Approved: 4/1/93
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidrickson at 9:00 a.m. on March 23, 1993 in Room 254-E of the Capitol.

All members were present except:
Senator Rock-Excused

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:
Rep. Jene Vickrey, Louisburg
Don Low, Director, Utilities Division, Kansas Corporation Commission
Chris Giles, Director, Marketing Programs KCPL
Robert Johnson, Peper, Martin, Jensen, Maichel and Hetlage
Gary Hibbert, Hudson, Kansas

Others attending: See attached list

The chairman introduced Rep. Jene Vickrey who spoke in support of **HB 2194** which would require vehicle dealers to disclose the fact that the vehicle was a factory buyback . He stated that this bill would protect the consumer and it was supported by General Motors Car Dealers.

Attention was turned to **HB 2420** relating to rates for public utilities. Don Low spoke in support of this bill, the purpose of which is to ensure commission flexibility regarding ratemaking treatment relating to Integrated Resource Planning costs and to explicitly authorize commission consideration of "externalities" in reviewing these IRP plans. He discussed the needs of the bill and its effects as well and the need for amendments and their effects as outlined in his testimony. (See Attachment A)

Chris Giles stated that KCPL opposed this bill as it would cause utility rates to increase more than necessary. He explained that the bill would also give the KCC the ability to oversee management of the Company's resources and he did not feel it was in the best interest of the Company and its customers to interject the KCC in Company decision making. (See Attachment B)

Robert Johnson also spoke in opposition to this bill saying jobs and corporation rates would increase above what they normally should increase and he did not feel that there was a need for increase in energy rates. He did not feel that it was the proper role of the KCC to consider broad social issues and technical environmental information as utilities should only be required to comply with environmental laws enacted by the legislature and regulations enacted by environmental agencies. He felt the legislature was better equipped than the KCC to deal with these matters. (See Attachment C)

Additional opposing testimony was also presented by Gary Hibbert who urged the committee to kill the bill. (See Attachment D)

The chairman called for action on several bills. **HB 2194** requiring vehicle dealers to disclose certain facts was presented. A motion was made by Senator Harris to pass this bill favorably. A second was made by Senator Tiahrt. Motion carried.

Attention was turned to **HB 2461** regarding the registration of motor carriers. A motion was made by Senator Burke to adopt the amendments to this bill. A second was made by Senator Jones. Motion carried.

A motion was then made by Senator Jones to pass **HB 2461** favorably as amended. This was seconded by Senator Emert. Motion carried.

The committee turned their attention to **HB 2089** concerning vehicle dealers and manufactures licensing. Senator Papay made a motion to accept the amendments to this bill . The staff distributed a balloon draft of the bill with New Sec. 6. (See Attachment E)

Senator Emert offered a substitute motion to strike paragraph b (4) in the New Sec. 6 and adopt the whole amendment with this exception. This was seconded by Senator Tiahrt and the motion failed.

The chairman called for a division. There were two "yeas" and six "nays". He then requested the committee to return to the primary motion.

Senator Tiahrt offered a substitute motion on the original to read, "Every person who shall sell or expose to sale any goods, wares or merchandise, or shall keep open any grocery except for the sale of daily necessities on the first day of the week, commonly called 'Sunday", shall on conviction be adjudged guilty of a misdemeanor". A second was made by Senator Emert. Motion failed.

Senator Harris made a motion to second the original motion and move the bill favorably. Motion carried.

The chairman asked for direction on the remaining bills. Senator Papay made a motion that the committee authorize the chairman to write a letter to the Legislative Coordinating Council and recommend several of the remaining bills for an interim study. A second was made by Senator Jones. Motion carried.

A motion was made by Senator Tiahrt to approve the minutes of the March 22nd meeting. This was seconded by Senator Harris. Motion carried.

The meeting was then adjourned by the chairman.

GUEST LIST

SENATE TRANSPORTATION COMMITTE

DATE: March 23, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Don Low	Topeka	KCC
Don McNeely	Topeka	Kansas Motor Car Dealers
Tom Whitaker	Topeka	KS Motor Carriers Assn
Jack Tierce	Topeka	KCC
Don Carlile	Topeka	KEC
Betty McBride	Topeka	KDOR
Rick Schieber	Topeka	KDOR
Earnie Lehman	Topeka	Western Resources
Tia Martin	Topeka	Western Resources
[illegible]	Topeka	KS Motor Car Dealers
Ron Hein	"	Hein, Leard, Moses Chtd
Carl Daugherty	Columbus	Empire District Electric
Whitney Damron	Topeka	KCPL / McGill & Assoc.
Chris Giles	K.C. No.	KCPL
J. Wright	Topeka	Wichita Eagle
[illegible]	Hays	Sunflower Electric
Marvel Clark	Topeka	KEC
Lester Murphy	Topeka	KEC
Bruce Graham	Topeka	KEPCo
Irene Potter	Topeka	Williams
Jean Cogswell	Topeka	KS-NE Assn of 7th Day Adventists

GUEST LIST (continued)

DATE: 3/23/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jacque Dakas	Topeka	KIADA
Dina Spangenberg	Hudson	
Robert C. Johnson	720 Olive St, St. Louis, Mo 6310	Kansas Industrial Consumers
ED SCHAUB	TOPEKA	WESTERN RESOURCES

March 23, 1993

PRESENTATION TO
THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
By
THE CORPORATION COMMISSION
Don Low - Director, Utilities Division
On

HB 2420 - INTEGRATED RESOURCE PLANNING

BACKGROUND: KCC proposed bill last year and this in conjunction with proceedings regarding Integrated Resource Planning (IRP) for gas and electric utilities. (See attached background testimony to House committee.) KCC staff working on proposed rules to submit to Commission.

HB 2420 considered and passed by House committee without opposing testimony. Utilities have now expressed concerns about bill and KCC proposes an amendment to House bill to meet some of those concerns.

PURPOSES OF BILL:

1. To ensure commission flexibility regarding ratemaking treatment relating to IRP costs.
2. To explicitly authorize commission consideration of "externalities" in reviewing IRP plans.

1. INCENTIVE AND COST RECOVERY MECHANISMS.

Need for bill:

- Current statute explicitly authorizes bonus rate of return for investment in renewable resources, energy conservation and efficiency.
- Arguably forecloses different incentive mechanisms which may be preferable to rate of return bonus.
- Is unclear whether covers costs of programs which do not involve utility owned equipment and facilities, such as customer owned DSM or educational programs.

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- Commission needs flexibility to adopt mechanisms which best promote implementation of cost effective integrated resource plans.

Effects of bill:

- Allows for Commission adoption of other incentive mechanisms as well as alternative cost recovery treatment.
- Disclaims any implication of limiting Commission's ratemaking flexibility in other contexts.

2. EXTERNALITIES.

Need for amendments:

- Basic issue is whether KCC should consider "externalities" in addition to direct costs. The prices of goods and services usually reflect only the direct costs, such as labor, materials, and taxes, incurred in producing the good or service, including the costs of complying with governmental regulations. The external costs are the impacts on society as a whole, such as on the environment or on the general economy, associated with providing the good or service but not otherwise reflected in prices.
- Inclusion of externalities could affect decisions as part of IRP process.

    E.g. - gas fired electric generation could be more cost effective than coal when costs associated with air emissions from coal generation or effects on Kansas economy are considered; or greater levels of DSM could be justified compared to additional generation.

- Some question exists whether the Commission has authority to consider environmental and other externalities as part of IRP process.

    - "Externalities" are explicit consideration now only in specific contexts: environmental impacts relating to siting of generation facility under K.S.A. 66-1,162 and KAR 82-8-3; and adverse economic impacts in connection with prudence aspect of valuation of electric generating facility, under K.S.A. 66-128g.

- According to one count, over 30 states have some form of environmental externalities requirements while others have concluded that do not have

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authority.

- Legislative clarification of Commission's discretion is desirable.

Effects of amendments:

- Would explicitly authorize KCC consideration of externalities in reviewing IRP plans for resource acquisitions, at its discretion.
- Does not specify degree or kind of consideration to be given.
  - KCC would determine what factors to include, how they should be reflected, and trade-offs with rate impacts and other considerations.
- Would allow for flexibility in future.

PROPOSED AMENDMENTS TO ORIGINAL BILL

Page 3, lines 16-26:

In determining the cost effectiveness of such projects, systems, programs and measures, or of alternative energy supply resources, the commission shall ~~may~~ consider direct costs and may consider other impacts, including, but not limited to, impacts on reliability, rates, the environment, society and risk, associated with ~~avoided environmental impacts and other societal costs of~~ meeting customer needs for energy due to such projects, systems, programs, measures and supply resources~~,~~ ~~and~~ The commission may accept or require modification of ~~investment in, or implementation of,~~ resource plans involvng such projects, systems, programs, and measures or alternative supply resources. Nothing in this section shall limit the commission's authority to allow, adopt or order reasonable ratemaking or regulatory methods, mechanisms and procedures.

- Clarifies the "externalities" impacts which may be considered.
- Attempts to address utility concerns about authority of KCC to order "investment in or implementation of" alternative resources by explicitly authorizing KCC to "accept or require modification of resource plans" which is a little more general.

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- Utilities object to KCC ability to "require" implementation of alternative plan as change in regulatory framework; which generally permits only disallowance of costs associated with unreasonable or imprudent utility decisions.
- "Threat" of cost disallowances in subsequent rate cases not satisfactory means of encouraging alternative plans.
    - Not enough to encourage second thoughts on Wolf Creek.
    - Appropriate cost disallowances may cause problems for ratepayers in extreme cases.
    - Would be very difficult to determine all cost consequences of failure to implement alternative resource plan, especially if societal impacts are considerations.
- Ability to require modification in IRP plans comparable to provisions in current generation siting act which requires "up-front" KCC review of new generating facilities.
    - K.S.A. 66-1,162 allows KCC to deny construction permit if facility not needed or to condition permit "with respect to the location or size of the proposed electric generation facility. . . to provide for an alternate location or size, or both . . . ."
    - Simply extends existing type of KCC authority over generation planning to "demand side" resource planning.
- Regulatory trend is for more "up-front" involvement by commissions in utility planning. Mere "veto" power inconsistent with IRP process, which provides for comprehensive review of planning options.
- Basic question is whether utilities, in receiving prior review of plans and, thus, some reduction in "regulatory risk" should also be subject to some degree of direction from regulators.

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February 4, 1993

PRESENTATION TO
THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
By
THE CORPORATION COMMISSION
Don Low - Director, Utilities Division
On
"INTEGRATED RESOURCE PLANNING"

Background and Status. About a year ago, the Commission initiated a proceeding to consider rules requiring gas and electric utilities to develop and submit to the Commission integrated resource plans (IRP's). IRP's are essentially the utilities' long term plans, or roadmaps, for meeting their customers' future energy needs not only by adding new supply sources, e.g. a new power plant, but also by helping customers use energy more efficiently through promotion of "demand-side management" (DSM) measures.[1] Planning which integrates "supply-side" and "demand-side" resources is desirable in helping to ensure that utility investment in new resources is necessary and efficient and that utility services are provided in the least cost manner. Congress, in sections 111 and 115 of the Energy Policy Act of 1992, now is requiring state commission consideration of

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[1] Installation of more efficient lighting, electric motors, insulation, and air conditioner load controls are examples of potential DSM measures. The draft rules define them as "any hardware, equipment, or device installed or behavioral practice which is altered resulting in an improvement to either the 1) efficiency of energy use, 2) timing of use, or 3)some combination thereof. A DS measure is typically an action taken by, or on behalf, a customer." The draft rules do not consider utility rate structure or pricing of services as a DSM measure or directly part of the IRP process. However, improvements in pricing are recognized as a part of the goal of efficient energy use.

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mandatory integrated resource planning by utilities.[2] Over thirty states now have some form of integrated resource planning or least cost planning requirements and other states have opened up proceedings to consider them.

The Commission staff, with assistance from consultants hired for the project, held four workshops last summer and fall to solicit input from any interested persons into potential IRP rules. Based on those comments and our research and analysis, we developed and circulated a first draft of rules the first of last month. Written comments on those rules are due by February 25th. We have provided some copies of those rules to the committee and would be glad to provide more if desired. We anticipate revisions to that first draft based on both the comments to be received and further staff review. Depending on whether additional comments on the next draft are deemed desirable, we anticipate submitting proposed rules to the Commission in late March or April. If the Commission decides to proceed, the proposed rules will be published for a

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[2]The Act defines integrated resource planning for electric utilities as "a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers, at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time, and shall treat demand and supply resources on a consistent and integrated basis." The definition for gas IRP is similar.

formal comment period and formal hearings will be held before the Commission. At the earliest, the rules could become effective in late summer.

Before discussing the substance of the draft rules, I should emphasize that they represent only the staff's work at this point. As noted, they will be subject to Commission review and modification later in the process.

Overview of Rules. The current draft would require utilities to submit integrated resource plans to the Commission every three years. At this point we anticipate establishing a staggered schedule of submissions so that all the plans are not submitted at the same time. Because of exclusions for retail electric coops, municipal utilities and small utilities, the rule would apply to five electric and eight natural gas utilities operating in Kansas.

Although the actual development of the IRP plans will be complex and will require a lot of information and data, the basic steps are relatively simple in concept. Those steps are: forecasting energy demand for the planning period; identifying and investigating potential new supply and demand-side resources; and integrating the resources for an optimal mix in light of cost and other considerations. As a result of that process, the utility specifies what is referred to as its "preferred plan" for acquiring and delivering the optimal mix of resources.

The load forecasting requirements in the draft rules are not new concepts for utilities. However, the rules do contemplate a method of forecasting, end use forecasting, which breaks down the various components of load to provide more accurate forecasts than may have been

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true in the past. Furthermore, we are suggesting the use of twenty year planning horizons, which is longer than some utilities, especially natural gas utilities, have traditionally used.

The utilities, of course, are accustomed to identifying and investigating potential supply side resources to meet future energy needs. However, the draft rules explicitly mandate investigation of renewable resources and independent power production as well as the traditional utility-owned fossil fuel-fired generation options.

The innovative aspect of integrated resource planning is the investigation of demand-side management (DSM) measures as potential resources. Basically, this requires utilities to look at meeting customers' energy needs not by supplying more energy but by promoting measures which allow customers to use energy more efficiently. For example, a DSM program, which is an offering of one or more DSM measures, such as promotion of new compact fluorescent light bulbs or water heater wraps, could delay the need for additional electric generation and therefore should be considered as an alternative energy resource.

The actual integration or optimization process centers in large part on the concept of avoided cost. Avoided cost is generally discussed in the context of demand-side resources and is used to calculate their cost-effectiveness. Because DSM measures increase the efficiency of energy use, they enable the utility to avoid the need for new generation plants, transmission and distribution facilities and other costs. The cost effectiveness of supply side resources, of course, are determined using standard cost-benefit analysis. On the basis of these cost effectiveness analyses, the utility can select the least cost or optimal mix of resources

which becomes the core of the "preferred plan" to be submitted to the Commission for review. As part of the overall IRP submission, the utility will also have to file all the underlying data, assumptions, analysis and justification for the preferred plan.[3]

In the draft rules, we have included provisions which attempt to ensure an open process for the review of submitted plans so that all interested persons have an opportunity to participate and provide input. One of those provisions also allows for informal participation prior to the actual submission of the plans. The draft rules also provide for the possibility of informal procedures to address issues or exchange information which may be of common interest to all electric or gas utilities in their development of IRP plans.

Significant Issues. Although there are numerous issues which are being addressed in the formulation of the rules, some policy issues may be of particular interest to this committee.

First, Commission review of the submitted IRP plans represents something of a change from existing regulatory involvement in utility planning. At present, the KCC reviews utility decisions to invest in facilities or programs in the context of general rate cases in which the

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[3]The draft rules also require a risk assessment of the preferred plan. In addition to the traditional uncertainties associated with new supply resources, e.g. construction costs, construction time, operating and fuel costs, and reliability; there are new uncertainties associated with the potential DSM programs, e.g. customer participation levels, efficiency improvement levels and durability, and implementation costs and schedule. Risk assessment will include sensitivity analysis of these uncertainties through extra iterations of the computer optimization model runs required under the integration process.

utility is proposing to include new investments in rate base or in test year expenses as part of the revenue requirement. In those cases, the Commission reviews the investment decision **after the fact** for reasonableness and prudence and to determine whether the property is "used and required to be used" as contemplated by K.S.A. 66-128. The primary exception now is in the context of applications for siting permits under the electric generation siting act, K.S.A. 66-1,158 et seq., and transmission line siting statutes, K.S.A. 66-1,177 et seq. In those cases, the Commission is required to assess the need for the facility and the reasonableness of the proposed siting before construction begins. However, the Commission still addresses the "used and required to be used" criteria and the reasonableness and prudence of the actual costs of the completed facilities in the context of rate cases.

The process contemplated by the draft IRP rules would be similar to that which results from the siting acts but would cover the utilities' overall plans for both additional supply and DSM resources. The draft rules do not propose that the Commission "approve" the submitted plans, as some of the parties have suggested, but the Commission would review the plans and determine whether to "accept" them. Furthermore, unlike the case under the generation siting act, there would be a periodic review (every three years) of the continuation of previous plans. Thus, the KCC will have the opportunity and the obligation to formally examine utility planning decisions to a greater extent than is now the case.

Another policy issue concerns cost recovery and incentive mechanisms associated with the plans. The draft rules address IRP costs in three different ways: §9.02 allows certain demand side management

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(DSM) costs, which would normally be expensed, to be capitalized and deferred for recovery; §9.03 allows, under specified conditions, for either recovery of identified net revenue losses due to implementation of DSM measures or a decoupling mechanism which periodically "trues up" rates to reflect changes in sales; and §9.04 allows for sharing of cost savings between ratepayers and stockholders due to implementation of DSM, subject to certain guidelines.

In proposing these mechanisms, the Commission staff has balanced the desire to promote DSM with concerns over allowing utilities to gain unwarranted earnings. We have concluded that we should attempt to treat DSM costs similar to capital costs associated with new generation facilities and should remove some of the disincentives to implement DSM due to decreases in sales. We also are suggesting some positive incentives to encourage implementation of the integrated resource approach. In this regard, the proposed positive incentive mechanism is a savings sharing approach rather than the rate of return bonus alternative that is currently set forth in K.S.A. 66-117(d). That statute allows an additional incremental rate of return on investment in conservation, energy efficiency or renewable resources of from 1/2 to 2%. We believe the shared savings approach is more desirable because it would be based on the actual energy savings generated by efficiency investments rather than just the dollars invested. However, the final rule could provide for different mechanisms based on comments received and the rule could change in the future as all concerned gain experience with the IRP process. In any event, we believe it is desirable to allow for flexibility in the

mechanisms used to promote the IRP process. The Commission will likely suggest statutory amendments to ensure that flexibility.

Another significant issue concerns the consideration to be given to costs or impacts which are not otherwise reflected in the direct cost analysis of resource options. These costs are not normally reflected in analyses because they are not built into the prices of goods and services and are therefore known as "externalities."[4] The major externalities for consideration in the IRP context are those associated with environmental impacts, such as air emissions due to use of different types of fuels. Consideration of such externalities could significantly influence the kind of new electric generation facility, e.g. gas or coal fired, and the level of DSM chosen under the IRP plan.

The draft rules address the externality issue through the provisions concerning cost effectiveness tests. As mentioned earlier, the choice of supply and demand-side resources is done through the application of cost effectiveness tests. The draft rules require the use of the "Total Resource Cost" test which compares the benefits (consisting of utility avoided costs) against the costs (consisting of utility program administration costs, including customer incentive payments, and customer direct costs) of the evaluated resource. This cost effectiveness test is the basic one adopted by most other states. Some states, however, have adopted the Societal Cost Test, which differs from the Total

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[4]The draft rules define externality as "a cost or benefit from production or consumption that is not accounted for in market prices. For example, the damage costs created by the presence of certain pollutants are negative externalities. All costs which are external to the current system of pricing for energy or energy services."

Resource Cost Test by including externalities in the determination of avoided costs.[5] The draft rules also require utilities to determine how use of this Societal Cost test would affect the preferred plan.

The use of both tests will allow the utilities and the Commission to determine the costs and rate impacts of addressing environmental and other considerations. Although the quantification (monetization) of externalities will be very difficult, we believe that it is desirable to consider such factors in order to determine which plan is acceptable and in the public interest. Since some parties have expressed doubts about the Commission's authority to require analysis of externalities, clarifying amendments to K.S.A. 66-117 would be desirable if the legislature feels that explicit authorization is appropriate.

Conclusion. I hope this summary of the Commission's IRP proceeding is helpful. We would be interested in any concerns or comments you might have about this undertaking and would be glad to update any of you as we continue to consider the matter.

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[5]The draft rules do require the utilities to include costs of compliance with environmental regulations which may not be currently effective but are reasonably anticipated during the planning period in the Total Resource Cost test. This approach, also recently adopted in Missouri, simply reflects good planning.

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Testimony
of
CHRIS B. GILES
Director, Marketing Programs
KANSAS CITY POWER & LIGHT COMPANY

Before the House Committee on
Transportation and Utilities

On House Bill 2420

HB2420 amends KSA 66-117(d), which provides for incentives for utility investment in renewable energy resources, conservation and efficiency programs. HB2420 seeks to expand the present scope of this statute in two respects:

1. By use of the phrase "alternative energy supply resources," the statute would be applicable to <u>all</u> energy supply resources (for example, coal-fired plants, gas-fired plants, transmission lines, etc.).
2. The Bill allows the KCC to consider so-called societal or "external" costs in determining the cost effectiveness of <u>all</u> energy supply resources. This authorization apparently extends to Integrated Resource Plans and rate cases.

KCPL opposes at this time attempts to quantify and use "external" costs in utility planning and ratemaking activities. The addition of the phrase "alternative energy supply resources" to KSA 66-117(d) simply allows the KCC to consider "external" costs for all purposes, so I will focus on the issue of whether "external" costs should be quantified and used by the KCC in reviewing utility planning decisions and in setting rates.

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First, what are "external costs"? I'll discuss this question in the context of generating and delivering electricity. KCPL pays a variety of costs in providing electricity to its customers: it builds power plants and lines; it buys fuel and other materials and supplies; it pays for the labor necessary to provide electricity to its customers. These types of costs–which KCPL pays for–are called "internal costs," since they have been internalized into KCPL's rates. But there are other costs, or damages, which may arise to some extent by KCPL's operations and which are paid or incurred by somebody other than KCPL and its ratepayers. These are "external costs" or "externalities". Examples of some of these external costs above direct costs are the effects of mining coal in Wyoming for use in KCPL's plants; the effects of emissions from KCPL's power plants; the effects on the environment from the management and disposal of wastes generated by the power production process; and the aesthetic impact of power plants and power lines. KCPL does not pay for these externalities–there is no requirement that KCPL do so. And it is important to realize that these externalities exist even though KCPL is in full compliance with all environmental and other laws and requirements.

There is an economic theory which holds that electric utilities should plan, construct and operate their systems so that the costs to society–that is, the costs that KCPL pays and the costs borne by society in general–are minimized. Supporters of this theory advocate what is called "monetization" of external costs; in other words, putting a price tag on all of the external costs. HB2420 would allow the KCC to use the "monetization" concept in utility planning and ratemaking activities. KCPL's objections to this are both philosophical and pragmatic.

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Let's discuss the shortcomings of the monetization concept first. It is very difficult to come up with a dollar figure, for example, for environmental externalities. There have been various studies performed, and they have arrived at wildly different dollar figures for the costs of air emissions. For instance, the Pace University study pegs the cost of SO_2 emissions at $4,060 per ton, while Tellus Institute (KCC contract consultant on IRP) asserts that a ton of SO_2 emissions costs $1,500 per ton, or only 37% of the Pace value. As a recent Federal Energy Regulatory Commission Staff report[1] observed, "this area is clearly not an exact science."

Apart from the difficulties of estimating the costs of externalities, there is grave risk that the use of these externality costs only in utility resource planning will lead to unsound decisions because of the limited scope of the KCC's jurisdiction. Energy sources such as electricity, gas, coal, propane, wood, fuel oil, etc., are relatively interchangeable. If the cost of electricity goes up because of the monetized externalities, people may decide to switch from electricity to other energy sources which the KCC does not regulate and which have larger environmental impacts. Thus, attempting to internalize external costs can have the paradoxical result of increasing societal costs.

It must also be remembered that the KCC does not regulate municipal generation or qualifying facilities under PURPA. If the rates of regulated utilities are increased because of monetized externalities, then this non-jurisdictional generation may capture a larger share of the market. As the FERC Staff report points out, "non-jurisdictional generation from municipal ...

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[1] "Report on Section 808 Renewable Energy and Energy Conservation Incentives of the Clean Air Act Amendments of 1990", December, 1992 at page iii.

as well as industrial self-generators may ultimately cost consumers more and may, in fact, produce lower environmental quality. This is particularly true for industrial self-generation, because its environmental controls are, at least in some instances, less strict than for electric utilities".[2]

KCPL is very concerned about keeping its rates as low as possible. We've done, I think, a good job of doing so. Our rates are less than average for the nation. I'm sure you, as legislators, are concerned about keeping utility rates as low as possible as well. You should know, then, that HB2420 will cause utility rates to increase more than necessary to provide safe and adequate service. Why? Because monetization of externalities will force utilities to acquire energy resources which will cost more than alternative resources. For example, a coal plant may cost 6 cents a kilowatt-hour, but be assigned externality costs of, say, 4 cents for a total of 10 cents a kilowatt-hour. A demand-side management program might cost 9 cents with no externality costs. Under HB 2420, the utility may be forced to implement the 9 cent program, even though it costs 50% more than the coal plant. Remember, customers don't pay the externalities–they only pay for the actual costs incurred by the utility in serving them. Rates will go up more than they have to if HB 2420 is enacted. In light of the current economic conditions in the State, KCPL questions the wisdom of unnecessarily increasing rates.

Among the FERC Staff Report's concluding observations and recommendations are these:

> *States should proceed cautiously with their plans to internalize environmental externalities*

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[2] Id. at 37.

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1. Some early state efforts may have been misguided. Some of the states that pioneered those efforts have distanced themselves from their early efforts and are now committed to develop high quality data on environmental impacts and better models for internalizing externalities.

2. This area is clearly not an exact science. However, the quality of data on environmental impacts should improve dramatically in the next several years, after the DOE/EC study, as well as a number of state studies, are finished. States may want to consider delaying further action in this area until better data are available.

KCPL concurs with these observations, and recommends that HB2420 be referred for further study and analysis.

The Commission's staff has developed revised language to the original Bill–lines 16 through 23. The revision mitigates to some degree Kansas City Power & Light Company's concern with this section of the Bill. However, under the Commission Staff's revision, the KCC would still, as in the original version of the bill, have the ability to enter a new area of oversight; that is, the management of the Company's resources. We do not believe it is in the interest of the Company and its customers to interject the KCC in Company decision making.

March 23, 1993

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GENERAL MOTORS CORPORATION

Industry - Government Relations

Norman R. Sherbert
Regional Manager

TRANSMITTAL MEMO

Let's Get It Together
SAFETY BELTS SAVE LIVES

DELIVER TO:	Senator Ben E. Vidricksen, Topeka, Kansas	**FAX#:** 913-296-6718
	Senator Lillian D. Papay	**FAX#:** 913-296-6718
	Senator Paul D. Burke, Jr.	**FAX#:** 913-296-6718
	Senator Tim Emert	**FAX#:** 913-296-6718
	Senator Mike Harris	**FAX#:** 913-296-6718
	Senator Todd Tiahrt	**FAX#:** 913-296-6718
	Senator William R. Brady	**FAX#:** 913-296-6718
	Senator Sherman Jones	**FAX#:** 913-296-6718
	Senator Richard R. Rock	**FAX#:** 913-296-6718
	Bob Johnson - Peper, Martin, et. al	**FAX#:** 314-621-4834
	Ron Hein - Hein, Ebert and Rosen	**FAX#:** 913-273-9243
	Terry Leatherman - Kansas Chamber of Commerce and Industry (KCCI)	**FAX#:** 913-357-4732

DATE: 3/22/93

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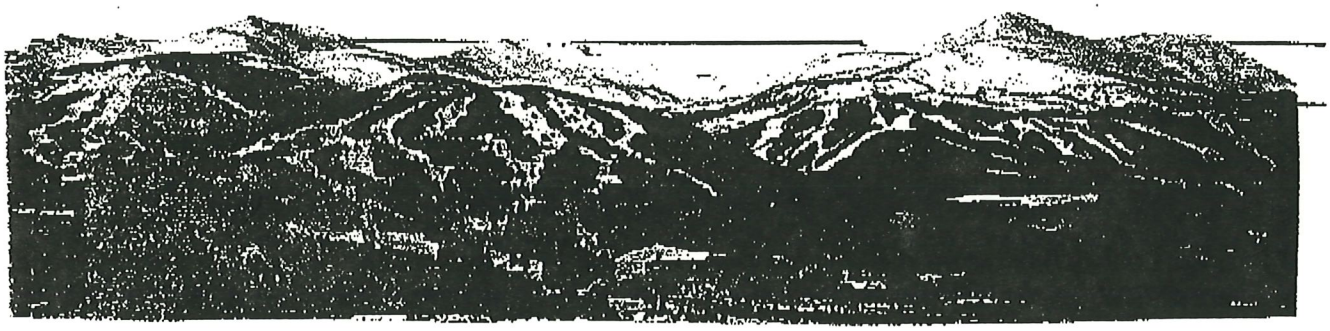

ATTACHMENT C
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GENERAL MOTORS CORPORATION

Industry – Government Relations

Norman R. Sherbert
Regional Manager

Let's Get It Together
SAFETY BELTS SAVE LIVES

March 22, 1993

Senator Ben E. Vidricksen
Chairperson
Senate Transportation & Utilities Committee
State Capitol
Topeka, KS 66612

RE: KANSAS H.B. 2420

Dear Senator Vidricksen:

General Motors stands strongly opposed to this particular piece of legislation. We regret that H.B. 2420 was not recognized for its deficiencies and potential increase in utility rates for all taxpayers including business, industry, and consumers as it passed the Kansas House. However, there still is time to take positive action against H.B. 2420 and I would respectfully request that you do not pass out of Committee this onerous piece of legislation.

I hereby am attaching a "white" position paper developed by the Kansas Industrial Energy Consumers ("KIEC") on the negative impact of this legislation which states how utility rates were affected in New York and how they are projected to increase in Massachusetts relative to similar legislation in those states.

Thank you for your consideration in defeating this legislation.

Respectfully,

Norman R. Sherbert
Regional Manager

NRS/ls
Attachment.
cc: Members of the Kansas Senate Transportation & Utilities Committee:
Senator Lillian D. Papay
Senator Paul D. Burke, Jr.
Senator Tim Emert
Senator Mike Harris
Senator Todd Tiahrt
Senator William R. Brady
Senator Sherman Jones
Senator Richard R. Rock

Bob Johnson - Peper, Martin, Jensen, Maichel and Hetlage
Ron Hein - Hein, Ebert, and Rosen
Terry Leatherman - Kansas Chamber of Commerce and Industry

1560 Broadway, Suite 1195 Denver, Colorado 80202 (303) 763-3995 FAX (303) 763-3998

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HOUSE BILL 2420 -- OPPOSE

The Kansas Industrial Energy Consumers ("KIEC") strongly oppose H.B. 2420[1] for the following reasons.

Externalities: Environmental and Other Societal Costs

H.B. 2420 will raise utility rates for all consumers (residential and business). Requiring utilities to plan based on costs to society at large would substantially increase rates, with no resulting benefit. Additionally, requiring utilities to plan based on social and environmental externalities may have negative economic consequences as Kansas would be placed at a competitive disadvantage with neighboring states such as Missouri, which does not require consideration of externalities at all.

It is not the proper role of the KCC to consider broad social issues and technical environmental information, and it does not have the resources to do so. Utilities should only be required to comply with environmental laws enacted by the legislature and regulations enacted by environmental agencies. The legislature is far better equipped than the KCC to deal with these matters.

Incentives to Utilities for Implementing DSM Measures

H.B. 2420 would wrongly reward utilities for activities they are required to do under existing law. Utilities already have a duty to provide efficient service at just and reasonable rates. *See* K.S.A. §66-101(b). Utilities should not be given monetary rewards for performing their statutory duty; their reward for doing so is the right to provide a monopoly service and receive a reasonable rate of return. Artificial incentives to provide efficient service, which includes DSM, result in a regulatory "bribe" to utilities at the expense of ratepayers (residential and business) and to the enrichment of utility stockholders.

Further, the present version of K.S.A. §66-117 already allows the KCC to grant utilities a specified additional rate of return for such investments. That statute demonstrates that the legislature has previously recognized the need to limit the KCC's authority to provide such incentives. In contrast, H.B. 2420 fails to provide necessary limits on this authority.

The provisions of H.B. 2420 which would give the KCC authority to adopt "alternative cost recovery mechanisms," an undefined term, threaten the present regulatory framework of

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[1]This proposed legislation gives the Kansas Corporation Commission ("KCC")a authority to (1) give additional financial incentives to utilities for investing in conservation measures ("demand side management" or "DSM") and to require utilities to make such investments; and (2) to consider environmental externalities and other "societal costs" of supplying energy in determining whether DSM investments are cost-effective.

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ratepayer protections by presumably allowing utilities automatic cost recovery outside of their rate cases. This would constitute improper single issue ratemaking.

Implication for Ratepayers (Consumer and Business) of H.B. 2420

H.B. 2420 would adversely impact the Kansas economy. The provisions of H.B. 2420 discussed above could potentially increase rates substantially in Kansas, causing industry to relocate or buy power on the competitive market from states like Missouri that do not allow utilities DSM incentives or require consideration of externalities. This result would increase rates for all consumers (residential and business).

In New York, whose retail electricity rates are among the highest in the world, annual impacts directly resulting from DSM expenditures average 3 percent for 1993 and 3.5 percent for 1994. In Massachusetts, it is estimated that consideration of externalities alone will result in up to a ten percent increase in electricity rates by the year 2000.

All energy consumers (residential and business) will face increased energy costs in the near term through enactment of President Clinton's new proposed energy tax. Increasing energy costs further through open-ended consideration by the KCC of societal costs and reward mechanisms to utilities for implementing conservation is particularly inappropriate and burdensome at this time.

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TESTIMONY
by
GARY HIBBERT

BEFORE THE SENATE COMMITTEE ON
TRANSPORTATION & UTILITIES

ON HOUSE BILL 2420

Mr Chairman, Mdm Vice-Chairman, and members of the Committee;

I come before you today to oppose Bill 2420. Frankly, I am appalled that this Bill ever got out of House Committee, much less passed on the House Floor. It begs the question of whether any knowledgeable person ever reads these proposals. Upon first reading this Bill, I found it difficult to determine the specific intent. Upon closer scrutiny, it appears to be yet another of a long list of substantial efforts to prevent the private electric power production from renewable energy sources. The encouragement of such private power production, which is mandated by the Public Utility Regulatory Policies Act of 1978, hereafter referred to as "PURPA", and the Federal Energy Regulatory Commission's regulations promulgated thereunder. Such federal agency which is hereafter referred to as "FERC".

Respecting the changes to the language in lines 39 and 40 of page 2, I have no problem with the intent, IF... and I emphasize "IF"...it could be trusted that the language would hereafter be interpreted in the spirit of the legislative intent. However, where there exists the potential, it must be assumed that the statutory language will be interpreted verbatim! Clearly, a given utility's act of contracting with a private producer for the purchase of his electricity could easily be construed to be "implementing a measure", and for this act, the utility would then qualify for application for "other incentive revenue replacement or alternative cost recovery mechanisms", whatever that means, and this could be allowed by the KCC to "promote the cost effective implementation of such measures", whatever that may mean. I submit that this whole proposed statutory provision could be reduced to the "simple" statement of; "The KCC can do whatever it wishes, whenever it wishes, and however it wishes". What is the point of limiting a "Return On Investment" to 2% in line 2 of page 3, when the added language of lines 5 through 8 render such limit moot? The added language places no limits or restrictions what-so-ever, on the KCC's authority to raise retail rates to "promote the cost effective investment in, or implementation of, such projects, systems, programs or measures". It is one thing to give the KCC "more flexibility", but it is quite another thing to give the KCC a signed "blank-check" of legislative authority.

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Begging the Committee's patience, we have, up to this point, merely set the stage for what is really taking place in this Bill. It is the added provision in lines 16 through 26 of page 3 which is the heart of this proposed amendment to K.S.A. 66-117. Concealed within this lengthy procession of ambiguous "buzz-words", is the phrase "alternative energy supply resources", in line 18, and again referred to in lines 21 and 23. Variations of this phrase is used extensively in the Federal Power Act, PURPA, and the FERC regulations pursuant thereto, and relates directly to private power production from renewable energy sources, such as wind, solar, hydro, geothermal, and wastes. If we then read this provision, while also ignoring inapplicable terms and phrases, it generally states that...In determining the value of alternative energy supply resources, the Commission may consider "other societal costs", whatever that means, of meeting customer needs for energy due to such alternative energy supply resources, and "may require investment in such alternative energy supply resources".

The quoted phraseology just now emphasized is the "cornerstone" and the true design behind this Bill. First, the very ambiguous term of "other societal costs" to be "considered" by the KCC when determining the value of the private producer's electricity, is yet another attempt by the utility-conglomerate and the KCC to diminish the monitary amount to be received by the private producer from the utility to a mere pittance, which, of course, would render his project economically unfeasible. Secondly, You will note that the key words of "the utility's" (possessive sense) is conveniently omitted from between the words "require" and "investment" in line 22 of page 3. This is clever! With five years experience of every conceivable manipulation imaginable, I am well versed in the KCC's innovative trickery, but even I had to read this provision a half-dozen times before it became apparent. If I have learned nothing else, my experience has taught me that the KCC will interpret statutory provisions verbatim, even when such interpretation is obviously well beyond the "spirit" of the legislative intent. Such as SB 381, to which I also offered testimony before this Committee. In the literal, verbatim interpretation of this provision, the KCC would have the statutory authority to require a potential private producer to make a substantial monitary investment in the facility proposed by him, BEFORE he would be entitled to the contractual-requirement afforded him in K.S.A. 66-1,184. This provision, then, attempts to negate the entire legislative intent in K.S.A. 66-1,184, and is furthermore contrary to FERC regulation 18 C.F.R. §292.304(d), from which the contractual-requirement provision of K.S.A. 66-1,184 is derived. The sole reason for such FERC regulation and Kansas statutory provision, is to provide the potential private producer reasonable assurance of a return on his FUTURE

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investment in facilities to produce electricity from renewable energy sources...PERIOD! The KCC merely continues its unceasing efforts to stall and circumvent the federal mandate to encourage private power production from renewable energy sources.

What concerns me most about this proposed Bill, is the obvious implication of a conspiracy. The KCC, being the State regulatory authority, is supposed to be the public "watchdog" over the utility-conglomerate...and it is a "conglomerate", by legal definition thereof, and this is the precise reason why it is govermentally-regulated in the first place. This paramount "public watchdog" function of which, our present Commission is unquestionably derelict. It is outrageous, that a private individual, such as myself, must use their own resources to stand alone in opposition to the clandestine activities of such overwhelming forces. I know how "David" felt. This powerful utility-conglomerate historically adamantly opposes any form of additional regulation. This fact is well documented. Then, whereas this Bill was introduced "at the request of a spokesperson from the State Corporation Commission", and whereas it is unopposed by the utilities, and whereas the language I previously illuminated from the Bill intentionally does not specify whom the KCC may require investments from, and the literal interpretation is not therefore exclusive of the utilities, then this whole situation smacks of a deal being struck between the KCC and the utilities, whereby the utilities would support the measure if they were assured, by some means, that the KCC would use such "unlimited" scope-of-authority to the utilities' advantage. It troubles me deeply, that if I had not, per-chance, "happened" upon the existance of this Bill, then who would have opposed it here today? I suspect that it would have been passed and signed into law. I, alone, have apparently inherited the task of the public "watchdog" respecting matters relating to electric utilities and the KCC. A task which I do not relish, but I suppose the adage of.."its a tough job, but someone has to do it"... applies. The Legislature obviously assumes the KCC to be fulfilling this finction, but I assure you that it is not.

In summary, I would urge this Committee to kill this Bill, and take more time to thoroughly consider energy conservation measures, and employ a disinterested expert to ensure compatibility with preemptive federal authorities. It should not be left to the special-interests which are here represented by the KCC, to design public policy respecting energy and environmental matters. Most importantly, I urge this Committee to thoroughly evaluate the political ambitions of the KCC, which has strayed far afield from its intended function and scope of responsibility contemplated by the former Legislature when it was created, and use extreme caution when delegating legislative authority to

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this agency. The constitutional "separation of powers" doctrine prevents the courts from substantially intervening in the agency's activities, and our system of "checks-and-balances" becomes disfunctional.

I thank you, Mr Chairman, for allowing me to testify here today, and if there are no questions, this concludes my testimony.

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As Amended by House Committee

Session of 1993

HOUSE BILL No. 2089

By Committee on Transportation

1-21

AN ACT amending the vehicle dealers and manufacturers licensing act; relating to financial responsibilities of vehicle dealers; concerning temporary salespersons licenses; amending K.S.A. 8-2401 and 8-2430 and K.S.A. 1992 Supp. 8-2404, 8-2410 and 8-2433 and repealing the existing sections.

prohibiting certain vehicle dealers from conducting motor vehicle sales on Sunday;

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

Section 1. K.S.A. 8-2401 is hereby amended to read as follows: 8-2401. As used in this act, the following words and phrases shall have the meanings:

(a) "Vehicle dealer" means any person who: (1) For commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in vehicles; or (2) for commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in motor vehicles as an auction motor vehicle dealer as defined in ~~(jj)~~ *(bb)*; but does not include: (A) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, or any bank, trustee or lending company or institution which is subject to state or federal regulations as such, with regard to its disposition of repossessed vehicles; (B) public officers while performing their official duties; (C) employees of persons enumerated in provisions (A) and (B), when engaged in the specific performance of their duties as such employees; (D) auctioneers conducting auctions for persons enumerated in provisions (A), (B) or (C); or (E) auctioneers who, while engaged in conducting an auction of tangible personal property for others, offer for sale: (i) Vehicles which have been used primarily in a farm or business operation by the owner offering the vehicle for sale, including all vehicles which qualified for a farm vehicle tag at the time of sale except vehicles owned by a business engaged primarily in the business of leasing or renting passenger cars; (ii) vehicles which meet the statutory definition of antique vehicles; or (iii) vehicles for no more than four principals or households per auction. All sales of vehicles exempted pursuant to pro-

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vision (E), except truck, truck tractors, pole trailers, trailers and semitrailers as defined by K.S.A. 8-126, and amendments thereto, shall be registered in Kansas prior to the sale.

(b) "New vehicle dealer" means any vehicle dealer who is a party to an agreement, with a first or second stage manufacturer or distributor, which agreement authorizes the vehicle dealer to sell, exchange or transfer new motor vehicles, trucks, motorcycles, or trailers or parts and accessories made or sold by such first or second stage manufacturer or distributor and obligates the vehicle dealer to fulfill the warranty commitments of such first or second stage manufacturer or distributor.

(c) "Used vehicle dealer" means any person actively engaged in the business of buying, selling or exchanging used vehicles.

(d) "Vehicle ~~salesman~~ *salesperson*" means any person who is employed as a ~~salesman~~ *salesperson* by a vehicle dealer to sell vehicles.

(e) "Board" means the vehicle dealer review board created by this act.

(f) "Director" means the director of vehicles, or a designee of the director.

(g) "Division" means the division of vehicles of the department of revenue.

(h) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated except that such term shall not include motorized bicycles, and such term shall not include manufactured homes or mobile homes. As used herein, the terms "manufactured home" and "mobile home" shall have the meanings ascribed to them by K.S.A. ~~1991~~ *1992* Supp. 58-4202.

(i) "Motor vehicle" means any vehicle other than a motorized bicycle, which is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated.

(j) "Licensor" means the director or division or both.

(k) "First stage manufacturer" means any person who manufactures, assembles and sells new vehicles to new vehicle dealers for resale in this state.

(l) "Second stage manufacturer" means any person who assembles, installs or permanently affixes body, cab or special unit equipment to a chassis supplied by a first stage manufacturer, distributor or other supplier and sells the resulting new vehicles to new vehicle dealers for resale in this state.

(m) "First stage converter" means any person who is engaged in

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the business of affixing to a chassis supplied by a first stage manufacturer, distributor or other supplier, specially constructed body units to result in motor vehicles used as, but not limited to, buses, wreckers, cement trucks and trash compactors.

(n) "Second stage converter" means any person who is engaged in the business of adding to, subtracting from or modifying previously assembled or manufactured vehicles and sells the resulting converted vehicles at retail or wholesale.

(o) "Distributor" means any person who sells or distributes for resale new vehicles to new vehicle dealers in this state or who maintains distributor representatives in this state.

(p) "Wholesaler" means any person who purchases vehicles for the purpose of resale to a vehicle dealer.

(q) "Factory branch" means any branch office maintained in this state by a first or second stage manufacturer for the sale of new vehicles to distributors, or for the sale of new vehicles to new vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this state.

(r) "Distributor branch" means any branch office similar to (q) maintained by a distributor for the same purposes as a factory branch.

(s) "Factory representative" means a representative employed by a first or second stage manufacturer or factory branch for the purpose of making or promoting the sale of its new vehicles to new vehicle dealers, or for supervising or contacting its new vehicle dealers or prospective new vehicle dealers with respect to the promotion and sale of such vehicles and parts or accessories for the same.

(t) "Distributor representative" means any representative similar to (s) employed by a distributor or distributor branch for the same purpose as a factory representative.

(u) "Person" means any natural person, partnership, firm, corporation or association.

(v) "New motor vehicle" means any motor vehicle which has never been titled or registered and has not been substantially driven or operated.

(w) "Franchise agreement" means any contract or franchise or any other terminology used to describe the contractual relationship between first or second stage manufacturers, distributors and vehicle dealers, by which:

(1) A right is granted one party to engage in the business of offering, selling or otherwise distributing goods or services under a marketing plan or system prescribed in substantial part by the other party, and in which there is a community of interest in the marketing of goods or services at wholesale or retail, by lease, agreement or

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otherwise; and

(2) the operation of the grantee's business pursuant to such agreement is substantially associated with the grantor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the grantor or an affiliate of the grantor.

(x) "Broker" means any person who, for a fee, commission, money, other thing of value, valuable consideration or benefit, either directly or indirectly, arranges or offers to arrange a transaction involving the sale of a vehicle, or is engaged in the business of: (1) Selling or buying vehicles for other persons as an agent, middleman or negotiator; or (2) bringing buyers and sellers of vehicles together, but such term shall not include any person engaged in a business in which the acts described in this subsection are only incidentally performed or which are performed or authorized within the requirements or scope of any other category of license, or not prohibited, in the manner authorized by the vehicle dealers' and manufacturers' licensing act.

(y) "Salvage vehicle dealer" means any person engaged in the business of buying, dismantling, disassembling or recycling wrecked, abandoned or repairable vehicles and selling the usable parts thereof, or selling such wrecked, abandoned or repairable vehicles as a unit or selling the hull of the vehicle after the salvageable parts have been removed.

(z) "Lending agency" means any person, desiring to be licensed under this act and engaged in the business of financing or lending money to any person to be used in the purchase or financing of a vehicle.

(aa) "Established place of business" means a building or structure, other than a building or structure all or part of which is occupied or used as a residence, owned either in fee or leased and designated as an office or place to receive mail and keep records and conduct the routine of business. To qualify as an established place of business, there shall be located therein an operable telephone which shall be listed with the telephone company under the name of the licensed business, except that a vehicle dealer who derives at least 50% of such person's income from operating a farm as a resident thereof, the established place of business may be the farm residence of such vehicle dealer and the operable telephone may be located in such residence when such dealer engages only in vehicles and equipment not required to have vehicle registration to travel on a highway.

(bb) "Auction motor vehicle dealer" means any person who for commission, money or other thing of value is engaged in an auction of motor vehicles except that the sales of such motor vehicles shall

involve only motor vehicles owned by licensed motor vehicle dealers and sold to licensed motor vehicle dealers, except that any auction motor vehicle dealer, registered as such and lawfully operating prior to June 30, 1980, shall be deemed to be and have been properly licensed under this act from and after July 1, 1980. For the purposes of this subsection, an auction is a private sale of motor vehicles where any and all licensed motor vehicle dealers who choose to do so are permitted to attend and offer bids and the private sale of such motor vehicles is to the highest bidder.

(cc) "Licensee" means any person issued a valid license pursuant to this act.

(dd) "Dealer" means a vehicle dealer as defined by this act, unless the context otherwise requires.

(ee) "Insurance company" means any person desiring to be licensed under this act and engaged in the business of writing or servicing insurance related to vehicles.

(ff) "Supplemental place of business" means a business location other than that of the established place of business.

Sec. 2. K.S.A. 1992 Supp. 8-2404 is hereby amended to read as follows: 8-2404. (a) No vehicle dealer shall engage in business in this state without obtaining a license as required by this act. Any vehicle dealer holding a valid license and acting as a vehicle ~~salesman~~ *salesperson* shall not be required to secure a ~~salesman's~~ *salesperson's* license.

(b) No first stage manufacturer, second stage manufacturer, factory branch, factory representative, distributor branch or distributor representative shall engage in business in this state without a license as required by this act, regardless of whether or not an office or other place of business is maintained in this state for the purpose of conducting such business.

(c) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such other information as may be deemed reasonable and pertinent, and shall be accompanied by the required fee. The director may require in the application, or otherwise, information relating to the applicant's solvency, financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the director in determining the fitness of the applicant to engage in business as set forth in this section. The director may require the applicant for licensing to appear at such time and place as may be designated by the director for examination to enable the director to determine the accuracy of the

On and after January 1, 1994,

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facts contained in the written application, either for initial licensure or renewal thereof. Every application under this section shall be verified by the applicant.

(d) All licenses shall be granted or refused within 30 days after application is received by the director. All licenses, except licenses issued to ~~salesmen~~ *salespersons*, shall expire, unless previously suspended or revoked, on December 31 of the calendar year for which they are granted, except that where a complaint respecting the cancellation, termination or nonrenewal of a sales agreement is in the process of being heard, no replacement application shall be considered until a final order is issued by the director. Applications for renewals, except for renewals of licenses issued to ~~salesmen~~ *salespersons*, received by the director after February 15 shall be considered as new applications. All ~~salesmen's~~ *salespersons'* licenses issued on or after January 1, 1987, shall expire on June 30, 1988, and thereafter shall expire, unless previously suspended or revoked, on June 30 of the calendar year for which they are granted. Applications for renewals of ~~salesmen's~~ *salespersons'* licenses received by the director after July 15 shall be considered as new applications.

(e) License fees for each calendar year, or any part thereof shall be as follows:

(1) For new vehicle dealers, $50;

(2) for distributors, $50;

(3) for wholesalers, $50;

(4) for distributor branches, $50;

(5) for used vehicle dealers, $50;

(6) for first and second stage manufacturers, $200 plus $50 for each factory branch in this state;

(7) for factory representatives, $25;

(8) for distributor representatives, $25;

(9) for brokers, $50;

(10) for lending agencies, $25;

(11) for first and second stage converters, $25;

(12) for salvage vehicle dealers, $50;

(13) for auction motor vehicle dealers, $50;

(14) for vehicle ~~salesman~~ *salesperson*, $15; and

(15) for insurance companies, $50.

Any salvage vehicle dealer who is also licensed as a used vehicle dealer shall be required to pay only one $50 fee for both licenses. Any new vehicle dealer who is also licensed as a used vehicle dealer shall be required to pay only one $50 fee for both licenses.

(f) Dealers establishing supplemental places of business within the same county of their licensure or within their area of respon-

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sibility as defined in their franchise agreement shall be required to pay a supplemental license fee of $10. Original inspections by the division of a proposed established place of business shall be made at no charge except that a $5 fee shall be charged by the division for each additional inspection the division must make of such premises in order to approve the same.

(g) The license of all persons licensed under the provisions of this act shall state the address of the established place of business, office or branch and must be conspicuously displayed therein. If such address is changed, the director shall endorse the change of address on the license without charge if it is within the same county. A change of address to a different county shall require a new license and payment of the required fees.

(h) Every ~~salesman~~ *salesperson*, factory representative or distributor representative shall carry on their person a certification that the person holds a valid state license. The certification shall name the person's employer and shall be displayed upon request. An original copy of the state license for a vehicle ~~salesman~~ *salesperson* shall be mailed or otherwise delivered by the division to the employer of the ~~salesman~~ *salesperson* for public display in the employer's established place of business. When a ~~salesman~~ *salesperson* ceases to be employed as such, the former employer shall mail or otherwise return the original copy of the employee's state license to the division. A ~~salesman~~ *salesperson*, factory representative or distributor representative who terminates employment with one employer may file an application with the director to transfer the person's state license in the name of another employer. The application shall be accompanied by a $2 transfer fee. A ~~salesman~~ *salesperson*, factory representative or distributor representative who terminates employment, and does not transfer the state license, shall mail or otherwise return the certification that the person holds a valid state license to the division.

(i) If the director has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this act, the director may require the applicant or licensee to furnish and maintain a bond in such form, amount and with such sureties as the director approves, but such amount shall be not less than $5,000 nor more than $20,000, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any act by the licensee constituting grounds for suspension or revocation of the license. Every applicant or licensee who is or applies to be a used vehicle dealer or a new

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vehicle dealer shall furnish and maintain a bond in such form, amount and with such sureties as the director approves, in the amount of $15,000, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any act by the licensee in violation of any act which constitutes grounds for suspension or revocation of the license. To comply with this subsection, every bond shall be a corporate surety bond issued by a company authorized to do business in the state of Kansas and shall be executed in the name of the state of Kansas for the benefit of any aggrieved party. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving 30 days' notice to the director, and thereafter the surety shall be relieved of liability for any breach of condition occurring after the effective date of cancellation. Bonding requirements shall not apply to first or second stage manufacturers, factory branches, factory representatives or ~~salesmen~~ *salespersons*.

~~The~~ *Upon determination by the director that a judgment from a Kansas court of competent jurisdiction is a final judgment and that the judgment resulted from an act in violation of this act or would constitute grounds for suspension, revocation, refusal to renew a license or administrative fine pursuant to K.S.A. 8-2411, and amendments thereto, the* proceeds of the bond on deposit or in lieu of bond provided by subsection (j), shall be paid ~~upon receipt by the director of a final judgment from a Kansas court of competent jurisdiction against the dealer and in favor of an aggrieved party~~. *The determination by the director under this subsection is hereby specifically exempted from the Kansas administrative procedure act (K.S.A. 77-501 through 77-549, and amendments thereto,) and the act for judicial review and civil enforcement of agency actions (K.S.A. 77-601 through 77-627, and amendments thereto). Any proceeding to enforce payment against a surety following a determination by the director shall be prosecuted by the judgment creditor named in the final judgment sought to be enforced. Upon a finding by the court in such enforcement proceeding that a surety has wrongfully failed or refused to pay, the court shall award reasonable attorney fees to the judgment creditor.*

(j) An applicant or licensee may elect to satisfy the bonding requirements of subsection (i) by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas, or negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas ~~or irrevocable~~

~~letters of credit of any such bank~~. *When negotiable bonds,* or *negotiable certificates of deposit* ~~*or irrevocable letters of credit*~~ *have been deposited with the state treasurer to satisfy the bonding requirements of subsection (i), such negotiable bonds,* or *negotiable certificates of deposit* ~~*or irrevocable letters of credit*~~ *shall remain on deposit with the state treasurer for a period of not less than* ~~*five*~~ two *years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to termination of the licensee's license. In the event a licensee elects to deposit a surety bond in lieu of the negotiable bonds, negotiable certificates of deposit* ~~*or irrevocable letters of credit*~~ *previously deposited with the state treasurer, the state treasurer shall not release the negotiable bonds,* or *negotiable certificates of deposits* ~~*or irrevocable letters of credit*~~ *until at least* ~~*five*~~ two *years after the date of delivery of the certificate of title to the motor vehicle which was the subject of the last motor vehicle sales transaction in which the licensee engaged prior to the date of the deposit of the surety bond.* The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area and any interest on those funds shall accrue to the benefit of the depositor.

(k) No license shall be issued by the director to any person to act as a new or used dealer, wholesaler, broker, salvage vehicle dealer, auction motor vehicle dealer, second stage manufacturer, first stage converter, second stage converter or distributor unless the applicant for the vehicle dealer's license maintains an established place of business which has been inspected and approved by the division. First stage manufacturers, factory branches, factory representatives, distributor branches, distributor representatives and lending agencies are not required to maintain an established place of business to be issued a license.

(l) Dealers required under the provisions of this act to maintain an established place of business shall own or have leased and use sufficient lot space to display vehicles at least equal in number to the number of dealer license plates the dealer has had assigned.

(m) A sign with durable lettering at least 10 inches in height and easily visible from the street identifying the established place of business shall be displayed by every vehicle dealer. Notwithstanding the other provisions of this subsection, the height of lettering of the required sign may be less than 10 inches as necessary to comply with local zoning regulations.

(n) If the established or supplemental place of business or lot is zoned, approval must be secured from the proper zoning authority

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and proof that the use complies with the applicable zoning law, ordinance or resolution must be furnished to the director by the applicant for licensing.

(o) An established or supplemental place of business, otherwise meeting the requirements of this act may be used by a dealer to conduct more than one business, provided that suitable space and facilities exist therein to properly conduct the business of a vehicle dealer.

(p) If a supplemental place of business is not operated on a continuous, year-round basis, the dealer shall give the department 15 days' notice as to the dates on which the dealer will be engaged in business at the supplemental place of business.

(q) Any vehicle dealer selling, exchanging or transferring or causing to be sold, exchanged or transferred new vehicles in this state must satisfactorily demonstrate to the director that such vehicle dealer has a bona fide franchise agreement with the first or second stage manufacturer or distributor of the vehicle, to sell, exchange or transfer the same or to cause to be sold, exchanged or transferred.

No person may engage in the business of buying, selling or exchanging new motor vehicles, either directly or indirectly, unless such person holds a license issued by the director for the make or makes of new motor vehicles being bought, sold or exchanged, or unless a person engaged in such activities is not required to be licensed or acts as an employee of a licensee and such acts are only incidentally performed. For the purposes of this section, engaged in the business of buying, selling or exchanging new motor vehicles, either directly or indirectly, includes: (1) Displaying new motor vehicles on a lot or showroom; (2) advertising new motor vehicles, unless the person's business primarily includes the business of broadcasting, printing, publishing or advertising for others in their own names; or (3) regularly or actively soliciting or referring buyers for new motor vehicles.

(r) No person may engage in the business of buying, selling or exchanging used motor vehicles, either directly or indirectly, unless such person holds a license issued by the director for used motor vehicles being bought, sold or exchanged, or unless a person engaged in such activities is not required to be licensed or acts as an employee of a licensee and such acts are only incidentally performed. For the purposes of this section, engaged in the business of buying, selling or exchanging used motor vehicles, either directly or indirectly, includes: (1) Displaying used motor vehicles on a lot or showroom; (2) advertising used motor vehicles, unless the person's business primarily includes the business of broadcasting, printing, publishing

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or advertising for others in their own names; or (3) regularly or actively soliciting buyers for used motor vehicles.

(s) The director of vehicles shall publish a suitable Kansas vehicle ~~salesman's~~ *salesperson's* manual. Before a vehicle ~~salesman's~~ *salesperson's* license is issued, the applicant for an original license or renewal thereof shall be required to pass a written examination based upon information in the manual.

(t) No new license shall be issued nor any license renewed to any person to act as a salvage vehicle dealer until the division has received evidence of compliance with the junkyard and salvage control act as set forth in K.S.A. 68-2201 *et seq.*, and amendments thereto.

(u) On and after the effective date of this act, no person shall act as a broker in the advertising, buying or selling of any new or used motor vehicle. Nothing herein shall be construed to prohibit a person duly licensed under the requirements of this act from acting as a broker in buying or selling a recreational vehicle as defined by subsection (f) of K.S.A. 75-1212, and amendments thereto, when the recreational vehicle subject to sale or purchase is a used recreational vehicle which has been previously titled and independently owned by another person for a period of 45 days or more, or is a new or used recreational vehicle repossessed by a creditor holding security in such vehicle.

(v) Nothing herein shall be construed to prohibit a person not otherwise required to be licensed under this act from selling such person's own vehicle as an isolated and occasional sale.

Sec. 3. K.S.A. 1992 Supp. 8-2410 is hereby amended to read as follows: 8-2410. (a) A license may be denied, suspended or revoked or a renewal may be refused by the director on any of the following grounds:

(1) Proof of financial unfitness of the applicant;

(2) material false statement in an application for a license;

(3) filing a materially false or fraudulent tax return as certified by the director of taxation;

(4) negligently failing to comply with any applicable provision of this act or any applicable rule or regulation adopted pursuant thereto;

(5) knowingly defrauding any retail buyer to the buyer's damage;

(6) negligently failing to perform any written agreement with any buyer;

(7) failure or refusal to furnish and keep in force any required bond;

(8) knowingly making a fraudulent sale or transaction;

(9) knowingly engaging in false or misleading advertising;

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(10) willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer;

(11) negligent use of fraudulent devices, methods or practices in contravention of law with respect to the retaking of goods under retail installment contracts and the redemption and resale of such goods;

(12) knowingly violating any law relating to the sale, distribution or financing of vehicles;

(13) being a first or second stage manufacturer of vehicles, factory branch, distributor, distributor or factory representative, officer, agent or any representative thereof, who has:

(A) Induced or has attempted to induce, by coercion, intimidation or discrimination, any dealer to involuntarily accept delivery of any vehicle or vehicles, parts or accessories therefor, or any form of advertisements or other commodities which shall not have been ordered by the dealer;

(B) unfairly, without due regard to the equities of the vehicle dealer, and without just provocation, canceled, terminated or failed to renew a franchise agreement with any new vehicle dealer;

(C) induced, or has attempted to induce, by coercion, intimidation or discrimination, any vehicle dealer to involuntarily enter into any franchise agreement with such first or second stage manufacturer, factory branch, distributor, or any representative thereof, or to do any other act to a vehicle dealer which may be deemed a violation of this act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a franchise agreement existing between such parties;

(14) being a first or second stage manufacturer, or distributor who for the protection of the buying public fails to specify in writing the delivery and preparation obligations of its vehicle dealers prior to delivery of new vehicles to new vehicle dealers. A copy of such writing shall be filed with the division by every licensed first or second stage manufacturer of vehicles and the contents thereof shall constitute the vehicle dealer's only responsibility for product liability as between the vehicle dealer and the first or second stage manufacturer. Any mechanical, body or parts defects arising from any express or implied warranties of the first or second stage manufacturer shall constitute the product or warranty liability of the first or second stage manufacturer. The first or second stage manufacturer shall reasonably compensate any authorized vehicle dealer for the performance of delivery and preparation obligation;

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(15) being a first or second stage manufacturer of new vehicles, factory branch or distributor who fails to supply a new vehicle dealer with a reasonable quantity of new vehicles, parts and accessories, in accordance with the franchise agreement. It shall not be deemed a violation of this act if such failure is attributable to factors reasonably beyond the control of such first or second stage manufacturer, factory branch or distributor;

(16) knowingly used or permitted the use of dealer plates contrary to law;

(17) has failed or refused to permit an agent of the division, during the licensee's regular business hours, to examine or inspect such dealer's records pertaining to titles and purchase and sale of vehicles;

(18) has failed to notify the division within 10 days of dealer's plates that have been lost, stolen, mutilated or destroyed;

(19) has failed or refused to surrender their dealer's license or dealer's plates to the division or its agent upon demand;

(20) has demonstrated that such person is not of good character and reputation in the community in which the dealer resides;

(21) has, within five years immediately preceding the date of making application, been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violations of any law of any state or the United States in connection with such person's operation as a dealer or ~~salesman~~ *salesperson*;

(22) has cross-titled a title to any purchaser of any vehicle. Cross-titling shall include, but not by way of limitation, a dealer or broker or the authorized agent of either selling or causing to be sold, exchanged or transferred any vehicle and not showing a complete chain of title on the papers necessary for the issuance of title for the purchaser. The selling dealer's name must appear on the assigned first or second stage manufacturer's certificate of origin or reassigned certificate of title;

(23) has changed the location of such person's established place of business prior to approval of such change by the division;

(24) having in such person's possession a certificate of title which is not properly completed, otherwise known as an "open title";

(25) doing business as a vehicle dealer other than at the dealer's established or supplemental place of business, with the exception that dealers selling new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed 14 days;

(26) any violation of K.S.A. 8-126 *et seq.*, and amendments thereto, in connection with such person's operation as a dealer;

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(27) any violation of K.S.A. 8-116, and amendments thereto;

(28) any violation of K.S.A. 21-3757, and amendments thereto;

(29) any violation of K.S.A. 79-1019, *79-3294 et seq., or 79-3601 et seq.,* and amendments thereto;

(30) failure to provide adequate proof of ownership for motor vehicles in the dealer's possession;

(31) being a first or second stage manufacturer who fails to provide the director of property valuation all information necessary for vehicle identification number identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles; ~~or~~

(32) displaying motor vehicles at a location other than at the dealer's established or supplemental place of business, without obtaining the authorization required in K.S.A. 1992 Supp. 8-2435, and amendments thereto; ; or

(33) any violation of section 6 of this act.

(b) The director may deny the application for the license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant whose license has been so denied, the applicant shall be granted an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(c) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be good cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of its ~~salesmen~~ *salespersons* or representatives while acting as its agent.

(d) Any licensee or other person aggrieved by a final order of the director, may appeal to the district court as provided by the act for judicial review and civil enforcement of agency actions.

(e) The revocation or suspension of a first or second stage manufacturer's or distributor's license may be limited to one or more municipalities or counties or any other defined trade area.

Sec. 4. K.S.A. 8-2430 is hereby amended to read as follows: 8-2430. (a) Any licensee, or proposed licensee, who proposes to establish an additional new vehicle dealer for new motor vehicles or permit the relocation of an existing new vehicle dealer in new motor vehicles to a location within the relevant market area where the same line-make vehicle is already presently represented by a new vehicle dealer or dealers in new motor vehicles of that same line-make shall give written notice of its intention by certified mail to

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the director of vehicles and shall establish good cause for adding or relocating the new vehicle dealer. The notice required hereunder shall state:

(1) The specific location at which the additional or relocated new vehicle dealer in new motor vehicles will be established;

(2) the date on or after which the licensee, or proposed licensee, intends to be engaged in business as a new vehicle dealer in new motor vehicles at the proposed location;

(3) the identity of all new vehicle dealers in new motor vehicles who are franchised to sell the same line-make vehicle from licensed locations whose relevant market areas include the location where the additional or relocated dealer is proposed to be located;

(4) the names and addresses of the new vehicle dealer-operator and principal investors in the proposed new vehicle dealer's business; and

(5) a short and plain statement of the evidence the licensee, or proposed licensee, intends to rely upon in meeting the burden of proof for establishing good cause for an additional new vehicle dealer for new motor vehicles or permit relocation of an existing new vehicle dealer in new motor vehicles within a relevant market area where the same line-make of vehicle is presently represented by a new vehicle dealer.

Immediately upon receipt of such notice the director shall cause a notice to be published in the Kansas register. The published notice shall state that a petition or complaint by any dealer with standing to protest pursuant to subsection (c) must be filed with the director not more than 30 days from the date of publication of the notice in the Kansas register. The published notice shall describe and identify the proposed new vehicle dealer and dealership sought to be licensed, and the director shall cause a copy of the notice to be mailed to those dealers identified in the notice under paragraph (3) of this subsection.

(b) (1) An application for a new vehicle dealer license to act as a vehicle dealer in new motor vehicles in any community or county shall not be granted when the licensee, or proposed licensee, seeking to establish an additional new vehicle dealer or relocate an existing new vehicle dealer in the same line-make of vehicles fails to comply with the requirements of this act, or when:

(A) A timely protest is filed by a presently existing new vehicle dealer in new motor vehicles with standing to protest as defined in subsection (c); and

(B) the director has held a hearing and determined that there is good cause for not permitting the addition or relocation of such new

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vehicle dealer. The burden of proof in establishing good cause to permit an additional new vehicle dealer in new motor vehicles or to permit the relocation of an existing new vehicle dealer in new motor vehicles shall be on the licensee, or proposed licensee, seeking to establish or relocate a new vehicle dealer and shall be by a preponderance of the evidence presented;

(2) in determining whether good cause has been established for an additional new vehicle dealer or the relocation of an existing new vehicle dealer for the same line-make of vehicle as provided herein, the director shall take into consideration the existing circumstances, including, but not limited to:

(A) Permanency of the investment of both the existing and proposed new vehicle dealers;

(B) growth or decline in population and new car registrations in the relevant market area;

(C) effect on the consuming public in the relevant market area;

(D) whether it is injurious or beneficial to the public welfare for an additional new vehicle dealer to be established;

(E) whether the new vehicle dealers of the same line-make vehicles in that relevant market area are providing adequate competition and convenient customer care for the vehicles of the line-make in the market area which shall include the adequacy of vehicle sales and service facilities, equipment, supply of vehicle parts and qualified service personnel;

(F) whether the establishment of an additional new vehicle dealer would increase competition and whether such increased competition would be in the public interest;

(G) the effect and denial of relocation will have on a relocating dealer; and

(H) the effect the new vehicle dealer addition or relocation which is proposed will have on the existing dealer or dealers.

The application for a new vehicle dealer license shall not be denied after the applicant meets the requirements of this section if the applicant otherwise meets the requirements of the vehicle dealers and ~~salesmen~~ *manufacturers* licensing act K.S.A. 8-2401, et seq., and amendments thereto.

(c) An existing new vehicle dealer in new motor vehicles shall have standing to protest the proposed addition or relocation of a new vehicle dealer in new motor vehicles where such existing new vehicle dealer in new motor vehicles has a franchise agreement for the same line-make vehicle as that which is to be sold or offered for sale or transfer by the proposed additional or relocated new vehicle dealer and is physically located such that the protesting

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dealer's relevant market area, as defined in subsection (e), includes the location where the additional or relocated dealer is proposed to be located.

(d) The director shall not issue a license for the proposed additional or relocated new vehicle dealer until a final decision is rendered determining good cause exists for establishing an additional new vehicle dealer or relocating a new vehicle dealer and that the application for the new vehicle dealer's license should be granted.

(e) The words or phrases used in this section shall have the meanings otherwise provided by law, except the following specific words or phrases shall have the following meanings:

(1) "Line-make vehicle" means those new motor vehicles which are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer or distributor of the same; and

(2) "relevant market area" means the area within:

(A) A radius of 10 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's principal location is in a county having a population of 30,000 or more persons;

(B) a radius of 15 miles around an existing new vehicle dealer in new motor vehicles, if the existing new vehicle dealer's principal location is in a county having a population of less than 30,000 persons; or

(C) the area of responsibility defined in the franchise agreement of the existing dealer, whichever is greater.

(f) No person, entity, licensee or their agents or employees, shall require the relocation, cancellation or termination of an existing dealer or otherwise take any action to penalize any dealer who exercises the rights provided under this section, or undertake such action for the purpose of preventing or avoiding the exercise by a dealer of the rights provided under this section. No franchise agreement made, entered or renewed after the effective date of this act shall contain provisions which avoid or circumvent the requirements of this act.

(g) A dealer's license may be denied, suspended or revoked, or the renewal of a dealer's license may be refused by the director for the dealer's failure to comply with this section or for otherwise violating its provisions.

(h) Any licensee, or proposed licensee, aggrieved by a final order of the director may appeal as provided in subsection (d) of K.S.A. 8-2410, and amendments thereto.

(i) The provisions of this section shall not apply to a new vehicle dealer who is a party to an agreement, with a first or second stage

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manufacturer or distributor, which authorizes the vehicle dealer to sell, exchange or transfer motorcycles.

Sec. 5. K.S.A. 1992 Supp. 8-2433 is hereby amended to read as follows: 8-2433. (a) Whenever application for a license as a vehicle ~~salesman~~ *salesperson* has been made, a temporary permit may be granted by the director, effective with the application date for the ~~salesman~~ *salesperson* license provided the ~~salesman~~ *salesperson* is under direct supervision whenever any sale for a vehicle is conducted. The temporary permit shall be valid until such time as the application is approved or denied by the director ~~of vehicles~~ but in no case shall such temporary license be valid for a period exceeding 45 days.

(b) The director shall not grant to any person more than one temporary salesperson's license, as provided in subsection (a), during any twelve-month period commencing with the date on which the person made application for licensing as a salesperson and such temporary permit was granted.

~~(b)~~ *(c)* This section shall be a part of and supplemental to the vehicle dealers and manufacturers licensing act.

Sec. [6] K.S.A. 8-2401 and 8-2430 and K.S.A. 1992 Supp. [8-2404,] 8-2410 and 8-2433 are hereby repealed.

Sec. [7] This act shall take effect and be in force from and after [~~January 1, 1994, and~~] its publication in the ~~Kansas register~~ statute book.

New Sec. 6. (attached)

7

Sec. 8 On and after January 1, 1994, K.S.A. 1992 Supp. 8-2404 is hereby repealed.

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New Sec. 6. (a) Except as provided in subsection (b), no vehicle dealer or vehicle salesperson, as defined by K.S.A. 8-2401, and amendments thereto, may barter, exchange, buy, sell or negotiate the sale, barter, exchange or purchase of any motor vehicle or keep open, operate or assist, in keeping open or operating any established place of business or supplemental place of business for the purpose of buying, selling, bartering or exchanging, or offering for sale, barter or exchange, any motor vehicle on Sunday.

(b) This section does not apply to:

(1) The sale of recreational motor vehicles as defined by subsection (f) of K.S.A. 75-1212, and amendments thereto;

(2) the sale of motorcycles, as defined in K.S.A. 8-1438, and amendments thereto;

(3) washing, towing, wrecking, repairing operations, the sale of petroleum products, tires, and repair parts and accessories, or motor vehicle shows or displays in which no offering to sell or buy, negotiation, buying, selling, bartering or exchanging of motor vehicles occurs; or

(4) the isolated or occasional sale of a motor vehicle by a vehicle dealer. The sale of five or less motor vehicles in any calendar month shall be considered an isolated or occasional sale under this paragraph.

(c) This section shall be a part of and supplemental to the vehicle dealers and manufacturers licensing act.

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