

Approved: 2/14/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on February 10, 1994 in Room 254-E of the Capitol.

All members were present except:

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:

Others attending: See attached list

### **SB 162 - Salvage vehicle dealers**

The Kansas Automobile Dealers Association distributed a bill draft of Amendments to the Vehicle Dealers' and Manufactures Licensing Act. (Attachment 1).

A motion to introduce this bill was made by Senator Papay. Senator Tiahrt made the second. Motion carried.

Senator Tiahrt distributed a copy of the balloon version of the bill. (Attachment 2)

Bruce Kinzie explained that this was a carry over bill and most of the changes were technical. He addressed the clarification changes on page 2 as well as the definition change of "Salvage vehicle" under (hh). "Major component part" (ll) was made more extensive and "Nonrepairable vehicle" (mm) addressed the regulation of Salvage Pools.

Senator Tiahrt pointed out that part of the controversy is about sales tax. With these amendments the salvage operations won't pay tax but the rebuilders will. The changes will help with the component parts and theft of vehicles. He stated that with the amendments he thought it was good legislation.

A memorandum from the Topeka Salvage Pool, Inc. was given to the Committee members prior to the meeting time. (Attachment 3)

Lee Wright of the Farmers Insurance Group suggested an amendment under (w) (2) (C) that would add the words "or facsimile" after the word "title".

Senator Rock made a motion to approve this amendment. A second was made by Senator Emert. Motion carried.

Senator Tiahrt then made a motion to accept the Sub-Committee Report. Senator Papay seconded this. Motion carried.

Senator Tiahrt made a motion to recommend **SB 162** as amended as favorable for passage. A second was made by Senator Papay and the motion carried.

A motion to approve the minutes of the February 9 meeting was made by Senator Burke and seconded by Senator Emert. Motion carried.

The meeting was then adjourned by the Chairman.

## GUEST LIST

## SENATE TRANSPORTATION COMMITTEE

DATE: February 10, 1994

[illegible]



# kansas automobile dealers association

800 Jackson, Suite. 1110 • Topeka, Kansas 66612-1216 • (913) 233-6456 • FAX (913) 233-1462

February 10, 1994

To: The Honorable Ben Vidricksen, Chairman  
Senate Committee on Transportation and Utilities  
Members of the Committee

From: Pam Somerville, Director of Governmental Affairs

Re: Bill Request

**AMENDMENTS TO THE VEHICLE DEALERS'  
AND MANUFACTURERS' LICENSING ACT**

**SB \_\_\_\_\_** by Committee on Transportation and Utilities. This bill contains four provisions amending the dealer licensing act. Those components are:

\* To clarify the existing definition for "supplemental place of business" (permanent, and operated on a year-round basis) and add new definitions for "storage facility" (a lot to store vehicles), "motor vehicle show" (for shows and/or temporary sales), and "recreational vehicle" because it is referenced in the statute and a definition is not addressed in the current dealer licensing act.

\* Add language in K.S.A. 8-2404 to set forth requirements for obtaining a supplemental place of business and to hold a motor vehicle show. One requirement is to encompass the relevant market area requirements contained in K.S.A. 8-2430 for dealers seeking to establish a supplemental location, and dealers seeking a temporary location would be required to secure consent or participation of at least 50% of the licensed dealers in the county of the location to be established.

\* Amend K.S.A. 8-2415 to require the manufacturer or distributor to pay authorized promotional allowances, incentive payments, and warranty claims within 30 days of approval. In addition, the manufacturer would retain the right to audit such claim, including warranty claims, for a period of one year after the date the claim was paid; however, current Kansas statutes would allow the manufacturer the right to audit two years previous if there is good cause that fraud had occurred.

\* The final provision is a new section to add the Sunday closing language which would require vehicle dealers to close on Sunday; however, the isolated or occasional sale of 5 vehicles per month is permitted.

ATTACHMENT **1**

SEN. TRANS. 2/10/94

1-1

## SENATE BILL No. 162

By Committee on Transportation and Utilities

AN ACT concerning salvage vehicle dealers; relating to the regulation thereof; amending K.S.A. 8-1,137, ~~8-2401~~ and 8-2408 and K.S.A. ~~1992~~ Supp. 8-2404 and repealing the existing sections.

1993

8-2401 and

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

New Section 1. (a) A salvage yard shall consist of the following:

(1) A minimum area of 40,000 square feet, unless all of the business of the salvage vehicle dealer is conducted within the confines of a building;

(2) shielded by a fence meeting the following requirements:

(A) Having a minimum height of six feet with a maximum of 10 feet in height; and

(B) such fencing shall shield the inventory of the business from ordinary view.

(3) a living hedge of equal height and sufficient density may be substituted for the fence. A living hedge may exceed the 10-foot height limitation;

(4) reasonable consideration shall be given to the topography of the land by enforcement personnel when inspecting premises for such fence or enclosure, except that this provision shall not be construed to permit violation of the United States highway beautification act of 1965, as amended, where applicable, or K.S.A. 68-2201 through 68-2215, and amendments thereto;

(5) a building, used in the business, may be used in whole or in part to shield the inventory of the business from ordinary view; and

(6) if the business of the salvage vehicle dealer is conducted within the confines of a building, the provisions of (2), (3), (4) and (5) shall not apply.

(b) All nonowned vehicles in storage for the general public shall be held in an area segregated and easily identifiable from the inventory of the salvage vehicle dealer. The salvage vehicle dealer shall maintain a separate record of all transactions concerning these vehicles.

(c) The office in which such business will be transacted will be in a structure of sufficient size to conduct such business, this area

ATTACHMENT 2

SEV. TRANS. 2/10/94 2-1

1 shall consist of the following:

- 2 (1) A minimum area of 200 square feet;
- 3 (2) area devoted to sales transactions;
- 4 (3) an office to maintain records required to operate business by
- 5 the salvage vehicle dealer;
- 6 (4) regular business hours posted in plain view; and
- 7 (5) records of the business available for inspection during regular
- 8 business hours by any employee of the division or any member of
- 9 the highway patrol as set forth in K.S.A. 8-2408, and amendments
- 10 thereto.

11 (d) A sign meeting the requirements of subsection (m) of K.S.A.

12 8-2404, and amendments thereto.

13 (e) Any salvage vehicle dealer which was lawfully in existence

14 on July 1, ~~1993~~, and duly licensed under the provisions of K.S.A.

15 8-2404, and amendments thereto, shall not be required to meet the

16 requirements of paragraph (1) of subsection (a) or paragraph (1) of

17 subsection ~~(b)~~ so long as such salvage vehicle dealer remains in

18 continuous operation at the same business location. A salvage vehicle

19 dealer will not be considered in continuous operation if such salvage

20 vehicle dealer is closed for business for a period exceeding two

21 consecutive months, unless such closure is approved by the director.

22 (f) The provisions of this section shall be part of and supplemental

23 to the vehicle dealers and manufacturers licensing act.

24 Sec. 2. K.S.A. 8-1,137 is hereby amended to read as follows: 8-

25 1,137. (a) If any vehicle for which a certificate of title has been

26 issued shall be dismantled, disassembled or recycled by selling such

27 vehicle to a scrap processor for recycling after the salvageable parts

28 have been removed by a licensed salvage vehicle dealer as defined

29 in K.S.A. 8-2401, and amendments thereto, such dealer shall sur-

30 render the original or duplicate title to the division with the word

31 salvage or junk written or stamped across its face and no certificate

32 of title of any type shall be issued nor any registration allowed again

33 for such vehicle.

34 (b) When any major component part, as defined in K.S.A. 8-

35 2401, and amendments thereto, is sold, ~~a notarized bill of sale and~~

36 ~~a copy of the vehicle title must be given to the buyer and accompany~~

37 ~~such major component part as proof of legal possession of such major~~

38 ~~component part.~~

39 ~~Sec. 3. K.S.A. 8-2401 is hereby amended to read as follows: 8-~~

40 ~~2401. As used in this act, the following words and phrases shall have~~

41 ~~the meanings:~~

42 (a) ~~"Vehicle dealer" means any person who: (1) For commission,~~

~~money or other thing of value is engaged in the business of buying,~~

1994

(c)

by a licensed salvage vehicle dealer to a  
licensed vehicle dealer, a sales receipt and

Any major component part, as defined in  
K.S.A. 8-2401, and amendments thereto, sold  
to any other person shall be accompanied by a  
notarized bill of sale and a copy of the  
vehicle title as proof of legal possession of  
such major component part.

1 selling or offering or attempting to negotiate a sale of an interest in  
2 vehicles; or (2) for commission, money or other thing of value is  
3 engaged in the business of buying, selling or offering or attempting  
4 to negotiate a sale of an interest in motor vehicles as an auction  
5 motor vehicle dealer as defined in (bb); but does not include: (A)  
6 Receivers, trustees, administrators, executors, guardians, or other  
7 persons appointed by or acting under the judgment or order of any  
8 court, or any bank, trustee or lending company or institution which  
9 is subject to state or federal regulations as such, with regard to its  
10 disposition of repossessed vehicles; (B) public officers while perform-  
11 ing their official duties; (C) employees of persons enumerated in  
12 provisions (A) and (B), when engaged in the specific performance of  
13 their duties as such employees; (D) auctioneers conducting auctions  
14 for persons enumerated in provisions (A), (B) or (C); or (E) auction-  
15 eers who, while engaged in conducting an auction of tangible per-  
16 sonal property for others, offer for sale: (i) Vehicles which have been  
17 used primarily in a farm or business operation by the owner offering  
18 the vehicle for sale, including all vehicles which qualified for a farm  
19 vehicle tag at the time of sale except vehicles owned by a business  
20 engaged primarily in the business of leasing or renting passenger  
21 cars; (ii) vehicles which meet the statutory definition of antique  
22 vehicles; or (iii) vehicles for no more than four principals or house-  
23 holds per auction. All sales of vehicles exempted pursuant to pro-  
24 vision (E), except truck, truck tractors, pole trailers, trailers and  
25 semitrailers as defined by K.S.A. 8-126, and amendments thereto,  
26 shall be registered in Kansas prior to the sale.

27 (b) "New vehicle dealer" means any vehicle dealer who is a party  
28 to an agreement, with a first or second stage manufacturer or dis-  
29 tributor, which agreement authorizes the vehicle dealer to sell, ex-  
30 change or transfer new motor vehicles, trucks, motorcycles, or  
31 trailers or parts and accessories made or sold by such first or second  
32 stage manufacturer or distributor and obligates the vehicle dealer to  
33 fulfill the warranty commitments of such first or second stage man-  
34 ufacturer or distributor.

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

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

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

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

SEN TR405 2/10/94 2-3

(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, and amendments thereto.

(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 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)

SEN TRANS 2/12/94 24

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 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

1 ~~wrecked, abandoned or repairable vehicles and selling the us-~~  
2 ~~able parts thereof, or selling such wrecked, abandoned or re-~~  
3 ~~pairable vehicles as a unit or selling the hull of the vehicle~~  
4 ~~after the salvageable parts have been removed selling or ex-~~  
5 ~~changing used vehicles and primarily engaged in the business under~~  
6 ~~standard industrial code classification 5015 and complying with local~~  
7 ~~government regulations for zoning as a salvage yard.~~

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

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

25 (bb) "Auction motor vehicle dealer" means any person who for  
26 commission, money or other thing of value is engaged in an auction  
27 of motor vehicles except that the sales of such motor vehicles shall  
28 involve only motor vehicles owned by licensed motor vehicle dealers  
29 and sold to licensed motor vehicle dealers, except that any auction  
30 motor vehicle dealer, registered as such and lawfully operating prior  
31 to June 30, 1980, shall be deemed to be and have been properly  
32 licensed under this act from and after July 1, 1980. For the purposes  
33 of this subsection, an auction is a private sale of motor vehicles  
34 where any and all licensed motor vehicle dealers who choose to do  
35 so are permitted to attend and offer bids and the private sale of  
36 such motor vehicles is to the highest bidder.

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

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

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

SEN TRAVIS 2/10/84 26

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

(gg) "Standard industrial classification code 5015" means the classification for establishments primarily engaged in the distribution at wholesale or retail of used motor vehicle parts published in the standard industrial classification manual, 1987, as prepared by the statistical policy division of the office of management and budget of the office of the president of the United States of America. This industry includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts.

(hh) "Salvage vehicle" means any vehicle which is abandoned, dismantled or damaged by collision, fire, flood, accident, trespass or other occurrence to the extent that the owner, an insurer or other person acting on behalf of the owner, determines that the cost of parts and labor makes it uneconomical to repair.

(ii) "Salvage yard" means the place owned or leased and regularly occupied by a person, firm or corporation, doing business under standard industrial classification code 5015 and licensed under the provisions of this act for the principal purpose of engaging in the business of a salvage vehicle dealer. Salvage yard shall include the location where the:

- (1) Products for sale are displayed and offered for sale;
- (2) books and records required for the conduct of the business are maintained;
- (3) records are kept in the normal daily business activity; and
- (4) records are made available for inspection.

(jj) "Salvage vehicle pool" means any person who as an agent for a third party is primarily engaged in the business of storing, displaying and offering for sale salvage vehicles.

(kk) "Ultimate purchaser" means, with respect to any salvage vehicle or salvage vehicle part, a purchaser who in good faith purchases such salvage vehicle or part for purposes other than resale and is not licensed as a salvage vehicle dealer under this act.

(ll) "Major component part" means any sheet metal vehicle part bearing the public vehicle identification number, or engine number if manufactured prior to 1981, to include front clips, rear clips and doors.

Sec. 4. 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 sales-  
man salesperson shall not be required to secure a salesman's  
salesperson's license

SEN TRANS 2-7 3/10/94

(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 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~~ *salesperson's* 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~~ *salesperson's* 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;

SENT 2/10/94 28

- 1 (4) for distributor branches, \$50;  
2 (5) for used vehicle dealers, \$50;  
3 (6) for first and second stage manufacturers, \$200 plus \$50 for  
4 each factory branch in this state;  
5 (7) for factory representatives, \$25;  
6 (8) for distributor representatives, \$25;  
7 (9) for brokers, \$50;  
8 (10) for lending agencies, \$25;  
9 (11) for first and second stage converters, \$25;  
10 (12) for salvage vehicle dealers, \$50;  
11 (13) for auction motor vehicle dealers, \$50;  
12 (14) for vehicle ~~salesman~~ salesperson, \$15; and  
13 (15) for insurance companies, \$50; and  
14 (16) for salvage vehicle pool, \$50.

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

20 (f) Dealers establishing supplemental places of business within  
21 the same county of their licensure or within their area of respon-  
22 sibility as defined in their franchise agreement shall be required to  
23 pay a supplemental license fee of \$10. Original inspections by the  
24 division of a proposed established place of business shall be made  
25 at no charge except that a \$5 fee shall be charged by the division  
26 for each additional inspection the division must make of such prem-  
27 ises in order to approve the same.

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

35 (h) Every ~~salesman~~ salesperson, factory representative or dis-  
36 tributor representative shall carry on their person a certification that  
37 the person holds a valid state license. The certification shall name  
38 the person's employer and shall be displayed upon request. An  
39 original copy of the state license for a vehicle ~~salesman~~ salesperson  
40 shall be mailed or otherwise delivered by the division to the em-  
41 ployer of the ~~salesman~~ salesperson for public display in the em-  
42 ployer's established place of business. When a ~~salesman~~ salesperson  
43 ceases to be employed as such, the former employer shall mail or

SEN TR 405 2/10/94 29

1 otherwise return the original copy of the employee's state license to  
2 the division. A ~~salesman~~ *salesperson*, factory representative or dis-  
3 tributor representative who terminates employment with one em-  
4 ployer may file an application with the director to transfer the  
5 person's state license in the name of another employer. The appli-  
6 cation shall be accompanied by a \$2 transfer fee. A ~~salesman~~  
7 *salesperson*, factory representative or distributor representative who  
8 terminates employment, and does not transfer the state license, shall  
9 mail or otherwise return the certification that the person holds a  
10 valid state license to the division.

11 (i) If the director has reasonable cause to doubt the financial  
12 responsibility or the compliance by the applicant or licensee with  
13 the provisions of this act, the director may require the applicant or  
14 licensee to furnish and maintain a bond in such form, amount and  
15 with such sureties as the director approves, but such amount shall  
16 be not less than \$5,000 nor more than \$20,000, conditioned upon  
17 the applicant or licensee complying with the provisions of the statutes  
18 applicable to the licensee and as indemnity for any loss sustained  
19 by any person by reason of any act by the licensee constituting  
20 grounds for suspension or revocation of the license. Every applicant  
21 or licensee who is or applies to be a used vehicle dealer or a new  
22 vehicle dealer shall furnish and maintain a bond in such form, amount  
23 and with such sureties as the director approves, in the amount of  
24 \$15,000, conditioned upon the applicant or licensee complying with  
25 the provisions of the statutes applicable to the licensee and as in-  
26 demnity for any loss sustained by any person by reason of any act  
27 by the licensee in violation of any act which constitutes grounds for  
28 suspension or revocation of the license. To comply with this sub-  
29 section, every bond shall be a corporate surety bond issued by a  
30 company authorized to do business in the state of Kansas and shall  
31 be executed in the name of the state of Kansas for the benefit of  
32 any aggrieved party. The aggregate liability of the surety for all  
33 breaches of the conditions of the bond in no event shall exceed the  
34 amount of such bond. The surety on the bond shall have the right  
35 to cancel the bond by giving 30 days' notice to the director, and  
36 thereafter the surety shall be relieved of liability for any breach of  
37 condition occurring after the effective date of cancellation. Bonding  
38 requirements shall not apply to first or second stage manufacturers,  
39 factory branches, factory representatives or ~~salesmen~~ *salespersons*.  
40 The proceeds of the bond on deposit or in lieu of bond provided  
41 by subsection (j), shall be paid upon receipt by the director of a  
42 final judgment from a Kansas court of competent jurisdiction against  
43 the dealer and in favor of an aggrieved party.

1    Yj) An applicant or licensee may elect to satisfy the bonding re-  
2    quirements of subsection (i) by depositing with the state treasurer  
3    cash, negotiable bonds of the United States or of the state of Kansas,  
4    negotiable certificates of deposit of any bank organized under the  
5    laws of the United States or of the state of Kansas or irrevocable  
6    letters of credit of any such bank. The cash deposit or market value  
7    of any such securities shall be equal to or greater than the amount  
8    of the bond required for the bonded area and any interest on those  
9    funds shall accrue to the benefit of the depositor.

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

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

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

30   (n) If the established or supplemental place of business or lot is  
31   zoned, approval must be secured from the proper zoning authority  
32   and proof that the use complies with the applicable zoning law,  
33   ordinance or resolution must be furnished to the director by the  
34   applicant for licensing.

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

40   (p) If a supplemental place of business is not operated on a  
41   continuous, year-round basis, the dealer shall give the department  
42   15 days' notice as to the dates on which the dealer will be engaged  
43   in business at the supplemental place of business.

SEN TRAN 2-11 2/10/94

(g) 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 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.

SEN TRANS 2/10/91 2/12

(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) (1) In addition to the requirements of this section, each person initially applying for a salvage vehicle dealer license shall supply the following information to the director:

(A) A statement of the previous history, record and association of the applicant and of each owner, partner, officer and director, which statement shall be sufficient to establish to the satisfaction of the director the reputation in business of the applicant;

(B) a statement showing whether the applicant has previously applied for a vehicle dealer license in this state or any other state and the result of the application and whether the applicant has ever been the holder of any such license which was revoked or suspended; and

(C) if the applicant is a corporation or partnership, a statement showing whether any of the partners, officers or directors have been refused a vehicle salesperson or vehicle dealer license in this state or any other state, or have been the holder of any such license which was revoked or suspended.

(2) Upon renewal of a salvage vehicle dealer license, the director may require the applicant for renewal to submit the information in subparagraphs (A), (B) and (C) of paragraph (1).

(3) In addition to provisions in K.S.A. 8-2410, and amendments thereto, a license may be denied, suspended or revoked or a renewal may be refused by the director on the grounds of the information obtained in subparagraphs (A), (B) and (C) of paragraph (1).

(w) (1) No person shall engage in the business of a salvage vehicle pool, unless such person holds a license issued by the director under the provisions of this act.

(2) No person licensed as a salvage vehicle pool under this act shall

(A) Sell a salvage vehicle when having reasonable cause to believe it is not offered by the legal owner thereof;

(B) sell a salvage vehicle to any person except a person licensed

SEU TRANS 2/10/94 2 13

1 as a salvage vehicle dealer under this act unless sales tax is collected/  
2 (C) fail to have available on the premises a certificate of title of  
3 a salvage vehicle sold by the salvage vehicle pool to provide veri-  
4 fication of mileage at the time of sale, unless such vehicle is included  
5 in the exceptions as set forth in K.S.A. 8-135, and amendments  
6 thereto;

7 (D) operate as a salvage vehicle pool at the same location where  
8 any salvage yard is operated;

9 (E) sell any vehicle without disclosing the true owner of such  
10 vehicle prior to sale.

11 (3) A salvage vehicle pool shall consist of the following:

12 (A) A minimum area of 40,000 square feet, unless all of the  
13 business of the salvage vehicle pool is conducted within the confines  
14 of a building;

15 (B) shielded by a fence meeting the following requirements:

16 (i) Having a minimum height of six feet with a maximum of 10  
17 feet in height; and

18 (ii) such fencing shall shield the inventory stored, displayed and  
19 offered for sale from ordinary view.

20 (C) a living hedge of equal height and sufficient density may be  
21 substituted for the fence. A living hedge may exceed the 10-foot  
22 height limitation;

23 (D) reasonable consideration shall be given to the topography of  
24 the land by enforcement personnel when inspecting premises for such  
25 fence or enclosure, except that this provision shall not be construed  
26 to permit violation of the United States highway beautification act  
27 of 1965, as amended, where applicable or K.S.A. 68-2201 through  
28 68-2215, and amendments thereto;

29 (E) a building, used in the business, may be used in whole or  
30 in part to shield the inventory of the business from ordinary view;

31 (F) if the business of the salvage vehicle pool is conducted within  
32 the confines of a building, the provisions of (B), (C), (D) and (E)  
33 shall not apply.

34 (3) The office in which such business will be transacted will be  
35 in a structure of sufficient size to conduct such business, this area  
36 shall consist of the following:

37 (A) Area devoted to sales transactions;

38 (B) an office to maintain records required to operate business  
39 by the salvage vehicle pool;

40 (C) regular business hours posted in plain view; and

41 (D) records of the business available for inspection during reg-  
2 ular business hours by any employee of the division or any member  
3 of the highway patrol as set forth in subsection (c) of K.S.A. 8

1 ~~2408, and amendments thereto.~~

2 ~~(4) A sign meeting the provisions of subsection (m) of K.S.A. 8-~~  
3 ~~2404, and amendments thereto.~~

4 ~~(5) Any salvage vehicle pool which was lawfully in existence on~~  
5 ~~July 1, 1993, shall not be required to meet the requirements of~~  
6 ~~subparagraph (A) of paragraph (3) so long as such salvage vehicle~~  
7 ~~pool remains in continuous operation at the same business location.~~  
8 ~~A salvage vehicle pool will not be considered in continuous operation~~  
9 ~~if such salvage vehicle pool is closed for business for a period ex-~~  
10 ~~ceeding two consecutive months, unless such closure is approved by~~  
11 ~~the director.~~

12 ~~(6) Salvage vehicle pools shall not be issued dealer license plates~~  
13 ~~under K.S.A. 8-2406, and amendments thereto, or full-privilege li-~~  
14 ~~cense plates under K.S.A. 8-2425, and amendments thereto.~~

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

18 Sec. 5. K.S.A. 8-2408 is hereby amended to read as follows: 8-  
19 2408. Except as hereinafter provided, every person licensed as a  
20 dealer under provisions of this act shall:

21 (a) On or before the 20th day of each month, file a monthly  
22 report, on a form prescribed and furnished by the division of ve-  
23 hicles, listing all sales or transfers, except sales or transfers by a first  
24 or second stage manufacturer to a vehicle dealer of new or used  
25 vehicles, including the name and address of the purchaser or trans-  
26 feree, date of sale, the serial or identification number of the vehicle,  
27 and such other information as the division may require.

28 (b) Salvage vehicle dealers shall, in addition to their monthly  
29 sales report for used vehicles, if applicable, file a quarterly report  
30 on a form prescribed and furnished by the division, listing all vehicles  
31 for which have been or will be dismantled, disassembled or  
32 converted to scrap and sold to a scrap processor. Any titles to  
33 the vehicles in the possession of the vehicle dealer must ac-  
34 company the quarterly report the major component part containing  
35 the vehicle identification number or engine number if manufactured  
36 prior to 1981, has been disposed of or sold. The certificate of title  
37 or transfer certificate for all vehicles listed must accompany the  
38 quarterly report.

39 (c) Make available during regular business hours to any employee  
40 of the division or any member of the highway patrol for the purpose  
41 of investigation or inspection, all records concerning vehicles pur-  
chased, sold or exchanged during the preceding 12 months, including  
certificates of title on all vehicles owned by the dealership, except

See Attachment

SEN TR405 2/10/94 2-15

Sec. 3. K.S.A. 1993 Supp. 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 (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 provision (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 salesperson" means any person who is employed as a 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. 1993 Supp. 58-4202, and amendments thereto.

(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 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 subsection (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 subsection (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 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~~ selling or exchanging used vehicles and primarily engaged in the business under standard industrial code classification 5015 and complying with local government regulations for zoning as a salvage yard.

(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.

(gg) "Standard industrial classification code 5015" means the classification for establishments primarily engaged in the distribution at wholesale or retail of used motor vehicle parts published in the standard industrial classification manual, 1987, as prepared by the statistical policy division of the office of management and budget of the office of the president of the United States of America. This industry includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts.

(hh) "Salvage vehicle" means any vehicle which has been wrecked, destroyed or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition and for legal operation on the roads or highways, exceeds 75% of the retail value of the vehicle, as set forth in a current edition of a nationally recognized compilation (to include automated data bases) of retail values, as approved by the secretary of transportation. The value of repair parts for purposes of this subsection shall be determined by using the current published retail cost of the original equipment manufacturer parts or the actual retail cost of the repair parts to be used in the repair. The labor cost of repairs for purposes of this subsection shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed. Salvage vehicle shall also include any vehicle which an insurance company acquires ownership pursuant to a damage settlement or any vehicle that the vehicle's owner designates as a salvage vehicle by obtaining a nonhighway title without regard to the extent of the vehicle's damage and repairs.

(ii) "Salvage yard" means the place owned or leased and regularly occupied by a person, firm or corporation, doing business under standard industrial classification code 5015 and licensed under the provisions of this act for the principal purpose of engaging in the business of a salvage vehicle dealer.

Salvage yard shall include the location where the:

- (1) Products for sale are displayed and offered for sale;
  - (2) books and records required for the conduct of the business are maintained;
  - (3) records are kept in the normal daily business activity;
- and

- (4) records are made available for inspection.

(jj) "Salvage vehicle pool" means any person who as an agent for a third party is primarily engaged in the business of storing, displaying and offering for sale salvage vehicles.

(kk) "Ultimate purchaser" means, with respect to any salvage vehicle or salvage vehicle part, a purchaser who in good faith purchases such salvage vehicle or part for purposes other than resale and is not licensed as a salvage vehicle dealer under this act.

(ll) "Major component part" means any vehicle part including the front clip, rear clip, doors, frame, chassis, engine, transmission, transaxle, cab bed, and box bearing the public vehicle identification number or engine number, if manufactured prior to 1981; or any vehicle part bearing a derivative of such number.

(mm) "Nonrepairable vehicle" means any vehicle which is incapable of safe operation for use on the roads or highways and which has no resale value except as a source of parts or scrap only, or that the owner of the vehicle irreversibly designates as a source of parts or scrap.

Sec. 4. K.S.A. 1993 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 salesperson shall not be required to secure a 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 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 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 salespersons, received by the director after February 15 shall be considered as new applications. All 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 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 salesperson, \$15; and
- (15) for insurance companies, \$50; and
- (16) for salvage vehicle pool, \$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 responsibility 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 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 salesperson shall be mailed or otherwise delivered by the division to the employer of the salesperson for public display in the employer's established place of business. When a 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 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 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 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 salespersons. 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. 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. When negotiable bonds or negotiable certificates of deposit have been deposited with the state treasurer to satisfy the bonding requirements of subsection (i), such negotiable bonds or negotiable certificates of deposit shall remain on deposit with the state treasurer for a period of not less than 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 or negotiable certificates of deposit previously deposited with the state treasurer, the state treasurer shall not release the negotiable bonds or negotiable certificates of deposits until at least 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 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 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 salesperson's manual. Before a vehicle 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) (1) In addition to the requirements of this section, each person initially applying for a salvage vehicle dealer license shall supply the following information to the director:

(A) A statement of the previous history, record and association of the applicant and of each owner, partner, officer and director, which statement shall be sufficient to establish to the satisfaction of the director the reputation in business of the applicant;

(B) a statement showing whether the applicant has previously applied for a vehicle dealer license in this state or any other state and the result of the application and whether the applicant has ever been the holder of any such license which was revoked or suspended; and

(C) if the applicant is a corporation or partnership, a statement showing whether any of the partners, officers or directors have been refused a vehicle salesperson or vehicle dealer license in this state or any other state, or have been the holder of any such license which was revoked or suspended.

(2) Upon renewal of a salvage vehicle dealer license, the director may require the applicant for renewal to submit the information in subparagraphs (A), (B) and (C) of paragraph (1).

(3) In addition to provisions in K.S.A. 8-2410, and amendments thereto, a license may be denied, suspended or revoked or a renewal may be refused by the director on the grounds of the information obtained in subparagraphs (A), (B) and (C) of paragraph (1).

(w) (1) No person shall engage in the business of a salvage vehicle pool, unless such person holds a license issued by the director under the provisions of this act.

(2) No person licensed as a salvage vehicle pool under this act shall:

(A) Sell a salvage vehicle when having reasonable cause to believe it is not offered by the legal owner thereof;

(B) sell a salvage vehicle to any person except a person licensed as a salvage vehicle dealer under this act unless sales tax is collected, unless otherwise exempted from sales tax by law;

(C) fail to have available on the premises a certificate of title or a photocopy of the complete title of a salvage vehicle sold by the salvage vehicle pool to provide verification of mileage at the time of sale, unless such vehicle is included in the exceptions as set forth in K.S.A. 8-135, and amendments thereto;

(D) operate as a salvage vehicle pool at the same location where any salvage yard is operated;

(E) sell any vehicle without disclosing the true owner of such vehicle prior to sale.

(3) A salvage vehicle pool shall consist of the following:

(A) A minimum area of 40,000 square feet, unless all of the business of the salvage vehicle pool is conducted within the confines of a building;

(B) enclosed by a fence meeting the following requirements:

(i) Having a minimum height of six feet with a maximum of 10 feet in height; and

(ii) such fencing shall meet the requirements of the United States highway beautification act of 1965, as amended, where applicable or K.S.A. 68-2201 through 68-2215, and amendments thereto;

(C) a building, used in the business, may be used in whole or in part to shield the inventory of the business from ordinary view;

(D) if the business of the salvage vehicle pool is conducted within the confines of a building, the provisions of (B) and (C) shall not apply.

(4) The office in which such business will be transacted will be in a structure of sufficient size to conduct such business, this area shall consist of the following:

(A) Area devoted to sales transactions;

(B) an office to maintain records required to operate business by the salvage vehicle pool;

(C) regular business hours posted in plain view; and

(D) records of the business available for inspection during regular business hours by any employee of the division or any member of the highway patrol as set forth in subsection (c) of

K.S.A. 8-2408, and amendments thereto.

(5) A sign meeting the provisions of subsection (m) of K.S.A. 8-2404, and amendments thereto.

(6) Any salvage vehicle pool which was lawfully in existence on July 1, 1994, shall not be required to meet the requirements of subparagraph (A) of paragraph (3) so long as such salvage vehicle pool remains in continuous operation at the same business location. A salvage vehicle pool will not be considered in continuous operation if such salvage vehicle pool is closed for business for a period exceeding two consecutive months, unless such closure is approved by the director.

(7) Salvage vehicle pools shall not be issued dealer license plates under K.S.A. 8-2406, and amendments thereto, or full-privilege license plates under K.S.A. 8-2425, and amendments thereto.

(v) (x) 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.

those titles surrendered pursuant to subsection (b).

(d) Whenever a dealer sells or otherwise disposes of such dealer's business, or for any reason suspends or goes out of business as a dealer, such dealer shall notify the division and return the dealer's license and dealer plates, and the division upon receipt of such notice and plates shall cancel the dealer's license, except that such dealer may, upon payment of 50% of the annual fee to the division, have the license and dealer plates assigned to the purchaser of the business.

(e) In addition to the requirements of subsection (a), any dealer paying a commission or fee to a broker shall report to the division, on the monthly sales report, the name of the broker and the broker's license number.

(f) Dealers, licensed as brokers must in addition to the requirements of subsection (a) include on the monthly sales reports, the name of the seller, the transferor or dealer that owns the vehicle and whether the seller or the purchaser paid the broker's fee or commission.

(g) Lending agencies licensed under this act, which sell two or less repossessed vehicles a month, shall not be required to file the monthly reports under subsection (a), except that such lending agencies shall report annually, on a form prescribed and furnished by the division, the total number of sales or transfers of such vehicles.

Sec. 6. K.S.A. 8-1,137, ~~8-2401~~ and 8-2408 and K.S.A. ~~1992~~ 1993 Supp. ~~8-2404~~ are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

8-2401 and

SEN TRAN'S 2/10/94 2-25

## MEMORANDUM

TO: SENATE TRANSPORTATION COMMITTEE

FROM: TOPEKA SALVAGE POOL, INC.

DATE: FEBRUARY 9, 1994

RE: 1993 SB 162

The subcommittee considering 1993 SB 162 left unresolved and for consideration by the full committee a decision on the contents of section 4(w)(2)(B). I have written this memorandum for the purpose of:

- Assisting in clarification of that section; but please note that we still oppose passage of the bill for numerous other reasons.

### Section 4(w)(2)(B)

Section 4(w)(2)(B) appears in the bill in a list of acts prohibited by salvage pools. The subsection reads:

"(2) No person licensed as a salvage vehicle pool under this act shall:

**(B) sell a salvage vehicle to any person except a person licensed as a salvage vehicle dealer under this act unless sales tax is collected, unless otherwise exempted from sales tax by law."**

KADRA's position is that this section is needed because a large number of individuals are escaping payment of sales tax by not registering vehicles purchased from salvage pools.

Our position is that relatively few cars are sold to individuals by salvage pools and sales tax is being paid to the County Treasurer on those sold; collection of this tax by our salvage pool, which is a "mom and pop" operation, would be a burden to a small business; we fear that collection of such tax would invoke a poorly understood "implied warranty" problem and we are concerned that this may be a first step in limiting to whom we may sell.

The following is a chart of sales of vehicles by Kansas Salvage Pools in 1993:

**KANSAS SALVAGE POOLS<sup>(1)</sup>**  
**1993**

	Approximate # Vehicles Sold	<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 <sup>(2)</sup>	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.

The above chart demonstrates that relative few vehicles are sold to the public, that Topeka Salvage Pool has a direct interest in this part of the legislation and is in a unique position to assist in answering the questions about whether sales tax is collected.

We considered several ways to answer the question.

First, the persons who purchase these cars continue to be our customers we have contact with them and they often mention how these cars are running, their problems with them, how good or bad a deal they got. In short, we see the people driving these recycled vehicles on a daily basis.

Secondly, our accounting records show that in the most recent three month period, the average price paid for all cars sold at Topeka Salvage Pool was \$904, but the average price paid by the individuals who purchase cars was \$1,636. Individuals are clearly buying the better vehicles for the purpose of fixing and driving them. To drive them they must be registered and taxes must be paid to the county treasurer.

Thirdly, we attempted to telephone the purchasers of the ten least expensive vehicles purchased by individuals in the past three months. (All ten sold for less than \$500.) The thinking was that we could determine if these persons are paying sales tax on these cheaper vehicles. Of the six persons we reached, three have rebuilt the vehicle they purchased, one is working on it and one plans to start when it warms up.

In summary we find no significant evidence that individuals to whom we sell salvage vehicles are avoiding sales tax.

Attached for your information are two newspaper articles. In the larger article, at the end of the third column, the Missouri Attorney General's position that the lack of free and open competition in the sale of salvage vehicles results in receipt of less for the vehicles than they would otherwise have brought is a position with which we agree. In the smaller article Missouri Attorney General Ashcroft also states:

"The closed pool prevents insurance companies from getting the best price possible for wrecked vehicles. In such situations customers usually are forced to pay for the losses through higher insurance rates."

This is also a position with which we agree.

Because there is not a significant public policy reason to enact section 4(w)(2)(B) and because we believe that the right to free and open competition should be protected, we respectfully request that section 4(w)(2)(B) be amended as follows:

"(2) No person licensed as a salvage vehicle pool under this act shall:

(B) be prohibited from selling sell a salvage vehicle to any person licensed as a salvage vehicle dealer under this act ~~unless sales tax is collected, unless otherwise exempted from sales tax by law.~~

- Please note that proposing this change does not indicate support for the bill. We believe this will improve the bill but oppose passage of the bill for numerous reasons.

Attachment

# State sues five city firms for trade conspiracy

By BARBARA CLAUSER  
The Leader & Press

Five Springfield salvage operations are accused of engaging in conspiracy in restraint of trade in an injunction suit filed in Greene County Circuit Court today by the state attorney general's office.

The defendants, who are accused of being co-conspirators with other persons not listed as defendants, have committed such acts as agreeing to boycott any salvage pool which al-

lowed rebuilders and others to freely compete with the salvage dealers on the purchase of vehicles, the suit alleges.

Firms listed as defendants are Rogers Auto Salvage, 1853 W. Kearney; All Parts Auto Salvage, 2600 Benton; Nichols Street Auto Salvage, 3563 W. Nichols; Springfield Salvage Pool, 3607 W. Division; and The Ozark's Salvage Pool, 3537 W. Nichols.

Spokesmen at the first four firms declined to comment at present. The

Rogers company spokesman referred a reporter to his attorney, Bert Twibell, but Twibell was out of his office. The owner of the fifth firm was not in his office.

The petition alleges that the defendant salvage dealers and co-conspirators have committed such acts as threatening to boycott salvage pools which did not agree to refuse to deal with rebuilders and others.

Insurance companies and others selling motor vehicles through sal-

vage pools have been deprived of free and open competition in the sale of vehicles and have received less for the vehicles than they would have received in the absence of the alleged conspiracy, the suit alleges.

The suit explains that when a motor vehicle becomes inoperable, the vehicles generally are disposed of by sale to a salvage dealer or rebuilder. The majority of such disposals are carried out by vehicle insurance companies.

It has become the practice of a number of insurance companies to engage salvage pools to act as their agents for solicitation of bids on the vehicles to which such firms have acquired the salvage rights, the suit says.

When an insurance company engages the services of a salvage pool, the salvage pool will pick up the inoperable vehicle and haul it to its place of business. Periodically the pool will send out lists of vehicles which it has in its possession, asking for bids.

Persons wishing to bid will obtain bid form from the pool but submit it bid directly to the insurance company who has salvage rights in the vehicle. The insurance firm selects a bidder, notifies the salvage pool of its selection and the pool collects a flat fee for its services from the successful bidder when they transfer possession of the vehicle to the successful bidder.

The petition was filed by Assistant Attorney General Max L. McClanahan of the antitrust division.

## Ashcroft, salvage firms agree

JEFFERSON CITY (AP) — Attorney General John Ashcroft says an agreement has been reached between the state and two Springfield auto salvage operations accused of violating Missouri's antitrust laws.

Under the agreement, Nichols Street Auto Salvage will pay a \$2,200 fine and The Ozarks' Salvage Pool will be prohibited from refusing to do business with anyone "except for valid business reasons," Ashcroft said Wednesday.

The two firms were among five Springfield auto salvage companies accused of operating a "closed" salvage pool, in which the companies allegedly attempted to restrict competition by refusing to do business with certain firms.

Ashcroft, whose office reached a settlement with the other three firms last month, said the closed pool prevents insurance companies from getting the best price possible for wrecked vehicles. In such situations, he said, consumers usually are forced to pay for the losses through higher insurance rates.

The latest agreement, filed in Greene County Circuit Court, also prevents Nichols Street and Ozarks' from making an agreement which restricts competition in the auto salvage market, Ashcroft said.

SEN TRAMS 3/11/84