

Approved Feb 21, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on February 16, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Petty (excused)
Senator Harrington (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Don McNeely, Kansas Automobile Dealers Association (KADA)
Pat Barnes, Attorney, KADA
Ron Gaches, Alliance of Automobile Manufactureres (AAM)
John Federico, General Motors (GM)

Others attending: see attached list

The minutes of the February 15th meeting were approved on a motion by Senator Vratil, seconded by Senator Oleen. Carried.

The Chair assigned **SB 629** to a subcommittee chaired by Senator Vratil. He withdrew **SB 585**, a bill which he introduced this year concerning the Uniform Mediation Act, explaining that the bill needed refining.

SB 489—concerning dealers and manufacturers licensing act

Conferee McNally testified on behalf of KADA in support of **SB 489**. He presented a brief historical overview of current laws protecting Kansas retail car and truck dealers from unfair practices by automobile manufacturers. He discussed troubling events which have occurred in other states necessitating the enactment of similar and further protective legislation to prohibit motor vehicle manufacturers from building factory-owned dealerships in Kansas. He stated that there is a potential for these dealerships to become centrally controlled monopolies. He further discussed economic as well as technological issues relating to the motor vehicle industry and summarized the bill's provisions. (attachment 1)

Conferee Barnes presented a detailed review of each section of the balloon amendment to **SB 489**. (attachment 2) Discussion followed.

Conferee Gaches stated that the AAM does not oppose the broad intent of **SB 489** but is opposed to it's passage in it's current form. He reviewed six amendments proposed by the AAM and stated that with the adoption of these amendments AAM would support the bill. (attachment 3)

Conferee Federico stated that GM is pleased with the willingness of KADA to negotiate the provisions in **SB 489** and stated GM joins with AAM and their suggested changes with the exception of restrictive language in Section (d) on page 2 of the bill beginning on line 5. He stated he hopes negotiations regarding this language can continue until there is agreement on specific language. He also discussed a "carve-out" to a provision in the bill for the manufacturer of Saturn vehicles stating that GM has reached a compromise with KADA regarding this. (attachment 4) Discussion followed.

The conferees agreed with the Chair's request that they continue to work together toward satisfactory language on this bill and to notify him early Monday morning if they have come to an agreement so that he can make an informed decision on how to proceed with this bill.

The meeting adjourned at 10:58. The next scheduled meeting is February 21, 2000.



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KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 16, 2000

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

From: Don L. McNeely, KADA President

RE: Senate Bill 489 – Amendments to the Kansas Dealers and Manufacturers
Licensing Act.

Good morning, Chairman Emert and Members of the Senate Committee on Judiciary. My name is Don McNeely and I serve as the President of the Kansas Automobile Dealers Association (KADA), which represents the franchised new car and truck dealers in Kansas. Joining me this morning is Mr. Pat Barnes, KADA's General Counsel and Mr. Whitney Damron, our Legislative Counsel. Also present with us today are several dealer members of our association who will be available to respond to questions you might have during the course of this hearing.

I appear before you this morning in support of SB 489 which proposes amendments to the Kansas Dealers and Manufacturers Licensing Act. As the members of the Committee may remember, the 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 times result in onerous obligations, increased costs, and in some instances, the loss of local business altogether. It is the Kansas Dealers and Manufacturers Licensing Act which provides some protection to new car and truck dealers against overreaching by the manufacturers. In fact, over two decades ago, the U.S. Supreme court spoke to the purpose and intent behind these laws in stating, "the disparity in bargaining power between automobile manufacturers and their dealers prompted Congress and some States to enact legislation to protect retail car and truck dealers from perceived abusive and oppressive acts by the manufacturers."

The proposed legislation before you, which is modeled after legislation already enacted by 14 other states, essentially seeks to prohibit motor vehicle manufacturers from obtaining a license to sell motor vehicles at retail within the state and competing with independently owned Kansas franchised dealers. In addition, the legislation ensures that

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In good
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all new vehicles, whether sold directly from the manufacturer on-line or through a catalog, are delivered by a licensed franchised dealer.

The proposed amendments are designed to keep the automobile manufacturers, which are some of the world's largest corporations, from cornering the market by targeting the best locations for their factory-owned stores, consolidating those dealerships and building a centrally controlled monopoly. This type of monopolistic centralization destroys competition, limits consumer choice, and ultimately drives up the price of a vehicle. If this happens, Kansas consumers in a lot of cases will be forced to drive further and pay more for future new car purchases and repairs. The proposed legislation will help ensure the survival of the most fiercely competitive retailers in the marketplace – your local independent franchised new car and truck dealership.

Ford Motor Company has already acquired all of the Ford-Lincoln-Mercury dealerships in several major markets including Oklahoma City, Tulsa and Salt Lake City, and they also own stores in San Diego and Rochester NY. Early last fall, General Motors also announced its intention to open factory-owned stores in 130 of its largest markets. Even though GM and Ford have recently backed off from this stance, the previous actions and announcements by the manufacturers have triggered alarm bells in state capitols nationwide, as an additional 16 states consider legislation to prohibit factory-owned dealerships.

Why have so many legislatures taken up the cause of local auto dealerships? It comes down to basic economics, fair play, maintaining healthy competition among dealerships, and protecting the rights of consumers.

Although Ford and GM would like dealers to believe that they have backed off these plans, dealers are skeptical because manufacturer-owned stores have dramatically unfair advantages over dealer-owned stores, as the cards are stacked against local dealerships. The manufacturers dictate location, building size, what vehicles can be sold at a given location, and how much working capital must be invested. They approve rent, mandate hours of operation, set training standards, control pricing and distribution of product, and floorplan financing. They have proprietary information on even the smallest detail of the dealership's operations, including monthly financial statements, customer data and payroll records. Manufacturers can undercut pricing, limit supply and ultimately drive independently owned dealers out of business using this unfair advantage. When Goliath-sized factory dealerships are allowed to replace a competitive system of family-owned and operated small businesses, consumers and taxpayers ultimately lose.

A healthy competitive environment currently exists among Kansas dealerships, which produces competitive pricing and options for consumers. A customer's relationship with their local dealer continues long after the sale, as it is more convenient to have warranty and maintenance issues resolved close to home, instead of an inconveniently-located factory owned store located miles away. The current geographical distribution of dealerships, for the most part, is well established throughout

Kansas to serve the needs of the motoring public. This will change dramatically if manufacturers are allowed to operate factory dealerships.

This is an issue of simple economics as well. Currently, there are 305 new car dealers in Kansas, with an average annual payroll of \$1.26 million. Dollars generated locally tend to circulate locally. Hometown dealers are local business people, and naturally, they do business locally. They have longstanding relationships with local banks, insurers, suppliers, and many local merchants. Local economies, both small and large, depend on the millions of dollars of sales, property and payroll taxes generated locally by these dealerships. Their commitment is to the communities where they live and work, not to a monopolistic headquarters in a faraway place.

In 1998, Kansas new vehicle dealerships generated \$5.283 billion in total sales, which amounts to 23.8 percent of the total retail sales in the state. In addition, Kansas dealerships employ 11,399 people statewide, whose annual income accounts for 10.9% of the state's retail payroll. What if even a portion of this was lost? Who will make up the difference? This issue has a profound impact on public schools, local governments, and civic and charitable organizations.

Automobile manufacturers like to stress the fact that car shopping has changed dramatically in the age of the Internet, and the possibility of buying a car online and taking delivery at your home or office would offer the ultimate in customer convenience. The same can be said of predatory pricing and fraudulent practices, too. The Internet presents a viable opportunity for that as well.

Online car shopping does sound attractive for people with busy lives. However, the sad truth is one in four online car customers later discovered that—although they were led to believe that the “online price” was the lowest price possible—they could have obtained a better deal on the same vehicle if they had just shopped at a local dealership (Source: CNW Marketing Research, Computers, Cars and the Internet e-Facts, v. 1.999). This is not to say the concept of Internet commerce is bad, but viewing a low-resolution image of a vehicle on a computer screen is a poor substitute for test driving the real thing, especially considering the purchase of a new motor vehicle is the second largest purchase an individual will make in their lifetime, not a \$5 Amazon.com book.

Local dealers have realized the power of the Internet as a tool to educate the consumer in order for them to make an informed buying decision. In fact, 74 percent of all local dealers have made an investment in technology and are online. Their web sites provide the most up-to-date information on the latest models, as well as upcoming sales, rebates, incentives and promotional interest rates.

Yet, a modem connection can't take the place of a consumer's “car buying” and “car owning” experience and it cannot and does not provide expert repair and customer service facilities. The proposed legislation stipulates that all cars, whether bought through a dealer or direct from the factory online or through a catalog, will need to be delivered by a licensed dealer. Specifically, it helps preserve customer satisfaction and choice, and

by its operation, keeps intact such consumer protections as the Kansas Implied Warranty Laws, the Kansas "Lemon Law" and the Ten-Year Seatbelt Warranty Law.

By prohibiting large manufacturers from cornering the market on their brands, controlling product distribution and driving existing dealerships out of business, states like Kansas maintain a competitive system of mostly family-owned and operated dealerships. Specifically, this new legislation:

- Assures consumers the ability to find a selection of competitively priced vehicles within a short drive of their hometown.
- Preserves the convenience and accountability of local service after the sale.
- Allows consumers the opportunity to comparison shop between brands, without being limited to one particular manufacturer's models and monopolistic pricing.
- Provides a level playing field for the state's existing businesses.
- Protects local jobs, local investments, and local business relationships of dealerships in communities large and small.
- Continues the level of corporate, payroll, property and local sales taxes generated by local dealerships.
- Preserves enacted Kansas Consumer Protections.
- Assures local availability of trained technicians, warranty and repair service.
- Provides delivery requirements, which help avoid fraud and circumvention of Kansas dealer laws and requirements, thus providing greater accountability.

On behalf of KADA, I would like to thank the Committee for their time and consideration of this legislation, which we believe to be critical to the long-term viability of the independent franchised new vehicle dealers in Kansas. At this time, I would like to introduce KADA's General Counsel, Mr. Pat Barnes, who will walk through the statutory changes to our Dealers and Manufacturers Licensing Act which I have just highlighted. Pat will also outline two proposed balloon amendments to SB 489, which we have agreed with the manufacturers to include with our proposal. At the conclusion of Pat's remarks, both he and I, and our dealers present today will be pleased to respond to any questions you might have.

KANSAS AUTOMOBILE DEALERS ASSOCIATION

SB 489 - Issues & Answers

Why do we need legislation to prohibit auto manufacturers from operating dealerships in Kansas?

The world's largest auto manufacturers are determined to corner the market by targeting the best locations for factory-owned stores, and consolidating the many competitive dealerships in an area down to a centrally controlled monopoly. If this happens, consumers will be forced to drive farther and pay more for future new car purchases and repairs.

Factory-owned stores are ultimately anti-consumer. If the manufacturers get their way, customers may not be able to buy the most popular models and—because the auto makers could use predatory pricing to drive independent, same-brand dealers out of business in a given market area—they could raise prices because there would be no intra-brand competition.

Essentially, the proposed legislation seeks to amend Kansas' dealers license law to prohibit motor vehicle manufacturers (with some exceptions) from obtaining a license to sell motor vehicles at retail within the state.

Why do we need the legislation now?

Last fall, General Motors announced its intention to open factory-owned stores in 130 of its largest markets. Though GM has recently backed off from this stance, the announcement triggered alarm bells in state capitols nationwide. Ford Motor Co. recently purchased all of the Ford dealers in several major markets including Oklahoma City, Tulsa and Salt Lake City, and own stores in San Diego and Rochester NY. Both Ford and GM would like dealers to believe that they have backed off these plans. Dealers are skeptical because manufacturer-owned stores have unfair advantages over dealer-owned stores.

Like dealers, legislators in 14 states have understood that their states will lose corporate, payroll, local sales and property tax revenues they receive from local dealerships in small and large municipalities statewide. Last year's new vehicle taxes made up about one-fourth of the total retail sales taxes collected statewide. Add to that the fact that family-owned and operated dealerships benefit their local communities because they make local vendor purchases, support school education and athletic programs, and are very involved in charities and civic organizations.

The current geographical distribution of dealerships is well established throughout Kansas to serve the public needs. This will change dramatically if manufacturers are allowed to operate factory dealerships. The proposed legislation to ban factory-owned dealerships is the only effective way to prevent unfair competition.

Has this legislation been tried before and what was the result?

Fourteen states prohibit manufacturers from owning or operating dealerships: Arkansas, Florida, Georgia, Illinois, Louisiana, Maryland, Montana, Nevada, New Jersey, North Carolina, Texas, Utah, Virginia and Wisconsin.

Nineteen states have laws that ban "unfair competition" by manufacturers against dealers, though dealers in those states believe that the laws are unenforceable and are moving toward all-out prohibitions. The "unfair competition" states are Alabama, California, Connecticut, Delaware, Idaho, Indiana, Kentucky, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, Ohio, Oregon, Rhode Island, Tennessee, Vermont, West Virginia and Wyoming.

Currently, dealer associations in Colorado, Iowa, Nebraska, Missouri, North and South Dakota and Minnesota are working hand-in-hand with legislators to protect consumer rights and options.

The proposed legislation includes provisions that would allow manufacturers to co-own a dealership for a period of time, which would permit a person of limited financial resources (often a minority) to purchase the dealership. The manufacturer may own a dealership for up to a year to facilitate the sale of the dealership.

Manufacturers have portrayed this legislation as anti-competitive. Is it?

No. If anything, the manufacturer-owned stores are anti-competitive. For factory-owned stores to be a profitable venture, manufacturers must consolidate many dealerships into one. This type of monopolistic centralization destroys competition, limits consumer choice, and ultimately drives up the price of a vehicle.

Consumers will be forced to drive farther and pay more for vehicles and service. The legislation will ensure the survival of the most fiercely competitive retailers in the marketplace— independent car and truck dealers.

Manufacturers also claim factory-owned stores will streamline the process of buying their brands in traditional and innovative ways (i.e. the Internet). Why not try it?

Automobile manufacturers like to stress the fact that car shopping has changed dramatically in the age of the Internet. Local dealers have also realized the power of the Internet as a tool to educate consumers, in order for them to make an informed buying decision. In fact, a whopping 74 percent of all local dealers have made an investment in technology, are online and provide the

most up-to-date information on the latest models, as well as upcoming sales, rebates, incentives and promotional interest rates—some of which are only available from dealerships. But a modem connection can not take the place of a consumer's "car buying experience" and "car owning experience, and it can not and does not provide expert repair and customer service facilities.

A customer's relationship with that dealer continues long after the sale, because it is more convenient to have warranty and maintenance issues resolved close to home instead of an inconveniently-located "mega" dealership. The proposed legislation stipulates that all cars, whether bought through a dealer or direct from the factory online, will need to be delivered by a licensed dealer. Additionally, it helps preserve customer satisfaction and choice, and by its operation keeps intact such consumer protections as the Kansas Implied Warranty Laws, the Kansas "Lemon Law" and the Ten-Year Seatbelt Warranty Law.

Why do local dealers consider it unfair to compete with their own manufacturers?

The system of local dealerships was established a century ago, when Henry Ford envisioned a distribution system for his Model T that would launch an industry. Mr. Ford's system of local sales and service helped automakers survive the Great Depression, two World Wars, and an influx of foreign vehicles. Now, since new vehicle sales have reached record levels, some of the world's largest corporations want to corner the market for local sales and service. The manufacturer has proprietary information on its dealers, including financial statements, customer lists, floor plans, and payroll records. This is simply not a level playing field.

This legislation protects local small businesses, while providing many benefits for consumers and taxpayers of our state:

- Assures future buyers the ability to find a selection of competitively-priced vehicles within a short drive of their hometown
- Preserves the convenience and accountability of local service after the sale
- Gives consumers the opportunity to comparison shop between brands, without being limited to one particular manufacturer's models and monopolistic pricing
- Provides a level playing field for the state's existing businesses
- Protects local jobs, local investments, and local business relationships of dealerships in communities large and small
- Preserves enacted Kansas Consumer Protections
- Continues the level of corporate, payroll and sales taxes generated by local dealerships
- Assures local availability of trained technicians, warranty and repair service
- Provides delivery requirements, which help avoid fraud and circumvention of Kansas dealers laws and requirements, thus providing greater accountability
- Models legislation previously passed and proven fair in 14 other states

KANSAS AUTOMOBILE DEALERS ASSOCIATION

SB 489 - Situation Analysis

Auto manufacturers have announced their intention to establish factory-owned dealerships nationwide, and in some cases have already begun with stores on either coast. In response, a grassroots effort to protect local auto dealers has gone from zero-to-sixty, as 17 states (including Kansas) consider legislation to prohibit factory-owned dealerships.

The proposed legislation, modeled after legislation currently on the books in 14 other states, is designed to prohibit predatory practices by manufacturers such as Ford and General Motors.

Why have so many legislatures taken up the cause of local auto dealerships? It comes down to basic economics, fair play, maintaining healthy competition between dealers and protecting the rights of consumers.

Basic Economics - Consumers could lose their rights and taxpayers will foot the bill for factory stores.

Factory-owned stores are ultimately anti-consumer. If the manufacturers get their way, customers may not be able to buy the most popular models, because the auto makers could use predatory pricing to drive independent, same-brand dealers out of business in a given market area, and they could raise prices because there would be no intra-brand competition.

A customer's relationship with that dealer continues long after the sale, because it is more convenient to have warranty and maintenance issues resolved close to home instead of an inconveniently-located "mega" dealership. As such, the legislation also stipulates that all cars, whether bought through a dealer or direct from the factory online, will need to be delivered by a licensed dealer. This helps preserve customer satisfaction and choice, and by its operation keeps intact such consumer protections as the Kansas Implied Warranty Laws, the Kansas "Lemon Law" and the Ten-Year Seatbelt Warranty Law.

But this is an issue of simple economics as well. A healthy competitive environment between Kansas dealers produces competitive pricing for consumers. In fact, that competitive pricing helped produce a record number of new vehicle sales in 1999. This has a profound impact on public schools, local governments, and civic and charitable organizations. Consider the economics of the issue:

- *305 new car dealerships in Kansas (down from 1200 in the early 60's)
- *1998 sales of \$5.283 billion (23.8% of total Kansas retail sales)
- *Average sales per dealership of \$17.323 million
- *Millions of dollars in sales tax revenue for state and local governments
- *11,399 employees

Essentially, the legislation seeks to amend Kansas' dealers license law to prohibit motor vehicle manufacturers (with some exceptions) from obtaining a license to sell motor vehicles at retail within the state. It will keep the world's largest auto manufacturers from cornering the market by targeting the best locations for factory-owned stores, consolidating those dealerships and building a centrally controlled monopoly. If this happens, consumers will be forced to drive further and pay more for future new car purchases and repairs.

Fair Play - Predatory practices destroy existing businesses, build monopolies.

The cards are stacked against local dealerships. Manufacturers control which dealerships get shipments of popular models and control rebates. Manufacturers have proprietary information, including a dealer's financial statements, floor plans, customer lists and payroll records. Manufacturers can undercut pricing, limit supply and drive dealers out of business using this unfair advantage.

When Goliath-sized factory dealerships are allowed to replace a competitive system of family-owned and operated small businesses, consumers and taxpayers lose.

Cost, Convenience, Local Control: Just like Henry Ford envisioned a century ago.

A century ago, when Henry Ford envisioned a model distribution system for the Model T, he recruited local dealers in each marketplace. The original concept of local dealerships helped the automobile industry to survive through two World Wars, the Great Depression, and an influx of foreign car manufacturers.

The entrepreneurial spirit of Henry Ford continues to express itself today through local dealers who remain close to the pulse of their community. But as the industry has evolved, so have the local dealers. In fact, 74 percent of all local dealers have made an investment in technology, are online and provide the most up-to-date information on the latest models, as well as upcoming sales, rebates, incentives and promotional interest rates, some of which are only available from dealerships.

By prohibiting large manufacturers from cornering the market on their brands, controlling product distribution and driving existing dealerships out of business, states like Kansas maintain a competitive system of mostly family-owned and operated dealerships. Specifically, this new legislation:

- Assures consumers the ability to find a selection of competitively priced vehicles within a short drive of their hometown
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- Assures local availability of trained technicians, warranty and repair service
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- Models legislation previously passed and proven fair in 14 other states

**STATES WITH FACTORY STORE PROVISIONS
2000**

Prevent manufacturer from competing with dealer in RMA with exceptions - reasonable time, while for sale, during a buyout: Alabama, California, Indiana, Louisiana, Maine, Minnesota, Nevada, New Jersey, New Hampshire, Rhode Island, Tennessee

Prevent manufacturer from unfairly competing with dealer in RMA with exceptions - reasonable time, while for sale, during a buyout: Connecticut, Delaware, Idaho, Kentucky, Michigan, Ohio, Vermont, West Virginia, Wyoming

Illegal for manufacturer to own or operate, directly or indirectly a dealership: Florida, Massachusetts

Unlawful for manufacturer to directly or indirectly own or operate a dealership or act in the capacity of a dealer: Texas

Illegal for manufacturer to own, operate or control a dealership: Virginia, Wisconsin

Manufacturer prohibited from selling to a consumer, except through a franchisee: New Jersey, Utah

Manufacturer, or entity owned or controlled by a manufacturer, may not sell to a retail buyer: Maryland

Addresses manufacturer/dealer entities: Texas, Georgia, North Carolina.

States enacting or amending existing laws during 1998 - 99 are marked with an *. They are:

1. Arkansas
2. Georgia
3. Illinois
4. Indiana
5. Montana
6. North Carolina
7. Texas
8. Connecticut
9. Wisconsin

Page Two

States that have or will introduce bills containing factory store prohibition language:

Alaska

Arizona – HB 2101

Colorado

Iowa

Kansas – SB 489

Kentucky – HB 250

Minnesota

Missouri – SB 826

Nebraska – LB 1018

New Hampshire – SB 375

Oklahoma

South Carolina – HB 4450, SB 1044

Utah

Washington State – HB 2529, SB 6220

West Virginia

Rural-Focus

White Paper Report

White Paper Report

Legislation protects consumer pocketbooks, Retains local control of car dealerships

“Only men financially reliable, of good standing in the community, and occupying presentable homes, are accepted as dealers by Ford Motor Company.”

--Early 1900's dealer recruitment ad

When the visionary entrepreneur, Henry Ford, designed a distribution system for the Model T, he created a franchise relationship with local dealers in each marketplace rather than maintain control as the manufacturer. He reasoned this was the best way to serve the needs of consumers, and thus make it possible for more people to buy and service their cars locally.

Today, there are 305 new car dealerships in Kansas. In 1998, they had \$5.283 billion in total sales. Healthy competition between dealerships locally and regionally helped Kansas consumers buy a record number of new vehicles last year.

Hometown dealers are local business people, and naturally, they do business locally. They have longstanding relationships with local banks, insurers, suppliers, and advertising companies. Dealers and their employees support local charities, churches, little league teams, driver' education programs, and civic organizations. Their commitment is to the communities where they live and work, not to a monopolistic headquarters in a far away state or country.

Dollars generated locally tend to circulate locally as well. Dealerships in Kansas employ 11,399 people statewide. Local schools and small town economies depend on the millions of dollars of sales, property and payroll taxes generated locally by these dealerships. What if even a portion of this was lost? Who will make up the difference if manufacturer-owned dealerships are allowed in Kansas?

But this issue goes well beyond local economics—consumers could ultimately feel the crunch because they will lose out on fair pricing, reliable service and the chance to comparison shop between brands. Automobile manufacturers like to stress the fact that car shopping has changed dramatically in the age of the Internet and the possibility of buying a car online and taking delivery at a factory-owned “mega” dealership offers the ultimate in customer convenience.

Online car shopping does sound attractive for people with busy lives. However, the sad truth is one in four online car customers later discovered that—although they were led to believe that “online price” was the lowest price possible—they could have gotten a better deal on the same vehicle if they had just shopped at their local dealer. This is not to say the concept of Internet commerce is bad, but a low resolution graphic on a computer screen is a poor substitute for the real thing.

Local dealers realize the power of Internet as a tool to educate the consumer about a vehicle’s features. In fact, a whopping 74 percent of all local dealers in the U.S. have made an investment in technology and are online. Their websites can be counted on to provide the most up-to-date information on the latest models, as well as upcoming sales, rebates, incentives and promotional interest rates—some of which are only available from dealerships.

A modem connection can’t take the place of a consumer’s “car buying” and “car owning” experience. That’s why, in order to help preserve customer choice and satisfaction, the proposed legislation prohibiting manufacturer-owned dealerships in Kansas stipulates that all cars bought online will need to be delivered by a dealer.

The specter of manufacturer-owned dealerships is a real one. Hoping to “cherry pick” the best locations in the state for their company-owned stores, Detroit’s largest auto manufacturers want to use insider information about family-owned and operated Kansas dealerships to gain a competitive advantage.

Here’s how the cards are stacked against local dealerships:

- 1) Manufacturers control which dealerships get shipments of popular new models, and control rebates;
- 2) Manufacturers have proprietary information, including a dealer’s financial statements, floor plans, and payroll records;
- 3) Manufacturers can undercut pricing, limit supply, and drive dealers out of business using this unfair advantage;
- 4) After manufacturers eliminate competition and create monopolies in the largest population centers, they can price vehicles as they want, sending profits to Detroit.

Thirty-two states have recognized the devastating impact of unfair competition on current dealerships, and have passed laws limiting or prohibiting altogether the manufacturer’s ability to operate a retail store in competition with its franchised dealers. Most recently, such unfair practices were prohibited in eight states: Arkansas, Georgia, Illinois, Montana, Nevada, North Carolina, Texas, and Wisconsin.

Kansas has an opportunity to act now, on behalf of its citizens, to assure local small businesses can continue to compete on a level playing field.

By prohibiting large manufacturers from cornering the market on their brands of automobiles, thus controlling product distribution and driving existing dealerships out of business, Kansas maintains a competitive system of family-owned and operated dealerships to serve all its communities.

Strengthening the franchise law provides many benefits to taxpayers and consumers:

- ◆ Assures future buyers the ability to find a selection of competitively-priced vehicles within a short drive of their hometown
- ◆ Preserves the convenience and accountability of local service after the sale
- ◆ Allows consumers the opportunity to comparison shop between brands, without being limited to one particular manufacturer's models and monopolistic pricing
- ◆ Provides a level playing field for the state's existing small businesses
- ◆ Protects local jobs, local investments, and local business relationships of dealerships in communities large and small
- ◆ Continues the level of corporate, payroll, and sales taxes generated by local dealerships
- ◆ Models legislation previously passed and proven fair in 14 other states

**Metropolitan-Focus
White Paper Report**

White Paper Report

New legislation protects consumer pocketbooks, Retains vigorous competition between local dealerships

In the state's largest metropolitan areas, a vast number of new car dealerships share the same marketplace, creating vigorous competition to the benefit of buyers. Can you imagine what would happen if these dealerships were consolidated, and a single auto manufacturer's monopoly took their place? Consumers would suffer devastating consequences: higher prices, less selection, and unsatisfactory service after the sale.

That's the scenario facing new car buyers in the metropolitan area if Detroit's largest manufacturers have their way. Unless legislators put the brakes on and stop the Big Three automakers in their tracks, many metropolitan dealerships will be bought out or driven from business through predatory practices now banned in 14 other states.

Currently, there are 305 new car dealers in Kansas. In 1998, they sold \$5.283 billion in new vehicles, 23.8 percent of the total retail sales in the state. Due to healthy competition between dealerships in the greater metropolitan area, and a tremendous selection of new vehicles of all makes and models, new car sales have reached record levels.

Now, Detroit's largest auto manufacturers want to use insider information about these metropolitan dealerships to gain a competitive advantage, hoping to "corner the market" and create a citywide monopoly for their company-owned stores.

Here's how the cards are stacked against local dealerships:

- 1) Manufacturers control which dealerships get shipments of popular new models, and control rebates;
- 2) Manufacturers have proprietary information, including a dealer's financial statements, floor plans, customer lists and payroll records;
- 3) Manufacturers can limit supply and drive dealers out of business using unfair business practices;

After manufacturers eliminate competition and create monopolies in the largest population centers, they can price vehicles any way they want, sending profits back to Detroit.

But this issue goes well beyond local economics—consumers could ultimately feel the crunch because they will lose out on fair pricing, reliable service and the chance to comparison shop between brands. Automobile manufacturers like to stress the fact that car shopping has changed dramatically in the age of the Internet. And the possibility of buying a car online and taking delivery at a centrally located “mega” dealership would offer the ultimate in customer convenience.

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A modem connection can’t take the place of a consumer’s “car buying” and “car owning” experience. That’s why, in order to help preserve customer choice and satisfaction, the proposed legislation to prohibit manufacturer-owned dealerships in Kansas stipulates that all cars bought online will need to be delivered by a dealer.

Hometown dealers are local business people, and naturally, they do business locally. They have longstanding relationships with local banks, insurers, suppliers, and advertising companies. Dealers and their employees support local charities, churches, and civic organizations. Their commitment is to the communities where they live and work, not to a monopolistic headquarters in a far away state.

Dollars generated locally tend to circulate locally as well. Dealerships in Kansas employ 11,399 people statewide. Local economies depend on the millions of dollars of sales, property and payroll taxes generated locally by these dealerships. What if even a portion of this was lost? Who will make up the difference?

Thirty-two states have recognized the devastating impact of unfair competition on current dealerships, and have passed laws limiting or prohibiting altogether the manufacturer’s ability to operate a retail store in competition with its franchised dealers. Most recently, such unfair practices were prohibited in eight states: Arkansas, Georgia, Illinois, Montana, Nevada, North Carolina, Texas, and Wisconsin.

Kansas has an opportunity to act now, on behalf of its citizens, to assure local small businesses can continue to compete on a level playing field.

By prohibiting large manufacturers from cornering the market on their brands of automobiles, thus controlling product distribution and driving existing dealerships out of business, Kansas maintains a system that currently works well for its citizens and their communities.

Strengthening the franchise law provides many benefits to taxpayers and consumers:

- Assures future buyers the ability to find a selection of competitively-priced vehicles within a short drive of their hometown
- Preserves the convenience and accountability of local service after the sale
- Allows consumers the opportunity to comparison shop between brands, without being limited to one particular manufacturer's models and monopolistic pricing
- Provides a level playing field for the state's existing small businesses
- Protects local jobs, local investments, and local business relationships of dealerships in communities large and small
- Continues the level of corporate, payroll, and sales taxes generated by local dealerships
- Models legislation previously passed and proven fair in 14 other states

SENATE BILL No. 489

By Committee on Judiciary

1-26

Sen. Jud
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ATT #2

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AN ACT concerning the dealers and manufacturers licensing act; relating to owning, acting as or controlling new vehicle dealers; sale and delivery of vehicles and responsibilities with respect thereto; prescribing certain prohibited acts.

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

Section 1. (a) Except as provided by this section, and notwithstanding any other provisions of the vehicle dealers and manufacturers licensing act, with respect to motor vehicles, a first stage manufacturer of vehicles or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative, may not directly or indirectly:

- (1) Own an interest in a new vehicle dealer or dealership;
- (2) operate or control a new vehicle dealer or dealership; or
- (3) act in the capacity of a new vehicle dealer or dealership, or otherwise sell new vehicles at retail.

(b) A first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative may own an interest in a franchised dealer or dealership, or otherwise control a dealership, for a period not to exceed 12 months from the date the first or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative, acquires the dealership if:

- (1) The person from whom the dealer or dealership was acquired was new vehicle dealer; and
- (2) the dealership is for sale by the first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative, at a reasonable price and on reasonable terms and conditions.

(c) On a showing of good cause by a first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative, as the case may be, the director may extend the time limit set forth in subsection (b) for a period of not to exceed 12 months. ~~An existing new vehicle dealer in new~~

[one time

~~motor vehicles shall have standing to a protest of the request for extension if it is a party to a franchise agreement for the same line make vehicle as that dealer or dealership for which application for extension has been made and is located within the same relevant market area as defined in this section for that dealer or dealership.~~

(d) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under-represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative, may temporarily own an interest in a new vehicle dealer or dealership if the first or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative's participation in the new vehicle dealer or dealership is in a bona fide relationship with a new vehicle dealer who:

- (1) Has made a significant investment in the new vehicle dealer or dealership, which is subject to loss;
- (2) has an ownership interest in the new vehicle dealer or dealership; and
- (3) operates the new vehicle dealer or dealership under a plan to acquire full ownership of the new vehicle dealer or dealership within a reasonable time and under reasonable terms and conditions.

(e) The words or phrases used in this section shall have the meanings otherwise provided by law, except ~~the following specific words or phrases:~~

- ~~(1) "Dealership" means any physical premises, equipment, and business facilities on or with which a new vehicle dealer operates its business, including the sale or repair of motor vehicles. Dealership includes premises or facilities at which a person engages in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise agreement or a motor vehicle manufacturer's warranty;~~
- ~~(2) "line make vehicle" means those new motor vehicles which are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer or distributor of the same;~~

[the word

- ~~(3) "relevant market area" means the area within:

 - (A) A radius of 10 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's location is in a county having a population of 30,000 or more persons;
 - (B) a radius of 15 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's principal location is in a county have a population of less than 30,000 persons; or~~

~~(C) the area of responsibility defined in the franchise agreement of the existing dealer, whichever is greater.~~

(f) The provisions of this section shall not apply to a first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory representative as to only those dealers or dealerships which are already owned by such first stage manufacturer or second stage manufacturer of vehicles, factory branch, distributor branch, or distributor, distributor or factory represen-

10 posed by law, no first stage manufacturer or second stage manufacturer of
 11 of vehicles, factory branch, distributor branch, or distributor or factory
 12 representative may deliver a motor vehicle in this state to a person in this
 13 state, unless such motor vehicle is delivered to the person by a vehicle
 14 dealer licensed to do business in the state of Kansas pursuant to the
 15 dealers and manufacturers licensing act and as provided in this section.
 16 Unless otherwise provided by law, all new motor vehicles shall be delivered
 17 as required by this section by a new vehicle dealer and in the case
 18 of used motor vehicles, then by a new vehicle dealer or used vehicle
 19 dealer.
 20

who is a party to a franchise agreement for the same
 line-make of vehicle as that to be delivered

21 (b) The requirements of this section shall not apply to:
 22 (1) A person to whom the provisions of subsection (v) of K.S.A. 1999
 23 Supp. 8-2404, and amendments thereto, apply;
 24 (2) motor vehicles delivered by one licensed motor vehicle dealer to
 25 another within the scope of such license, including those delivered by
 26 first stage manufacturers and second stage manufacturers to each other;
 27 (3) deliveries of motor vehicles, including those which are used, to
 28 new vehicle dealers for resale in this state by such new vehicle dealer;
 29 (4) deliveries of used motor vehicles to auction motor vehicle dealers,
 30 used vehicle dealers and salvage vehicle dealers for resale in this state;
 31 and
 32 (5) (A) deliveries of motor vehicles to first stage converters and sec-
 33 ond stage converters for the construction and sale of motor vehicles pro-
 34 duced by such licensee; or
 35 (B) the resulting motor vehicles so constructed and produced by such
 36 licensee if it has not historically relied primarily upon franchise agree-
 37 ments with new vehicle dealers for the retail sale in this state of a material
 38 portion of the motor vehicles it produces and does not primarily utilize
 39 or rely upon franchise agreements between itself and new vehicle dealers
 40 for the retail sale in this state of new motor vehicles produced by such
 41 first or second stage convertor.

The term "line-make" as used in this section shall
 have the same meaning as that defined for this term
 in K.S.A. 1999 Supp. 8-2430(e), and amendments thereto.

42 Sec. 3. If a transaction for the sale of a new motor vehicle which does
 43 not take place in the state of Kansas requires or allows delivery in the

1 state of Kansas, then such new motor vehicle shall be deemed to have
 2 been sold in this state for purposes of meeting the definition set forth in
 3 subsection (a)(2) of K.S.A. 50-645, and amendments thereto, upon deliv-
 4 ery of such motor vehicle within the state of Kansas to a consumer as
 5 defined in subsection (a)(1) of K.S.A. 50-645, and amendments thereto,
 6 and the new motor vehicle shall thereafter be subject to the provisions
 7 of K.S.A. 50-645 and 50-646, and amendments thereto.

8 Sec. 4. No dealer may aid or abet a person in violating the dealers
 9 and manufacturers licensing act.

10 Sec. 5. If any provision of this act or the application thereof to any
 11 person or circumstance is held invalid, the invalidity does not affect other
 12 provisions or applications of this act which can be given effect without
 13 the invalid provision or application, and to this end the provisions of this
 14 act are severable.

15 Sec. 6. This act shall be a part of and supplemental to the vehicle
 16 dealers and manufacturers licensing act.

17 Sec. 7. This act shall take effect and be in force from and after its
 18 publication in the Kansas register.

Annual Contributions of Kansas's New-Vehicle Dealers*

Kansas's dealers maintain a multi-BILLION dollar retail industry.

Average sales per dealership	\$17.323 million
Total sales of all new-vehicle dealerships in Kansas	\$5.283 billion
Dealership sales as % of total retail sales in the state	23.8%
Estimated number of new-vehicle dealerships	305

Dealers provide thousands of well-paying jobs in Kansas.

Total number of new-vehicle dealership employees in Kansas	11,399
Average number of employees per dealership	37
Average annual earnings of new-vehicle dealership employees	\$34,216
Dealership payroll as % of total state retail payroll	10.9%
Annual payroll of new-vehicle dealerships	\$380 million
Average annual payroll per new-vehicle dealership	\$1.26 million

Dealers generate hundreds of millions of dollars of tax revenue for state and local government through:

- ✓ Sales tax revenue
- ✓ Corporate tax revenue
- ✓ Payroll tax revenue

**Numbers reflect annual economic activity during 1998.*



NATIONAL ASSOCIATION OF MINORITY AUTOMOBILE DEALERS

“Working Hard Every Day To Create Viable Opportunities
For Ethnic Minorities In The Automotive Industry”

February 15, 2000

Don L. McNeely
800 S. W. Jackson, Suite 1110
Topeka, KS 66612

Re: Senate Bill No. 489

Dear Mr. McNeely:

The National Association of Minority Automobile Dealers (NAMAD) is a non-profit trade association representing more than 500 ethnic minority franchised motor vehicle dealers, including dealers in Kansas. We have reviewed Senate Bill 489 and our association is in support of this legislation.

The bill as introduced fairly addresses the disparity that exists between the dealers and manufacturers. Additionally, the bill preserves the ability of non-traditional dealers to become dealers through the exception provided at Section 1(a). We urge the passage of Senate Bill 489 to preserve competition and serve the public.

For years, the traditional franchise dealer has served the interests of the general public in a number of ways, including ensuring fair and aggressive competition. The traditional dealer system has contributed greatly to our booming economy. They are leaders in their community and support numerous community and philanthropic activities.

Failure to pass this legislation could lead to the demise of the franchise system as we know it. The independent franchised dealer is in no position to compete with the factory, given the disparity in economic power and the factory's access to the dealer's financial and operational information. I ask you to consider this essential question as you consider passage of Senate Bill 489. “Do we really want to eliminate competition by eliminating those dealers providing sales and service in their local communities in favor of regional factory stores?” Since no dealer can compete with that dealer's sole supplier of product, the end result will be loss of choice and loss to the consumer.

Thank you for considering Senate Bill 489. Please feel free to contact me at (301) 306-1614 for any questions or further clarification.

Sincerely,

Sheila Vaden-Williams
President

\\Namad00\namad data\Franchise Owned Stores\2-15-00 Letter to Don McNeely re Kansas bill.wpd

8401 Corporate Drive • Suite 405 • Lanham, MD 20785
(301) 306-1614 • Fax (301) 306-1493
website: www.namad.com • email address: namad-dc@msn.com

**McGILL
GACHES
& ASSOCIATES**



INC.

GOVERNMENT AFFAIRS & PUBLIC RELATIONS

300 WEST EIGHTH • THIRD FLOOR • TOPEKA, KANSAS 66603-3912 • 785-233-4512 • FAX 785-233-2206

Testimony of Ron Gaches
McGill, Gaches, and Associates

On behalf of the Alliance of Automobile Manufacturers

Regarding Senate Bill 489
The Automobile Dealers and Manufacturers Licensing Act

Submitted to Senate Judiciary Committee
Wednesday, February 16, 2000

*S. Jud 2-16
Rt 3*

*In Jud
2-16-00
Rt 3*

Thank you Chairman Emert for this opportunity to appear before your Committee regarding Senate Bill 489. I am Ron Gaches with McGill Gaches and Associates and I appear today on behalf of the Alliance of Automobile Manufacturers.

The Alliance of Automobile Manufacturers member companies include BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Nissan, Toyota, Volkswagen, and Volvo.

Senate Bill 489 would create a broad prohibition against automobile manufacturers owning automobile dealerships in the state of Kansas.

The Alliance does not oppose the broad intent of SB 489, but is opposed to passage of the bill in its current form. We would like to offer six amendments to the bill. With adoption of these amendments, the Alliance would support passage of SB 489.

The first amendment is to Section 1 of the bill, which prohibits a manufacturer from directly or indirectly owning or operating a new vehicle dealership. The Alliance believes this prohibition is too broad and suggests striking the words "or directly" on line 20 and all of lines 21-24 and inserting the words "own or operate a new vehicle dealer or dealership."

With this change the broad prohibition against direct ownership of a dealership would be in place, but "indirect" ownership would not be prohibited. The Alliance is concerned that prohibiting indirect ownership would prevent the pension plan of an auto manufacturer from owning an interest in a publicly held dealership.

The amendment also deletes the language on line 23 that refers to "act in the capacity of a ... dealer." The Alliance believes this prohibition is too broad. For example, dealers run marketing and advertising campaigns, but so do manufacturers.

If the dealers concern is with manufacturer ownership of dealerships, this amendment should be acceptable.

The second amendment is on line 28 of page one, where a manufacturer is given 12 months to own an interest or control a dealership when such dealership is up for sale at a reasonable price and reasonable terms and conditions, with the opportunity for a 12 month extension.

The Alliance believes that 12 months, plus the extension, is probably sufficient in a strong economy like we have experienced the past few years, but believes a longer time period may necessary when there is a downturn in the economy. Specifically, we ask that the 12 months on line 28 be replaced by 24 months.

Our third amendment proposes to strike the language on page two, lines 5 – 9 that reads, "For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been

under-represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose,”

This language describes narrow terms under which a manufacturer may temporarily own an interest in a new vehicle dealer or dealership. The Alliance believes these terms are too narrow. Alliance members believe they should have the authority to temporarily own an interest in a new vehicle dealer or dealership to promote:

1. minority or female ownership of a dealership
2. transfer of a dealership to a sales manager or service manager who wants to buy the store, and
3. transfer of a dealership in an at risk market, as determined by local market conditions, to a dealer who is reluctant to invest their own capital in the location until they have had an opportunity to operate the dealership for some time

Our fourth amendment would clarify language in Section 2, page 3 that restricts to whom a manufacturer may deliver a vehicle. We believe the intention is to prohibit the transfer of vehicles to anyone other than a retail consumer. To more clearly accomplish this intent, we propose to strike the word “person” in line 13 and substitute the phrase “retail consumer.” Under Kansas’s law, a “person” can be a business entity. Our amendment makes clear the intent is to prohibit delivery to anyone other than the retail consumer.

Our final amendment would further tighten this prohibition by adding the phrase “franchised to sell that line make and” in line 14 following the word “dealer.” The new language would make it completely clear that vehicles are only to be delivered to retail consumers by dealers franchised to sell that line make and licensed to do business in the state of Kansas.

Automobile dealers and their manufacturers represent one of the most dynamic and productive business partnerships in the US economy today. Recognizing the importance of strong and healthy relationships with their dealers, the Alliance of Automobile Manufacturers is committed to working with the Kansas Automobile Dealers Association to craft a Dealers and Manufacturers Licensing Act that is beneficial to both parties and Kansas consumers.

The Alliance proposals are relatively modest, compared to the overall impact of the bill, but important to striking a good balance between the concerns of both dealers and manufacturers. The Alliance has discussed these amendments with the Kansas Automobile Dealers Association and is hopeful that these efforts will result in development of a bill that both dealers and manufacturers can support.

Thank you, Mr. Chairman. I’ll respond to any questions.

Attachment: Alliance amendments to SB 489

SENATE BILL No. 489

By Committee on Judiciary

1-26

9 AN ACT concerning the dealers and manufacturers licensing act; relating
10 to owning, acting as or controlling new vehicle dealers; sale and deliv-
11 ery of vehicles and responsibilities with respect thereto; prescribing
12 certain prohibited acts.
13

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

15 Section 1. (a) Except as provided by this section, and notwithstand-
16 ing any other provisions of the vehicle dealers and manufacturers licens-
17 ing act, with respect to motor vehicles, a first stage manufacturer of ve-
18 hicles or second stage manufacturer of vehicles, factory branch,
19 distributor branch, or distributor, distributor or factory representative,
20 may not directly ~~or indirectly:~~

21 ~~(1) Own an interest in a new vehicle dealer or dealership;~~
22 ~~(2) operate or control a new vehicle dealer or dealership; or~~
23 ~~(3) act in the capacity of a new vehicle dealer or dealership, or oth-~~
24 ~~erwise sell new vehicles at retail.~~

25 (b) A first stage manufacturer or second stage manufacturer of ve-
26 hicles, factory branch, distributor branch, or distributor, distributor or
27 factory representative may own an interest in a franchised dealer or deal-
28 ership, or otherwise control a dealership, for a period not to exceed ~~12~~
29 months from the date the first or second stage manufacturer of vehicles,
30 factory branch, distributor branch, or distributor, distributor or factory
31 representative, acquires the dealership if:

32 (1) The person from whom the dealer or dealership was acquired was
33 new vehicle dealer; and

34 (2) the dealership is for sale by the first stage manufacturer or second
35 stage manufacturer of vehicles, factory branch, distributor branch, or dis-
36 tributor, distributor or factory representative, at a reasonable price and
37 on reasonable terms and conditions.

38 (c) On a showing of good cause by a first stage manufacturer or sec-
39 ond stage manufacturer of vehicles, factory branch, distributor branch,
40 or distributor, distributor or factory representative, as the case may be,
41 the director may extend the time limit set forth in subsection (b) for a
42 period of not to exceed 12 months. An existing new vehicle dealer in new
43 motor vehicles shall have standing to file a protest of the request for

own, or operate a new vehicle dealer
or dealership.

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1 extension if it is a party to a franchise agreement for the same line-make
2 vehicle as that dealer or dealership for which application for extension
3 has been made and is located within the same relevant market area as
4 defined in this section for that dealer or dealership.

5 ~~(d) For the purpose of broadening the diversity of its dealer body and~~
6 ~~enhancing opportunities for qualified persons who are part of a group~~
7 ~~who have historically been under-represented in its dealer body, or other~~
8 ~~qualified persons who lack the resources to purchase a dealership out-~~
9 ~~right, but for no other purpose,~~ a first stage manufacturer or second stage
10 manufacturer of vehicles, factory branch, distributor branch, or distrib-
11 utor, distributor or factory representative, may temporarily own an inter-
12 est in a new vehicle dealer or dealership if the first or second stage man-
13 ufacturer of vehicles, factory branch, distributor branch, or distributor,
14 distributor or factory representative's participation in the new vehicle
15 dealer or dealership is in a bona fide relationship with a new vehicle dealer
16 who:

17 (1) Has made a significant investment in the new vehicle dealer or
18 dealership, which is subject to loss;

19 (2) has an ownership interest in the new vehicle dealer or dealership;
20 and

21 (3) operates the new vehicle dealer or dealership under a plan to
22 acquire full ownership of the new vehicle dealer or dealership within a
23 reasonable time and under reasonable terms and conditions.

24 (e) The words or phrases used in this section shall have the meanings
25 otherwise provided by law, except the following specific words or phrases:

26 (1) "Dealership" means any physical premises, equipment, and busi-
27 ness facilities on or with which a new vehicle dealer operates its business,
28 including the sale or repair of motor vehicles. Dealership includes prem-
29 ises or facilities at which a person engages in the repair of motor vehicles
30 if repairs are performed pursuant to the terms of a franchise agreement
31 or a motor vehicle manufacturer's warranty;

32 (2) "line-make vehicle" means those new motor vehicles which are
33 offered for sale, lease or distribution under a common name, trademark,
34 service mark or brand name of the manufacturer or distributor of the
35 same;

36 (3) "relevant market area" means the area within:

37 (A) A radius of 10 miles around an existing new vehicle dealer in new
38 motor vehicles, if the existing new vehicle dealer's location is in a county
39 having a population of 30,000 or more persons;

40 (B) a radius of 15 miles around an existing new vehicle dealer in new
41 motor vehicles, if the existing new vehicle dealer's principal location is in
42 a county have a population of less than 30,000 persons; or

43 (C) the area of responsibility defined in the franchise agreement of

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36

1 the existing dealer, whichever is greater.

2 (f) The provisions of this section shall not apply to a first stage man-
3 ufacturer or second stage manufacturer of vehicles, factory branch, dis-
4 tributor branch, or distributor, distributor or factory representative as to
5 only those dealers or dealerships which are already owned by such first
6 stage manufacturer or second stage manufacturer of vehicles, factory
7 branch, distributor branch, or distributor, distributor or factory represen-
8 tative, as the case may be, on the effective date of this act.

9 Sec. 2. (a) In addition to any other restrictions or requirements im-
10 posed by law, no first stage manufacturer or second stage manufacturer
11 of vehicles, factory branch, distributor branch, or distributor or factory
12 representative may deliver a motor vehicle in this state to a person in this
13 state, ~~unless such motor vehicle is delivered to the person by a vehicle~~
14 ~~dealer licensed to do business in the state of Kansas pursuant to the~~
15 ~~dealers and manufacturers licensing act and as provided in this section.~~
16 Unless otherwise provided by law, all new motor vehicles shall be deliv-
17 ered as required by this section by a new vehicle dealer and in the case
18 of used motor vehicles, then by a new vehicle dealer or used vehicle
19 dealer.

20 (b) The requirements of this section shall not apply to:

21 (1) A person to whom the provisions of subsection (v) of K.S.A. 1999
22 Supp. 8-2404, and amendments thereto, apply;

23 (2) motor vehicles delivered by one licensed motor vehicle dealer to
24 another within the scope of such license, including those delivered by
25 first stage manufacturers and second stage manufacturers to each other;

26 (3) deliveries of motor vehicles, including those which are used, to
27 new vehicle dealers for resale in this state by such new vehicle dealer;

28 (4) deliveries of used motor vehicles to auction motor vehicle dealers,
29 used vehicle dealers and salvage vehicle dealers for resale in this state;
30 and

31 (5) (A) deliveries of motor vehicles to first stage converters and sec-
32 ond stage converters for the construction and sale of motor vehicles pro-
33 duced by such licensee; or

34 (B) the resulting motor vehicles so constructed and produced by such
35 licensee if it has not historically relied primarily upon franchise agree-
36 ments with new vehicle dealers for the retail sale in this state of a material
37 portion of the motor vehicles it produces and does not primarily utilize
38 or rely upon franchise agreements between itself and new vehicle dealers
39 for the retail sale in this state of new motor vehicles produced by such
40 first or second stage convertor.

41 Sec. 3. If a transaction for the sale of a new motor vehicle which does
42 not take place in the state of Kansas requires or allows delivery in the
43 state of Kansas, then such new motor vehicle shall be deemed to have

retail consumer
franchised to sell that line make and

1 been sold in this state for purposes of meeting the definition set forth in
2 subsection (a)(2) of K.S.A. 50-645, and amendments thereto, upon deliv-
3 ery of such motor vehicle within the state of Kansas to a consumer as
4 defined in subsection (a)(1) of K.S.A. 50-645, and amendments thereto,
5 and the new motor vehicle shall thereafter be subject to the provisions
6 of K.S.A. 50-645 and 50-646, and amendments thereto.

7 Sec. 4. No dealer may aid or abet a person in violating the dealers
8 and manufacturers licensing act.

9 Sec. 5. If any provision of this act or the application thereof to any
10 person or circumstance is held invalid, the invalidity does not affect other
11 provisions or applications of this act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are severable.

14 Sec. 6. This act shall be a part of and supplemental to the vehicle
15 dealers and manufacturers licensing act.

16 Sec. 7. This act shall take effect and be in force from and after its
17 publication in the Kansas register.

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att 4

Testimony Offered To Senate Judiciary Committee By John Federico; Federico Consulting

On Behalf Of General Motors

SB 489

February 16, 2000

Thank you for the opportunity to appear before you today on behalf of General Motors. General Motors has been pleased with the willingness of the KADA to discuss and negotiate the provisions contained in SB 489. We join with the Alliance of Automobile Manufacturers and the suggested changes they have presented to this Committee.

Please note that General Motors remains particularly concerned about the restrictive language that appears in Section (d) on page 2 of SB 489 beginning on line 5. It has been, and will continue to be the goal of General Motors to partner with certain individuals/markets in an effort to provide automobile franchise ownership opportunities to individuals who would otherwise find difficulty in meeting the criteria for ownership which General Motors demands. We have made the KADA aware of our desire to reserve the right to partner with individuals for the purposes of placing dealerships in "high-risk" or business locales as part of its dealer development initiatives. We were unable to reach a compromise with the KADA but remain hopeful that an agreement on specific language can be reached and ultimately amended into the bill.

* * *

I was asked to work with the KADA in an effort to achieve a "carve-out" to the provisions contained in SB 489 for the manufacturer of Saturn vehicles. We believe that we have reached a compromise and support the balloon amendment offered by the KADA. I urge you to adopt these changes as Saturn in its corporate structure, in its business practices and in its relationships with its dealers, is a unique business entity.

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It should come as no surprise to the members of this committee that General Motors operates in a very competitive environment and was recently faced with the challenge of "re-capturing" lost market share. As part of many changes at General Motors, it was announced that they were interested in owning and operating factory stores to compete not against existing General Motors dealers, but their competitors.

This announcement drew the attention of automobile dealers across the country who made their concerns very well known to my client. As a result, and in a spirit of cooperation, GM abandoned the GMRH concept and made a public commitment to improving what they have admitted to being a very "strained" relationship with its franchise vehicle dealers across the country.

The agreement to support most of the language contained in SB 489 and the cooperative nature of the negotiations is testament to the fact that General Motors is committed to its franchised dealers success and seeks to work closely with them as a new and more challenging era of commerce unfolds in the twenty first century.