

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 p.m. on February 9, 2010, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Shirley Palmer - excused

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Jill Shelley, Kansas Legislative Research Department  
Betty Boaz, Committee Assistant

Conferees appearing before the Committee:

Representative Dan Kerschen  
Representative JoAnn Pottorff  
Don McNeeley, KADA President  
Sandy Braden, Representing Alliance of Automobile Manufacturers  
Laura Kliewer, Director, Midwest Interstate Passenger Rail Commission  
Mary Ellen Conlee, Representing The Northern Flyer Alliance  
Lindsay Douglas, Legislative Liaison, KDOT

Others attending:

See attached list.

Chairman Hayzlett called the meeting to order. He opened the hearing on **HB 2498**.

**HB 2498 - Religious services or functions, restricted drivers' licenses.**

Chairman Hayzlett recognized Representative Dan Kerschen. (Attachment #1) According to Representative Kerschen, the Graduated Drivers License bill which passed last year allows restricted drivers to go to and from school and to and from work. **HB 2498** would allow restricted drivers to also go to and from religious services or functions. He said he felt that allowing persons to drive to religious services and events would provide positive reinforcement. Representative Kerschen stood for questions.

The Chairman drew the Committee's attention to written testimony, provided by Kelly Arnold, Youth Sponsor, Westlink Christian Church supporting this bill. (Attachment #2)

Chairman Hayzlett also drew the Committee's attention to written, neutral testimony, from the Kansas Department of Transportation. (Attachment #3)

James R. Hanni, Executive Vice President, AAA Kansas (Attachment #4); Safe Kids Kansas (Attachment #5); and Suzanne Wikle, Director of Health Policy, Kansas Action for Children (Attachment #6), all submitted written testimony in opposition to **HB 2498**.

There were no other proponents or opponents so the Chairman closed the hearing on **HB 2498** and opened hearings on **HB 2547**.

**HB 2547 - Vehicle dealers and manufacturers licensing act, franchise agreements.**

Chairman Hayzlett recognized Don McNeely, KADA President. (Attachment #7) According to Mr. McNeely, **HB 2547** proposes amendments to the Kansas Dealers and Manufacturers Licensing Act. He said this Act provides some degree of protection to new motor vehicle dealers against overreaching by the manufacturers. Mr. McNeely talked about the bankruptcy of two domestic automobile manufacturers and the impact on the Kansas dealerships, the employees of those dealerships and the communities in which they were located. He said even more frustrating is the fact that these dealerships were viable and profitable Kansas automobile dealerships and being forced into closure did nothing to help the manufacturers because the dealers own the

## CONTINUATION SHEET

Minutes of the House Transportation Committee at 1:30 p.m. on April 29, 2010, in Room 783 of the Docking State Office Building.

property, the building, the inventory, the parts and tools. The proposed legislation will protect the dealers from manufacturer demands. He concluded by saying what they are asking is similar to amendments being incorporated into franchise acts in a large number of states. Mr. McNeely introduced KADA's General Counsel, Mr. Pat Barnes who outlined several amendments being suggested for **HB 2547** which were drafted after meeting with representatives of the Kansas Department of Revenue and manufacturer representatives. Staff prepared a balloon amendment indicating the proposed changes. (Attachment #8) Mr. McNeely and Mr. Barnes stood for questions.

There were no other proponents so the Chairman called for opponents.

The Chairman recognized Sandy Braden who was representing the Alliance of Automobile Manufacturers. (Attachment #9) Ms. Braden commented on the historic transformation in the auto industry in the past two years. She said the Alliance and the Kansas Auto Dealers Association had several conversations about the proposed **HB 2547** and the Alliance was greatly encouraged by their most recent communication with the dealers on some very difficult and important franchise issues. Ms. Braden said they were hopeful that with some more time they would be able to reach agreeable positions on the remaining issues. Ms. Braden said Tony Rinehart with the Ford Motor Company was available to answer questions. She asked the Committee to allow both sides to continue to meet to work out the remaining problems. When Ms. Braden completed her testimony she stood for questions.

There were no other opponents so Chairman Hayzlett closed the hearing on **HB 2547** and opened the hearing on **HB 2552**.

### **HB 2552 - Midwest interstate passenger rail compact.**

Chairman Hayzlett recognized Representative Pottorff. (Attachment #10) According to Representative Pottorff **HB 2552** enacts the Midwest Interstate Passenger Rail Compact. She said enacting the compact would make Kansas a member of the Midwest Interstate Passenger Rail Commission. She said being a member of this Commission is a great place to begin reviving the railroad system in Kansas. Representative Pottorff said this Commission has become a strong advocate for funding passenger rail improvements and is an advocate at the federal, state and local levels. She said the railroad system is by definition a multi-state pursuit. She said another important reason to join the compact is that it is an active advocate for federal funding for projects. She concluded with saying there was no good reason why Kansas should not be a part of the compact.

The next proponent was Laura Kliwer (Attachment #11) According to Ms. Kliwer the Midwest Interstate Passenger Rail Commission has been a leading voice for rail improvements since its inception. She said the keystone of their advocacy efforts is presenting a unified voice on the importance of passenger rail as part of a balanced national transportation system. She said through the Commission, Midwestern states have a unified way to plan and advocate at the federal, state and local levels for frequent, convenient and cost-effective passenger rail service. She closed with saying all these developments indicate it will be in the best interest of all the Midwestern states to work more closely together in the future. She provided the Committee with a copy of a News Release dated January 28, 2010.

Chairman Hayzlett recognized Mary Ellen Conlee who represents The Northern Flyer Alliance. (Attachment #12) Ms. Conlee said the Alliance is unanimously committed to daytime passenger rail service over the Burlington Northern Santa Fe system. She said that her purpose today was to ask for support of **HB 2552**, a bill that would provide the required legislative support for Kansas to become a full voting member of the Midwest Passenger Rail Commission. She said the main purposes of the compact are to promote, coordinate and support regional improvements to passenger rail service. She said as a voting member, Kansas would have the support of the commission as it seeks federal funding for bringing intercity passenger rail service to Kansas.

The next proponent was Lindsey Douglas, Legislative Liaison for the KDOT. (Attachment #13) According to Ms. Douglas, **HB 2552** would allow Kansas to join the Midwest Interstate Passenger Rail Compact. She said the purpose of the Midwest Interstate Passenger Rail Commission is to promote the development,

## CONTINUATION SHEET

Minutes of the House Transportation Committee at 1:30 p.m. on April 29, 2010, in Room 783 of the Docking State Office Building.

implementation and improvement of intercity passenger rail service in the Midwest and to promote coordination among the public sector at the federal, state and local levels as well as with private sector stakeholders. She said Kansas would have four members on the Commission - the Governor or designee, a member of the private sector appointed by the Governor and two state legislators, one from each legislative chamber.

The last proponent was Shelby Smith. (Attachment #14) Mr. Smith said he was increasingly confident that we're approaching substantial support for high speed long-distance passenger trains as a vital cog in both our regional and national systems of transportation. He said a recent Financial Impact Study conducted by the University of Kansas School of Business has demonstrated that increased travel, tourism, and employment along a passenger rail route will return a regional economic benefit of \$3.20 for every \$1.00 invested.

All proponents stood for questions.

There were no opponents so Chairman Hayzlett closed the hearing on **HB 2552**.

The Chairman opened **HB 2482** to the Committee for discussion, comments or motions. He asked Carmen Alldritt, Director of Motor Vehicles to brief the Committee on this bill. She also handed out an amendment which codifies what they are currently doing. After all questions were answered Representative Menghini made a motion to adopt the amendment, seconded by Representative Swanson, the motion to adopt the amendment carried.

Representative Menghini made a motion to pass favorably **HB 2482**, as amended, seconded by Representative Worley and the motion carried.

Chairman Hayzlett opened **HB 2484** to the Committee for discussion, comments or motions. Ted Smith, an attorney with the Division of Motor Vehicles gave the Committee a brief overview on the purpose of this bill. Representative King made a motion to pass favorably **HB 2484**, seconded by Representative Swanson, the motion carried.

Chairman Hayzlett opened **HB 2510** to the Committee for discussion, comments or motions. Representative Wetta made a motion to pass favorably **HB 2510**, seconded by Representative Kerschen and the motion carried.

There being no further business before the Committee the meeting was adjourned.





STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

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DAN KERSCHEN  
93RD DISTRICT

February 9, 2010

Chairman Hayzlett and members of the House Transportation Committee.

Good afternoon and thank you for the opportunity to visit with you about HB 2498.

As you know the restricted Drivers License bill passed last year was a step in the right direction for the safety of drivers, young and old and a meaningful improvement for insurance carriers.

The Bill allows restricted drivers to include "to and from school" and "to and from work" as provisions for their driving limitations.

HB 2498 would add the provision for "to and from religious services or functions" to be included in the driving guidelines.

I feel this is a tremendously positive addition that would allow them to drive other than an obligatory schedule such as school or work.

I feel that allowing persons to drive to these events may provide positive reinforcement that could impact their lives for all the right reasons.

Thank you so much for your attention and I would be glad to answer questions.

Respectfully,

Representative Dan Kerschen

House Transportation  
Date: 2-9-10  
Attachment # 1

February 9, 2010

## HOUSE TRANSPORTATION COMMITTEE

Chairman Hayzlett and Committee

I write today to express my strong support for House Bill 2498. Six years ago I got involved with High School Ministries at Westlink Christian Church. As an Adult leader I spend a great deal of time each week with students. I have a strong passion to help young students get connected with positive activities that will help develop a good structure in their lives.

Our church invests many valuable resources into our students each year. We offer an array of activities during the week to give high school students a safe, structured place to enjoy life with each other. On Sundays we have regular services in the morning and in the afternoons we open our activities center up so they can play ball, enjoy games or order coffee from the café. On Mondays the church is available for the same activities and also to offer a quiet place for students to study and use computers. Small groups are held at Adult leaders private homes through the week, offering our 450 students a more individualized setting to study and learn.

When the legislature passed the current driving law that went into effect January 1, it created a barrier to our students' ability to attend activities. Many of the students will now have to wait until they are much older before they can drive to a weekly small group. Some older students have assisted in carpools in the past, picking up friends to bring them to church or small group, but the new limitation on passengers has decreased attendance, keeping kids away from the positive influence a church group can provide. I would like to believe that parents would pick up and drive their kids to church or small group to help fill the gap that was created by the new law but that has not been the case. Many parents work or have conflicts and cannot drive their kids to events. Others unfortunately don't have the interest or ability to shuttle their kids from place to place.

I ask you to support House Bill 2498. It is important that we remove barriers for our youth so they can attend positive activities in a safe environment that will help them grow into mature young adults. It's important that they have every opportunity to attend church on Saturdays, Sundays and small groups at private homes during the week.

Kelly Arnold  
Youth Sponsor  
Westlink Christian Church

House Transportation  
Date: 2-9-10  
Attachment # 2

**TESTIMONY BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE**

**REGARDING HOUSE BILL 2498  
RELATING TO EXCEPTIONS TO DRIVING RESTRICTIONS**

**February 9, 2010**

Mr. Chairman and Committee Members:

The Kansas Department of Transportation appreciates the opportunity to provide written testimony on House Bill 2498, which would add an exception to the driving restrictions for teens holding a farm permit or restricted license.

The passage of the graduated driver's license system last year was an important step to improve the safety of teen drivers. In 2008, **51 people died due to crashes involving Kansas driver's ages 14 through 19.** And another 5,800 people were injured. Although they make up only seven percent of licensed drivers, young novice drivers are over-represented in crashes. They are involved in 13.5 percent of fatal crashes, and 23 percent of all crashes. Traffic crashes are the number one killer of Kansans under 35 and any actions we can take to reduce the number of fatalities is important.

Our concern with the exemption proposed in House Bill 2498 is that it weakens the efforts we've made in the last year to improve safety. The reason for passing a more comprehensive graduated driver's license system was to allow teens more time to gain driving experience with adult supervision and without distractions, such as cell phones and having too many other young people in the car with them. It doesn't matter where the young person is driving to or from; sports practice, piano lessons, grandmother's house, church, etc., the issue is immaturity and inexperience on the road. However, if we allow this exemption to be made for young drivers it opens the door to more exemptions to be made, which increases the risks of accidents for everyone on the road. The more exemptions we have, the less likely teen drivers are to develop the experience and maturity necessary to become responsible drivers.

There may be some confusion that the changes passed last year in HB 2143 (the Graduated Driver's License Bill) led to teens on restricted licenses or with farm permits being prohibited from driving unsupervised to religious services or functions. Teens driving on a restricted license or farm permit have never been allowed to drive unsupervised to religious services or functions.

Another issue we have a concern with is the vagueness of the statement "*while going directly to or from any religious service or function.*" This seems very broad, and raises the question of what constitutes a religious function. There will be issues with law enforcement verifying someone is in fact going to or from a religious function. This could lead to a lack of enforcement of restrictions, which could lead to more crashes involving teens who are violating restrictions.

Thank you for the opportunity to submit testimony on House Bill 2498.

OFFICE OF THE SECRETARY OF TRANSPORTATION

Dwight D. Eisenhower State Office Building

700 S.W. Harrison Street; Topeka, KS 66603-3745 • (785) 296-3461 • Fax: (785) 296-1095

Hearing Impaired - 711 • e-mail: [publicinfo@ksdot.org](mailto:publicinfo@ksdot.org) • Public Access at North Entrance of Building

House Transportation  
Date: 2-9-10  
Attachment # 3





**TESTIMONY, HB 2498**  
*Presented by James R. Hanni,*  
*Executive Vice President, AAA Kansas*  
**February 9, 2010**  
**House Transportation Committee**

AAA opposes exceptions to restrictions provided for in the recently enacted graduated driver licensing (GDL) systems and therefore opposes the addition of another exception in the restricted license and farm permit for driving to and from religious activities.

Between 80-90 percent, a strong majority of elected officials, helped to enact improvements in our GDL system during the last legislative session. The bill provided for a few very key changes to substantially improve the likelihood that young drivers in Kansas will avoid many crashes, injuries and fatalities in the years ahead.

It is premature to add any additional exceptions until we know how the current new law is working. Because of last year's grandfathered improvements in the system, it won't be possible to gauge the true effects of the changes until starting next year, with early results possibly in 2012.

Exceptions/exemptions of any kind contribute to more risk for inexperienced drivers and more crashes, injuries and fatalities. On top of that, the language for the religious activities exemption is too vague. A teen driver could contend they were driving home at 11 p.m. after bible study at a buddy's house and qualify under the exemption.

We also think it is important to remember that the law did not include an exemption for religious activities prior to passage of the GDL law, so nothing was taken away with the law passed last year.

Exemptions/exceptions are a bad idea for any GDL system, those already in law and those contemplated, and we ask the Transportation Committee to avoid this unnecessary loophole as a measure of safety for young drivers and to minimize confusion for parents and teens.

House Transportation  
Date: 2-9-10  
Attachment # 4



Preventing accidental injury.

February 9, 2010

**Testimony Presented to the  
House Committee on Transportation  
House Bill 2498**

Safe Kids Kansas opposes the amendment in HB 2498, which would allow teens to drive unsupervised to and from religious services or functions.

Motor vehicle crashes remain the leading cause of death for Kansas children ages one through 17. These crashes do not only kill the teen drivers, but passengers, pedestrians, and people in other vehicles. In Kansas, between the years 2003 and 2007, 28 children ages 14 and under were killed as passengers with a teen driver (age 14-19) at the wheel. During the same period, 1,497 children ages 14 and under were non-fatally injured in vehicle crashes where a teen was driving.

During the critical learning period before a teen receives their full unrestricted license, Safe Kids Kansas opposes additional unsupervised driving time for these novice drivers.

**Attachment:**

**Safe Kids Kansas Member Organizations**

Safe Kids Kansas, Inc. is a nonprofit Coalition of over 70 statewide organizations and businesses dedicated to preventing accidental injuries to Kansas children ages 0-14. Local coalitions and chapters cover Allen, Anderson, Atchison, Butler, Clay, Coffey, Dickinson, Doniphan, Douglas, Elk, Ellis, Finney, Geary, Harvey, Jackson, Jefferson, Johnson, Labette, Leavenworth, Marion, Marshall, McPherson, Meade, Mitchell, Montgomery, Pottawatomie, Riley, Saline, Sedgwick, Shawnee, Smith, Sumner, and Wilson counties, as well as the city of Emporia and the Metro Kansas City Area (Wyandotte county and several Missouri counties.) Safe Kids Kansas a member of Safe Kids Worldwide, a global network of organizations whose mission is to prevent accidental childhood injury. The lead agency for Safe Kids Kansas is the Kansas Department of Health and Environment.

1000 SW Jackson Suite 230 Topeka, KS 66612 tel 785-296-1223 fax 785-296-8645  
www.safekids.org www.safekidskansas.org

House Transportation  
Date: 2-9-10  
Attachment # 5



**Safe Kids**<sup>®</sup>

**Kansas**

## **Safe Kids Kansas Member Organizations**

AAA Kansas  
American Academy of Pediatrics – KS  
Board of Emergency Medical Services  
Brain Injury Association of Kansas  
Children's Mercy Hospital  
Child Care Providers Together of Kansas  
Cusick Jost Consulting, LLC  
Dillon Stores  
Fire and Burn Safety Alliance of S Central Kansas  
Fire Education Association of Kansas  
Fire Marshal's Association of Kansas  
Head Start State Collaboration Office/SRS  
Huggable Images  
HCC Fire Service Training Program  
Kansas Academy of Family Practice Physicians  
Kansas Action for Children  
Kansas Association for Counties  
Kansas Association of Local Health Departments  
Kansas Association of Osteopathic Medicine  
Kansas Association of School Boards  
Kansas Chapter International Association  
of Arson Investigators  
Kansas Children's Cabinet & Trust Fund  
Kansas Chiropractic Association  
Kansas Cooperative Extension 4-H  
Kansas Dental Association  
Kansas Department Health & Environment  
Kansas Department of Human Resources  
Kansas Department of Transportation  
Kansas Department of Wildlife and Parks  
Kansas District of Kiwanis International  
Kansas EMS Association  
Kansas Emergency Nurses Association  
Kansas Farm Bureau  
Kansas Healthy Start Home Visitors  
Kansas Highway Patrol  
Kansas Hospital Association  
Kansas Insurance Department  
Kansas MADD  
Kansas Medical Society  
Kansas Motor Carriers Association  
Kansas Operation Lifesaver  
Kansas Parent Teachers Association

Kansas Poison Control Center  
Kansas Public Health Association  
Kansas Recreation & Park Association  
Kansas Safe Routes to School Program  
Kansas SADD  
Kansas Safety Belt Education Office  
Kansas School Nurses Organization  
Kansas State Association of Fire Chiefs  
Kansas State Board of Education  
Kansas State Child Death Review Board  
Kansas State Fire Marshal's Office  
Kansas State Firefighters Association  
Kansas State Nurses Association  
Kansas Trial Lawyers Association  
Kansas Trauma Program  
KIDS AND CARS  
KNEA  
KUMC Burn Center  
KUMC Emergency Services  
KUMC Trauma Program  
NHTSA Regional Office  
Office of the Governor  
Safety & Health Council Western MO & KS  
SIDS Network of Kansas  
State Capitol Area Fire Fighters Association  
State Farm Insurance Companies  
Stormont-Vail Regional Medical Center  
United School Administrators of Kansas  
Via Christi – St. Francis Burn Center  
Via Christi – Trauma Center  
Wesley Medical Center

Membership also includes Local Coalitions and Chapters located in Allen, Anderson, Atchison, Clay, Dickinson, Doniphan, Douglas, Elk, Ellis, Ford, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Marion, Meade, Mitchell, Montgomery, Osage, Pottawatomie, Rice, Riley, Saline, Shawnee, Smith, Wabaunsee, Wilson and Woodson Counties, as well as the cities of Chanute, Emporia, Leavenworth, Pittsburg, Wichita Area and Metro Kansas City.

Safe Kids is a member of Safe Kids Worldwide.

12-09



# KANSAS ACTION FOR CHILDREN

Shaping policy that puts children first

To: House Transportation  
From: Suzanne Wikle, Director of Health Policy  
Re: HB 2498

Kansas Action for Children Inc.  
720 SW Jackson | Suite 201  
Topeka, KS 66603

P 785-232-0550 | F 785-232-0699  
kac@kac.org | www.kac.org

Celebrating 30 years  
of child advocacy

Good afternoon Chairman Hayzlett and members of the committee. Thank you for this opportunity to provide my concerns about HB 2498.

Last year this committee worked very hard to craft and pass a comprehensive Graduated Drivers License policy that addressed the three greatest risks to teen driving: inexperience, multiple passengers, and late-night driving. The policy that passed was a collaborative effort by policymakers, the insurance industry, law enforcement, KDOT, and advocacy organizations.

Kansas Action for Children opposes HB 2498 because it undermines the good work that was done last year. Although Kansas Action for Children opposes each change in HB 2498, we are especially concerned about the changes it makes to teen drivers under the age 16, those 15 year-olds holding a restricted license and teens holding a farm permit.

The GDL law of 2009 did **not** alter the driving privileges of 15 year-olds – prior to the GDL law and currently today, 15 year-olds that choose to complete the requirements for a restricted license have the privilege to drive to and from work and school only. House Bill 2498 would expand these privileges to include travel to and from religious services and functions.

The current policy for 15 year-olds has been in place for nearly two decades. Expanding driving privileges for 15 year-olds and teens with farmer’s permits would be a step backwards and cause increased vulnerability to the risks facing teen drivers, especially late-night driving. Nationally, nearly half of all teen crash fatalities occur after 9:00pm. Allowing teens to drive to and from religious services provides them with one more opportunity to drive late at night, putting them at greater risk. The current law has been sound policy for nearly twenty years and should remain in tact.

I regret that I was not able to appear in person before you today. I am happy to discuss this further with any committee members who have questions or concerns. I may be contacted by email at [suzanne@kac.org](mailto:suzanne@kac.org) or phone at 785-232-0550.

#### PRESIDENT & CEO

Gary Brunk

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- Jan Pratt, RN
- Pam Shaw, MD

A Member of Voices  
for America's Children

House Transportation  
Date: 2-9-10  
Attachment # 6



## KANSAS AUTOMOBILE DEALERS ASSOCIATION

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February 9, 2010

To: Chairman Gary Hayzlett  
and the Members of the House Transportation Committee

From: Don L. McNeely, KADA President

Re: House Bill 2547 – Amendments to the Kansas Dealers and Manufacturers  
Licensing Act.

Good afternoon Chairman Hayzlett and Members of the House Transportation Committee. My name is Don McNeely and I serve as the President of the Kansas Automobile Dealers Association (KADA), which represents the franchised new motor vehicle dealers in Kansas. Joining me this afternoon is Mr. Pat Barnes, KADA's General Counsel and Mr. Whitney Damron, our Legislative Counsel.

I appear before you this afternoon in support of HB 2547 which proposes amendments to the Kansas Dealers and Manufacturers Licensing Act. As some members of the Committee may remember, 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 contracts of adhesion, which means they are offered on a take it or leave it basis by the manufacturers and if left unchecked, can 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 degree of protection to new motor vehicle dealers against overreaching by the manufacturers. In fact, over three 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 States to enact legislation to protect retail car and truck dealers from perceived abusive and oppressive acts by the manufacturers."

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

The legislation before you does not attempt to turn back the clock prior to the bankruptcies of two of our domestic automobile manufacturers, which occurred last summer. Although the dealer terminations that resulted from those bankruptcies were devastating to the

House Transportation  
Date: 2-9-10  
Attachment # 7

45 Kansas dealerships named, the employees of those dealerships and the communities in which they were located. What is even more frustrating is the fact that these dealerships, despite the bad business decisions by their manufacturers, were viable and profitable Kansas automobile dealerships.

The forced closure of these Kansas dealerships did absolutely nothing to insure the viability of the two manufacturers involved, as the dealers essentially cost them nothing. The dealer owns the property, the building, the inventory, the parts and the tools. The costs finally disclosed during the congressional hearings were essentially per unit costs and these costs will occur whether they have 3500 dealerships or 100.

What brings us in front of you today is despite some of the manufacturers demonstrated inability to run their own companies, they continue want to tell Kansas dealers how to run their own dealerships, essentially forcing them to spend the last remaining amount of their own capital on renovating their dealerships; mandating that they remove other franchises from their dealerships, forcing them to build new facilities and underutilize their current facility; and turn control of the use of the dealership facility over to the manufacturer without any paid consideration.

The proposed legislation before you addresses the following issues:

- Prohibits the manufacturer from requiring a dealer to relocate, build a new building or renovate their current building unless it is deemed reasonable in light of existing financial and economic considerations.
- Prohibits the manufacturer from preventing a dealer from acquiring another franchise, as long as the dealer complies with reasonable facilities and capital requirements.
- Prohibits a manufacturer from requiring exclusive facilities or remove a current franchise from a dealership's facility, when doing so would be unreasonable in light of existing financial and economic considerations.
- Prohibits the manufacturer from controlling the use of the dealership facility without ownership or consideration.
- Require the manufacturers' performance standards, sales objectives and programs for measuring dealer performance that have a material effect on a dealer be fair, reasonable, equitable and based on accurate information;
- Prohibit the manufacturer from requiring a dealer to pay the legal fees of the manufacturer related to a dispute between the parties.
- Establish a general dispute resolution mechanism to address disputes that may arise between a dealer and a manufacturer without involving the State of Kansas.

- Add voluntary termination of a franchise agreement to our current termination, cancelation, buy-back provisions.
- Add that upon termination, a manufacturer must buy-back computers and data processing systems which were required or made a condition of participation in a manufacturer's program or for receiving a franchise agreement.
- Assure that a dealer is paid for a customer's warranty claim, as long as the dealer presents reasonable documentation or other evidence to substantiate the claim for payment.
- Limit the time period for the audit of incentive payments to 12 months after the date of payment, unless justified by evidence of fraud.
- Prohibit the manufacturer from withdrawing money from an account owned by a dealer while an audit or other claim is on appeal.
- Requires the manufacturer to either to approve or reject the entire successor agreement, and cannot reject it simply because it operates over a period time.
- Prohibits the manufacturer from requiring a dealer to waive their rights to state law or compel a Kansas dealer to consent to the jurisdiction of another state or forego any right to a jury trial.
- The manufacturers agrees to indemnify the dealer from claims made by a third party in relation to any vehicle, part or accessories manufactured or distributed by the manufacturer or any service system or procedures the manufacturer required or recommended the use of, as long as the dealer used them properly, as well as indemnifying the dealer for the improper use of non-public personal information obtained by the manufacturer from the dealer.

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 franchised new vehicle dealers in Kansas.

As always, the members of KADA are willing to work as much as possible with all parties affected by industry legislation within the confines of the goals to be achieved. With respect to HB 2547, we have made every effort that we can to be responsible and responsive to the concerns of others to the extent we can do so given the reasons for which this legislation has been brought.

In closing, I would note that what we have brought to this Committee today is similar to amendments being incorporated into franchise acts in a large number of states last year and this year. Following the bankruptcies of GM and Chrysler, a large majority of states reviewed their existing franchise laws and subsequently incorporated changes to address inequities between the dealer body and the manufacturers. Most of our changes have been adopted in one form or

another in other states and have been modified to work within the statutory framework of the Kansas Dealers and Manufacturers Licensing Act.

At this time, I would like to introduce KADA's General Counsel, Mr. Pat Barnes, who will outline several amendments we are suggesting to our bill, which were drafted after meetings with representatives of the Kansas Department of Revenue and manufacturer representatives.,

At the conclusion of Pat's remarks, we will be pleased to respond to any questions you might have.

Thank you.



**HOUSE BILL No. 2547**

By Committee on Transportation

1-27

9 AN ACT amending the vehicle dealers and manufacturers licensing act;  
10 amending K.S.A. 8-2410, 8-2413, 8-2414, 8-2415, 8-2416, 8-2417 and  
11 8-2419 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 8-2410 is hereby amended to read as follows: 8-  
15 2410. (a) A license may be denied, suspended or revoked or a renewal  
16 may be refused by the director on any of the following grounds:

- 17 (1) Proof of financial unfitness of the applicant;  
18 (2) material false statement in an application for a license;  
19 (3) filing a materially false or fraudulent tax return as certified by the  
20 director of taxation;  
21 (4) negligently failing to comply with any applicable provision of this  
22 act or any applicable rule or regulation adopted pursuant thereto;  
23 (5) knowingly defrauding any retail buyer to the buyer's damage;  
24 (6) negligently failing to perform any written agreement with any  
25 buyer;  
26 (7) failure or refusal to furnish and keep in force any required bond;  
27 (8) knowingly making a fraudulent sale or transaction;  
28 (9) knowingly engaging in false or misleading advertising;  
29 (10) willful misrepresentation, circumvention or concealment,  
30 through a subterfuge or device, of any material particulars, or the nature  
31 thereof, required by law to be stated or furnished to the retail buyer;  
32 (11) negligent use of fraudulent devices, methods or practices in con-  
33 travention of law with respect to the retailing of goods under retail in-  
34 stallment contracts and the redemption and resale of such goods;  
35 (12) knowingly violating any law relating to the sale, distribution or  
36 financing of vehicles;  
37 (13) being a first or second stage manufacturer of vehicles, factory  
38 branch, distributor, distributor or factory representative, officer, agent or  
39 any representative thereof, who has:  
40 (A) Required any new vehicle dealer to order or accept delivery of  
41 any new motor vehicle, part or accessory of such part, equipment or any  
42 other commodity not required by law, or not necessary for the repair or  
43 service, or both, of a new motor vehicle which was not ordered by the

House Transportation  
Date: 2-9-10  
Attachment # 8

- 1 new vehicle dealer;
- 2 (B) unfairly, without due regard to the equities of the vehicle dealer,  
3 and without just provocation, canceled, terminated or failed to renew a  
4 franchise agreement with any new vehicle dealer; or
- 5 (C) induced, or has attempted to induce, by coercion, intimidation  
6 or discrimination, any vehicle dealer to involuntarily enter into any fran-  
7 chise agreement with such first or second stage manufacturer, factory  
8 branch, distributor, or any representative thereof, or to do any other act  
9 to a vehicle dealer which may be deemed a violation of this act, or the  
10 rules and regulations adopted or orders promulgated under authority of  
11 this act, by threatening to cancel or not renew a franchise agreement  
12 existing between such parties;
- 13 (14) being a first or second stage manufacturer, or distributor who  
14 for the protection of the buying public fails to specify in writing the de-  
15 livery and preparation obligations of its vehicle dealers prior to delivery  
16 of new vehicles to new vehicle dealers. A copy of such writing shall be  
17 filed with the division by every licensed first or second stage manufacturer  
18 of vehicles and the contents thereof shall constitute the vehicle dealer's  
19 only responsibility for product liability as between the vehicle dealer and  
20 the first or second stage manufacturer. Any mechanical, body or parts  
21 defects arising from any express or implied warranties of the first or sec-  
22 ond stage manufacturer shall constitute the product or warranty liability  
23 of the first or second stage manufacturer. The first or second stage man-  
24 ufacturer shall reasonably compensate any authorized vehicle dealer for  
25 the performance of delivery and preparation obligation;
- 26 (15) being a first or second stage manufacturer of new vehicles, fac-  
27 tory branch or distributor who fails to supply a new vehicle dealer with a  
28 reasonable quantity of new vehicles, parts and accessories, in accordance  
29 with the franchise agreement. It shall not be deemed a violation of this  
30 act if such failure is attributable to factors reasonably beyond the control  
31 of such first or second stage manufacturer, factory branch or distributor;
- 32 (16) knowingly used or permitted the use of dealer plates contrary to  
33 law;
- 34 (17) has failed or refused to permit an agent of the division, during  
35 the licensee's regular business hours, to examine or inspect such dealer's  
36 records pertaining to titles and purchase and sale of vehicles;
- 37 (18) has failed to notify the division within 10 days of dealer's plates  
38 that have been lost, stolen, mutilated or destroyed;
- 39 (19) has failed or refused to surrender their dealer's license or  
40 dealer's plates to the division or its agent upon demand;
- 41 (20) has demonstrated that such person is not of good character and  
42 reputation in the community in which the dealer resides;
- 43 (21) has, within five years immediately preceding the date of making

- 1 application, been convicted of a felony or any crime involving moral tur-  
2 pitude, or has been adjudged guilty of the violations of any law of any  
3 state or the United States in connection with such person's operation as  
4 a dealer or salesperson;
- 5 (22) has cross-titled a title to any purchaser of any vehicle. Cross-  
6 titling shall include, but not by way of limitation, a dealer or broker or  
7 the authorized agent of either selling or causing to be sold, exchanged or  
8 transferred any vehicle and not showing a complete chain of title on the  
9 papers necessary for the issuance of title for the purchaser. The selling  
10 dealer's name must appear on the assigned first or second stage manu-  
11 facturer's certificate of origin or reassigned certificate of title;
- 12 (23) has changed the location of such person's established place of  
13 business or supplemental place of business prior to approval of such  
14 change by the division;
- 15 (24) having in such person's possession a certificate of title which is  
16 not properly completed, otherwise known as an "open title";
- 17 (25) doing business as a vehicle dealer other than at the dealer's es-  
18 tablished or supplemental place of business, with the exception that deal-  
19 ers selling new recreational vehicles may engage in business at other than  
20 their established or supplemental place of business for a period not to  
21 exceed 15 days;
- 22 (26) any violation of K.S.A. 8-126 *et seq.*, and amendments thereto,  
23 in connection with such person's operation as a dealer;
- 24 (27) any violation of K.S.A. 8-116, and amendments thereto;
- 25 (28) any violation of K.S.A. 21-3757, and amendments thereto;
- 26 (29) any violation of K.S.A. 79-1019, 79-3294 *et seq.*, or 79-3601 *et*  
27 *seq.*, and amendments thereto;
- 28 (30) failure to provide adequate proof of ownership for motor vehi-  
29 cles in the dealer's possession;
- 30 (31) being a first or second stage manufacturer who fails to provide  
31 the director of property valuation all information necessary for vehicle  
32 identification number identification and determination of vehicle classi-  
33 fication at least 90 days prior to release for sale of any new make, model  
34 or series of vehicles; or
- 35 (32) displaying motor vehicles at a location other than at the dealer's  
36 established place of business or supplemental place of business without  
37 obtaining the authorization required in K.S.A. 8-2435, and amendments  
38 thereto.
- 39 (b) In addition to the provisions of subsection (a), and notwithstand-  
40 ing the terms and conditions of any franchise agreement, including any  
41 policy, bulletin, practice or guideline with respect thereto or performance  
42 thereunder, no first or second stage manufacturer of vehicles, factory  
43 branch, distributor, distributor or factory representative, officer or agent

1 or any representative thereof, or any other person may do or cause to be  
 2 done any of the following acts or practices referenced in this subsection,  
 3 all of which are also declared to be a violation of the vehicle dealers and  
 4 manufacturers licensing act, and amendments thereto:

5 (1) Through the use of a written instrument or otherwise, unreason-  
 6 ably fail or refuse to offer to its same line-make new vehicle dealers all  
 7 models manufactured for that line-make, or unreasonably require a dealer  
 8 to: (A) Pay any extra fee;

9 (B) purchase unreasonable advertising displays or other materials; or

10 (C) remodel, renovate or recondition the dealer's existing facilities as  
 11 a prerequisite to receiving a model or series of vehicles. ~~The provisions~~ [Remove line out.]  
 12 ~~of this subsection shall not apply to manufacturers of recreational~~  
 13 ~~vehicles;~~

14 (2) require a change in the capital structure of the new vehicle dealer-  
 15 ership, or the means by or through which the dealer finances the oper-  
 16 ation of the dealership, if the dealership at all times meets any reasonable  
 17 capital standards determined by the manufacturer and in accordance with  
 18 uniformly applied criteria;

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

23 (4) unless required by subpoena or as otherwise compelled by law:  
 24 (A) Require a new vehicle dealer to release, convey or otherwise provide  
 25 customer information if to do so is unlawful, or if the customer objects  
 26 in writing to doing so, unless the information is necessary for the first or  
 27 second stage manufacturer of vehicles, factory branch or distributor to  
 28 meet its obligations to consumers or the new vehicle dealer, including  
 29 vehicle recalls or other requirements imposed by state or federal law; or

30 (B) release to any unaffiliated third party any customer information  
 31 which has been provided by the dealer to the manufacturer;

32 (5) *through the use of written instrument, or otherwise:*

33 (A) *Prohibit or prevent a dealer from acquiring, adding or maintain-*  
 34 *ing a sales or service operation for another line-make at the same or*  
 35 *expanded facility at which the dealership is located if the dealer complies*  
 36 *with reasonable facilities and capital requirements;*

37 (B) *require a dealer to establish or maintain exclusive facilities, per-*  
 38 *sonnel or display space if the imposition of the requirement would be*  
 39 *unreasonable in light of all existing circumstances, including debt expo-*  
 40 *sure, cost, return on investment, the dealer's business plan and other fi-*  
 41 *nanacial and economic conditions and considerations;*

42 (C) *to require a dealer to build or relocate and build new facilities,*  
 43 *or make a material alteration, expansion or addition to any dealership*

1 facility, unless the requirement is reasonable in light of all existing con- but not limited to  
 2 ditions, including debt exposure, cost, return on investment, the dealer's and manufacturer's  
 3 business plan and other financial and economic considerations;

4 (6) through the use of written instrument, or otherwise, require, co-  
 5 erce or force a dealer to underutilize its facilities by requiring the dealer  
 6 to exclude or remove operations for the display, sale or service of any  
 7 vehicle for which the dealer has a franchise agreement, except that in light  
 8 of all existing circumstances the dealer must comply with reasonable fa-  
 9 cilities requirements. The requirement for a dealer to meet reasonable  
 10 facilities requirements shall not include any requirement that a dealer  
 11 establish or maintain exclusive facilities.

12 In the event a dealer decides to add an additional franchise agreement  
 13 to sell another line-make of new vehicles of a different first or second stage  
 14 manufacturer or distributor from that currently sold in its existing facility,  
 15 it shall be a rebuttable presumption that the decision to do so is reason-  
 16 able. Any dealer adding a franchise agreement for an existing facility shall  
 17 provide 60 days written notice of its intent to those other parties to fran-  
 18 chise agreements it may have. The other party must respond to such notice  
 19 within 60 days by requesting a hearing before the director in accordance  
 20 with K.S.A. 8-2411, and amendments thereto. Consent shall be deemed  
 21 to have been given approving the addition of the line-make if no hearing  
 22 is timely requested. A party objecting to the addition shall have the burden  
 23 to overcome such presumption by clear and convincing evidence;

a preponderance of  
 the evidence;

24 (7) (A) through the use of written instrument, or otherwise, directly  
 25 or indirectly condition the awarding of a franchise agreement to a pro-  
 26 spective dealer, the addition of a line-make or franchise agreement to an  
 27 existing dealer, the renewal of a franchise agreement, the approval of a  
 28 dealer or facility relocation, the acquisition of a franchise agreement or  
 29 the approval of a sale or transfer of a franchise agreement or other ar-  
 30 rangement on the willingness of a dealer or a prospective dealer to enter  
 31 into a site control agreement or exclusive use agreement as defined in this  
 32 subsection;

33 (B) as used in this paragraph, "site control agreement" and "exclusive  
 34 use agreement" include any agreement by or required by the first or  
 35 second stage manufacturer of vehicles, factory branch or distributor  
 36 ("manufacturer parties" in this paragraph) that has the effect of either:

- 37 (i) Requiring that the dealer establish or maintain exclusive dealer-  
 38 ship facilities in violation of the dealer and manufacturer's licensing act;
- 39 (ii) restricting the ability of the dealer, or the ability of the dealer's  
 40 lessor in the event the dealership facility is being leased, to transfer, sell,  
 41 lease or change the use of the dealership premises, whether by sublease,  
 42 lease, collateral pledge of lease or other similar agreement; or
- 43 (iii) which gives control of the premises to a designated party. "Site

1 control agreement" and "exclusive use agreement" also include manufac-  
2 turer parties restricting the ability of a dealer to transfer, sell or lease the  
3 dealership premises by right of first refusal to purchase or lease, option  
4 to purchase, or option to lease, except as otherwise allowed by K.S.A. 8-  
5 2416, and amendments thereto.

6 (8) through the use of written instrument, or otherwise, require ad-  
7 herence to a performance standard or standards which are not applied  
8 uniformly to other similarly situated dealers. In addition to any other  
9 requirements by law, the following shall apply:

10 (A) A performance standard, sales objective or program for measur-  
11 ing dealer performance that may have a material effect on a dealer, in-  
12 cluding the dealer's right to payment under any incentive or reimburse-  
13 ment program and the application of the standard, sales objective or  
14 program by a manufacturer, distributor or factory branch shall be fair,  
15 reasonable, equitable and based on accurate information;

16 (B) a dealer that claims that the application of a performance stan-  
17 dard, sales objective or program for measuring dealership performance is  
18 unreasonable, unfair, inaccurate, unrepresentative or otherwise defective  
19 or unreliable may request a hearing before the director pursuant to K.S.A.  
20 8-2411, and amendments thereto, who may determine whether or not the  
21 application of the performance standard or program is defective or un-  
22 reliable under this paragraph, and

23 (C) a first or second stage manufacturer of vehicles, factory branch  
24 or distributor has the burden of proving by clear and convincing evidence  
25 that the performance standard, sales objective or program for measuring  
26 dealership information complies with this paragraph and is not defective  
27 or unreliable.

28 (9) in addition to any other provisions of law, a franchise agreement  
29 or other contract offered to a dealer by a first or second stage manufac-  
30 turer of vehicles, factory branch or distributor may not contain any pro-  
31 vision requiring a dealer to pay the attorney's fees of the first or second  
32 stage manufacturer of vehicles, factory branch or distributor related to  
33 disputes between the parties.

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 (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

provided however,  
voluntary agreements  
where separate and  
reasonable consideration  
has been offered and  
accepted are excluded;

does not meet the  
standards listed in  
subsection (A) may  
request a hearing  
before the director  
pursuant to K.S.A.  
8-2411, and amendments  
thereto;

subsection;

a preponderance of the

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 (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 (f) The revocation or suspension of a first or second stage manufac-  
8 turer's or distributor's license may be limited to one or more municipal-  
9 ities 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) ~~Notwithstanding any other statute, law or rule of court, any first  
16 or second stage manufacturer or distributor or new vehicle dealer which  
17 has entered a franchise agreement with the other under which a dispute  
18 has arisen with respect to the conduct of business or the business rela-  
19 tionship between the parties which is not otherwise addressed by the  
20 dealers and manufacturers licensing act may elect to file a complaint with  
21 the director of vehicles for resolution of the issue or issues in dispute  
22 between the parties which shall be resolved by hearing pursuant to K.S.A.  
23 8-2411, and amendments thereto. The director shall have authority to  
24 apply principles of equity and good faith in determining such matters.  
25 Neither party shall be deemed to be barred by such action from any other  
26 forum or recourse they may have, including any damages or other relief.  
27 The director shall have the authority to receive and evaluate the facts in  
28 the matter in controversy and render a decision by entering an order  
29 which shall thereafter become binding and enforceable with respect to the  
30 parties, subject to the right of each party to appeal or as otherwise pro-  
31 vided by the Kansas judicial review act.~~

32 Sec. 3. K.S.A. 8-2414 is hereby amended to read as follows: 8-2414.

33 (a) No franchise agreement entered into between a vehicle dealer and a  
34 first or second stage manufacturer or distributor may be cancelled, ter-  
35 minated or not renewed by the first or second stage manufacturer or  
36 distributor unless 90 days notice has been given to the vehicle dealer and  
37 the director, which notice must state in full the reasons and causes for  
38 the cancellation, termination or nonrenewal of such franchise agreement,  
39 except that in the event of a showing of fraud, insolvency or failure to  
40 perform in the ordinary course of business, a notice of not less than 15  
41 days may be approved by the director, with notice thereof to such vehicle  
42 dealer and upon written application by such first or second stage manu-  
43 facturer or distributor. A notice required under this subsection shall be

shall participate in the mediation of the dispute upon the request of any party to the matter.

In the event mediation is requested, any time frame applicable for taking action under the dealers and manufacture licensing act shall be deemed stayed or tolled as the case may be, until the mediation is completed. The mediation shall be non-binding, unless the parties reach agreement resolving the dispute.

1 given by certified mail and the period of time given in the notice prior to  
 2 cancellation, termination or nonrenewal shall be computed from the date  
 3 of mailing thereof.

4 (b) A vehicle dealer, within a period of time equal to that provided  
 5 for in the notice filed pursuant to subsection (a), may file a complaint  
 6 with the director against a first or second stage manufacturer or distrib-  
 7 utor challenging the reasons and causes given for the proposed cancel-  
 8 lation, termination or nonrenewal of the franchise agreement. Upon a  
 9 complaint being filed, the director shall promptly set the matter for public  
 10 hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for  
 11 the purpose of determining whether there has been a violation of K.S.A.  
 12 8-2410, and amendments thereto, or whether good cause exists for can-  
 13 cellation, termination or nonrenewal of the franchise agreement *in ac-*  
 14 *cordance with the dealers and manufacturers licensing act.* Notwithstand-  
 15 ing the provisions of K.S.A. 8-2411, and amendments thereto, the hearing  
 16 may be set for a time which is not less than the number of days provided  
 17 in the notice given pursuant to subsection (a), from the date the director  
 18 gives notice thereof.

19 (c) The franchise agreement shall remain in full force and effect  
 20 pending the determination by the director of the issues involved as pro-  
 21 vided by this act. If the director determines that the first or second stage  
 22 manufacturer or distributor is acting in violation of this act or that good  
 23 cause does not exist for the proposed action, the director shall order for  
 24 the franchise agreement to be kept in full force and effect.

25 (d) The burden of proof shall be on the first or second stage manu-  
 26 facturer or distributor to show ~~by clear and convincing evidence~~ that it a preponderance of the  
 27 did not act arbitrarily or unreasonably and that good cause did exist for evidence  
 28 the proposed cancellation, termination or nonrenewal of the franchise  
 29 agreement. The director shall order that the franchise agreement may be  
 30 cancelled, terminated or not renewed if the director finds, after a hearing  
 31 that the licensed vehicle dealer is acting in violation of this act or that the  
 32 judgment of the first or second stage manufacturer or distributor is with  
 33 good cause, ~~the proposed termination is not illegal, ill advised, uncon-~~ Return to existing law.  
 34 ~~scionable or otherwise inequitable~~ and the vehicle dealer's default is  
 35 material.

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

- 40 (A) The new vehicle dealer was given notice by the first or second
- 41 stage manufacturer or distributor of the failure prior to the notice of
- 42 cancellation, termination or nonrenewal as required by subsection (a);
- 43 (B) the notification stated that the notice of failure of performance



- 1 was provided pursuant to this article;
- 2 (C) the new vehicle dealer was afforded a reasonable opportunity to
- 3 carry out the franchise agreement; and
- 4 (D) the failure continued for more than one year after the date no-
- 5 tification was given.
- 6 (2) In the event of cancellation, termination or nonrenewal of a fran-
- 7 chise agreement, good cause shall not exist where there has been a vio-
- 8 lation by the first or second stage manufacturer or distributor of K.S.A.
- 9 8-2410, and amendments thereto, *or any other provision of the dealers*
- 10 *and manufacturers licensing act*. Additionally, notwithstanding any agree-
- 11 ment, the following alone shall not constitute good cause for the termi-
- 12 nation, cancellation or nonrenewal of a franchise agreement:
- 13 (A) A change in ownership of the new vehicle dealer's dealership.
- 14 This subparagraph does not authorize any change in ownership which
- 15 would have the effect of a sale or an assignment of the franchise agree-
- 16 ment or a change in the principal management of the dealership without
- 17 the first or second stage manufacturer's or distributor's prior written
- 18 consent;
- 19 (B) the refusal of the new vehicle dealer to purchase or accept deliv-
- 20 ery of any new motor vehicles, parts, accessories or any other commodity
- 21 or services not ordered by the new vehicle dealer;
- 22 (C) the fact that the new vehicle dealer owns, has an investment in,
- 23 participates in the management of or holds a franchise agreement for the
- 24 sale or service of another make or line of new motor vehicles, or that the
- 25 new vehicle dealer has established another make or line of new motor
- 26 vehicles or service in the same dealership facilities as those of the first or
- 27 second stage manufacturer or distributor ~~which existed on or before Feb-~~
- 28 ~~ruary 1, 1996, or is approved in writing by the first or second stage man-~~
- 29 ~~ufacturer or distributor;~~
- 30 (D) the fact that the new vehicle dealer sells or transfers ownership
- 31 of the dealership or sells or transfers capital stock in the dealership to the
- 32 new vehicle dealer's spouse, son or daughter, except that the sale or trans-
- 33 fer shall not have the effect of a sale or an assignment of the franchise
- 34 agreement without the first or second stage manufacturer's or distribu-
- 35 tor's prior written consent *or approved as allowed by K.S.A. 8-2416, and*
- 36 *amendments thereto.*
- 37 (F) (1) In event of cancellation, termination or nonrenewal of a fran-
- 38 chise agreement, *whether voluntary or involuntary*, the first or second
- 39 stage manufacturer or distributor shall pay the new vehicle dealer, at a
- 40 minimum:
- 41 (A) Dealer net acquisition cost for any new, undamaged and unsold
- 42 new motor vehicle inventory purchased from the first or second stage
- 43 manufacturer or distributor within 12 months prior to the receipt of no-

1 tice of termination, cancellation or nonrenewal, provided the new motor  
 2 vehicle has less than 500 miles registered on the odometer, not including  
 3 mileage incurred in delivery to the new vehicle dealer or in transporting  
 4 the vehicle between dealers for sale or delivery, plus any cost to the new  
 5 vehicle dealer for returning the vehicle inventory to the first or second  
 6 stage manufacturer or distributor;

7 (B) the dealer price listed in the current list or catalog or, if unavail-  
 8 able, the list or catalog actually utilized within the 12 months previous to  
 9 termination, cancellation or nonrenewal, as the case may be, for any new,  
 10 unused and undamaged parts, supplies, and accessories acquired from a  
 11 first or second stage manufacturer, or distributor, or a source approved  
 12 or recommended by it, less applicable allowances specified in advance of  
 13 dealer purchase, plus 5% of the catalog or list price, as the case may be,  
 14 for the cost of packing and returning the parts, supplies and accessories  
 15 to the first or second stage manufacturer or distributor. Parts, supplies or  
 16 accessories which are reconditioned or subject to reconditioning or re-  
 17 building or other return in the ordinary course of business which are  
 18 considered to be core parts in the trade practice and usage of the industry  
 19 shall be valued for payment purposes at their core value, the price listed  
 20 in the catalog or list referenced above or the amount paid for expedited  
 21 return of core parts, whichever is higher;

22 (C) fair market value for furnishings required to be purchased by the  
 23 first or second stage manufacturer or distributor and signs which bear the  
 24 trademark or trade name of the first or second stage manufacturer or  
 25 distributor which were required or recommended to be purchased or  
 26 leased from the first or second stage manufacturer or distributor, or their  
 27 approved sources;

28 (D) dealer cost for special tools, *computers and data processing sys-*  
 29 *tems that are in usable condition* and equipment required to be purchased  
 30 or leased by the first or second stage manufacturer or distributor within  
 31 three years of the date of termination, cancellation or nonrenewal *or that*  
 32 *was necessary, required, recommended or made a condition of partici-* <sup>as</sup>  
 33 *pation in a promotional or incentive program or to perform the franchise*  
 34 *agreement;*

35 (E) the cost of transporting, handling, packing and loading of signs,  
 36 special tools, equipment and furnishings.

37 (2) Upon termination, cancellation or nonrenewal of a franchise  
 38 agreement by the first or second stage manufacturer or distributor *or in*  
 39 *the event of a voluntary termination, cancellation or nonrenewal*, the first  
 40 or second stage manufacturer or distributor shall also pay to the new  
 41 vehicle dealer a sum equal to the current fair rental value of its established  
 42 place of business for a period of one year from the effective date of  
 43 termination, cancellation or nonrenewal, or the remainder of the lease,

1 whichever is less. If the new vehicle dealer owns the dealership facilities,  
 2 the first or second stage manufacturer or distributor shall pay the new  
 3 vehicle dealer a sum equivalent to the reasonable rental value of the  
 4 dealership facilities for one year or until the facilities are leased or sold,  
 5 whichever is less. [The rental payment required under this subsection is  
 6 only required to the extent that the established place of business was  
 7 being used for activities under the franchise agreement and only to the  
 8 extent such facilities were not leased for unrelated purposes. The first or  
 9 second stage manufacturer or distributor shall not be required to make  
 10 the payment set forth under this subsection if the basis of the cancellation,  
 11 termination or nonrenewal of such franchise agreement under this act is  
 12 due to conviction of the dealer of a felony or any crime involving moral  
 13 turpitude, or if the dealer has been adjudged guilty of the violation of any  
 14 law of any state or the United States in connection with such person's  
 15 operation as a dealer.

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

19 (4) The first or second stage manufacturer or distributor shall pay the  
 20 new vehicle dealer the sums specified in this subsection within 90 days  
 21 after the tender of the property, subject to the new vehicle dealer pro-  
 22 viding evidence of good and clear title upon return of the property to the  
 23 first or second stage manufacturer or distributor.

24 (5) Nothing in this subsection shall preclude or prohibit the first or  
 25 second stage manufacturer or distributor or vehicle dealer from agreeing  
 26 to other terms for additional payment or reimbursement, except that such  
 27 terms shall include, at a minimum, the payment or reimbursement  
 28 requirements contained in this subsection.

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

37 Sec. 4. K.S.A. 8-2415 is hereby amended to read as follows: 8-2415.

38 (a) A first or second stage manufacturer or distributor shall pay reasonable  
 39 compensation to any authorized new vehicle dealer who performs work  
 40 to rectify warranty defects in the first or second stage manufacturer's or  
 41 distributor's product.

42 (b) A first or second stage manufacturer or distributor shall pay any  
 43 authorized new vehicle dealer all promotional allowances or other incen-

and the termination is not voluntary,

In the event the dealership facilities are owned by the new vehicle dealer through the use of a business entity which it owns completely which also leases or rents the facilities to the dealer, then in the event of a voluntary termination the rental payment provided herein shall not apply.

Additionally, the provisions of subsection (f) shall not apply to (a) voluntary termination by dealers of recreational vehicles; or (b) where the new vehicle dealer has voluntarily terminated its franchise agreement in conjunction with the sale of the business.

1 tive payments submitted by the dealer as provided by the applicable pro-  
 2 visions of such programs subject to the applicable requirements of this  
 3 act.

4 (c) In the determination of what constitutes reasonable compensation  
 5 for warranty work under this act, among the factors to be considered shall  
 6 be: The rate or charge which the authorized vehicle dealer in good faith  
 7 is charging other customers for the same type of service or repair work,  
 8 the compensation being paid by other first or second stage manufacturers  
 9 or distributors to their vehicle dealers for the same work or service, and  
 10 the prevailing wage or labor rate being paid or charged by all vehicle  
 11 dealers licensed to operate in the city or community in which said au-  
 12 thorized vehicle dealer is doing business.

13 (d) A first or second stage manufacturer or distributor shall not re-  
 14 quire unreasonable proof to establish compensation under this section,  
 15 nor act unreasonably to delay payments or adjustments in the rate or  
 16 charge for particular warranty work, promotional allowances or other in-  
 17 centive payments as circumstances or changes may justify or require such  
 18 adjustments. *A claim for compensation shall not be divided or the amount*  
 19 *to be reimbursed reduced if the new vehicle dealer has reasonably sub-*  
 20 *stantiated the claim. A new vehicle dealer's failure to comply with the*  
 21 *specific requirements of processing a claim may not constitute grounds*  
 22 *for denial of the claim or reduction of the amount of compensation paid*  
 23 *to the dealer if the dealer presents reasonable documentation or other*  
 24 *evidence to substantiate the claim.*

25 (e) A claim made by a new motor vehicle dealer for compensation  
 26 under this section shall be either approved or disapproved within 30 days  
 27 after the claim is submitted to the first or second stage manufacturer or  
 28 distributor in the manner and on the forms the first or second stage  
 29 manufacturer or distributor reasonably prescribes. An approved claim  
 30 shall be paid within 30 days after its approval. If a claim is not specifically  
 31 disapproved in writing or by electronic transmission within 30 days after  
 32 the date on which the first or second stage manufacturer or distributor  
 33 receives it, the claim shall be considered to be approved and payment  
 34 shall follow within 30 days. A first or second stage manufacturer or dis-  
 35 tributor retains the right to audit claims for warranty work for a period  
 36 of one year after the date on which the claim is paid and to chargeback  
 37 any amounts paid on claims that are false or unsubstantiated. A first or  
 38 second stage manufacturer or distributor retains the right to audit claims  
 39 for promotional allowances or other incentive payments submitted by the  
 40 dealer for a period of ~~two years~~ *one year* after the date on which the claim  
 41 is paid and to chargeback any amounts paid on claims that are false or  
 42 unsubstantiated. If there is evidence of fraud, this subsection does not  
 43 limit the right of the manufacturer to audit for longer periods and char-

If the claim is for warranty work, whether or not it includes parts, repairs or service, then the amount of compensation for the claim shall not be reduced or disallowed on the grounds the dealer failed to submit the claim fewer than 60 days after the dealer completed the work underlying the claim.

1 geback for any fraudulent claim, subject to the limitation period under  
2 paragraph (3) of subsection (a) of K.S.A. 60-513, and amendments  
3 thereto, in addition to any other available remedy; ~~this~~. *A claim for re-*  
4 *imbursement by the first or second stage manufacturer or distributor of*  
5 *sums due following an audit must be presented to the dealer within 90*  
6 *days of the audit of the item subject to the claim. A first or second stage*  
7 *manufacturer or distributor may not setoff or otherwise take control over*  
8 *funds owned, or under the control of the new vehicle dealer, or which are*  
9 *in an account designated for the new vehicle dealer when such action is*  
10 *based upon the findings of an audit or other claim with respect thereto*  
11 *until a final decision is issued with respect to any challenge or appeal by*  
12 *either party of any such audit or claim. This section may be enforced*  
13 *pursuant to K.S.A. 8-2411, and amendments thereto.*

14 Sec. 5. K.S.A. 8-2416 is hereby amended to read as follows: 8-2416.  
15 (a) A vehicle dealer shall not transfer, assign or sell a franchise agree-  
16 ment or interest in a dealership to another person unless the dealer first  
17 gives written notice to the first or second stage manufacturer or distrib-  
18 utor of the dealer's decision to make such transfer, assignment or sale.  
19 The dealer shall provide the first or second stage manufacturer or dis-  
20 tributor with any completed application forms and related information  
21 generally utilized by the first or second stage manufacturer or distributor  
22 to conduct its review of prospective new vehicle dealers, and a copy of  
23 all agreements regarding the proposed transfer, assignment or sale.

24 (b) The first or second stage manufacturer or distributor shall send a  
25 letter by certified mail to the dealer within 60 days of receipt of the  
26 information specified in subsection (a). The letter shall indicate any dis-  
27 approval of the transfer, assignment or sale and shall specifically set forth  
28 the reasons for the disapproval. If the first or second stage manufacturer  
29 or distributor does not respond by letter within the 60-day period, its  
30 consent to the proposed transfer, assignment or sale is deemed to have  
31 been granted. A first or second stage manufacturer or distributor shall  
32 not arbitrarily or unreasonably withhold approval of the transfer, assign-  
33 ment or sale of a franchise agreement or an interest in a dealership. *The*  
34 *first or second stage manufacturer or distributor may not approve or*  
35 *reject only a part of an agreement for the transfer, assignment or sale, but*  
36 *must accept or reject the whole agreement. If the first or second stage*  
37 *manufacturer or distributor rejects an agreement, it may indicate changes*  
38 *to the agreement which would cause it to accept the proposed agreement.*  
39 *An agreement may not be rejected merely because it provides provisions*  
40 *which operate in the future, an option to undertake or refrain from an*  
41 *action, or because it is to operate over an extended period of time or as*  
42 *an installment agreement.*

43 (c) Within 90 days after receipt of a notice of disapproval as provided

1 in subsection (b), the new vehicle dealer may file a complaint with the  
 2 director with respect to the first or second stage manufacturer or distrib-  
 3 utor's failure to approve the proposed transfer, assignment or sale. When  
 4 such a complaint has been filed, the director shall inform the first or  
 5 second stage manufacturer or distributor that a timely complaint has been  
 6 filed and a hearing is required in accordance with the provisions of K.S.A.  
 7 8-2411 and amendments thereto, to determine whether good cause exists  
 8 to disapprove the transfer, assignment or sale. A disapproval shall not be  
 9 final until the director or the director's designee makes a final determi-  
 10 nation as to good cause.

11 (d) A first or second stage manufacturer or distributor shall not fail  
 12 or refuse to approve the transfer, assignment or sale of the business and  
 13 assets of a new vehicle dealer, or refuse to continue the franchise agree-  
 14 ment with the prospective transferee after the holding of a hearing on  
 15 the complaint if the director or the director's designee determines that  
 16 good cause does not exist for the first or second stage manufacturer or  
 17 distributor to fail or refuse to approve such transfer, assignment or sale.  
 18 The burden of proof shall be on the first or second stage manufacturer  
 19 or distributor to show ~~by clear and convincing evidence~~ that the disap- <sup>a preponderance of the</sup>  
 20 proval of the transfer, assignment or sale was with good cause ~~and the~~  
 21 ~~refusal is not unjust, unfair, inequitable or otherwise in violation of the~~  
 22 ~~dealers and manufacturers licensing act.~~ Material factors to be considered  
 23 may include, but are not limited to: (1) Whether the basic financial and  
 24 facility requirements of the franchise agreement will be met by the pro-  
 25 posed transfer, assignment or sale;  
 26 (2) whether the proposed purchaser, transferee or assignee is capable  
 27 of operating, managing and supervising such business; and  
 28 (3) the extent to which the refusal to approve will have a substantial  
 29 and adverse effect upon the dealer's investment or return on investment.  
 30 (e) The first or second stage manufacturer or distributor shall have a  
 31 right of first refusal to acquire the new vehicle dealer's assets or ownership  
 32 in the event of a proposed change of all or substantially all of the dealer's  
 33 ownership, or the transfer of all or substantially all of the new vehicle  
 34 dealer's assets, if all of the following are met: (1) The first or second stage  
 35 manufacturer or distributor notifies the dealer in writing within the 60-  
 36 day limit established under subsection (b) of its intent to exercise its right  
 37 of first refusal;  
 38 (2) the exercise of the right of first refusal will result in the dealer  
 39 and dealer's owners receiving consideration, terms and conditions that  
 40 either are the same as or greater than that which they have contracted to  
 41 receive in connection with the proposed change of all or substantially all  
 42 of the dealer's ownership, or the transfer of all or substantially all of the  
 43 new vehicle dealer's assets;

1 (3) the proposed change of all or substantially all of the dealership's  
2 ownership or the transfer of all or substantially all of the new vehicle  
3 dealer's assets does not involve the transfer of assets or the transfer or  
4 issuance of stock by the dealer or one or more dealer owners to a des-  
5 ignated family member or members, including the spouse, child or grand-  
6 child, spouse of a child or grandchild, brother, sister or parent of the  
7 dealer owner, or one or more dealer owners, or to a qualified manager,  
8 or to a partnership or corporation controlled by any such person; or to a  
9 trust arrangement established or to be established for the purpose of  
10 allowing the new vehicle dealer to continue to qualify as such a dealer,  
11 so long as the new vehicle dealer continues to qualify as such pursuant  
12 to the first or second stage manufacturer or distributor's standards, or  
13 provides for the succession of the franchise agreement to designated fam-  
14 ily members or qualified management in the event of the death or inca-  
15 pacity of the dealer or its principal owner or owners; and

16 (4) except as otherwise provided in this subsection, the first or second  
17 stage manufacturer or distributor agrees to pay the reasonable expenses,  
18 including reasonable attorney fees, which do not exceed the usual, cus-  
19 tomary and reasonable fees charged for similar work done for other cli-  
20 ents, incurred by the proposed owner or transferee prior to the first or  
21 second stage manufacturer or distributor's exercise of its right of first  
22 refusal in negotiating and implementing the contract for the proposed  
23 change of all or substantially all of the dealer ownership, or the transfer  
24 of all or substantially all of the new vehicle dealer's assets. No payment  
25 of expenses and attorney fees shall be required if the dealer has not  
26 submitted or caused to be submitted an accounting of those expenses  
27 within 20 days of the dealer's receipt of the first or second stage manu-  
28 facturer or distributor's written request for such an accounting. Such an  
29 expense accounting may be requested by a first or second stage manu-  
30 facturer or distributor before exercising its right of first refusal.

31 (f) A new vehicle dealer and its owners may appoint by trust, will or  
32 any other valid written instrument a successor to the owner's interest in  
33 the franchise agreement upon the owner's death or incapacity, subject to  
34 the following procedures: (1) Unless the first or second stage manufac-  
35 turer or distributor has good cause to refuse to approve the succession,  
36 the successor may succeed to the ownership of the new vehicle dealer  
37 under the existing franchise agreement if: (A) Within 90 days of the  
38 owner's death or incapacity, the successor gives written notice of the  
39 successor's intent to succeed to ownership of the new vehicle dealer and  
40 its franchise agreement; and

41 (B) the successor agrees to be bound by all the terms and conditions  
42 of the franchise agreement with the prior new vehicle dealer.

43 (2) Upon request, the successor shall promptly provide the first or

1 second stage manufacturer or distributor evidence of the successorship  
 2 appointment, as well as personal and financial information reasonably  
 3 necessary to determine whether the succession should be approved by  
 4 the first or second stage manufacturer or distributor.

5 (3) If a first or second stage manufacturer or distributor believes that  
 6 good cause exists to refuse to approve the intended succession under  
 7 subsection (f)(1), then the first or second stage manufacturer or distrib-  
 8 utor shall serve the new vehicle dealer and named successor written no-  
 9 tice of refusal to approve the intended succession within 60 days of its  
 10 receipt of the notice of the intended succession, or within 60 days of  
 11 receiving the information requested under paragraph (f)(2), whichever is  
 12 later. The notice must contain specific grounds for the refusal to approve  
 13 the succession. In the event of such a refusal the new vehicle dealer or  
 14 successor may file a complaint as provided under subsection (c), and the  
 15 matter shall then proceed to hearing in the manner and on the same basis  
 16 as the disapproval of a transfer, assignment or sale.

17 (4) If notice of refusal to approve the intended succession is not  
 18 served within 60 days upon the intended successor, the successor may  
 19 continue the franchise agreement and the successor shall thereby be  
 20 deemed approved by the first or second stage manufacturer or distributor.

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

29 Sec. 6. K.S.A. 8-2417 is hereby amended to read as follows: 8-2417.  
 30 (a) The obtaining of a license hereunder shall bring the applicant under  
 31 the jurisdiction of the state of Kansas, and if no agent for service of process  
 32 has been designated by a licensee, the ~~said~~ licensee will be deemed to  
 33 have designated the secretary of the state of Kansas as agent for receipt  
 34 of service of process.

35 (b) *No franchise agreement or other agreement between the parties*  
 36 *to a franchise agreement may limit, waive or substitute the party's rights,*  
 37 *duties or obligations under this act absent separate and additional, ade-*  
 38 *quate and material consideration, nor compel a party to consent to juris-*  
 39 *isdiction or governance by the law of of another state or territory outside*  
 40 *Kansas, or to forego any right to trial by jury.*

41 Sec. 7. K.S.A. 8-2419 is hereby amended to read as follows: 8-2419.  
 42 (a) All first or second stage manufacturers *and distributors* shall be liable  
 43 for the full period of the warranty of the vehicle for all defects in any

[Remove "and materia1".]



1 equipment attached to any vehicle at the factory and all defects in any  
2 equipment produced by or advertised as an accessory to a vehicle man-  
3 ~~ufacturer~~ *manufactured* by such first or second stage manufacturer which  
4 is added at the dealership whether such equipment is added to a new or  
5 to a used vehicle so long as such equipment has been advertised as being  
6 either an "accessory" or an "option."

7 (b) *All first stage manufacturers and second stage manufacturers and*  
8 *distributors shall, upon demand:*

9 (1) *Indemnify any existing or former licensee or party to a franchise*  
10 *agreement and the licensee or party's successors and assigns from any*  
11 *and all damages sustained and attorney's fees and other expenses reason-*  
12 *ably incurred by the licensee or party that result from or relate to any*  
13 *claim made or asserted by a third party against the licensee or party to*  
14 *the extent the claim results from any of the following:*

15 (A) *The condition, characteristics, manufacture, assembly or design*  
16 *of any vehicle, parts, accessories, tools or equipment or the selection or*  
17 *combination of parts or components manufactured or distributed by the*  
18 *manufacturer or distributor;*

19 (B) *service systems, procedures or methods the franchisor required*  
20 *or recommended the licensee or party to use if the licensee or party prop-*  
21 *erly uses the system, procedure or method;*

22 (C) *improper use or disclosure by a manufacturer or distributor of*  
23 *nonpublic personal information obtained from a licensee or party con-*  
24 *cerning any consumer, customer or employee of the licensee or party; and*

25 (D) *any act or omission of the manufacturer or distributor for which*  
26 *the licensee or party would have a claim for contribution or indemnity*  
27 *under applicable law or under the franchise, irrespective of and without*  
28 *regard to a prior termination or expiration of the franchise.*

29 (2) *This subsection does not limit in any way the existing rights, rem-*  
30 *edies or recourses available to any licensee, party or other person.*

31 Sec. 8. K.S.A. 8-2410, 8-2413, 8-2414, 8-2415, 8-2416, 8-2417 and  
32 8-2419 are hereby repealed.

33 Sec. 9. This act shall take effect and be in force from and after its  
34 publication in the Kansas register.



**Written Testimony of Sandy Braden  
Gaches, Braden and Associates  
On behalf of the Alliance of Automobile Manufacturers  
House Bill 2547  
Before the House Transportation Committee  
February 9, 2010**

Mr. Chairman and Committee members, please accept the following comments on behalf of the Alliance of Automobile Manufacturers, a trade association of eleven car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota and Volkswagen.

By any measurement the past two years have been witness to an historic transformation in the U.S. auto industry. Dramatic increases in CAFE standards, new attention toward CO2 reductions, the recession and financial crunch have significantly impacted every manufacturer selling vehicles in the U.S. In addition, state policymakers have played a role in reshaping the industry during this period through various legislative and regulatory proposals. The most significant of these initiatives involve states that have sought to expand franchise laws that govern the business relationships between manufacturers and dealers.

The Alliance and the Kansas Auto Dealers Association have had several conversations about the proposed HB 2547 over the last several weeks, even as recently as this morning. The Alliance is greatly encouraged by our most recent communication with the dealers on some very difficult and important franchise issues such as burden of proof, the opportunity for voluntary agreements in site control, exclusivity and dualling situations as well as limitations on termination assistance for certain voluntary terminations. We are hopeful that with some more time, we would be able to reach agreeable positions on the remaining issues, such as:

1. A provision requiring a manufacturer to pay facility assistance (or rental assistance) for a dealer-initiated voluntary termination. Facilities assistance is typically limited to those situations where a dealer has been terminated by the manufacturer for unsatisfactory sales or service performance and may understandably need help in winding down its business operations for a period of time. It is not meant to be used as a financial windfall mechanism for a dealer who voluntarily and unilaterally chooses to no longer be a motor vehicle dealership. The scope of any such assistance should be limited as provided in current statute.
2. Dualling- the proposed language imposes significant limitations on a manufacturer's ability to object to a dealer adding another franchise to the dealer's facility. This has the effect of diluting a manufacturer's representation and ability of the dealer to focus on meeting the sales and service needs of customers. While it appears that the dealer's have agreed to exclude voluntarily entered agreements from these dualling limitations, we are hopeful that they will also accept the addition of "the dealer's and the manufacturer's business plan..." language at both line 40, pg. 4 and line 2, page 5.
3. For legitimate payment of dealer warranty and sales incentive claims, dealers should have to comply with the manufacturer's reasonable requirements and any exceptions should be limited to clerical errors. Language proposed may potentially allow dealers to ignore reasonable manufacturer procedural requirements.

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BMW Group • Chrysler Group LLC • Ford Motor Company • General Motors Company • Jaguar Land Rover  
Mazda North American Operations • Mercedes-Benz • Mitsubishi Motors • Porsche • Toyota • Volkswagen Group of America



# Alliance OF AUTOMOBILE MANUFACTURERS

4. Additionally, the newly proposed language allowing a dealer up to 90 days after the completion of warranty work to submit a claim to the manufacturer for reimbursement is unreasonable. While processes vary from manufacturer to manufacturer, the timeframe typically used for claim submission is 30 days. Delays due to parts shipment delays or the like are addressed through manufacturer established problem hotlines allowing a dealer to make a phone call, lodge his concern about the delayed part and receive an extension on the time within which to submit a claim. Manufacturers for their part regularly reimburse a dealer within 24-48 hours of receiving the claim. In Kansas, statutorily, a manufacturer has 30 days within which to pay a claim so at the very least the periods for payment and submission should mirror each other. And the sooner the claim is submitted, the sooner the manufacturer can pay and the sooner the books can be closed on these open transactions. Additionally, there is a consumer component where 30 days provides a quicker and clearer picture of warranty issues; allowing for a quicker response to consumers issue.
  
5. Expansion of termination assistance to include computers and computer data processing systems is not appropriate. While having some type of system in place may be a requirement of the manufacturer, these are dealer negotiated purchases or leases and consequently are a cost of doing business. Manufacturers should not be left having to pay for a poorly negotiated dealer purchase or lease agreement.

Thank you for the opportunity to present our concerns to the committee. Please do not hesitate to contact the Alliance directly, Amy Brink at 202-326-5541 or our local representative Sandy Braden, 785-233-4512.

STATE OF KANSAS

**JO ANN POTTORFF**  
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TOPEKA

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JOINT COMMITTEE ON STATE  
BUILDING CONSTRUCTION

Testimony to the House Committee on Transportation

February 9, 2010

Representative Jo Ann Pottorff

Mr. Chairman, fellow members of the House committee on transportation, I appreciate the opportunity to testify before you today on HB 2552, enacting the Midwest Interstate Passenger Rail Compact.

Enacting the compact would make Kansas a member of the Midwest Interstate Passenger Rail Commission, or MIPRC. The MIPRC is a great place to begin our journey to reviving the railroad system in Kansas. Since its creation in 2000, MIPRC has become a strong advocate for funding to make passenger rail improvements a reality in the region. In addition to being an advocate at the federal, state, and local levels, it seeks ways to develop partnerships, including interstate partnerships and partnerships with rail industry and labor, to implement improved passenger railroads.

Currently, the MIPRC is made up of the majority of the Midwestern states, including Illinois, Iowa, Ohio, Wisconsin, Missouri, and Minnesota. In fact, the only two states that are eligible for the compact which are not already members are Kansas and South Dakota. There is no good reason why Kansas should not be a member of the MIPRC.

Some people might claim that a compact is not in Kansas' best interests. However, railroad tracks do not begin or end at the Kansas state border. The railway system is, by definition, a multi-state pursuit. The MIPRC recognizes this fact and works to coordinate interaction among Midwestern state officials. It also seeks to encourage federal government financial partnerships with the individual states to create a faster, more frequent passenger rail service for the Midwest.

This is an important reason to consider joining the compact. The MIPRC is an active advocate for federal funding for projects. In 2009, the federal American Recovery and Reinvestment Act provided \$8 billion dollars for passenger rail. Of that 8 billion dollars, the Midwest received 2.6 billion. Although Kansas asked for \$17.9 million, we were only rewarded with \$250,000, or 1.4% of what we requested. In contrast, Ohio received 74.52%, or \$400 million of the \$563.8 million they asked for and Wisconsin received 98.77%, or \$822 million of the \$832.2 million they asked for. Michigan, one of the states that received only 2.22% of the amount they asked for, still received \$40 million.

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Kansas is no less deserving of that money than the rest of the Midwest. However, we did not have a strong advocate in our corner, pushing for federal assistance in reviving our passenger rail. Therefore, I believe that we need to become a member of the MIPRC, helping to create that advocate that would be useful for future federal funding, as well as assisting in coordination between other Midwestern states. Again, there is no good reason why Kansas should not be a part of the compact. Thank you for the opportunity to speak to the committee about this issue.

#### American Recovery and Reinvestment Act funding

State	Amount Requested	Amount Received	Percentage Received
Wisconsin	\$832.2 million	\$822 million	98.77%
Ohio	\$563.8 million	\$400 million	74.52%
Missouri	\$84.7 million	\$31 million	36.60%
Illinois	\$4.9 million	\$1.255 billion	25.20%
Iowa	\$301.8 million	\$18 million	5.96%
Indiana	\$2.9 billion	\$71 million	2.45%
Michigan	\$1.8 billion	\$40 million	2.22%
Kansas	\$17.9 million	\$250,000	1.40%
Minnesota	\$136.4 million	\$1 million	0.73%

Amount requested and received by each individual state was obtained from the MIPRC website – [www.miprc.org](http://www.miprc.org)

**Testimony before the Kansas House Transportation Committee 2/9/10**  
**Hearing on HB 2552 - to enact the Midwest Interstate Passenger Rail Compact**  
**Laura Kliewer, Director, Midwest Interstate Passenger Rail Commission**

Chairman Hayzlett, Members of the Kansas House Transportation Committee, thank you for allowing me to speak to you today in support of HB 2552, which would enable Kansas to join the Midwest Interstate Passenger Rail Compact.

My name is Laura Kliewer, and I am the director of the Midwest Interstate Passenger Rail Commission, the organization created to carry out the compact's objectives when the compact language was passed by three states - Indiana, Minnesota and Missouri - in 2000. Current membership in the commission includes those three states, plus Illinois, Iowa, Michigan, Nebraska, North Dakota, Ohio and Wisconsin - a total of 10 to date. All 12 Midwestern states are eligible to join.

The Midwest Interstate Passenger Rail Commission has been a leading voice for rail improvements since its inception. The keystone of our advocacy efforts is presenting a unified voice on the importance of passenger rail as part of a balanced national transportation system. Intercity passenger rail development is predominantly a *multi-state* pursuit. Though the commission, Midwestern states have a unified way to plan and advocate at the federal, state and local levels for frequent, convenient and cost-effective passenger rail service.

Until about a year and a half ago, MIPRC focused on educating Members of Congress from member states on the importance of passenger rail development, as well as the necessity of a federal-state partnership in funding such development, similar to other modes of transportation. We fought hard for that partnership, and in October 2008, we received the first solid federal commitment to assisting states in the development of better, more frequent passenger rail service, with the passage of the Passenger Rail Investment and Improvement Act (which established several programs for passenger rail grant assistance to states). We next focused on getting some funding for these programs, and as you may know, \$8 billion was set aside for passenger rail development within the federal economic stimulus legislation. For a state to hope to receive a portion of the \$8 billion, it had to apply to the Federal Railroad Administration. The awards were just announced on January 28, and the Midwest was a big winner. Every Midwestern state that applied for a portion of the funding available through the High Speed Intercity Passenger Rail Program received an award. The region will receive more than \$2.6 billion of \$8 billion available.

Kansas submitted three applications, and one of those three was awarded funding in this first ever substantive distribution of federal assistance to states to make passenger rail improvements. Your state will receive \$250,000 to develop a "Service Development Plan" (SDP) for new passenger rail service between Netwon, KS and Oklahoma City, OK, as well as potential new service connecting Kansas City and Dallas/Fort Worth. The SDP will be

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developed following the completion of an Amtrak Expansion Feasibility Study which is underway and should be completed soon.

What does all this mean for Kansas in now considering joining the Midwest Interstate Passenger Rail Commission? MIPRC is the vehicle for state leaders to work together to advocate for the federal commitment and understand the state planning that is necessary to see passenger rail initiatives become a reality.

As a region, in partnership with the federal government, the Midwest can become the nation's leader in offering viable, economically-feasible and efficient passenger rail travel. But we'll need to work together. MIPRC brings together the key state-level parties - governors and their designees, legislators and agency officials - to ensure that the region works together in planning and advocacy. Each state also has a private sector designee to the commission.

The commission has been the primary regional advocate of the Midwest Regional Rail Initiative (MWRRI) and the Ohio Hub plans, a nine-state effort to bring more frequent, efficient passenger rail service to our region. Both of these plans received significant funding on January 28 - you can see what each of the corridors received by looking at the press release and chart we produced that day (copies of which were given to you). Closest to you, Missouri received \$31 million to make a number of improvements on the St. Louis to Kansas City route. Missouri currently has state-supported passenger rail service between St. Louis and Kansas City twice a day. The MWRRI would increase those roundtrips to six, as well as make improvements to bring train speeds up to 90 mph.

Over all, all these developments indicate that it will behoove all the Midwestern states to work more closely together in the future. With legislators, governors and their designees, agency officials and private sector appointees representing their states on the Midwest Interstate Passenger Rail Commission, under the auspices of a compact, we are positioned to bring the best interests of the Midwestern states forward. We look forward to the prospect of working together with Kansas to ensure that the region's passenger rail plans are realized.

Thank you again for your time and I would be glad to answer any questions.



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*Vice-Chair*  
Rep. Robert F. Hagan, Ohio

*Financial Officer*  
Mr. Robert C. Polk, Sr., Michigan

*Director*  
Laura Kliewer

*Bringing Together  
State Leaders from  
Across the Region  
to Advocate  
for Passenger Rail  
Improvements*

The Midwest Interstate Passenger Rail Commission is a 10-state interstate compact commission that promotes, coordinates and supports regional improvements to passenger rail service. Our member states include Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio and Wisconsin

## News Release

### Federal stimulus funding for high speed and intercity passenger rail projects will significantly help the Midwest build-out planned network

January 28, 2010

Contact: Laura Kliewer, Director, Midwest Interstate Passenger Rail Commission: (630)925-1922, [lkiewer@miprc.org](mailto:lkiewer@miprc.org)

LOMBARD, IL – The Midwest Interstate Passenger Rail Commission (MIPRC) today congratulates the federal government and the Midwestern states for their commitment to developing a network of faster, more frequent passenger rail service in the region.

According to a summary list and fact sheets posted on the White House web site late last night, each Midwestern state that applied for a portion of the \$8 billion stimulus funding available through the High Speed Intercity Passenger Rail Program has received financial support for one or more project.

In total, the Midwest will receive more than \$2.6 billion, to improve track and signaling on existing lines (allowing for faster and more frequent service), to conduct the environmental work necessary to bring higher speed service on other lines, and to conduct feasibility studies for additional service. Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Ohio and Wisconsin will all receive a portion of the award.

Four corridors that had been previously designated by the Federal Railroad Administration as "High-Speed Rail Corridors" -- Minneapolis/St. Paul-Milwaukee-Chicago, Chicago-St. Louis-Kansas City, Cleveland-Columbus-Cincinnati and Detroit-Chicago -- will receive substantive funding.

"A good day for America! At last, reinvesting in our infrastructure, creating jobs, travel options and rebuilding our future!" said Missouri State Rep. Charlie Schlottach, immediate past chair of MIPRC.

Missouri is to receive \$31 million in funding for various improvements along the St. Louis to Kansas City line. Illinois will receive \$1.1 billion to make necessary track, signaling and station improvements to implement 110 mph service between Chicago and St. Louis.

"This is a great step forward for passenger rail and economic development in Illinois. It is rewarding to see the federal government recognize the state's commitment to passenger rail and devote significant resources to improving our system," said Illinois State Rep. Elaine Nekritz, MIPRC's chair.

Minnesota and Wisconsin will both receive funding for development of the Chicago to Minneapolis/St. Paul corridor. Wisconsin's \$822 million award will fund necessary improvements to bring new service between Chicago and Madison. Minnesota's award, at \$1 million, will fund the environmental study that is necessary before high speed rail service can be extended from Madison to the Twin Cities.

(more)



*MIPRC News Release – Building out the Midwest’s planned passenger rail network – 1/28/10 (cont.)*

“President Obama's leadership has jump-started a nationwide race to bring high speed rail to the American people. It's an exciting step towards the development of the line from Chicago to the Twin Cities,” said Minnesota State Sen. Katie Sieben. Sieben is the Minnesota Senate’s appointment to MIPRC.

For the Detroit-Chicago corridor, Illinois, Indiana and Michigan will all receive funding to make track and station improvements.

"This is a forward-looking investment for 21st century high speed modern travel," noted Michigan State Rep. Lee Gonzales, the Michigan House’s appointment to MIPRC.

Ohio’s \$400 million award will allow the state to start up new passenger rail service between the major metropolitan areas in the state. The 250-mile “3-C” corridor will connect Cincinnati in the southwestern area of the state up to Cleveland via the capitol of Columbus.

Since 2000, the Midwest Interstate Passenger Rail Commission has worked on behalf of its member states to promote, coordinate and support improvements to passenger rail service. A primary objective of the commission is to help build the strong federal-state partnership necessary to advance passenger rail improvements in our region and nation.

“Witnessing this first major federal investment in passenger rail development is a wonder to behold, and to have all the Midwestern states that applied benefit directly is marvelous – it will not only jump-start the region’s network, but provide a much-needed economic stimulus,” said Missouri Sen. Joan Bray (Sen. Bray is Missouri Gov. Jay Nixon’s designee to the commission).

Last October, MIPRC formally expressed support for Midwestern states’ applications. In a letter to FRA Administrator Joe Szabo, MIPRC described the benefits of the Midwest’s two multi-state initiatives – the Midwest Regional Rail Initiative (MWRRI) and the Ohio Hub. The letter explained that that the two initiatives have been planned by Midwestern states for over a dozen years and that the build-out of the MWRRI and Ohio Hub would bring over \$30 billion in economic benefit to the region, while creating an average of more than 20,000 jobs annually during construction and approximately 75,000 permanent new jobs. MIPRC also asked that the funding provided through the stimulus be awarded to a number of states, rather than focusing on one or two large state projects, noting that this would both help jump-start passenger rail development and stimulate the economy in many states.

A table compiling the information on the projects for which Midwestern states received awards is attached.

Fact sheets for each on each of the awards are on the White House press release webpage:

<http://www.whitehouse.gov/briefing-room/statements-and-releases>

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*The MIPRC is a 10-state compact of Midwestern states – Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio and Wisconsin – working together to preserve and improve passenger rail service in the region.*

# Summary of Midwestern States' Awards 1/28/10



MIDWEST REGION			\$2.617 billion total
<b>Corridor: Chicago-St. Louis-Kansas City</b>			
State	Route	Est. Funding	Description
IL	Chicago - St. Louis	\$1.102 billion	Improvements to the corridor, allowing passenger rail service from Chicago to St. Louis to operate at speeds of up to 110 mph. These include an overhaul of track, signal systems, and existing stations, as well as implementation of positive train control technology. Planning studies for additional service enhancements are also included.
MO	St. Louis - Kansas City	\$31 million	Projects will include the expansion of existing railroad bridges and universal crossovers, as well as improved grade crossings.
<i>Corridor Total</i>		<i>\$1.133 billion</i>	
<b>Corridor: Minneapolis/St. Paul-Milwaukee-Chicago</b>			
MN	Minneapolis/St. Paul-Madison	\$1 million	A planning study will explore extension of high-speed rail service to the Twin Cities
WI	Madison-Milwaukee	\$810 million	This project will include new and refurbished stations, as well as implementation of positive train control technology along 80 miles of track.
WI	Milwaukee - Chicago	\$12 million	Station construction, infrastructure enhancements, and signal and track improvements will enhance time performance and reliability and create the building blocks for future 110 mph service.
<i>Corridor Total</i>		<i>\$823 million</i>	
<b>Corridor: Detroit-Chicago</b>			
MI	Detroit/Pontiac-Chicago	\$40 million	Renovation of stations in Troy and Battle Creek, MI, and construction of a new station in downtown Dearborn.
IL	Detroit/Pontiac-Chicago	\$133 million	Station renovations and investments such as a new station, a flyover, approach bridges and embankment and retaining walls.
IN	Detroit/Pontiac-Chicago	\$71 million	Crossovers and related signal system improvements, rail additions and siding improvements, resulting in travel time savings and on-time performance improvements.
<i>Corridor Total</i>		<i>\$244 million</i>	
<b>Corridor: Cleveland-Columbus-Cincinnati</b>			
OH	Cleveland - Columbus - Cincinnati	\$400 million	"3-C" (Cleveland-Columbus-Cincinnati) start-up service (capacity additions, track upgrades, grade crossing upgrades, stations, train maintenances & layover facilities). This project will also include planning for necessary equipment that can support future service improvements/
<i>Corridor Total</i>		<i>\$400 million</i>	
<b>*Corridor: Chicago-Omaha</b>			
IA	Chicago-Omaha	\$1 million	Service Level Tier 1 NEPA planning study to determine preferred route, prepare a service development plan (SDP) and conduct preliminary engineering (PE) for new service between Chicago and Omaha
<i>Corridor Total</i>		<i>\$1 million</i>	
<b>*Additional Midwestern States' Projects Awarded</b>			
IA	Iowa portion of Amtrak's California Zephyr route	\$17 million	Reduce travel times and improve on-time performance by installing 4 remotely-controlled powered crossovers on the BNSF Ottumwa subdivision.
KS	Kansas-Oklahoma/Texas route studies	\$250 thousand	Service development plan between Newton, KS and Oklahoma City, OK connecting Amtrak Southwest Chief service with the Heartland Flyer service, as well as potential new service connecting Kansas City and Dallas/Fort Worth
<i>Total Additional Project Awards:</i>		<i>17.25 million</i>	

Sources: [http://www.whitehouse.gov/files/documents/100128\\_1400-HSRAwards-Summary\\_FRA%20Revisions.pdf](http://www.whitehouse.gov/files/documents/100128_1400-HSRAwards-Summary_FRA%20Revisions.pdf); Midwestern states' HSIPR Program applications.

\*Note: funding for those marked with an asterisk (\*) are from sources other than the \$8 billion funding for High Speed Intercity Passenger Rail Program available through the American Recovery and Reinvestment Act.

**Testimony presented to the House Transportation Committee**  
**Presented by Mary Ellen Conlee**  
**February 9, 2010**

Chairman Hayzlett, members of the committee. I am Mary Ellen Conlee representing The Northern Flyer Alliance, a consortium of city councils, civic groups and citizens promoting the development of intercity passenger rail service in Kansas, Oklahoma and Texas. The Alliance is led by civic leaders who have come together to convey a message of strong constituent support for legislative authorization for passenger rail service.

The Alliance is unanimously committed to daytime passenger rail service over the Burlington Northern Santa Fe system running from Kansas City through Lawrence to Topeka, continuing southwest to Emporia and west through Strong City to Newton, and then south through Wichita, and Arkansas City continuing service to Oklahoma City and terminating in Fort Worth. Northbound service would run on a reverse transit over this same corridor.

The Kansas Department of Transportation commissioned a Feasibility Study with Amtrak in December 2008 which is scheduled for release in February 2010. In addition, the Wiedemann Foundation of Wichita, Kansas funded a return on investment study that was released in December 2009. The ROI study, completed by the University Of Kansas School Of Business, revealed a 3-1 economic return to the State including significant tax revenue that would offset a major percentage of the modest service contract between Amtrak and the State of Kansas. A summary of the findings of this study is included in the materials we have provided.

The Governor and Kansas Department of Transportation have received over 80 resolutions and letters of support from 62 city councils, county commissions and community organizations requesting the restoration of intercity passenger rail service in the state. (Please see attached list) The Governor and legislators have also received at least 2500 communications from citizens requesting new passenger rail service.

I am here today asking for your support of HB 2552, a bill that would provide the required legislative support for Kansas to become a full voting member of the Midwest Passenger Rail Commission. The main purposes of the compact are to promote, coordinate and support regional improvements to passenger rail service. As a voting member, Kansas would have the support of the commission as it seeks federal funding for bringing intercity passenger rail service to Kansas. The proposed rail service, connecting Kansas City to Oklahoma City and Forth Worth, would close the gap in Amtrak service from Chicago to Dallas while providing daytime passenger rail service for several Kansas and Oklahoma cities and towns.

As an FYI, the Senate is currently considering SB 409, which would authorize but not fund a mechanism for handling the funding of passenger rail service in Kansas if and when the route is supported by Amtrak with federal funding. Such legislation is necessary to indicate legislative support so that that Federal Railway Administration will continue to consider intercity passenger rail service through Kansas. The Northern Flyer Alliance will provide in-depth testimony to this committee when SB 409 reaches the House for consideration. For now, we have provided a bill brief in your packet for your information.

Evan Stair, the Oklahoma Vice President of the Northern Flyer Alliance and I are available to answer questions.



House Transportation  
Date: 2-9-10  
Attachment # 12

## Cities, Civic Organizations and Community Authorities Supporting Passenger Rail Service

City of Arkansas City, Kansas  
Arkansas City, Kansas Chamber  
City of Bel Aire, Kansas  
Camp Wood YMCA  
City of Cassoday, Kansas  
Chase County, Kansas Chamber  
City of Clearwater, Kansas  
Grand Central Hotel, Cottonwood Falls, Kansas  
City of Cottonwood Falls  
Cowley County  
Mayor of Denton, Texas  
City of Derby, Kansas  
City of Edmond, Oklahoma  
City of Edmond, Oklahoma Chamber  
Edmond, Oklahoma CVB  
City of Edwardsville, Kansas  
City of El Dorado, Kansas  
City of Emporia  
City of Guthrie, Oklahoma  
City of Halstead, Kansas  
Harvey County  
City of Haysville, Kansas  
City of Hesston, Kansas  
Mayor of Krum, Texas  
City of Lawrence, Kansas  
City of McPherson, Kansas  
City of Midwest City, Oklahoma  
City of Mulvane, Kansas  
Mulvane, Kansas Chamber  
City of Newton, Kansas  
Newton, Kansas Chamber  
City of Osage City, Kansas  
City of Oxford, Kansas  
City of Park City, Kansas  
City of Pauls Valley, Oklahoma  
City of Peabody, Kansas  
City of Perry, Oklahoma  
City of Ponca City, Oklahoma  
Mayor of Ponca City, Oklahoma  
Ponca City Main Street, Oklahoma  
City of Rose Hill, Kansas  
City of Sedgwick, Kansas  
Shawnee County  
City of Strong City, Kansas  
Sumner County  
Sumner County Economic Development Commission  
Superintendent of Tallgrass Prairie National Preserve  
Topeka Chapter of Retired Railroad Employees  
City of Topeka, Kansas  
City of Udall, Kansas  
City of Valley Center, Kansas  
City of Wellington, Kansas  
Old Town Association, Wichita, KS  
City of Wichita, Kansas  
Wichita Downtown Development Corporation  
Wichita Area Metropolitan Planning Organization  
Wichita, Kansas Chamber  
City of Winfield, Kansas  
Mayor of Winfield, Kansas  
Colorado Passenger Rail Association



Northern Flyer Alliance, Inc.

www.NorthFlyer.org

Northern Flyer Alliance, Inc.  
KU School Of Business  
Jayhawk Consulting  
Final Return On Investment Review

December 2009

**Lawrence**

**Kansas City**  
Visitors: 14,500,000

**Topeka**

**Wichita**

**Oklahoma City**  
Visitors Per Year: 7,500,000  
Annual Visitor Revenue: \$1,500,000,000  
Average Dollar Spent Per Visitor: \$200

**Map: The Northern Flyer Alliance Kansas City - Fort Worth Passenger Rail Corridor Possible Stops**

Existing Route: Solid line  
Expansion Route: Dotted line  
Existing Stop: Blue circle

Stops along the route: Garden City, Hutchinson, Newton, Lawrence, Topeka, Wichita, Arkansas City, Ponca City, Enid, Perry, Guthrie, Edmond, Stillwater, Norman, Purcell, Lawton, Duncan, Pauls Valley, Davis, Ardmore, Galnesville, FORTH WORTH, DALLAS, Marshall, Mirabel.

Directions: To Chicago (North), To Los Angeles (South)

**CONSULTING**  
THE UNIVERSITY OF KANSAS - SCHOOL OF BUSINESS

**NORTHERN FLYER ALLIANCE**  
ECONOMIC BENEFIT STUDY

## **Executive Summary**

Final University of Kansas study results show that the states of Kansas, Oklahoma and Texas should proceed aggressively with passenger rail planning. Despite the fiscally conservative study approach used by the University of Kansas, a robust *Regional Taxable Revenue Ratio increase of 3.2:1\** was projected for a Kansas City – Wichita – Oklahoma City route. Federal support for passenger rail through the *High Speed Intercity Passenger Rail (HSIPR)* capital funding program would dramatically increase ratio benefit for Kansas, Oklahoma, and Texas taxpayers. The HSIPR program will inject \$8 billion in capital into select national projects during FY2010 alone. The HSIPR program mimics federal interstate highway investment programs of the 1950's and 1960's. This visionary program could dramatically reduce required capital expenditures for Kansas, Oklahoma, and Texas and bring the benefits of passenger rail service back to our Tri-State area.

The KU study proves that passenger rail can become an effective and sustainable regional economic development tool even before HSIPR. Overall economic impact shows a break-even return after the first year with a continuing \$43 million annual impact.

These increases are due to direct, indirect, and induced economic factors. Regional employment increases through construction and operational staffing represent direct and positive economic effects. Employment increases and associated economic benefits through support industries (construction, real estate, healthcare, tourism, etc...) would flow into the regional economy. These indirect and induced *after-the-fare-box* effects are obviously substantial. They prove that rail travel infrastructure/operational investment and development can play a significant role in creating and improving regional economies. The region cannot afford to ignore the economic benefits analyzed by the University of Kansas.

\* For every dollar of investment taxable income increases by \$4.60.

## **1.0 Background**

The University of Kansas – School of Business – Jayhawk Consulting (KU) completed its Return On Investment study (ROI) with a presentation to the Northern Flyer Alliance, Inc. (NFA) board and the K. T. Wiedemann foundation on December 17, 2009 in Wichita, Kansas at PBA Architects. The intent of this independent and impartial study was to analyze potential economic impact based upon a passenger rail reintroduction between Kansas City, MO and Oklahoma City, OK.

This document represents the official NFA position regarding the study, based upon the current regional economic climate, contemporary passenger rail economics, and peer Amtrak operations in Missouri, Oklahoma, and Texas. The NFA wishes to thank the K. T. Wiedemann Foundation and KU for their contributions and work on this important and timely economic evaluation.

The criteria used to develop this study included an aggressively fast completion date, thus limiting the possibility of a more comprehensive and thorough overview. Many economic benefit criterions were excluded. If time had allowed, these additional benefits would have only improved economic benefit ratios as passenger rail costs are well understood. The appropriation source percentage, federal versus state, was seen as outside of project scope.

## **1.1 Need Statement**

Historically, Amtrak has not included quantitative economic benefit analysis within internal studies. Amtrak's pending cost study for the *Kansas City – Wichita – Oklahoma City – Fort Worth* rail corridor will likewise not include such data. Intensified fiscal scrutiny of state government programs demands a detailed economic benefit analysis. The NFA board deemed the production of a complementary economic benefit analysis to be imperative to its mission. KU produced a study based upon this need with financial contribution from the K. T. Wiedemann Foundation as owner of the study.

### 1.2 Amtrak Cost Study\*

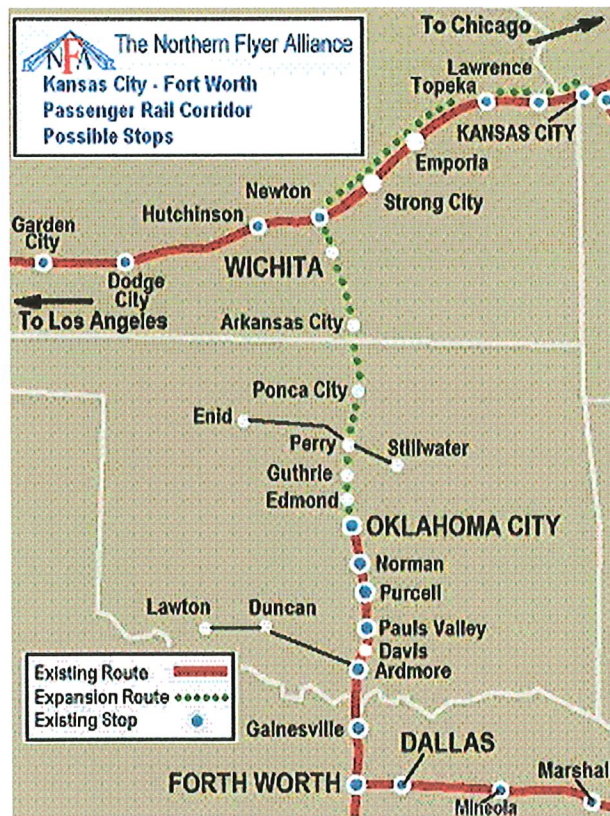
As mentioned, Amtrak is in the process of completing a cost study for the Kansas, Oklahoma, and Texas Departments of Transportation (KDOT, ODOT, and TxDOT respectively). Amtrak uses the AECOM model to analyze potential capital costs, operational costs, and ridership. The AECOM model likely differs significantly from the IMPLAN model used by KU. Simply stated, the Amtrak study will measure ridership and cost while the IMPLAN model measured economic benefit. The final Amtrak study will consider four scenarios:

**Scenario A.** A night-time roundtrip between Newton and Oklahoma City to connect with the eastbound and westbound *Southwest Chief* by extending the *Heartland Flyer* using the existing train set.

**Scenario B.** A night-time roundtrip between Kansas City and Fort Worth via connections at Newton and Oklahoma City. It would not connect to the *Southwest Chief* and would use the existing *Heartland Flyer* between Oklahoma City and Fort Worth and a new service between Kansas City and Oklahoma City. This option would require an additional train set to supplement the *Heartland Flyer* equipment.

**Scenario C.** The preferred Scenario of the NFA. A daytime roundtrip between Kansas City and Fort Worth via Wichita and Oklahoma City using a new, stand-alone service and two new train sets for the entire route.

**Scenario D.** A daytime roundtrip between Kansas City and Oklahoma City using a new, stand-alone service and two new train sets for the entire route.



**NOTE:** The *Heartland Flyer* makes a daily round trip between Fort Worth and Oklahoma City and the *Southwest Chief* operates daily between Chicago and Los Angeles. Their schedules do not change in the study scenarios.

\*Source: Kansas Department of Transportation

### 1.3 KU ROI Study Overview

The aggressive schedule necessitated a drastically limited scope. While costs are strictly understood as defined, many benefits were intentionally excluded. Therefore, the final product quantifies only large economic benefits while neglecting other more time consuming analysis such as transportation cost avoidance, clean air, and congestion mitigation savings and other economic criteria.

### 1.4 KU ROI Study Inputs

Study inputs were derived from several different sources. KU used the IMPLAN economic analysis model to study potential corridor economic impacts. A March 2000 KDOT passenger rail study, adjusted for inflation and energy prices, was referenced heavily for ridership, infrastructure cost, and operational cost. Regional travel and tourism data was collected for Kansas City, Lawrence, Topeka, Wichita, and Oklahoma City to approximate travel related cash flow. Only *scenario "D"*, as detailed in the Amtrak Study Scope from paragraph 1.2 was studied.

## 2.0 Analysis Data Highlights

The NFA has taken the liberty of condensing KU results for quick overview. The preliminary net project economic return is nearly \$400 million over a ten year span. The project returns more than its original investment after the first year of operation or \$72.7 million with a \$66.5 million federal/ state investment. After five years the project will have returned \$217 million for a benefit ratio of 2.52 to 1. After ten years, the benefit ratio climbs to 3.58 to 1.

### 2.1 Tax Considered Return on Investment

For each \$1.00 of net investment Amtrak scenario "D" produces \$3.22 in economic benefits after tax consideration, a 3.2 to 1 ratio. Analysis details are provided in Table 1.

**Table 1: Jayhawk Consulting Return on Investment.**

<b>Return on Investment (after Tax Consideration)</b>	
Net out of pocket Investment	\$1.00
Value Produced from Investment	\$3.58
Incremental Economic Benefit	\$3.22*
Tax Considered ROI:	<b>3.2:1</b>

\*Net of average 10% all taxes impact on value produced.

### 2.2 Jayhawk Consulting Projected Ridership

KU used the March 2000 KDOT Passenger Rail study to project ridership figures. Table 2 shows potential figures which were used as inputs to the IMPLAN model. These figures were adjusted by ten-percent due to higher 2009 gasoline prices.



**Table 2: Potential Kansas City – Oklahoma City Corridor Ridership Figures.**

<b>Benefiting City</b>	<b>Population</b>	<b>Projected Ridership</b>
Kansas City	688,380	43,763
Lawrence	114,784	7,295
Topeka	174,709	11,107
Emporia	35,562	2,261
Strong City	2,804	178
Newton	33,675	2,141
Wichita	482,863	30,697
Winfield – Arkansas City	34,065	2,166
Newkirk – Ponca City	45,632	2,901
Perry	11,169	701
Guthrie	38,102	2,422
Edmond – Oklahoma City	706,617	44,922
<b>Totals</b>	<b>2.4 Million</b>	<b>150,562</b>

**2.3 Infrastructure and Operational Costs**

Table 3 provides an infrastructure analysis. This information was derived from the March 2000 KDOT Passenger Rail study. Table 4 provides an operational analysis. KU adjusted these values to 2009 figures and allocated costs based upon a rail mileage basis between Oklahoma and Kansas.

**Table 3: Infrastructure Costs.**

<b>Total Infrastructure Costs By State</b>			
<b>State</b>	<b>Miles of Rail</b>	<b>Allocation</b>	<b>Amount Spent</b>
Kansas	281.72	70.836%	\$33,791,783
Oklahoma	115.99	29.164%	\$13,912,782
<b>Total Infrastructure Cost of Proposed Railway*</b>			<b>\$47,704,565</b>
<i>* 2010 Figure (updated for inflation)</i>			

**Table 4: Operational Costs.**

<b>Calculation of Operational Costs by State</b>			
<b>State</b>	<b>Miles of Rail</b>	<b>Allocation</b>	<b>Cost</b>
Kansas	281.72	70.836%	\$15,819,890
Oklahoma	115.99	29.164%	\$6,513,378
<b>Totals</b>	<b>397.71</b>	<b>100.000%</b>	<b>\$22,333,268</b>

### 3.0 Critical Analysis

The NFA has evaluated passenger rail industry costs associated with other regional passenger rail projects as provided by Amtrak, the states of Missouri, Oklahoma, and Texas. Table 5 provides an overview. While the cost and ridership elements of the KU study will be refined within the official Amtrak study the KU benefit analysis will remain valid. The NFA expects significantly reduced values for operational and capital costs based upon industry analysis. Further, because KU studied only scenario "D" potential ridership between Kansas City and Fort Worth will be dramatically lower than a through route (Scenario "C") without an overnight layover in Oklahoma City.

**Table 5: Regional Amtrak State Operational Funding Requirements.**

<b>Calculation of Operational Costs by State</b>			
State or Entity	Annual Operational Cost (Million)	Daily Miles	Per-Mile Cost
Oklahoma-Texas	4.297	412	\$28.57
Missouri	7.400	1,132	\$17.91
KU/KDOT Projection	22.333	1,204	<b>\$50.82</b>

### 4.0 Conclusions

Transportation corridors, regardless of mode, highway, aviation, and rail, are the arteries of local, state, and interstate commerce. These paths are a fixture of modern society. KU has provided a case study demonstrating a method to bring increased prosperity to the region. A passenger rail transportation market exists between *Kansas City – Wichita – Oklahoma City – Fort Worth* that can be served through Amtrak route expansion.

The NFA encourages lawmakers to seriously consider the KU report as positive economic news in depressed economic times. Kansas cannot afford to miss the economic development, job growth, quality of life, business and agri-business productivity gains, tourism, and life and limb savings this form of transportation would bring to the state. Related rail infrastructure improvements will encourage more rail freight shipping, reducing highway damage, and thus conserving precious taxpayer dollars. The reduction in fossil fuel burning automobile miles will improve air quality while conserving personal investments. Further, a fast track reintroduction along the entire corridor will aide downtown communities both large and small and provide transportation options that competing states use as a tool to lure away our citizens.

## Intercity Passenger Rail Service Development Act-2010

An Act establishing the passenger rail service program; providing for powers and duties of the Secretary of Transportation; establishing a passenger rail service revolving fund.

### Legislative Brief and Background Notes

This Act authorizes the Kansas Department of Transportation (KDOT) to develop intercity passenger rail service in the state and interstate connection with Oklahoma and Texas over the BNSF Railway system.

Legislative action has developed from widespread city council, civic, and public interest. This interest is affirmed through receipt of formal resolutions and letters and emerging federal passenger rail funding programs. A coalition of corridor communities has been organized through the Northern Flyer Alliance, Inc. (NFA). The NFA serves to brief state legislators with timely facts and background based upon community interest, economic impact studies, and general transportation need. This effort culminated in the development of a forthcoming Amtrak Feasibility Study, and federal grants which include a High Speed Intercity Passenger Rail (HSIPR) program under the American Recovery and Reinvestment Act of 2009.

**Senate Bill No. 409**, provides an appropriation mechanism, for a potential state passenger rail funding program. This proposed funding program is designed to size appropriations such that both state and federal revenues can be collected and adjusted under legislative mandate. The proposed program will provide flexibility if the state authorizes supplemental passenger rail services. A similar appropriation mechanism exists in Oklahoma through the Oklahoma Tourism and Passenger Rail Revolving Fund.

KDOT must receive legislative authorization and direction, including appropriation, to establish a passenger rail service program. Such a program must include authorization to exercise administrative control over fiscal and operational service management responsibilities

A revolving fund and program establishment provides a method to satisfy a federal grant eligibility requirement. The requirement is referenced within HSIPR and other federal programs. A formal authorized state rail plan including fiscal passenger rail operational funding provision demonstrates to federal authority's serious development intent. At present KDOT is drafting a comprehensive state rail plan including a passenger component. The plan, which will be released in 2010, requires a legislative authorization. As proposed this program would allow obligation of that portion of the Comprehensive Transportation Plan for operational contracts and capital requirements necessary for federal grant approval and program initiations.

**No appropriation for funding is requested in this bill. Operational and capital funding requirements will be specified through proposals by contract operators and/or construction companies. It is anticipated that program appropriations shall be considered on a case by case basis. The program outlined within this act does not obligate the state of Kansas to develop such programs. It does; however, provide a method for the state of Kansas to develop service and be approved for federal rail funding grants.**

Note: Fourteen other states fund supplemental intercity passenger rail services. Many states are aggressively moving to secure landmark federal grants in hopes of sparking economic development corridors. The fact that Kansas is centrally located provides an extraordinary opportunity for connection with other state and interstate routes. These connections will attract significant numbers of visitors and provide convenient transportation to cities where existing travel options are inconvenient, expensive, or unavailable.



**TESTIMONY BEFORE  
HOUSE TRANSPORTATION COMMITTEE**

**REGARDING HOUSE BILL 2552  
RELATED TO KANSAS JOINING THE MIDWEST INTERSTATE  
PASSENGER RAIL COMPACT**

**February 9, 2010**

Mr. Chairman and Committee Members:

I am Lindsey Douglas, Legislative Liaison for the Kansas Department of Transportation (KDOT). I appreciate the opportunity to testify in support of HB 2552.

HB 2552 would allow Kansas to join the Midwest Interstate Passenger Rail Compact. The purpose of the Midwest Interstate Passenger Rail Commission, and its member states, is to promote the development, implementation and improvement of intercity passenger rail service in the Midwest and to promote coordination among the public sector at the federal, state and local levels as well as with private sector stakeholders.

In joining the Compact, Kansas would have four members on the Commission. The Governor or his designee, a member of the private sector appointed by the Governor, and two state legislators, one from each legislative chamber, would comprise the Kansas delegation to the Commission. At this time, each member state contributes an annual fee of \$15,000 to the Commission. This fee covers administrative costs of Commission staff as well as reimbursement to members for travel, lodging and meals associated with official Commission meetings.

Thank you for the opportunity to testify in support of HB 2552. I would be happy to stand for questions at the appropriate time.

House Transportation  
Date: 2-9-10  
Attachment # 13

## TESTIMONY

Shelby Smith  
House Transportation Committee  
February 9, 2010

In a political context, critical mass can often be difficult to measure. I'm increasingly confident, however, that we're approaching substantial support for high-speed long-distance passenger trains as a vital cog in both our regional and national systems of transportation.

While the debate intensifies around health care, and the various bailouts, the benefits – both immediate and long-term–of passenger rail service to the economy of every town, city, and state along its routes are very significant indeed. A recent Financial Impact Study conducted by the University of Kansas School of Business has demonstrated that increased travel, tourism, and employment along a passenger rail route will return a regional economic benefit of \$3.20 for every \$1.00 invested.

Oklahoma's experience is reassuring! Towns along the route averaged \$4 million in expanded economic activity the first year after the train's arrival.

All of the start-up capital costs: locomotives, passenger coaches, and necessary improvements to the track are federally funded. The Legislature will be required to subsidize operational costs sometime two or three years in the future.

The members of the Kansas T-Link Task Force, a large and diverse group charged with formulating long-range policy recommendations for transportation in the Sunflower State, have called for Kansas to capture this economic opportunity.

House Transportation  
Date: 2-9-10  
Attachment # 14

Amid all the talk of public investment in passenger rail, the private sector has recognized the value to our country and its people of a revitalized railway system. Consider Warren Buffett: America's most well-known and perhaps its most successful investor. He has completed a \$34-billion acquisition of the nation's second largest railroad, the Burlington Northern Santa Fe. Railroads will be able to move more people and more goods, using less energy, than do other modes of transportation. BNSF last year moved on average a ton of goods 470 miles on one gallon of diesel.

Mr. Buffett has it right. According to data from the U.S. Department of Energy, Amtrak is almost 20 percent more efficient on a per-passenger-mile basis than domestic airline travel, and 28 percent more efficient than auto travel.

The Wall Street Journal's in-depth analysis of Transportation Secretary Ray LaHood's Vision for High-Speed Rail in America concludes-it could change the way Americans travel. In my view, it could be Obama's legacy.

Additionally, a Congressional Resolution reads "long-distance passenger rail is a vital and necessary part of our national transportation system and economy."

The arguments in favor of renewed passenger rail service for Kansas have now reached critical mass. ALL ABOARD now for this important new initiative for our individual and collective economic well-being.

Respectfully,