



KANSAS AUTOMOBILE DEALERS ASSOCIATION

January 31, 2019

To: The Honorable Mike Petersen, Chairman and Members of the Senate Transportation Committee

From: Don L. McNeely, President

Re: SB 39 - Compensation for warranty services under the vehicle dealers and manufacturers licensing act.

Good Morning, Chairman Petersen and member of the Committee. My name is Don McNeely and I serve as the President and CEO of the Kansas Automobile Dealers Association (KADA). I appear before you this morning in support of SB 39, which amends the Kansas Dealers and Manufacturers Licensing Act. As some members of the Committee may remember, Kansas new vehicle dealers operate under sales and service agreements, which are defined to be franchise agreements under Kansas law. These agreements and the policies instituted under them are contracts of adhesion, which means they are offered on a take it or leave it basis by the manufacturers and if left unchecked, can result in onerous obligations, increased costs, and in some instances, the loss of local business altogether.

It is the Kansas Dealers and Manufacturers Licensing Act which provides some degree of protection to new motor vehicle dealers against overreaching by the manufacturers. In fact, over three decades ago, the U.S. Supreme court spoke to the purpose and intent behind these laws in stating, "the disparity in bargaining power between automobile manufacturers and their dealers prompted Congress and States to enact legislation to protect retail car and truck dealers from perceived abusive and oppressive acts by the manufacturers." 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 proposal with the motor vehicle manufacturers and entered into discussions. I am pleased to report that we reached an agreement on the bill as it appears before you.

The amendment contained in SB 39 deals with the rate that manufacturers reimburse their franchised dealers for warranty and recalls. It does not affect consumers since it only involves repairs for which the consumer does not pay for.

Like most states, Kansas law has for years required that manufacturers compensate dealers at the "retail rate" for warranty work. However, Kansas is one of only 7 states left where the law does

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not include details about how to calculate or determine the “retail rate”. SB 39 fixes that by clearly setting forth a process by which the “retail rate” will be calculated, which is based on a sampling of non-warranty customer-pay repair orders. This rate is then paid by the manufacturer to the dealer for warranty and recall work. SB 39 only affects the internal process between the manufacturers and their franchised dealers.

If you remember, KADA brought a comprehensive bill in 2018, but held this issue back in order to have for further discussions with the manufacturers and to see how other states addressed it with general agreement by all parties, which is what we have brought forth. The provision before you is based upon a law passed in Iowa last session.

In closing, I would also note that this provision is similar to amendments that have been incorporated into motor vehicle franchise acts in 43 other states over the last several years.

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

Thank you.