such transaction, unless the first or second stage
 11 manufacturer or distributor: (1) At the election of the new vehicle dealer,
 12 assumes the lease for or acquires the real property on which the business
 13 of the new vehicle dealer is conducted on the same terms as those on
 14 which the real property or lease was to be sold or transferred to the
 15 acquiring party in connection with the sale of the business of the new
 16 vehicle dealer, unless otherwise agreed after the proposal is made; and
 17 (2) reimburses the proposed acquiring party for the reasonable expenses
 18 paid or incurred by the party in evaluating and investigating the franchise
 19 agreement and transaction and negotiating and pursuing the acquisition
 20 of the franchise agreement and transaction prior to the exercise of the
 21 right of first refusal or other right to acquire the business or franchise
 22 agreement, or both, of the new vehicle dealer. For purposes of this sub-
 23 section, expenses subject to reimbursement include, without limitation of
 24 other expenses associated with evaluation and investigation of the trans-
 25 action, legal expenses, accounting expenses and expenses associated with
 26 the evaluation or investigation of any real property associated with the
 27 transaction further including, but not limited to, expenses associated with
 28 title examinations, environmental assessments, and other expenses directly
 29 related to the acquisition or lease of such real property by the proposed
 30 acquiring party. The proposed acquiring party shall submit an itemized
 31 list of the expenses to be reimbursed along with supporting documents, if
 32 any, to the first or second stage manufacturer or distributor, as the case
 33 may be, no later than 30 days after receipt of a written request for such
 34 expenses from the responsible party, who shall then make payment within
 35 30 days of its receipt of the list.

36 ~~(g) (h)~~ It shall be a violation of this act for a first or second stage man-
 37 ufacturer or distributor, or anyone on their behalf, to exercise a right of
 38 first refusal or other right to acquire the business of the new vehicle dealer
 39 or a franchise agreement as a means to influence the consideration or
 40 other terms offered by a person in connection with the acquisition of the
 41 business or franchise agreement ~~of the new vehicle dealer~~ or to influence
 42 a person to refrain from entering into, or to withdraw from, negotiations
 43 for the acquisition of the business or franchise agreement of the new ve-

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#3*



February 27, 1998

RECREATION
VEHICLE
INDUSTRY
ASSOCIATION

Don McNeely
Executive Vice President
Kansas Automobile Dealers Association
800 Jackson Street, Suite 1110
Topeka, KS 66612

Via Facsimile: 913/233-1462

Dear Don:

As you know, I have had a number of conversations regarding the proposed franchise legislation, S 593, with Bill Hawley, a Kansas recreation vehicle (RV) dealer and the state director for the National Recreation Vehicle Dealer Association (RVDA). Specifically, Mr. Hawley and I have discussed your proposed language dealing with the allocation of vehicles and the meaning of the term "line-make" as it applies to the RV industry.

Mr. Hawley also consulted with other RV dealers including representatives from the National RVDA. As a result, the RV industry (manufacturers and dealers) has concluded that for a variety of reasons the allocation provision in S 593 should not apply to the RV industry.

Accordingly, we propose the allocation provision be amended with the language I am attaching to this letter. If you have any questions or concerns please do not hesitate to contact either me or Bill Hawley.

Thanks for your assistance.

Sincerely,

Jay Landers
Director
Government Affairs

Copy Via Facsimile:

J. B. Craig, Lydia Craig RV, 316/733-4404
B. Hawley, Hawley Bros., 316/943-9302
M. Molino, RVDA, 703/591-0734

1896 Preston White Dr.
P.O. Box 2999
Reston, VA 20195-0999
703/620-6003
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*Senate Judiciary
3-10-98 PM
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**Recreation Vehicle Industry's
Proposed Amendment to
Kansas Senate Bill 593
February 27, 1998**

Being a manufacturer, distributor, distributor branch or factory branch, or officer, agent or other representative thereof, who:

unreasonably fails or refuses to offer to its same line make franchised dealers all models manufactured for that line-make, or unreasonably requires a dealer to (1) pay any extra fee, (2) purchase unreasonable advertising displays or other materials, or (3) remodel, renovate, or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. This subsection shall not apply to manufacturers of recreational vehicles.

require any new motor vehicle dealer to order or accept delivery of any new motor vehicle, part of accessory thereof, equipment, or any other commodity not required by law, or necessary for the repair and/or service of a new motor vehicle which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.