

Approved: April 30, 1994

Date

MINUTES OF THE HOUSE COMMITTEE ON TRANSPORTATION.

The meeting was called to order by Chairman Rex Crowell at 1:30 p.m. on March 10, 1994 in Room 519-S of the Capitol.

All members were present except: Rep. Shallenburger, Excused
Rep. Hendrix, Excused
Rep. Haulmark, Excused
Rep. Lloyd, Excused
Rep. Shore, Excused
Rep. Garner, Excused

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Donna Luttjohann, Committee Secretary

Conferees appearing before the committee: Pat Wiechman, KADRA
Paul Davis, President, KADRA
Randy Hearrell, Topeka Salvage Pools

Others attending: See attached list

Chairman Crowell opened the hearing on SB 162 concerning the regulation of salvage vehicle dealers.

Pat Wiechman was recognized by the Chairman to testify as a proponent of the bill. She testified on the work done on the bill by the Senate subcommittee. See Attachment 1.

The Chairman recognized Randy Hearrell as a conferee of the bill. He testified that salvage pools and salvage yards are not the same. Salvage pools do not dismantle vehicles. They take totaled vehicles from insurance companies, gather them and sell them, usually by an auction. See Attachment 2.

Chairman Crowell closed the hearing on SB 162.

The meeting was adjourned at 3:21 p.m. by Chairman Crowell with the next meeting scheduled for March 14, 1994, at 1:30 p.m. in Room 519-S of the Capitol.

HOUSE TRANSPORTATION COMMITTEE

Name	Address	Representing
Tom Whitaker	Topeka	Kansas Motor Carriers Assn.
Pat Wiechman	Topeka	Ks Automotive Dismantlers & Recycling Assn
Leona Noeder	Topeka	Business owner
Clay W. Myers	Topeka	SALVAGE YARD
MARY E. TURKINGTON	Topeka	Kansas Motor Carriers Assn
Randy M. Hearrell	Topeka	Topeka Salvage Pool
Paul Davis	Wichita	KADRA
John W Smith	Topeka	KDOT DML
Pam Samonville		
Jack Berce		
Rich Scherbe		
Betty McBride		
Steve Rodina		KHP
Mary Woodland		KDOT
Joe Krahg		KDOT



HOUSE TRANSPORTATION COMMITTEE

March 10, 1994

Senate Bill No. 162

Chairman Crowell, Members of the Committee:

I am Pat Wiechman, executive director for the Kansas Automotive Dismantlers and Recyclers Association. HB 2195 was introduced in this committee last year and SB 162 was the companion bill. The two originally contained identical language. SB 162 was worked extensively in sub-committee; then, at the direction of the sub-committee chairperson, the interested parties met to draw up compromise language. The results of that meeting and the sub-committee's work are before you in SB 162. I am going to go through the bill and talk about the proposed changes to current law, as well as, the changes made by the sub-committee to the original language of the bill. I will also discuss the reasons for the changes; and address some concerns that have been expressed.

New Section 1, page 1, addresses sizing and screening requirements for a salvage yard. In most of your communities, I'm sure you have noticed that there

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Executive Office

1101 W. 10 Topeka, Kansas 66604

913-233-1666 - Fax - 233-8893

are increasing numbers of backyards and vacant lots that have become storage areas for junk vehicles. Eventually, there may be a sign erected and the place is called a "salvage yard." These are, at the least, an eye sore for the community. Most often, the people taking these cars apart do not take any precautions to prevent pollution to our Earth, to your water supplies, or to your air. Many of our counties and towns have tried to pass local regulations to control these "backyard junk yards;" but they have not been very successful. By addressing minimum size and screening requirements, you will be helping your communities to clean up their backyards. Kansas currently has a Highway Beautification Act, this bill simply spells out the details more clearly.

A minimum area of 40,000 square feet would be required. This figure is used because it is slightly less than an acre or what is commonly known as a "city acre" - that is, an acre less roadways or alleyways. The fencing required to shield the business from ordinary view would have to be between 6 and 10 feet tall. A living hedge could be used that could exceed 10 feet; or a building, used in the business, could be used.

In order to be a vehicle dealer in Kansas, you must have an established place of business which means a building or structure. The bill sets out a specific minimum size for the office space. 200 square feet was used because that space would allow for the use of a small trailer for the office. This would not eliminate even the small dealer that is in business now, but would give criteria for a standard in the future.

On Page 1 at Line 38, there is provision for the storage of vehicles that are held for the general public. Many salvage yards are used by local law enforcement or by insurance companies as holding lots for wrecked or abandoned vehicles. This provision has been included to ensure that those vehicles held for that kind of storage are kept separate from the inventory of the salvage dealer. This is to assure that the public's vehicles are not inadvertently dismantled or crushed.

A clause grandfathering existing salvage vehicle dealers as to the size requirements is included on Page 2 at Line 14. This was recommended by the attorney for the Division of Vehicles and is to assure that no existing dealer will be adversely effected. Also to ensure that no existing dealer is harmed, when inspecting the screening requirements, "reasonable consideration shall be given to the topography of the land by enforcement personnel."

On Page 2 at Line 36 and on Page 21 at Line 36, the definition of "major component part" and the requirements necessary for the sale of that part are given. These provisions were amended by the sub-committee from the suggestions made by the Kansas Highway Patrol and the insurance industry. The new language sets out more exactly which parts are considered major component parts. These parts carry the public vehicle identification number or engine number or a derivative of that number. If these parts are sold by a licensed salvage vehicle dealer to a licensed salvage vehicle dealer, a copy of the vehicle title must accompany the part. If the part is sold to any other person, a notarized bill of sale and a copy of the vehicle title must accompany the part. These requirements

will be a deterrent to vehicle theft; and law enforcement will be better able to track down stolen parts and stolen vehicles.

The next proposed change to current law is on Page 19 at Line 29. The definition of salvage vehicle dealer reflects the changes that have occurred in the industry over the past ten years. The standard industrial code 5015 specifically sets out that the primary business is the distribution at wholesale or retail of used motor vehicle parts and says that "this industry includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts." SIC 5015 is used by Kansas taxing authorities, local and state; as well as, by other state and federal agencies.

The definition for "salvage vehicle" is given on Page 20 at Line 42. This language was changed by the sub-committee to reflect language that has been submitted by the federal Anti Car-Theft task force. Other definitions include "ultimate purchaser," and "nonrepairable vehicle."

The definition of "salvage yard" is on Page 21 at Line 18. On Page 28 at Line 4, there are additional requirements for initial application for a salvage vehicle dealer license. The Division has expressed that they are unable to do anything to help in the problems of the "backyard junk yards" since nothing is specifically spelled out.

On Page 21 at Line 29, is the definition for "salvage vehicle pool." The next change to current law sets up the fee for licensing of the salvage vehicle pool at \$50 annually. This is the same fee that is paid by other vehicle dealers in Kansas. On Page 28 at Line 28, the provisions for the operation of a salvage

vehicle pool are set out. The salvage vehicle pools have never been regulated in Kansas. You will remember during the interim session, the video was shown that revealed how it is possible for stolen vehicles to be "washed" through pool sales; and that improperly rebuilt vehicles can be sold without the history being revealed. There is at least another salvage vehicle pool scenario wherein a dealer can sell through the pool a vehicle that has had good parts exchanged for bad parts without the history being revealed. In our numerous discussions with the Division of Vehicles and law enforcement, there has been agreement that the salvage vehicle pools need to be regulated.

Much of this section is compromise language that resulted from the meeting held at the direction of the sub-committee. On Page 28 at Line 39, the language "or a facsimile or photocopy" was added at the suggestion of the insurance industry. It is important to note that this provision is extremely important when taken with the prior requirement that a major component part cannot be sold without a copy of the title accompanying the part.

The major "bone-of-contention" was the provision at Line 35 (Page 28) which would require that the pools not "sell a salvage vehicle to any person except a person licensed as a salvage vehicle dealer under this act unless sales tax is collected." The compromise language was added at Line 37 "unless otherwise exempted from sales tax by law." One of the pool owners has expressed continued concern about this compromise language. It was his position that the collection of sales tax caused an implied warranty.

K.A.D.R.A. has consulted legal counsel who pointed out that the mere act of sales tax collection has nothing to do with implied warranty. For a sale to require the collection of sales tax, the sale must be made to a buyer that will consume the goods sold, that type of sale is a *retail sale*. If the sale is made to a buyer who will resell the item, then that sale would not require the collection of sales tax. That type of sale is a *wholesale sale*. In visiting with the Department of Revenue, Sales Tax Division, we were informed that, by definition, the only vehicle sale that would **not** require collection of sales tax would be a sale to a vehicle dealer which would be a *wholesale sale*.

The issue of implied warranty arises when the sale is a *retail sale*. I have attached a copy of an opinion from the Kansas Attorney General wherein it is stated that "The implied warranty of merchantability is a relative concept; an old clunker is not expected to hold up like a new car. Therefore a seller is not required to warrant perfection; he is only required to warrant that the car is ordinarily fit for the use to which other cars of the same vintage are put. . . . If the seller uses a form which contains the typical disclaimer language, the disclaimer is void. Its mere presence in the sales contract also triggers a civil penalty. . . There is one way in which a seller can disclaim the implied warranty of merchantability: If he can isolate a specific defect or defects in the car and establish that the consumer had knowledge of the specific defect or defects at the time of the sale, and that this knowledge went to the basis of the bargain, responsibility for the defect or defects can be disclaimed. . . This also means that

used cars cannot be sold 'as is' insofar as that phrase amounts to a disclaimer of the implied warranty of merchantability."

A second letter from the Attorney General is attached and addresses the disclaimer of the implied warranties saying that "the Kansas Consumer Protection Act states that to exclude, modify or otherwise attempt to limit the implied warranties of merchantability and fitness for a particular purpose is an unconscionable act and practice."

A second concern was expressed by the owner of the same salvage pool that the provisions in the bill were an attempt at "restraint of trade." In an opinion to K.A.D.R.A., legal counsel pointed out that it is always within the authority of the Legislature to regulate industries within the state by imposing responsible regulation upon the industry. There is nothing within SB 162 that prevents anyone from the buying and selling of salvage vehicles, as long as they comply with the law.

The owner of that salvage pool also expressed concern that the bill contains the provision that "Salvage vehicle pools shall not be issued dealer license plates." Legal counsel points out that salvage vehicle pools are **not now** issued dealer license plates. There is nothing within current law or within SB 162 that would prevent a salvage vehicle pool from becoming a used vehicle dealer and thus obtaining dealer license plates. We would emphasize that dealer license plates are to be used for demonstrating vehicles offered for sale to customers, not for the convenience or tax avoidance of the dealer.

The sub-committee changed the sizing requirements for pools by eliminating the office size provisions. To protect existing salvage vehicle pools, the bill contains a similar grandfathering clause to that provided for salvage vehicle dealers.

The final change to existing law is on Page 30 at Line 13. This addresses the reports made by salvage vehicle dealers to the Division of Vehicles and is the procedure that is currently being followed by the Division.

K.A.D.R.A. appreciates the opportunity to present this information to you. I will be happy to attempt to answer any questions you may have.

Respectfully submitted,

Patricia M. Wiechman
Executive Director



D-2615

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

July 23, 1975

[REDACTED]
Chief, Dealer Licensing Bureau
State Office Building
Third Floor
Topeka, Kansas 66612

Dear [REDACTED]

The overall intent of the Kansas Consumer Protection Act is to equalize the disparity of bargaining position between the businessman and the consumer by providing protection for the unsophisticated consumer. In order to achieve this result, the legislature chose to limit the seller's or supplier's ability to avoid liability for the product he sells. Under the Kansas Consumer Protection Act the seller is required to refrain from making representations during the bargaining process which ultimately limit the buyer's legal rights.

The word "merchantable" as defined by K.S.A. 50-624 means, the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards for quality and safety of goods; and in the case of goods with mechanical, electrical or thermal components, the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

/ The implied warranty of merchantability is a relative concept; an old clunker is not expected to hold up like a new car. Therefore a seller is not required to warrant perfection; he is only required to warrant that the car is ordinarily fit for the use to which other cars of the same vintage are put. The new statute merely removes the ability to disclaim this warranty in the print of the sales contract. In summary, disclaimers of implied warranty of merchantability typically take away from the buyer more than the express warranty gives him.

Under the new Kansas Consumer Protection Act, no manufacturer or dealer may disclaim the implied warranty of merchantability given

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[REDACTED]
July 23, 1975
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to the consumer by K.S.A. 84-2-314; nor may the printed form limit any remedy otherwise provided by Kansas law, including the right to cancel and to collect consequential damages for a defective product. K.S.A. 1974 Supp. 50-639(a), as amended by House Bill No. 2010. If the seller after January 1, 1974, uses a form which contains the typical disclaimer language, the disclaimer is void. Its mere presence in the sales contract also triggers a civil penalty, recoverable in an individual action brought by the consumer or by the Attorney General of up to \$2,000 with the amount to be set by the court. K.S.A. 1974 Supp. 50-636(a). If the consumer prevails in an action based on breach of warranty, and a disclaimer has been used in the contract, the court may also award reasonable attorney's fees against the party "who caused the improper disclaimer to be written. K.S.A. 1974 Supp. 50-639, as amended by House Bill No. 2010. In light of these substantial penalties, the only advice to give a Kansas dealer is to re-write his sales documents and remove any disclaimer language.

On the other hand, it is clear that a limited express warranty (on top of the implied warranty of merchantability) can continue to be given. For example, a dealer who desires to give a twelve month, or 12,000 mile warranty covering the power train of a used car may continue to do so under the new law. But he would be well advised to designate it clearly as an "express warranty" in the brochure or sales contract; and, most importantly, he should eliminate from his forms any language which purports to disclaim the implied warranty. For example, Kansas dealers should delete such phrases as "this warranty is in lieu of all other warranties, express or implied". This also means that used cars cannot be sold "as is" insofar as that phrase amounts to a disclaimer of the implied warranty of merchantability. K.S.A. 84-2-316(3)(a).

There is one way in which a seller can disclaim the implied warranty of merchantability: If he can isolate a specific defect or defects in the car and establish that the consumer had knowledge of the specific defect or defects at the time of the sale, and that this knowledge went to the basis of the bargain, responsibility for the defect or defects can be disclaimed. K.S.A. 1974 Supp. 50-639(c). For example, if a used car dealer lowers his price on the basis of a faulty transmission, and the consumer is willing to buy on this basis, the car may be sold without any implied warranty covering the transmission. In short, a dealer may not sell used cars "as is". Any such disclaimer worded in this manner is absolutely unlawful and subjects the seller to substantial damages.

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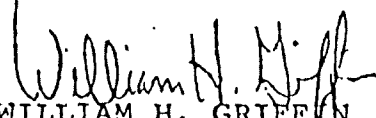
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Page Three

If we can be of further assistance, please contact us.

Yours sincerely,

CURT T. SCHNEIDER
ATTORNEY GENERAL

BY:


WILLIAM H. GRIFFIN
Assistant Attorney General
Chief, Consumer Protection Division

WHG:gg

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 3, 1984

MAIN PHONE: (913) 296-2218
CONSUMER PROTECTION: 296-3751

[REDACTED]
Merchants National Bank Building
Topeka, Kansas 66612

RE: Disclaimer of Implied Warranties

Dear Sir/Madam:

It has come to the attention of this office that a disclaimer of the implied warranties of merchantability and fitness for a particular purpose appears on several standard printed forms used by Kansas dealers.

As you may know, the Kansas Consumer Protection Act states that to exclude, modify or otherwise attempt to limit the implied warranties of merchantability and fitness for a particular purpose is an unconscionable act and practice.

You should inform your members of this problem. If you or any of your dealers have any questions, please do not hesitate to contact this office.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Wayne E. Hundley

Wayne Hundley
Deputy Attorney General
Consumer Protection and
Antitrust Division

WH:lm1

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2-9-84

3/10/94

TESTIMONY ON 1993 SENATE BILL 162

My name is Randy Hearrell. I am a shareholder in Topeka Salvage Pool, Inc. and I appear before the House Taxation Committee in that capacity.

SALVAGE POOLS

Before getting into the details of the bill, I would like to spend a little time telling you what salvage pools do to be certain that you understand that they are not salvage yards; they do not dismantle vehicles. Salvage pools are a relatively new business with few having been in existence over 30 years. They take totaled vehicles from insurance companies, gather them and sell them, usually by an auction.

Salvage pools are contacted by insurance companies to remove vehicles from storage facilities. The salvage pool then advances the existing charges of towing and storage, which in our case averages approximately \$175.00 per car. The salvage pool stores the vehicle for an indefinite period of time, with 24-hour security, and processes the title on behalf of the insurance company (meeting all federal and state requirements, including recordkeeping). The pool advertises the vehicle, sells it, transfers the title to the buyer, and collects and guarantees funds to the insurance company. Nationally, the fees range from \$40 to \$50 for these services. In this area, the fees are at the extreme low end.

Salvage pools are a major source of vehicles for salvage yards. Industry publications recognize that insurance companies obtain the best return by selling the vehicles through salvage

pools and, conversely, acquiring vehicles through salvage pools is the most expensive method of acquisition for salvage yards.

In Kansas, there are only six salvage pools operating, to my knowledge. And I assume their total employment is approximately 50 persons. Following is a chart that I have prepared showing activity in Kansas salvage pools in 1993.

KANSAS SALVAGE POOLS⁽¹⁾
1993

	<u>Approximate # Vehicles Sold</u>	<u>DOES POOL SELL TO:</u>			<u># Vehicles Sold to Public</u>
		<u>Salvage Dealers</u>	<u>Used Car Dealers</u>	<u>Public</u>	
Kansas City Salvage Pool	15,000	Yes	Yes	No	0
Manhattan Storage Pool	300	Yes	Yes	No ⁽²⁾	0
Topeka Salvage Pool	1,500	Yes	Yes	Yes	226
Wichita Insurance Pool	8,000	Yes	No	No	0
Wichita - Acme Storage Pool	1,200	Yes	No	No	0

(1) A new salvage pool was opened in Chanute in the Fall of 1993. Information is not available at this time.

(2) Manhattan Storage Pool does not sell to public, but will sell to persons who are not salvage dealers or used car dealers if they have a tax number.

OTHER STATE'S EXPERIENCES

When Senate Bill 162 and House Bill 2195, (which is an identical bill that this committee heard a year ago,) were introduced, one of the first things I did was to talk to salvage pool operators in other states to ask them the benefit of their experiences in dealing with legislation.

I talked to a number of them and the pattern seemed to be the same. Other salvage pool operators' experiences were that often legislation was introduced by the counterpart of KADRA in various states that, as a pattern, the salvage pools were not included in the drafting of the legislation.

The usual pattern is that the legislation contains a theme or element which is a good idea. It might be anti-car theft, anti-car jacking -- a theme from a television show such as 60 Minutes, or 48 Hours or changes in the state title or licensing laws. This change would be offered but included in the bill would be provisions which most generally had little or nothing to do with the main theme of the legislation but which offered a business advantage to the salvage yards. This business advantage sometimes came by raising the requirements for a salvage yard, thus, making the additional expense an impediment to new persons entering into that business. Other times, the legislation restricted salvage vehicle pools by limiting to whom they could sell; either in legislation directly applying to the pool, or by changing language in the titling law and affecting that certain type of vehicles must go directly to salvage yards. Several of the salvage pool operators I talked to stated that in their states such battles are on-going and that salvage yards are pursuing business advantages through the legislature and the administrative agencies.

THE LEGISLATION

In reviewing the bill, I have divided it into four sections. First, Section 1 which relates to salvage yards. Secondly, Section 2 is the anti-theft language. Thirdly, amendments to the vehicles dealers and manufactures licensing act. And fourth, and most important to me, Section (w) which relates to salvage pools.

Ordinarily, I would speak only to the parts of the bill relating to salvage vehicle pools, but because salvage vehicle pools did not want to be part of this legislation and it was drafted without their participation and input in the drafting, I will make a few comments about other parts of the legislation that don't relate directly to salvage vehicle pools.

Section 1 beginning on page 1, line 14 places in the statute minimum square footage, licensing, office space, and other requirements relating to salvage yards. And while I may have somewhat a cynical look at this piece of legislation because of what I have been told by salvage pool operators in other states, I have a hard time looking at this section without thinking that it substantially raises the price for anyone who wants to get into the salvage yard business, and might be damaging to some persons who are in the business.

Section 2, anti-theft measures. Over the course of probably at least a half-a-dozen committee and subcommittee hearings and other meetings on this bill, I have always been impressed by the arguments of the Highway Patrol and the expert witnesses in the area of auto-theft. I don't think anybody can be in favor of auto-theft. It certainly seems that whatever we can do in this area should be done. I do raise a couple of questions about section B. It seems to me that, judging from a look at the Sunday newspaper, there is always a lot of people that advertise they are "parting out" cars and I don't think people perceive that this is unlawful. I assume from reading part B that anyone who sells a part needs to accompany it with a notarized Bill of Sale and a photocopy of the vehicle title. It occurs to me that, because the law relating to the salvage yards is substantially based on Chapter 4738 of the Ohio statutes and that in Section 4738.02 the Ohio statutes allow a person to make five "casual" sales of motor vehicles in a 12-month period, that allowing casual or occasional sales might be appropriate. I would

also note that it seems the important part of this section is that the automobile not be stolen. It might be appropriate to allow someone to be able to later produce such notarized Bill of Sale if they failed to do so, much like if you are stopped without your driver's license you may later show that you have one and avoid the penalty.

Section 3, vehicle dealers and manufacturer's licensing act. I have several comments on section 3 which begins on page 16. My first proposal is that on page 19, line 23 after the word "include" that the phrase "salvage vehicle pools or" be inserted. The reason for this proposed insertion is to clarify that salvage vehicle pools are not brokers. On page 20, line 42, and extending onto the next page, there is a lengthy definition of salvage vehicle. I note that the Ohio statute defines salvage motor vehicle as "any motor vehicle which is wrecked, dismantled, or worn-out condition are unfit for operation as a motor vehicle."

On page 21, lines 29 through 31, the definition of salvage vehicle pool is acceptable.

On page 23, line 21, I respectfully request that this be stricken. This relates to licensing of salvage vehicle pools. My reasons for this request are as follows. Throughout the testimony on this bill, the only group that has ever testified for licensing of salvage vehicle pools has been KADRA. The Department of Revenue, to my knowledge, has not testified. The Highway Patrol has limited their testimony to the anti-theft provisions. My thinking is that most of us would prefer to have less government, not more government -- that the costs of administering the licenses for these six pools will far exceed the \$300 revenue and that, to my knowledge, there have been no problems with the pools. It is inconsistent with most people's philosophy of government to take the position that just because a business exists that it ought to be regulated, unless there are compelling public interest issues. In addition, I would venture to

guess that few members of the legislature knew that salvage pools exist or what they do. I would also venture to guess that no legislators ever receive complaints from the public about salvage pools, and that the purpose for this licensing is a first step in an effort of the salvage yards to gain a business advantage through either the legislative or administrative process.

SALVAGE VEHICLE POOLS

On page 28 of the bill at line 28, subsection (w) begins. For the most part, it sets out a list of requirements that are not necessary and are an effort by one business group to impose regulation on another business group.

In lines 3 through 8, it states "sell a salvage vehicle when having reasonable cause to believe it is not offered by the legal owner thereof. It seems to me that K.S.A. 21-3205 which states that a person is criminally liable for aiding, abetting or advising others to commit a crime, is already the law.

Subsection B page 28, line 35 which relates to selling a salvage vehicle to a person except a licensed salvage dealer unless sales tax is collected, unless that person is exempted from sales tax by law is a burden only on the Topeka Salvage Pool. As you can see by the chart I provided to you earlier, we are the only salvage pool that sells directly to individuals. I looked at some of our computer runs and my strong belief is that these cars are being registered. I base this on the fact that the average price paid for cars by individuals is over \$1,650 as opposed to the \$900 average price paid for all cars. Clearly, individuals are buying the better, rebuildable vehicles. We sell about 20 vehicles a month to individuals. I went back the past few months sales and found the 10 least expensive cars we sold to individuals. All these sold for less than \$500. I telephoned the owners and I reached 6 of the owners by phone and 4 have registered

their cars. One is working on fixing the vehicle and one says he's going to start working on it when it warms up. I did not find anyone who was planning to not register the car. In addition, it is the purchaser's obligation to register these cars and to pay the tax. It should not be the pool's obligation to enforce that law. There have been opinions that by collecting tax, the pool would somehow bring into play implied warranties. This may also be a reason to not enact this section. Section C, page 28, line 38 requires a title or facsimile to be on the premises.

This has always been our policy. We don't see any reason to put it into statutory form. It seems as though this is a business decision. If someone doesn't like what a pool does, they ought not to do business with them. In addition, anyone else who sells a car has 30 days to deliver the title. Section D, page 29, line 43 makes it unlawful to operate a salvage vehicle pool at the same location where a salvage yard is operated. I think this is totally unnecessary in that large insurance companies with whom we do business with have made it clear that they would not tolerate that. The thinking of the companies is that they do not want parts taken off their vehicles.

Section E, page 29, line 2 selling a vehicle without disclosing the true owner of such vehicle prior to sale. Mr. Ed Newsome, who is the President of the Kansas City Salvage Pool, which is the largest salvage pool in Kansas could not attend today because Thursday is the day that he has a sale, but I have a fax from Ed and his position on this is as follows. Mr. Newsome's fax on Senate Bill 162 states: "With respect to disclosing the true owner prior to the sale, it should be known that my salvage pool and most salvage pools, if not all, disclose the owner of the vehicle when asked by a perspective buyer. My experience has been that approximately 5% of the buyers ask for the disclosure of less than 5% of the vehicles offered

for sale. Inasmuch as we are already accommodating a small minority of buyers, it is my opinion that the request to disclose all vehicles prior to sales has no useful purpose and is frivolous in nature. In addition, it creates another unnecessary burden on the salvage pool operator, who has a myriad of disclosures that he must make and requirements that he must meet prior to the sale of the vehicle, (i.e., year, make, model, pin number, title type, odometer, federal recordkeeping requirements, etc.)."

Subsection (w)(3) lists the requirements for a salvage pool's fencing, square footage, requirements for an office, signage, etc. I would first say that a number of these things are just common sense - you can't do without them. Others are acts which we are required to meet whether this becomes law or not. The only thing I can see that this would do would be to make it more difficult for a competitor to get into the salvage pool business and perhaps even make it difficult for a couple of the small salvage pools to stay in the salvage pool business.

Subsection (w)(3) perplexes me. It says salvage vehicle pools shall not be issued dealer license plates under 8-2406. Currently, salvage pools who are also licensed as used car dealers can obtain dealer plates and this should continue to be the law. Occasionally, insurance companies abandon vehicles to us and this license is necessary.

I would note that in subsection x, if you in fact want to do something about casual sales, or "isolated and occasional sales" of parts might be a good place to do it.

In conclusion, we find the bill a mixed bag and if asked to say yes or no as it stands we would vote no, but we realize there are some positive parts of the bill.

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Attachment 2-8