



## KANSAS AUTOMOBILE DEALERS ASSOCIATION

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March 7, 2018

**To:** The Honorable Richard Proehl, Chairman and Members of the House Transportation Committee

**From:** Don L. McNeely, President

**Re:** SB 324 - AN ACT concerning the vehicle dealers and manufacturers licensing act; relating to improvements to facilities; performance measurements; recall repairs.

Good Afternoon, Chairman Proehl and members of the Committee. My name is Don McNeely and I serve as the President and CEO of the Kansas Automobile Dealers Association. I appear before you this morning in support of SB 324 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 in the interests of fairness serves to balance the relationship between new motor vehicle dealers against overreaching by the manufacturers. In fact, over four 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.” The reason 50 state legislatures have taken this up, comes down to basic economics, fair play, maintaining healthy competition among dealerships, and protecting the rights of consumers.

Prior to introducing this legislation, KADA shared the bill draft with the motor vehicle manufacturers and entered into extensive negotiations with General Motors and the Alliance of Automobile Manufacturers. While the bill was amended in the Senate Transportation Committee to address some of the concerns of the manufacturers, negotiations have continued over the last several weeks. I am pleased to report that we have reached a negotiated compromise on the bill and an amendment reflecting the agreement reached has been provided to the Revisor and also attached to this testimony.

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SB 324 address the following four issues:

**Facility Upgrades** - Prohibits manufacturers from requiring a dealer to remodel his or her facility within 10 years of the most recently manufacturer-required remodel. The 10 years runs from the date of the later of the manufacturer or local approval and includes the dealers' possible successors. However, this provision does not change present law allowing the dealer and manufacturer to agree to participate in such facility programs.

**Vendor Choice/Signage** – Promotes balance in the relationship of the various parties and promotes other local businesses by prohibiting a manufacturer from requiring a dealer to purchase building improvement materials from a manufacturer-designated vendor, provided the dealer can find a vendor that can provide “substantially similar materials” at a lower cost. Permits a manufacturer to require a specific vendor if the manufacturer reimburses the dealer for the increased cost of the materials. Also, requires a manufacturer that leases signage and other image and design elements to dealers to give the dealer the option to purchase similar items from a vendor selected by the dealer, unless the manufacturer incurs the cost.

**Sales Performance Standards** - Requires manufacturers, when evaluating a dealer's sales performance as it pertains to termination and buy-sells to consider local economic factors in the dealer's market area. Requires basic fairness in the design and use of the valuation process. Prevents use of unfounded or unsound data and statistics to terminate a dealer or misrepresent its performance, and requires the disclosure of the data and basis upon which the dealer is being evaluated.

**Recall Requirements** – In recent years tens of millions of motor vehicles have been recalled for defective air bag inflators and other problems that pose the risk of serious injury or death. Under current law, new motor vehicle dealers are not being compensated by their manufacturers for used vehicles in their inventories that they cannot sell due to unresolved recalls primarily due to a lack of parts. This creates an unfair added expense to dealers due to floor plan interest, insurance, storage, and vehicle depreciation associated with being unable to perform the repair.

The proposal essentially supplements federal law by closing a gap on payment between new vehicles and applying it to used vehicles, thus requiring manufacturers to compensate their same line dealers for those used vehicles with serious safety or emissions problems as determined by the National Highway Traffic Safety Administration (NHTSA) or auto manufacturers.

- covers vehicles with “Do-Not-Drive” orders by NHTSA (about 6% of total recalled vehicles) and “Stop-Sale” orders issued by the manufacturers;
- covers vehicles in inventory of in-kind dealer (i.e. a used Chevrolet owned by a Chevrolet dealer, not a used Chevrolet in the inventory of a Ford dealer);
- reasonable compensation for labor and parts if parts are not available to make repairs within 30 days of initial notice of recall;
- compensation rate of at least 1%/month of trade-in value.



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In closing, I would note that these provisions are similar to amendments being incorporated into motor vehicle franchise acts in a large number of states over the last two years and this year.

At this time, I will be pleased to respond to any questions you might have.

Thank you.

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## SB 324 – Proposed Amendments

(4) A manufacturer shall not rely upon sale and service performance criteria for the purposes of cancelling, terminating or non-renewing a franchise agreement or otherwise rely upon such criteria for purposes related to K.S.A. 8-2414 or 8-2416, and amendments thereto, which fail to meet the requirements of this subsection. A standard for measuring sales or service performance of any of its new vehicle dealers shall not use criteria that:

(a) Are unfair, unreasonable, arbitrary or inequitable; or

(b) do not consider the relevant and material local and state or regional criteria, including prevailing economic conditions affecting the sales or service performance of a vehicle dealer or any relevant and material data and facts presented by the dealer in writing. Relevant and material criteria, data or facts include, but are not limited to: (1) Those motor vehicle dealerships of comparable size and comparable markets; (2) Demographics in the new vehicle dealers area; (3) Geographic and market characteristics in the new vehicle dealer's area; (4) The proximity of other new vehicle dealers of the same line and make; (5) The proximity of motor vehicle manufacturing facilities; (6) The buying patterns and consumer preferences of motor vehicle purchases; and (7) Customer drive time and distance. If such performance measurement criteria are based in whole or in part on a survey, that survey must be based on a statistically significant and valid random sample or must survey a majority of new vehicle retail sales and warranty service customers of the dealer if the survey is one measuring customer satisfaction of the dealer's sales or service operations. A manufacturer, contractor or common entity or an affiliate that enforces against any vehicle dealer any such performance measurement criteria shall, upon the request of the dealer, describe in writing to the dealer, in detail, how the performance measurement criteria were calculated and uniformly applied and shall also provide any data upon which it relied in reaching the performance standard and applying it to the dealer.

# Driving Kansas' Economy

## Annual Contribution of Kansas' New-Car Dealers



Numbers reflect annual economic activity during 2016.



**213**  
**DEALERSHIPS**  
(new car)



**22,390**  
**TOTAL JOBS**  
(created by dealerships)  
Includes 10,733 direct jobs and  
11,657 indirect and induced jobs.



**50**  
**EMPLOYEES**  
(average per  
dealership)



**\$6.3B**  
**TOTAL SALES**

**15.1%**  
Share of Total  
Retail Sales in State



**\$538M**  
**PAYROLL**

**\$51,244**  
Average Annual  
Earnings

**\$170M**  
State and Federal  
Income Taxes Paid

Includes income taxes paid for direct,  
indirect and induced jobs.



**0.6%**  
**REGISTRATIONS**  
Kansas' Share of Total U.S.  
New-Vehicle Registrations

**13.2** YEARS  
**AVERAGE  
VEHICLE AGE**

**8-2402 Declaration of public policy.** It is hereby declared to be the public policy of this state to provide for fair and impartial regulation of those persons engaged in manufacturing, distributing or selling of vehicles. The provisions of this act which are applicable to such activities shall be administered in such a manner as will continue to promote fair dealing and honesty in the vehicle industry and among those engaged therein without unfair or unreasonable discrimination or undue preference or advantage. It is further declared to be the policy of this state to protect the public interest in the purchase and trade of vehicles, so as to insure protection against irresponsible vendors and dishonest or fraudulent sales practices and to assist, provide and secure a stable, efficient, enforceable and verifiable method for the distribution of vehicles to consumers in the state of Kansas and provide a system of tracking the flow of vehicles and their parts as well as preserving supporting services for consumers purchasing or otherwise acquiring vehicles.