

Approved 2-12-96
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m./p.m. on February 6, 1986 in room 254-E of the Capitol.

All members were present ~~except~~.

Sen. Doyen was excused.

Committee staff present:

Ben Barrett, Legislative Research Department
Hank Avila, Legislative Research Department
Louise Cunningham, Secretary

Conferees appearing before the committee:

Sen. Eric Yost
Jim Sullins, Kansas Motor Car Dealers Association
Dick Hatfield, Augusta, Dick Hatfield Chevrolet
Joe Self, Wichita, Joe Self Chevrolet
Bill Edds, Department of Revenue
Steven Wiechman, Kansas Automotive Dismantlers and Recyclers Association

On a motion from Sen. Norvell and a second from Sen. Hoferer the Minutes of February 5, 1986 were approved. Motion carried.

HEARING ON S.B. 470 - Bond required for certain dealers.

Sen. Yost said this bill would require new or used car dealers to be bonded for \$25,000. There had been problems in Wichita with cars that had been in floods or had other problems and the consumer had no recourse. There have been no problems with new cars but under this bill all dealers would have to be bonded. It would protect the consumer.

Jim Sullins, Kansas Motor Car Dealers' Association, said S.B. 321 which passed last year had this provision in the bill but it was taken out by the House Transportation Committee. They felt that too many dealers would be put out of business, but Mr. Sullins said if they had a problem getting bonded, they shouldn't be in the business. It would probably cost them \$200 to \$300 per year. Mr. Sullins also said there was a problem in this area with brokers. They do everything a used car dealer does but do not bear any responsibility. A copy of his statement is attached. (Att. 1).

Dick Hatfield, Hatfield Chevrolet, said car dealers are upgrading their business and are trying to clean up their act. Some dealers sell one or two cars and never back them up and are giving the business a bad name. It reflects on all dealers. Mr. Hatfield said most dealers in the state are good dealers and this bill would help them and it would help the consumer. Oklahoma has cleaned up the situation with a similar bill. He said many cars had been sold in the Wichita area that had been in floods. They cannot be sold in their own state and are often shipped to Kansas and are sold by a broker.

Joe Self, Joe Self Chevrolet, said it would cost \$200 or \$300 to get a bond and the insurance company would look at the applicant's financial responsibility. If they can't get bonded they shouldn't be in business. There is no protection for the consumer.

Some members of the committee said they would like to see the bond. Would the consumer be protected?

One member said Wichita and the larger areas might have complaints but he wondered how this would affect his district. Many small dealers are decent people and he would have to know more about how it would affect them.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m.~~p.m.~~ on February 6, 1986.

Bill Edds, Department of Revenue, said he had some questions about who is going to be responsible for representing the injured party and who is going to make demand on the bond. If the Department of Revenue has to do it, it will put a big load on his legal staff. Perhaps the injured party can bring his own lawsuit. He said he was not opposing the bill but there are some problems that would need to be addressed. He said he supported Mr. Sullin's proposed amendment on line 137 of the bill to strike the words "amount and with such sureties". He also requested that if the bill is passed the effective date be changed to January 1, 1987.

Steven Wiechman, Kansas Automotive Dismantlers and Recyclers Association, said that bonding is a partial step toward protecting consumers and they support S.B. 470. A copy of his statement is attached. (Att. 2).

The Chairman appointed a subcommittee for S.B. 470. They are Sen. Walker, Chairman; and Sen. Francisco and Sen. Hoferer.

The Chairman said he had spoken to the Sedgwick County Treasurer and there were concerns regarding the license plate issue. He suggested they express their concerns before the House Committee and this committee would have an informational meeting on the subject later on.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-6-86 Place 254-E Time 9:00

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
A. W. Klein	RR # Augusta, Kansas	
Joe Self	8801 E. Kellogg Wichita, Ks.	Joe Self Chevrolet
Jim Sullins	KS. Motor Car Dealers Assn	Topeka
Dick Hatfield	9109 Peppertree Cr	Dick Hatfield Sher
Pat Barnes	Topeka	Wichita
Narrod B. Funt	"	Ks. Motor Car Dealers Assn.
Bill Eddy	"	Dept of Rev
Steven Wiechman	"	" " "
Pat Wiechman	Topeka	K.A.D.R.A.
Eric Yost	Topeka	K.A.D.R.A.

STATEMENT BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION & UTILITIES

BY THE

KANSAS MOTOR CAR DEALERS ASSOCIATION

THURSDAY, FEBRUARY 6, 1986

SENATE BILL 470

Mr. Chairman and Members of the Committee, I am Jim Sullins, Executive Vice President of the Kansas Motor Car Dealers Association, the state trade association representing 392 franchised new car and new truck dealers in Kansas. We appreciate this opportunity to come before you this morning in support of Senate Bill 470, which would require all new and used vehicle dealers in Kansas to post a \$25,000 surety bond prior to engaging in the vehicle business in Kansas.

During the 1985 Session, this Committee and many interested parties spent a great deal of time addressing some of the problems which surrounded the motor vehicle industry in Kansas. Senate Bill 321 mainly addressed the use of dealer tags, but in its original form, the bill addressed several other areas, all of which centered around the licensing of motor vehicle dealers in Kansas. One of the issues addressed was the requirement of a prospective dealer posting a bond prior to becoming a dealer and then maintaining that bond while that dealer remained engaged in the vehicle business. This Committee approved language last year which would have required a \$20,000 bond, but the language was deleted by the House Transportation Committee. We come before you again this year supporting the enactment of this requirement as we see it as a vital step in protecting both the consumers and dealers of Kansas as well as the wellbeing of the State.

AKch. 1
S.T.U 2/6/86

The change SB 470 makes to K.S.A. 1985 Supp. 8-2404 is found on lines 133 through 142 on page 4. Briefly, the language requires that every "applicant or licensee" applying to be a new or used vehicle dealer would be required to furnish and maintain a \$25,000 bond conditioned on the applicant or licensee complying with the provisions of the statutes applicable to the licensee, which in this case is the dealer licensing law, K.S.A. 8-2401 et. seq.

By being required to have a bond, dealer accountability will be fostered. It will ensure that a consumer damaged by an unscrupulous dealer in one way or another could obtain relief by suing on the dealer bond. For example, if a dealer sold a vehicle to a consumer, and it was later found that the dealer had misrepresented the vehicle in some manner, the consumer would have recourse against the bond if that dealer was no longer in business, bankrupt or insolvent. The case of a fraudulent transaction would also be covered under the bond.

We believe that consumers will have more confidence in buying an automobile if they know that the dealership is bonded and that recourse is available.

Secondly, we feel that a bonding provision is vitally necessary to assist in preventing the so-called "fly-by-night" dealers from being licensed to do business in Kansas. We have all heard the horror stories and have seen street-corner dealerships come and go almost daily. At present, consumers who buy from those dealers who no longer exist have no protection for the vehicles they purchased.

So often during the debate on SB 321 last year we heard that the

motor vehicle industry in Kansas needed to be "cleaned-up" and that we needed to get all of those d-tags off the street. Major steps were taken to "clean-up" the industry, and requiring a dealer bond is the next step. Simply raising the price of the d-tag will not completely do the job.

If this Legislature truly wants to clean-up the motor vehicle industry in Kansas then it must ask one question: "Are we wanting to protect the Consumers of Kansas or the possibly unscrupulous dealers?" I think you would agree that your main concern should be the consumer, and I can guarantee you that the consumer is our main concern.

Our best information is that a \$25,000 bond would cost \$200-\$300 per year. Many other states require bonding including our neighbors in Missouri and Oklahoma. Any bond applicant with good character and some financial security would be able to acquire a bond. Granted, there might be some applicants who would not be able to qualify for a bond as we are sure that the issuing insurance company will screen the applicant very closely. However, if an insurance company is not willing to bond an applicant, do we want that person selling vehicles to the consumers of Kansas? Do we want our citizens exposed to possible losses on a major purchase and have no recourse? The franchised dealers of Kansas strongly answer "NO" to both of these questions, and ask you to do the same by favorably reporting SB 470 to the full Senate.

Mr. Chairman and Members of the Committee, before we close this morning, we do have a couple of suggestions concerning the language found on line 133 through 142.

First, on line 137, we would suggest that following the comma, the words, "amount and with such sureties" be stricken. We feel this is a simple duplication of verbage and is not necessary. Deleting those five words would make the line read, "... a bond in such form, as the director approves, in the amount of \$25,000....."

Secondly, on line 135 we would suggest that the work "motorcycle" and "other non-motorized vehicles" be stricken. Effectively, this would mean that motorcycles and trailer dealers would also be required to post the bond. Our reason for this is that in K.S.A. 8-2401, the definition section of the dealer licensing act, a "Vehicle" is defined as any device "in, upon, or by which any person or property is or may be transported or drawn upon a public highway.....except that such term shall not include motorized bicycles or mobile homes." Additionally, a "Used Vehicle Dealer" is defined as "....any person actively engaged in the business of buying, selling, or exchanging used vehicles." Motorcycle and trailer dealers, whether they are licensed as a "new" or "used" dealer, may sell not only motorcycles and/or trailers, but may also sell used cars and trucks under their licenses. In the same right, new or used car and truck dealers may also sell used motorcycles and/or trailers. If those two groups are exempted, then a loophole in the law will be created. An applicant could contend that they wanted to sell used motorcycles to get around the bond, and then legally sell used cars and trucks. Also, we think the Department of Revenue would have even bigger problems in the fact that by definition, different types of dealers (i.e. car, truck, motorcycle, trailer) are not specifically classified and licensed. Under the current statutes, a used vehicle dealer may sell any used vehicle, which would make the bonding provisions totally unenforceable and useless.

By pointing this out, we are not suggesting that various types of dealers be classified by what they are selling. As a matter of fact, we would oppose such a classification as up until 1980 we had such a system, and it did not work very well. The simple solution is to strike the language we have suggested, and not mess with rewriting K.S.A. 8-2401 et seq.

There is one other area which we would like to bring before you this morning which is not included in this bill in its present form. The state of Kansas allows "brokers" of vehicles to be licensed in Kansas. A broker by definition is someone who brings buyer and sellers of vehicles together as a middleman, agent or negotiator. In the pure sense of the word, a broker would list a vehicle as being "for sale" and find a prospective purchaser for that vehicle. Then, the actual buyer and seller would negotiate the transaction, and the broker would be paid a commission by the seller. Unfortunately, this is not the way things are working.

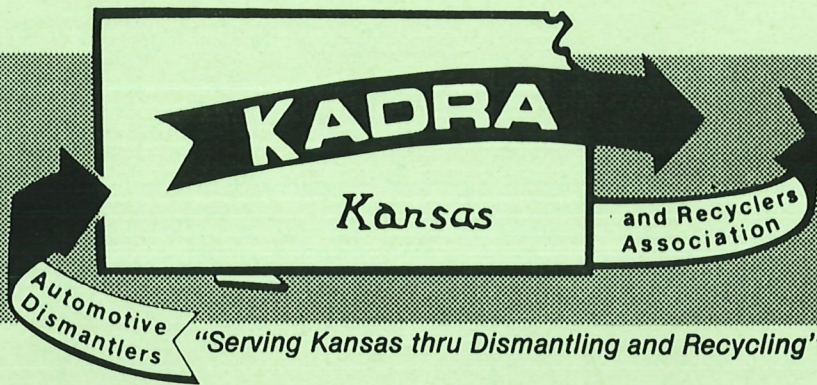
Brokers in Kansas are actually selling vehicles directly to consumers on behalf of other individuals. The brokers are demonstrating the vehicles, they are making representations concerning the condition of the vehicles, and they are doing everything that a used vehicle dealer does when a car is sold. But, there are several things which they are not doing which the used vehicles dealers must do. First, brokers do not collect sales tax. Since they never hold title to the vehicle they are technically not a "retailer" and consequently do not have to collect tax. Secondly, they are not putting the inventory tax stamps on those titles for the same reason as above; they don't own the vehicle. Thirdly, they are making representations about the vehicle, but at least to the best of our knowledge, are not held accountable for those representations as they are not the owner, and under the Consumer Protection Act, may not be a "supplier."

Brokers are not new. Several years ago brokering began in Kansas. In 1980, specific definitions were placed in the statutes in an effort to control brokering and provide guidelines. Over the years other states have been faced with the same questions, and several have acted in different manners. Most recently, a move to completely outlaw "brokering" has seemed to be the predominant manner of handling the situation, and states such as Texas, Oklahoma and Nebraska have totally eliminated brokering.

Effectively these states have taken the position that "consignment" sales of vehicles cannot be conducted in their states. They feel that if a vehicle is going to be sold, the seller should be the owner of the vehicle and should bear the responsibility. We feel that it is time that Kansas should also join in and eliminate this questionable class of dealer. If someone wants to be in the vehicle business, they should bear all of the ethical and legal responsibilities, and not be able to skirt those responsibilities by simply not "owning" the merchandise they are "selling."

To effect this change a new subparagraph (q) could be added on page 6 of SB 470 simply stating that it is against the public policy of this state to act as a broker.

Mr. Chairman and Members of the Committee, we thank you for the time you have afforded us this morning, and sincerely hope that you will give our suggestions strong consideration. We strongly support SB 470 in its present form, and feel that the changes suggested will benefit consumers and dealers alike.



PRESIDENT
Wayne Castle
Foreign Cars Unltd
Wichita, KS

SENATE TRANSPORTATION and UTILITIES COMMITTEE

February 6, 1986

VICE PRESIDENT
John Lewis
Lewis Auto Salvage
Topeka, KS

SENATE BILL NO. 470

SECRETARY/TREASURER
Evelyn Fateley
Hillside Auto Parts
Chanute, KS

SENATOR MORRIS, MEMBERS OF THE COMMITTEE:

LEGAL COUNSEL
Steven R. Wiechman
Topeka, KS

I am Steven R. Wiechman, representing the Kansas Automotive Dismantlers and Recyclers Association. K.A.D.R.A. wishes to express to you our support for SB 470.

DIRECTORS

Don Ely
Kingman Salvage
Kingman KS

Our association has been a long time advocate for self-regulation and increased credibility through proper control. We believe that bonding is a partial step toward instilling protection of consumers from unauthorized and improper activities of certain dealers. Although it does not effect our industry directly, we do not understand why motorcycle dealers have been excluded from the bonding requirement.

Jerry Inman
Hays Auto Parts
Hays, KS

Dale Lehning
A-One Salvage, Inc.
Haysville, KS

Gary Roth
Dodge City Salvage, Inc.
Dodge City, KS

Mark Warrell
A-OK Auto Salvage
Kansas City, KS

We would urge this Committee to pass SB 470, with a recommendation that it be passed by the full Senate.

Jerry Gray
G & R Motors
Wichita, KS

Ray Standifer
Standifer & Son Truck Recycling
Wichita, KS

Thank you for the opportunity to appear before you.

Respectfully submitted,

Paul Davis
A Plus Parts & Salvage
Wichita, KS

STEVEN R. WIECHMAN
Kansas Automotive Dismantlers &
Recyclers Association

Atch. 2
S. TU 2/6/86