

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 p.m. on February 11, 2010, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Representative Bill Otto
Representative Lisa Benlon
Paul Finney, Humboldt, KS
Kyle Schneweis, Chief of Governmental Affairs for KDOT
Captain Art Wilburn, KHP

Others attending:

See attached list.

Chairman Hayzlett called the meeting to order and opened the hearing on **HB 2122**.

HB 2122 - Highway advertising control act

Chairman Hayzlett recognized Representative Bill Otto. (Attachment #1) According to Representative Otto, this bill would amend the Kansas Highway Advertising Control Act to allow outdoor advertising structures erected by local zoning authorities prior to June 30, 2006, to be grandfathered or otherwise considered legally conforming signs.

The next proponent was Paul Finney of Humboldt. (Attachment #2) Mr. Finney said when Highway 169 went through the center of town and all passenger and freight traffic came through town on the highway or the Santa Fe Railroad, Humboldt had a vibrant downtown. The people passing through town patronized their stores, restaurants, and gas stations. He said today because the town is bypassed by the highway their downtown is economically devastated. He said this bill would allow small town businesses to advertise on the highways that now bypass them. This bill will grandfather all commercial zoning in existence before the passage of **SB 253** in 2006. Mr. Finney said this bill will allow small town businesses to advertise on the highways that now bypass them. He said this bill will grandfather all commercial zoning in existence before the passage of **SB 253** in 2006 and it will produce one billboard project that will benefit the businesses of Iola, Humboldt and Chanute.

There were no other proponents. The proponents stood for questions.

Chairman Hayzlett drew the Committee's attention to Written Testimony from Larry Tucker, City Administrator of Humboldt, in support of **HB 2122**. (Attachment #3).

The Chairman recognized Kyle Schneweis, Chief of Governmental Affairs for the Kansas Department of Transportation. (Attachment #4). According to Mr. Schneweis **HB 2122** would allow all outdoor advertising structures, erected by local zoning authorities prior to July 30, 2006, as a result of "spot zoning," to be considered legal conforming signs. He said this action is not recognized for outdoor advertising control purposes by the Federal Highway Administration. The prohibition against "spot zoning" was incorporated in state statute in 2006 to bring the state into compliance with federal law. Mr. Schneweis concluded his testimony by saying if **HB 2122** was passed, it would contradict federal law and KDOT would be subject to a ten percent reduction in federal funding. He stood for questions.

There were no other opponents so Chairman Hayzlett closed the hearing on **HB 2122** and opened the hearing on **HB 2623**.

CONTINUATION SHEET

Minutes of the House Transportation Committee at 1:30 p.m. on February 11, 2010, in Room 783 of the Docking State Office Building.

HB 2623 - Prohibiting covering license plate with clear or opaque material

Chairman Hayzlett recognized Representative Lisa Benlon (Attachment #5). According to Representative Benlon this bill would make it unlawful for a person to attach or display on any vehicle a license plate that is covered, in whole or in part, with any material, including any clear or opaque material or any other plastic-like material that affects the plate's visibility or reflectivity. This bill would carry a \$60 fine for unlawful display of a license plate. Representative Benlon said the Overland Park Police Department asked that she also mention their support for this legislation.

The Chairman recognized Captain Art Wilburn, Kansas Highway Patrol, as the next proponent. (Attachment #6) Captain Wilburn said the Highway Patrol supports **HB 2623** because license plates which are not clearly visible create a concern for law enforcement officer safety. He said when officers are unable to read license plates due to dirty, clouded, oxidized or colored license plate covers it prohibits officers from initiating computer checks on the license plates to determine if they are current, displayed on the correct vehicle, stolen or wanted in connection with a crime. He said the inability to initiate these checks and have prior knowledge of the vehicle before approaching the vehicle creates an unsafe condition for officers. Captain Wilburn said passage of **HB 2623** would also benefit the public when they witness a crime and want to record the license plate numbers to pass on to law enforcement.

Representative Benlon and Captain Wilburn stood for questions from the Committee.

There were no opponents so Chairman Hayzlett closed the hearing on **HB 2623**.

Chairman Hayzlett opened **HB 2498** to the Committee for discussion, comments and motions. After discussions the Committee decided to take no action on this bill this year.

The Chairman opened **HB 2547** to the Committee for discussion, comments and motions. After some discussions and agreement from parties on both sides of the issue, a balloon amendment was proposed. Representative Wetta made a motion to adopt the proposed amendment (Attachment #7) seconded by Representative Burgess. The motion carried. Representative Ballard made a motion to favorably pass HB 2547, as amended, seconded by Representative Wetta, and the motion carried.

Chairman Hayzlett opened HB 2555 to the Committee for discussion, comments and motions. Representative Maloney made a motion to favorably pass HB 2555, seconded by Representative Kerschen, and the motion carried.

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

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-11-10

NAME	REPRESENTING
Bill Vizony	KDOT
Dennis Miller	KDOT
Terry Heidner	KDOT
Matt Zielsdorf	LAWXR
Joe Mosimann	AUCR
Kyle Schuman	KPR
Ray Wilk	KFOR - DoTV
Whitney Gann	KADA
Paul Truempy	Self.
Sandy Braden	Alliance
Dan Murray	Federico Casalty
Pat Barnes	KADA
Larry R Bass	LKM
Ted Smith	KDOR

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

SERVING: ALLEN, ANDERSON, FRANKLIN

COFFEY, AND WOODSON COUNTIES

9th District
State Capitol - Docking Office Complex
300 SW 10th Ave.
Topeka, KS 66612
785-296-6014
bill.otto@house.ks.gov

102 9th Street
LeRoy, KS 66857
620-964-2355
billcotto@yahoo.com

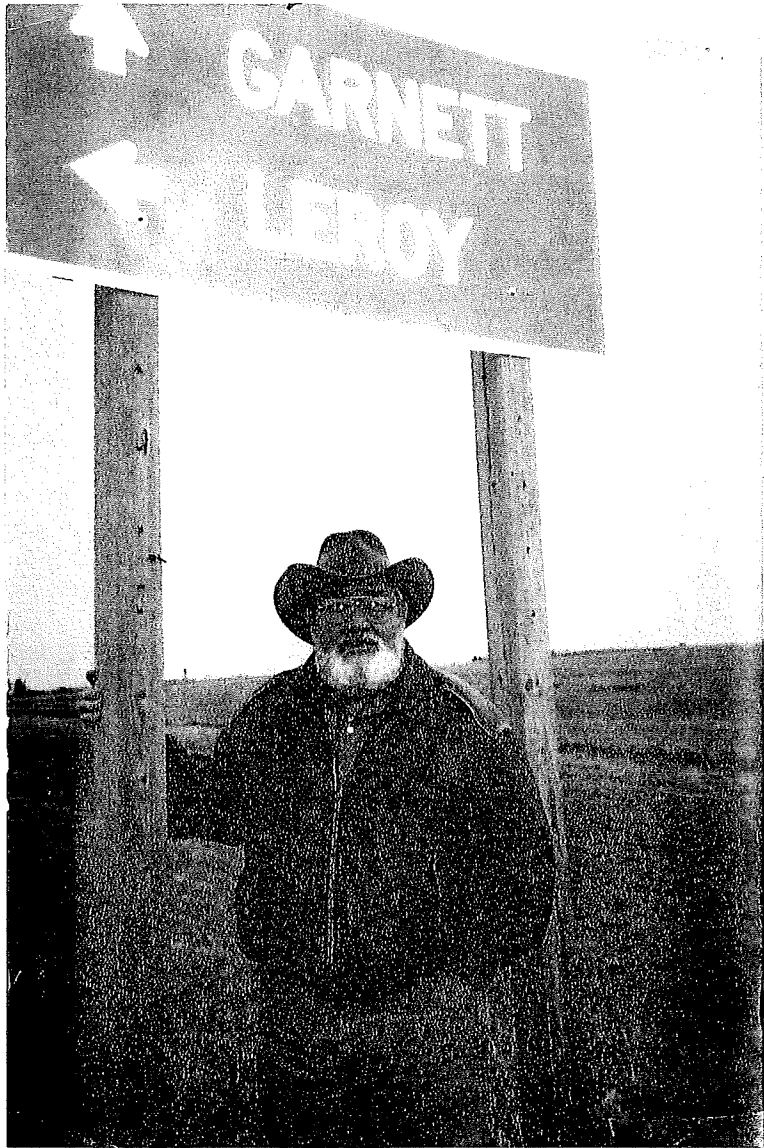


BILL OTTO

Other States have other goals!
New Goal for K.D.O.T.

*250 True Enterprise
+ \$20 per year
K-57 - K-58

Why are there blank blue signs?



*Linger Longer!
* Signs on Old Highway
You should get on new Highway
* Next Town
* Make money with increased taxes not increased sign fees!

House Transportation
Date: 2-11-10
Attachment # 1

KANSAS

DEPARTMENT OF TRANSPORTATION
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

WILLIAM F. VICORY, CHIEF

November 29, 2004

Arnold's Greenhouse
1430 Highway 57 SE
LeRoy, Kansas 66857

Dear Sir or Madam:

Subject: Resetting of Sign, New Sign Inventory No. 415653

It has not gone unnoticed that you have erected another illegal sign structure in the vicinity where two other illegal structures were erected and then removed. The first illegal sign structure was located adjacent to US-75 at reference point 88.682 on the right in Coffey County. The first illegal structure was removed November 27, 1989. The second illegal sign structure was sign inventory number 19817 which was located adjacent to US-75 at reference point 88.702 on the right in Coffey County. The second illegal sign structure was removed September 15, 2003. Since this is a repeat infraction, you are advised that the sign must be removed within 15 days of this notice. The details regarding the current illegal sign are as follows:

SIGN DATA:

Inventory Number: 415653

Location: US-75, Reference Point 89.258 (Left), Coffey County

Message: Arnold's Greenhouse

ILLEGAL VIOLATION:

This sign is illegal because commercial signs erected after March 31, 1972, may only be erected in a business area, i.e. non-scenic and zoned or unzoned commercial/industrial area. This sign was erected after March 31, 1972, in a zoned agricultural area. [Reference: K.S.A. 68-2232(b) and K.S.A. 68-2233(e).]

ACTION REQUIRED:

Removal of sign structure must be completed within 15 days of this notification. Removal must include posts and all debris.

TIME FRAME FOR ACTION TO BE TAKEN:

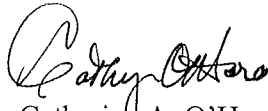
This matter is to be resolved on or before December 14, 2004.

BUREAU OF RIGHT OF WAY
DWIGHT D. EISENHOWER STATE OFFICE BUILDING
700 S.W. HARRISON STREET, TOPEKA, KS 66603-3754
PUBLIC ACCESS AT NORTH ENTRANCE OF BUILDING
VOICE 785-296-3501 TTY 785-296-3585 FAX 785-296-0009 <http://www.ksdot.org>
Toll Free Number 1-877-461-6817

Arnold's Greenhouse
Page 2
November 29, 2004

Please be informed if you fail to remove your illegal sign on or before **December 14, 2004** the Kansas Department of Transportation will be required to remove this sign and you will be liable for the costs of the removal. If you have further questions or concerns, please contact me (toll-free) 1-877-461-6817 or at 785-296-4061.

Sincerely,



Catherine A. O'Hara
Outdoor Advertising Manager

CAO: pe

Enclosure: Summary; KHACA

By certified mail

cc: Dee Delmar Trostle-property owner

Field Agent - WA - 12/14/04*



BUREAU OF RIGHT OF WAY
DWIGHT D. EISENHOWER STATE OFFICE BUILDING
700 S.W. HARRISON STREET, TOPEKA, KS 66603-3754
PUBLIC ACCESS AT NORTH ENTRANCE OF BUILDING
VOICE 785-296-3501 TTY 785-296-3585 FAX 785-296-0009 <http://www.ksdot.org>
Toll Free Number 1-877-461-6817

1-3

Testimony of Paul Finney

House Transportation Committee

February 11, 2010

Mr. Chairman, members of the committee, thank you for the opportunity to speak today.

I am Paul Finney of Humboldt, where I have been involved in the historic preservation and the attempted rejuvenation of our downtown.

I am here as a supporter of HB 2122, which my attorney, Ed Bideau, who formerly served in this House, says should be called the "Equity in Grandfathering Act."

Let me set the stage for this discussion.

In the hay days of our small towns such as Humboldt, when highway 169 went through the center of town, we had a vibrant downtown that included 13 gas stations and 17 churches. All passenger and freight traffic came through town on the highway or the Sante Fe Railroad. One could buy most his his needs downtown. People passing through patronized our stores and restaurants, bought gas and tires at our service stations, kept our motel, and hotels busy.

Today our downtown is economically devastated. In the early 80s, KDOT re-routed US 169 around Humboldt and the damage was instant. This scenario has played out in small towns across the state, as many of you so painfully know. People today never see these little towns, just a sign at the exits, a story that the movie "Cars" told so well. In the travelers' mind, these towns might as well be ghost towns , and indeed many are headed in that direction.

But it is worse than just being by-passed. Lady Bird's anti-billboard law of the 1960s compounded the damage. In the name of scenic beauty, Congress passed the law championing her cause without anyone's mentioning that she was restricting a major advertising medium that competed with her TV stations. And the newspapers that ran puff pieces lionizing Lady Bird for protecting the natural beauty did not point out that it would as well outlaw part of their own advertising competition.

This billboard control law has a very different effect around small towns than on the approaches to cities. There is ample commercial activity lining the freeways

House Transportation
Date: 2-11-10
Attachment # 2

leading into our cities so that there are no issues of "spot" zoning. Drivers can see the stores and billboards that dot the landscape advertising all manner of businesses. But the approaches to small towns are in agricultural areas where there is little commercial activity. Therefore one gets into issues of spot zoning.

Senate Bill 253 passed in 2006 codified restrictions about spot zoning while simultaneously grandfathering multitudes of billboards erected in cow pastures with no business in sight or even within miles.

Neighboring states such as Missouri and Illinois have many billboards in agricultural areas advertising businesses in small towns. Kansas has done too good a job of restricting rural billboards, to the detriment of our small town businesses.

Our small towns have produced our most famous Kansans including Alf Landon, Dwight Eisenhower, Bob Dole, Walter Johnson (who was from Humboldt—and Coffeyville—to be fair), William Inge, and Amelia Earhart. Most of our presidents have come from small towns. Our nation's small towns have nurtured many of our greatest citizens who went off into the larger world to make great accomplishments. The sum total of all of Americans' accomplishments has made us the world's greatest civilization to date.

Without flourishing stores and services, our small towns become much less attractive places to live. Unless we correct this problem, these towns will go into further decline. And the greatest incubator of our political leaders will cease to function.

Historic preservation is one avenue to save the buildings in our small towns. But without flourishing commerce, there will be no use for these buildings.

Government having helped create the demise of small town business districts by by passing the towns and regulating signage nearly out of existence in these areas, now offers some grants to restore the buildings it helped empty. This is a classic case of how government legislates to correct a problem it created with previous legislation. And we wonder why our taxes go up.

It would be simpler to allow small town businesses to advertise on the highways that now by pass them. House bill 2122 will grandfather all commercial zoning in existence before the passage of SB 253 in 2006. That will produce one bill board project that will benefit the businesses of Iola, Humboldt, and Chanute.

The passage of this bill will provide a pilot test of at least one such project that could be studied for it's beneficial effects in raising the level of retail activity in the small towns mentioned. I urge you to pass HB 2122.



CITY OF HUMBOLDT
OFFICE OF CITY ADMINISTRATION

701 Bridge, PO Box 228 · Humboldt, KS 66748-0228 · Ph: (620)473-3232 · Fax: (620)473-2133 · www.humboldtks.org

To: Transportation Committee

From: Larry Tucker

Re: House Bill 2122

Dear members of the Transportation Committee. I would like to write in support of HB 2122 to allow modifications to the existing comprehensive zoning regulations that govern advertising signage along public roads.

As City Administrator for Humboldt, Kansas, our town sits at least one mile off of US Highway 169 which prohibits direct traffic from passing near our community. Signage as provided by the Kansas Department of Transportation limits the ability to promote historic and commercial sites that are in Humboldt. Such signage is not only limited in lettering, but is also expensive for small communities to rent.

Modifications to the current zoning regulations would allow property owners along public roads to use signage to help promote historic, commercial and other activities in local towns that do not have a presence along major roadways.

There are many opportunities for travelers to explore across Kansas. With oversight from the state, such changes in the signage legislation would help rural communities promote these places for visitors and Kansans to visit which would contribute to the economic growth of the state.

Thank you in advance for reading these comments. If you have any questions, please contact me.

Respectfully submitted

Larry Tucker
City Administrator

c.c. Mayor

House Transportation
Date: 2-11-10
Attachment # 3

**TESTIMONY BEFORE
HOUSE TRANSPORTATION COMMITTEE**

**REGARDING HOUSE BILL 2122
RELATED TO HIGHWAY ADVERTISING CONTROL ACT**

February 11, 2010

Mr. Chairman and Committee Members:

I am Kyle Schneweis, Chief of Governmental Affairs for the Kansas Department of Transportation (KDOT). I am here to provide testimony in opposition to House Bill 2122, which proposes amendments to the Highway Advertising Control Act.

The bill would allow outdoor advertising structures erected by local zoning authorities prior to July 30, 2006, as a result of "spot zoning", to be considered legal conforming signs.

The Federal Highway Beautification Act considers "spot zoning" to be a state or a local zoning action created primarily to permit the erection of outdoor advertising structures, and is not part of comprehensive zoning. This action is not recognized for outdoor advertising control purposes by the Federal Highway Administration. The prohibition against "spot zoning" was incorporated in state statute in 2006 to bring the state into compliance with federal law.

If the proposed legislation were to be enacted, it would amend the Highway Advertising Control Act in a way that would contradict federal law. Thus, KDOT would be subject to a 10 percent reduction of federal funding for several highway programs, possibly resulting in a loss of \$22 million for fiscal year 2011, or \$66 million over the next three fiscal years.

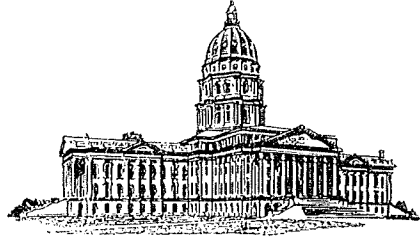
A reduction in federal highway funding to Kansas in these tough economic times would be devastating.

Thank you for the opportunity to provide testimony on HB 2122. I will gladly stand for questions at the appropriate time.

House Transportation
Date: 2-11-10
Attachment # 4

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

22ND DISTRICT
STATE CAPITOL
TOPEKA, KS 66612
(785) 296-7643
Lisa.Benlon@house.ks.gov



8725 W. 79TH ST.
OVERLAND PARK, KS 66204
(913) 268-4326
Lisa.Benlon@yahoo.com

LISA L. BENLON

Testimony in Support of HB 2623

February 11, 2010

Chairman Hayzlett and Committee Members,

We live in a far different world than we had 20 years ago.

With the nation constantly on alert of terrorist, and neighborhoods in fear of a criminal element, I have heard from several individuals and police department personnel that they are concerned with the growing number of cars on the road that have a plastic cover over their license plate. I have had gun shots in my district. Constituents have told me they are unable to get a license number due to the heavily smoke-colored, or opaque coverings. They are willing to contact the police, but feel they don't have enough information to do so.

Currently, an officer may pull over a vehicle for having a license plate frame that covers the plate where it is illegible. Some have told me they would like the law to include these covered plates. That is what I have attempted to do with this bill.

The infraction would carry a \$60 fine. You will find the addition to the list on page 5, line 14.

This is a simple bill and will affect only those who attempt to conceal the identity of their vehicle tag.

The Overland Park police department asked that I also mention their support for this legislation. Unfortunately, no one from their department was able to attend the hearing in Topeka today.

I would appreciate the committee's positive consideration of this legislation.

I will stand for questions at the appropriate time, Chairman Hayzlett.

House Transportation
Date: 2-11-10
Attachment # 5

Testimony on House Bill 2623
House Transportation Committee

Presented By
Captain Art Wilburn
Kansas Highway Patrol

February 11, 2010

Good afternoon Mr. Chairman and members of the Committee. I am Captain Art Wilburn and I appreciate the opportunity to appear before you today on behalf of Colonel Terry Maple and the Kansas Highway Patrol regarding House Bill 2623. This Bill would prohibit the covering of a license plate with any material including clear or opaque material if it affects the plate's visibility or reflectivity. Violations would be considered a traffic infraction with a \$60.00 fine under the Uniform Traffic Fine Schedule.

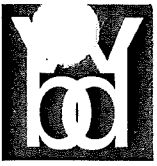
The KHP supports this Committee's efforts to increase the visibility of license plates. License plates which are not clearly visible create a concern for law enforcement officer safety. Often, officers are unable to read license plates due to dirty, clouded, oxidized or colored license plate covers. This inability to read license plates prohibits officers from initiating computer checks on the plates to determine if they are current, displayed on the correct vehicle, stolen or wanted in connection with a crime. The inability to initiate these checks and have prior knowledge of the vehicle prior to approaching the vehicle creates an unsafe condition for officers.

Support of this bill would also benefit the public as often a private citizen is witness to a crime. Visibility of the license plate greatly enhances the opportunity of citizens to record the license plate numbers and relay them to law enforcement.

The Kansas Highway Patrol supports the intent of this bill to make license plates visible to law enforcement officers and the public. I would be happy to address any questions from the Committee.

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House Transportation
Date: 2-11-10
Attachment # 6



MEMORANDUM

TO: The Honorable Gary Hayzlett, Chair
And Members of the House Transportation Committee

FROM: Whitney Damron
On behalf of the Kansas Automobile Dealers Association

RE: HB 2547 - An Act amending the vehicle dealers and manufacturers
licensing act.

DATE: February 11, 2010

Good afternoon Chairman Hayzlett and Members of the Committee:

I am Whitney Damron and I serve as legislative counsel to the Kansas Automobile Dealers Association. With me today is Pat Barnes, general counsel to the Association.

Our President, Mr. Don McNeely is unable to be here today due to his participation in a previously-scheduled dealer-related conference out of state.

Since our hearing on this bill on Tuesday of this week, KADA has continued to discuss, explain and negotiate over this bill with representatives of the Alliance of Automobile Manufacturers and believe we are probably about as close as we can get without compromising our objective of providing meaningful protections for the new franchised automobile dealers of Kansas.

When Don McNeely outlined the bill on Tuesday, at the conclusion of the hearing it appeared there were disagreements on anywhere from four to six points, depending upon whether the Alliance was evaluating the bill from the latest version. Since that time, Mr. Barnes has had several phone calls and E-mail exchanges with representatives of the Alliance and KADA representatives considered their suggestions and concerns in a conference call late yesterday.

Attached to this memorandum is a copy of Mr. Barnes' letter of transmittal to Revisor Bruce Kinzie and the bill as proposed for further amendment.

At this time, I would like to have Mr. Barnes will walk briefly through five points in the bill where we made revisions based upon negotiations and discussions with the Alliance.

Following his remarks, we are both available for questions.

Thank you.

Whitney Damron
Attachment

Since the House Transportation Committee hearing on Tuesday KADA considered some additional changes requested by the manufacturer's representatives. I am attaching a revised balloon with the changes included.

In comparison with that offered at Tuesday's hearings, the only changes to this draft as compared to the last are the following:

Page 4, lines 37 to 41 add in a reference to the manufacturer's business plan on dualling considerations with Respect to franchises. It is consistent with the top of Page 5.

Page 6, line 5. The prior version referred to 'reasonable' consideration. Because we are making material changes elsewhere we have returned this to an 'adequate' consideration standard on agreements foregoing rights in the statute.

Page 10, lines 28 through 36 deal with a compromise position on the repurchase of computer equipment and also separates out the paragraph dealing with it.

Page 10, line 39 shows a deletion which results in foregoing any facilities reimbursement for voluntary terminations.

Page 11, line 28 includes the revisor's suggestion that we break the provision out that details exceptions to the subsection out into a separate paragraph.

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

- 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 deal-
 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*

but not limited to
 and manufacturer's
 business plans

or the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted in exchange for altering or foregoing the limitations set forth in this subsection;

1 facility, unless the requirement is reasonable in light of all existing con-
2 ditions, including debt exposure, cost, return on investment, the dealer's
3 business plan and other financial and economic considerations;

but not limited to
and manufacturer's
business plans

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.

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

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

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;

a preponderance of the

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;

subsection;

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

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.~~

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 manufacturer 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.

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

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-
- 7-11

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-~~
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,

dealer cost for
computers and data
processing systems which
are in usable condition
and were leased or
purchased within three
years of the date of
termination, cancellati
on or nonrenewal of the
franchise agreement up
to an amount equal to
the cost of meeting the
minimum standards and
requirements for the
dealer to participate
in promotional or
incentive programs or
to perform the franchise
agreement.

(F)

~~Delete voluntary~~
termination provisions

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-

(6) 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- a preponderance of the
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 material".]

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.