

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~xxx~~/p.m. on February 20, 1985 in room 519-S of the Capitol.

All members were present except: Representatives Brown and Spaniol, excused.

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Office of the Revisor of Statutes
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Representative Mary Jane Johnson
Ms. Janet Vorbeck, Kansas City, Kansas
Mr. George Sterling, Hays, Kansas
Mr. Wayne Hundley, Kansas Attorney General's Office
Mr. Bob Barefield, Eldorado Motor Corporation
Mr. Pat Barnes, Kansas Motor Car Dealers Association

The meeting was called to order by Chairman Crowell and the first order of business was a hearing on HB-2124 concerning automobile warranties, commonly known as the "Lemon Law".

Representative Mary Jane Johnson, principle author of the bill, briefed the Committee on its contents.

Representative Patrick asked how this bill will save litigation. Representative Johnson replied that it will mainly speed things up by not having to go under the Consumer Protection Act.

Ms. Janet Vorbeck testified in favor of HB-2124 and gave a personal account of a vehicle purchased by her which turned out to be a "lemon".
(See Attachment 1)

Mr. George M. Sterling, Hays, Kansas, testified in favor of HB-2124. He also gave a personal account of cars purchased by his family which were troublesome and classified by him as "lemons".

Mr. Wayne Hundley of the Kansas Attorney General's Office testified in favor of HB-2124. (See Attachment 2)

Mr. Bob Barefield of the Eldorado Motor Corporation was the next conferee and spoke in opposition to HB-2124. He contended that there are enough laws in existence to handle matters dealing with automobile warranties. He said the Consumer Protection Act and the Uniform Commercial Code are adequate.

Mr. Pat Barnes of the Kansas Motor Car Dealers Association testified in opposition to HB-2124. (See Attachment 3) He stated that their membership endorses the concept of HB-2124 with certain changes.

Representative Knopp asked if Mr. Barnes was suggesting the statute of limitations should be reduced to either 6 months or 1 year from the date of original delivery whichever is earlier. Mr. Barnes said 6 months following the expiration of the expressed warranty term or 1 year from the date of sale. Mr. Barnes added one of the reasons for this is that if a car is driven for a year, the owner is going to know if something is wrong with the car.

The hearing on HB-2124 was concluded.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on February 20, 1985

The Chairman appointed a subcommittee consisting of Representatives Knopp as chairman, Adam, Patrick, Campbell and Moomaw.

The meeting was adjourned at 3:00 p.m.



Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 2-20-85

PLEASE PRINT

| NAME | ADDRESS | COMPANY/ORGANIZATION |
|--------------------------|-----------------------------|-------------------------------------|
| Wayne Hindley | Topeka | A.G. |
| DAN LABOZ | Lawrence | K.A.N.U. |
| Ernest Stuber | Ways Kansas | <input checked="" type="checkbox"/> |
| Janet Dorbeck | K.C. Ks | <input checked="" type="checkbox"/> |
| Lori Terrell | K.C. Ks | <input checked="" type="checkbox"/> |
| JIM SUGGINS | Ks. MOTOR CAR DEALERS ASSN | |
| HAT BARNES | Ks Motor Car Dealers Assn - | Topeka |
| WALT DARLING | TOPEKA, Ks | DIVISION OF BUDGET |
| RAUL R. GUEVARA | Topeka | KDOT |
| Chris Stralman | Topeka | Waburn V. |
| Tom Smith | " | Ks Bar Assn |
| Tom Reagon | " | Ks of Handmade |
| MIKE BEAM | " | Ks LUSTIG ASSN |
| CHARLES BELT | WICHITA | WICHITA CHAMBER OF COMMERCE |
| Jim McBride | Topeka | United Way |
| Michael Joty | Lawrence | UDK |
| Keb Hodge | Topeka | KCCI |
| Tom Whitaker | Topeka | Ks Motor Carriers Association |
| Mary E. Thompson | Topeka | Kansas Motor Carriers Assn. |
| Bruce W. Barfield | Minneapolis Ks | Eldorado Motor Corp |
| R. B. Barfield | Minneapolis Ks | Eldorado Motor Corp |
| Larry Bertrand | " " | " " " |

My name is Janet Vorbeck. My husband, Thomas Vorbeck, and I purchased a 1985 4x4 Silverado Chevy pickup from Jay Wolfe Chevrolet on October 27, 1984.

We didn't just wake up this day and decide to spend \$17,000 on a new truck. We had given it a lot of thought and planning before making such a big decision. After visiting several car lots we found the truck we wanted at Jay Wolfe Chevrolet on October 27, 1984. We were very excited about our new truck and couldn't wait to get it home.

I would like to note at this time that we felt by purchasing the most expensive truck available, we would be getting their best quality equipment.

On Monday, October 29, 1984, we went to pick up our new truck. To our disappointment, they had not undercoated it. So we made an appointment to bring it back the next morning on our way to work. They told us it would be ready by 3:00. A friend dropped me off to pick it up at 3:30. It was not ready. I waited for 2 hours so I could bring it home.

We called and made an appointment for November 14, 1984.

- Our problems were:
- (1) Very spongy soft brakes
 - (2) Truck hesitates between 35-45 m.p.h.
 - (3) Needs paint under dash

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Attach - 1

Their solutions were: (1) Bleed brakes
(2) Normal (torque converter kicking in)
(3) Repainted under dash

We called for an appointment November 26, 1984.

Problems: (1) Engine still hesitates
(2) Bad howling noise in radio

Solutions: (1) Adjusted timing from 0 degrees to 4 degrees
(2) Repaired radio

We called for an appointment December 20, 1984.

Problems: (1) Vibration in truck at 55 m.p.h.
(2) Bad squeak right side

Solutions: (1) Mechanic informed us that the truck has a major vibration.
They needed the truck for 3 days to pull out the driveshaft
and send it off to be fixed. They recommended to bring it
back the day after Christmas.

(2) Oiled right front springs

We called for an appointment December 26, 1984.

Problems: (1) Vibration
(2) Creaking noise, right door

Solutions: (1) No problem found. They said, "The vibration was just
the nature of the truck.

(2) Oiled door

After 4 trips to have our truck worked on, we still have all the same
problems.

We called for an appointment January 15, 1985.

Problems: (1) Windshield wipers come on every time you start the truck.

- Problems: (2) Windshield washer does not work
(3) Squeak in right door
(4) Cuts out (misses) at highway speeds

- Solutions: (1) Replaced control module
(2) No problem found
(3) No problem found
(4) No problem found

Still all the same problems as before

We called for an appointment January 25, 1985. My husband took off a day of work to get our truck fixed. We had to call a tow truck because the truck would not start. We personally talked to Cindy Wolfe and Wayne Brewer, we told them all we wanted was our truck fixed.

- Problems: (1) Truck won't start
(2) Vibration 45-55 m.p.h.
(3) Noise in brakes
(4) Engine pings
(5) Squeak in right side

- Solutions: (1) Replace gas valve
(2) No problem found
(3) No problem found
(4) No problem found
(5) No problem found

We called for an appointment January 29, 1985. My husband took off work early and met with Stan Micheals and Ed Farley. He personally showed them all the problems. At this time we felt sure that the truck would be fixed this time.

- Problems: (1) Squeak in right door
(2) Noise in brakes (pedal goes almost to floor)
(3) Pinging and misfiring

My husband personally showed them each problem and they agreed to the problems.

- Solutions: (1) Repositioned fender shims
(2) No problem found
(3) Repaired wiring

After all this, our truck still has all problems as before.

At this point we were scared. We have \$17,000 invested in a truck that vibrates, pings, backfires, has spongy brakes, squeaks and rattles. And they tell us no problem found. We called the zone man at General Motors. They said they would be on the case. There has been no reply from them. We called the Consumer Protection Agency, they informed us the Attorney General's Office handles this. They said they would take the case and sent us out a complaint form but advised us to get our own attorney to save time. So that's what we did. February 6, 1985, we called for an appointment with David McLain. He is now representing us. We had to give him a \$200.00 retainer to start proceedings. After talking with us he drove the truck. He feels there is a problem. We told him we felt it was dangerous and unsafe to drive. So it is parked in our driveway and has been since February 6, 1985. My husband said he didn't want his family to have an accident because of the truck, just to prove to them that there is a problem.

Our lawyer called Stan Micheals and made him aware of our dissatisfaction and the danger involved. Enclosed is a letter he wrote to Stan Micheals on February 12, 1985. At this time there has been no attempt on their part to satisfy or make any adjustment to us for our imposition. In the meantime,

we have a \$17,000.00 anchor sitting in our driveway and my husband is still without a truck for work.

How much more money do we have to spend and how much more time do we have to lose before we get this matter settled? We cannot put a price tag on the grief and embarrassment this situation has put us through.

After going through all of this and realizing what a gamble it is to buy a new automobile in the State of Kansas and seeing how unprotected we are, I will never buy a new automobile in the State of Kansas again.

We feel that the Lemon Law is a must.

WHITE & GRONEMAN, CHARTERED

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OF COUNSEL:
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CLARENCE R. WIETHARN
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EDWARD J. WHITE

GEORGE A. GRONEMAN

REPLY TO [] JO CO [] WY CO.

WYANDOTTE COUNTY OFFICE
PARKWAY BUILDING, SUITE 6
8047 PARALLEL PARKWAY
KANSAS CITY, KS. 66112
(918) 584-0220

OF COUNSEL:
DAVID R. MCLAIN

February 12, 1985

Mr. Stan Michaels
Jay Wolfe Chevrolet, Inc.
7707 State Avenue
Kansas City, Kansas 66112

RE: JANET & THOMAS VORBECK, 1985 Silverado 4 x 4,
Number 1GCEK14H3FS114206

Dear Stan,

Please be advised that I have been retained by Janet and Thomas Vorbeck in regards to the above-captioned automobile. They have informed me that they are not satisfied with the 1985 Silverado 4 x 4 in that they believe it is dangerous to operate. For that reason alone, they are not driving the vehicle. In addition, I have been informed that the vehicle has been in your service department on numerous occasions. I have in my possession eight (8) repair orders and Mr. Vorbeck indicates to me that this is not the total number of trips to the service department.

I want you to know that my clients are very sincere in their desires to see that their interests are protected. Whatever the final solution may be, I believe it would be in your best interest, as well as my clients, if we were to meet to discuss this matter that we may reach an amicable conclusion.

If you have any questions or comments, please contact me.

Sincerely,

David R. McLain,
Attorney at Law

DRM/mj
Enc.

2/20/85
Attachment 2

BEFORE THE HOUSE TRANSPORTATION COMMITTEE
REGARDING H.B. 2124 CONCERNING AUTOMOBILE
WARRANTIES (LEMON LAW)

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association.

Our membership endorses the concept of this bill, but would offer recommendations and amendments for your consideration.

Under current Kansas law, consumers have several remedies by which they may seek restitution from a manufacturer or dealer if the consumer feels the product purchased is substandard.

First of all, agencies such as the Better Business Bureau have formed informal third party arbitration panels which review consumer complaints against manufacturers. General Motors and American Motors Corporations have endorsed the Better Business Bureau program as their formal third party arbitration panel. Ford and Chrysler currently have similar arbitration or complaint resolution systems. Import manufacturers are also working with the Better Business Bureau or are setting up their own programs.

We feel that the third party mediation panel fairly resolves disputes of this type, and would also point out that House Bill 2124 contains language in Section 1, (f), that requires a consumer to follow such arbitration procedures if one has been established by the manufacturer.

Second, under the Uniform Commercial Code a customer can enforce the warranty he is provided by the manufacturer as well

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as the implied warranties provided by this law. The customer can also revoke his acceptance of the vehicle in certain cases to receive a refund.

Finally, the Kansas Consumer Protection Act can be invoked in appropriate cases.

Should this committee and should this legislature feel it necessary to enact this law, we would like to ask for certain amendments to the bill as it is currently written. Attached to this written statement is a balloon indicating our suggested amendments. These amendments would clear up what we feel to be some problem areas in interpretation as well as areas which we feel should be addressed or specified.

I will briefly, with your permission, review these recommended amendments:

On line 0025, following the word "vehicle", strike the comma and insert "normally used for personal, family, or household purposes", and on line 0026 following "transferred" insert "for the same purposes".

We feel this change is necessary as it limits this act to the "family" car. We can see problems on the horizon if this act included commercial vehicles. The normal abuse a commercial vehicle, such as a large truck, is subjected to on a daily basis could cloud a complaint to the degree that it might be impossible to determine if the defect was a manufacturer's defect, normal wear and tear, or abuse by the owner. The change in line 0026 is

technical so that the sentence conforms with the amendment on line 0025.

On line 0073 we would suggest striking "calendar" and inserting "business" to allow the manufacturer, its agent or authorized dealer more time to make the necessary repairs or adjustments.

On line 0078, following "disaster" we would suggest that a new sentence be added reading: "In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct notification from or on behalf of the consumer and an opportunity to cure the defect alleged."

This is a point of clarification. We feel that the consumer should have the responsibility to contact the manufacturer directly informing them of the defect and giving the manufacturer ample opportunity to cure the defect, if one actually exists. It is possible that a problem might occur with a vehicle which a dealer, especially a small dealer, might not be able to correct, but that would be correctible if the factory had the opportunity to have one of their service representatives work on the problem.

A new subsection (g) should be inserted to read as follows: "Any action brought under this act shall be commenced within six (6) months following (1) expiration of the express warranty term or (2) one (1) year following the date of original delivery of the motor vehicle to the consumer, whichever is the earlier date."

This is simply a statute of limitations whereby the consumer must begin any action within the prescribed time.

Finally, we would ask for the insertion of a subsection (h) which would essentially read as follows: "Any consumer must proceed under the provisions of this act and shall use the remedy provided hereunder and shall not be entitled to use those remedies provided under the provisions of Chapter 84 of the Kansas Statutes Annotated, and amendments thereto."

If different language is preferred we can recommend the language in the Missouri version of this act. Conformed to the Kansas Act it would read: "The provisions of K.S.A. 84-2-602 to K.S.A. 84-2-609, and amendments thereto, shall not apply to sales of new motor vehicles and such sales shall be governed by the provisions of [this Act]."

This exclusion is needed in the interest of fairness. If this law is truly designed to provide a remedy for problems consumers are faced with today, then the remedies provided under the Uniform Commercial Code in this state should be considered unneeded. In addition, in the interest of fairness a dealer should not be subjected to numerous claims under co-existing legal theories for the same defect.

Mr. Chairman and Members of the Committee, we hope that if you decide Kansas needs this legislation, you will amend H.B.

2124 to conform with the above suggestions.

Thank you for your time and attention, and I will be happy to attempt to answer any questions you may have.

HOUSE BILL No. 2124

By Representatives Johnson, Adam, Baker, Barr,
Blumenthal, Branson, Brown, Dillon, Fox, Fuller, Guldner,
Jenkins, Justice, Laird, Moomaw, Sifers, Sutter
and Whiteman

1-31

0020 AN ACT concerning motor vehicles; automobile warranties;
0021 commonly called the lemon law.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. (a) As used in this act:

0024 (1) "Consumer" means the purchaser, other than for purposes
0025 of resale, of a motor vehicle; any person to whom such motor
0026 vehicle is transferred during the duration of an express warranty
0027 applicable to such motor vehicle, and any other person entitled
0028 by the terms of such warranty to enforce the obligations of the
0029 warranty; and

0030 (2) "motor vehicle" means a passenger motor vehicle which
0031 is sold in this state.

0032 (b) If a new motor vehicle does not conform to all applicable
0033 express warranties, and the consumer reports the nonconformity
0034 to the manufacturer, its agent or its authorized dealer during the
0035 term of such express warranties or during the period of one year
0036 following the date of original delivery of the motor vehicle to a
0037 consumer, whichever is the earlier date, the manufacturer, its
0038 agent or its authorized dealer shall make such repairs as are
0039 necessary to conform the vehicle to such express warranties,
0040 notwithstanding the fact that such repairs are made after the
0041 expiration of such term or such one-year period.

0042 (c) If the manufacturer, or its agents or authorized dealers,
0043 are unable to conform the motor vehicle to any applicable ex-
0044 press warranty by repairing or correcting any defect or condition
0045 which substantially impairs the use and value of the motor

normally used for personal, family, or household purposes,

for the same purposes

0046 vehicle to the consumer after a reasonable number of attempts,
0047 the manufacturer shall replace the motor vehicle with a compa-
0048 rable motor vehicle under warranty or accept return of the
0049 vehicle from the consumer and refund to the consumer the full
0050 purchase price including all collateral charges, less a reasonable
0051 allowance for the consumer's use of the vehicle. Refunds shall be
0052 made to the consumer, and lienholder if any, as their interests
0053 may appear. A reasonable allowance for use shall be that amount
0054 directly attributable to use by the consumer and any previous
0055 consumer prior to the first report of the nonconformity to the
0056 manufacturer, agent or dealer and during any subsequent period
0057 when the vehicle is not out of service by reason of repair. It shall
0058 be an affirmative defense to any claim under this act (1) that an
0059 alleged nonconformity does not substantially impair such use
0060 and value or (2) that a nonconformity is the result of abuse,
0061 neglect or unauthorized modifications or alterations of a motor
0062 vehicle by a consumer.

0063 (d) If the manufacturer receives actual notice of the noncon-
0064 formity, it shall be presumed that a reasonable number of at-
0065 tempts have been undertaken to conform a motor vehicle to the
0066 applicable express warranties, if (1) the same nonconformity has
0067 been subject to repair four or more times by the manufacturer or
0068 its agents or authorized dealers within the express warranty term
0069 or during the period of one year following the date of original
0070 delivery of the motor vehicle to a consumer, whichever is the
0071 earlier date, but such nonconformity continues to exist or (2) the
0072 vehicle is out of service by reason of repair for a cumulative total
0073 of 30 or more calendar days during such term or during such
0074 period, whichever is the earlier date. The term of an express
0075 warranty, such one-year period and such thirty-day period shall
0076 be extended by any period of time during which repair services
0077 are not available to the consumer because of war, invasion,
0078 strike, fire, flood or other natural disaster.

0079 (e) Nothing in this act shall in any way limit the rights or
0080 remedies which are otherwise available to a consumer under any
0081 other law, except as hereafter provided.

0082 (f) If a manufacturer has established an informal dispute

business

In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct notification from or on behalf of the consumer and an opportunity to cure the defect alleged.

0083 settlement procedure which complies in all respects with the
0084 provisions of title 16, code of federal regulations, part 703, as
5 from time to time amended, the provisions of subsection (c) of
0086 this section concerning refunds or replacement shall not apply to
0087 any consumer who has not first resorted to such procedure.

0088 | Sec. 2. This act shall take effect and be in force from and
0089 after its publication in the statute book.

(g) Any action brought under this act shall be commenced within six (6) months following (1) expiration of the express warranty term or (2) one (1) year following the date of original delivery of the motor vehicle to consumer, whichever is the earlier date.

(h) Any consumer must proceed under the provisions of this act and shall use the remedy provided hereunder and shall not be entitled to use those remedies provided under the provisions of Chapter 84 of the Kansas Statutes Annotated, and amendments thereto.