



KANSAS AUTOMOBILE DEALERS ASSOCIATION

January 31, 2018

To: The Honorable Mike Petersen, Chairman and Members of the Senate 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 Morning, Chairman Petersen 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 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.” 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 it with the motor vehicle manufacturers and entered into extensive negotiations with General Motors. I am pleased to report that we reached an agreed upon negotiated compromise on the bill as it appears before you.

The amendments contained in 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.

731 S. Kansas Ave. Topeka, KS 66603

Phone: (800) 279.8566 • **Email:** info@kansasdealers.org • **Fax:** 785-233-1462 • **Web:** www.kansasdealers.org

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 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 and applied to the dealer.

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.

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.

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**