Approved May 6, 1987
Date

MINUTES OF THE House COMMITTEE ON Transportation.

The meeting was called to order by Rex Crowell at
Chairperson

1:30 a.m./p.m. on February 17, 1987 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Jim Sullins, Kansas Motor Car Dealers Association
Mr. Pat Hubbell, Kansas Railroad Association
Mr. John Schierman, Kansas Department of Transportation

The meeting was called to order by Chairman Crowell and the first order of business was a hearing on HB-2203 concerning written disclosure of the fact a vehicle has been a leased or rented vehicle.

Representative Herman Dillon, principal sponsor of the bill, explained that HB-2203 would require an automobile dealer to so disclose in writing if a car had previously been a leased or rented vehicle.

Mr. Jim Sullins, Kansas Motor Car Dealers Association, testified concerning HB-2203. (See Attachment 1)

Mr. Sullins suggested amendatory language be added to allow for the unforeseen situations which cause no harm and also to provide some needed definitions.

The hearing on HB-2203 was concluded.

Chairman Crowell announced that the hearing on HB-2238 designating I-670 as the Jay Dillingham Memorial Highway, would not be held as the Senate has a similar bill and we will work theirs should the Senate pass it.

The next order of business was a hearing on HB-2239 concerning railroad right-of-way.

Mr. Pat Hubbell, Kansas Railroad Association, testified in support of HB-2239. (See Attachment 2)

Mr. Hubbell said HB-2239 would amend K.S.A. 1986 Supp. 66-525 to make two changes: 1) even though a railroad may have received abandonment authority a rail line will not be deemed abandoned for purposes of the statute so long as the railroad or some other entity "continues to use the right-of-way for railroad purposes."; and 2) to more precisely identify the class of property which is subject to the provisions of the statute.

MINUTES OF THE House COMMITTEE ON Transportation,

room 519-S, Statehouse, at 1:30 ~~a~~p.m./p.m. on February 17, 19 87

Chairman Crowell asked what are the reversionary rights when a municipality grows up around a railroad, which did not exist at the time the railroad was built. Mr. John Schierman, Kansas Department of Transportation responded by saying it would be very difficult to generalize, but railroad rights-of-way would be reversionary in most situations.

Mr. John Schierman, Kansas Department of Transportation, testified in favor of HB-2239.

The hearing on HB-2239 ended.

Chairman Crowell appointed a subcommittee to further study HB-2203 consisting of Representative Dillon, Chairman and Representatives Smith and Shore.

The meeting was adjourned at 2:20 p.m.

Rex Crowell

Rex Crowell, Chairman

COMMITTEE: Transportation DATE: 2-17-87

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Pat Hubbell	Topeka	Kansas RR Assn
Leroy Jones	Overland Park	B. L. E.
Jim Sullins	Topeka	Ks Motor Car Dealers Assn
Pat Barnes	"	" " "
Paul W. Matthews	Okla City, OK	Highway Users Federation
Mike Germann	Topeka	Ks Railroad Association

Statement Before The

HOUSE COMMITTEE ON TRANSPORTATION

by the

KANSAS MOTOR CAR DEALERS ASSOCIATION

Tuesday, February 7, 1987

RE: House Bill 2203

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 370 franchised new car and new truck dealers in Kansas.

I appreciate the opportunity to come before you today to address the provisions within House Bill 2203. While I cannot say we are a proponent of HB 2203 in its present form, I don't believe that we are really an opponent either, as I hope you will see from my testimony.

House Bill 2203 amends a section of the statutes which was added last year in conjunction with a request from the school districts that dealers be allowed to provide schools drivers ed vehicles on dealer tags. During the Committee discussion, an amendment was offered to require dealers to disclose to prospective purchasers that the vehicle had been a drivers ed vehicle.

House Bill 2203 adds further to that disclosure requirement, as you can see on line 0028 of the bill, to include that the vehicle was used "...as a lease or rental motor vehicle..." Also, on line 0026, the disclosure is required to be "in writing."

Attach. 1

The major concern which KMCDA has with this bill is the narrowness in which it is drawn. In its present form, KMCDA believes that the bill is totally unworkable and places a burden on new and used vehicle dealers which will make compliance virtually impossible and possibly very expensive.

The statute, if HB 2203 in its present form becomes law, would clearly require a written disclosure to any purchaser that a vehicle had been previously leased or rented. This narrow requirement would place a tremendous burden on dealers as they might not know if a vehicle had been previously leased or rented, thereby making it impossible to make the disclosure.

To help explain the problem, let me give you a few examples as to how problems could occur assuming the bill has already become law.

First, let's look at the situation where someone bought a lease car a couple of years ago. Originally, the vehicle was titled in the lease company's name, then when it was purchased by the lessor, the title was converted to his name. Now, Mr. Doe trades the vehicle into a dealer, either intentionally or unintentionally doesn't tell the dealer the vehicle was previously a lease vehicle, and the dealer sells the vehicle without the required disclosure. Even though the dealer has no way of knowing the vehicle had previously been leased, he has violated the law.

In our second example, a dealer from out of state has had a car in his in-house daily rental fleet. In that case, the vehicle was probably titled in the name of the dealership. At some point in time, the vehicle is taken to an auto auction and is sold to a Kansas dealer,

or, a wholesaler buys the vehicle from the out-of-state dealer and sells it to the Kansas dealer. The out-of-state title makes no reference to a rental, and the purchasing Kansas dealer has not been told by either the selling dealer or the wholesaler that the vehicle was used as a daily rental. As with the first example, the dealer sells the vehicle without disclosure and violates the law, even without intent or knowledge.

As our third example, I would like to discuss a situation similar to what I understand prompted this bill. On a regular basis, the major manufacturers have sales at auto auction of vehicles which the factories have been using. These sales are open only to dealers who hold franchises from the manufacturers having the sale. At these sales, dealers will be buying the "executive" or "brass hat" cars. For the most part, these are vehicles that have been used by factory management and the sales and service staffs of the regional and zone offices. At the same time, the manufacturers may include in the sales vehicles which the manufacturer has repurchased from major rental car companies such as Hertz, Avis and Budget, to name a few. These cars are ones which were sold to the rental car companies and were on a guaranteed buy-back by the manufacturer.

Generally, when the sale begins, there will be three or four sale lines going at one time. Unless you have been to an auto auction it is hard to visualize, but with three or four cars being auctioned at the same time, auctioneers calling the bidding, dealers shouting out bids, etc., it looks like mass confusion. In many cases, the dealers don't know if the car they're bidding on is a brass hat or a rental car, and things move so fast, it's hard to keep up.

To compound the situation, the factories usually don't deliver title to the dealer at the auction. The titles are all in Michigan or somewhere else in a central corporate office. When the vehicle is sold, the information is then forwarded to the central office, the title is assigned, and then mailed to the purchasing dealer. One can usually expect a several-week time lag before receiving title.

Now for a moment let's assume that the vehicle purchased by the dealer was a rental car. When the dealer leaves the auction he does not have a title or any other paperwork that indicates the vehicle was a Hertz car rather than a "executive" car. The car goes out on the lot and is sold to a customer with the guarantee that title will be delivered within the required 30-day period. The customer drives off happy and the dealer has made a sale. Three weeks later the title arrives from Detroit, and suddenly, the dealer discovers that the vehicle came from Hertz. Not only does he have a customer who may be upset that the dealer didn't tell him it was a rental company car, but he has also violated the disclosure portion of this bill.

Mr. Chairman and Members of the Committee, these are not "dream" situations. These very transactions occur everyday in dealerships all across this state.

Another problem which could occur deals with the lack of a definition of what is a leased or rented vehicle. In talking with the lead sponsor of the bill, I believe that his intentions were to include those vehicles which are "regularly" leased or rented, either under a long-term lease through some type of lending institution or on daily rental through Hertz, Avis, etc.

However, dealers have in-house, short-term rental operations which may or may not be intended to be covered. Two examples come to mind.

First, some dealers have a few vehicles which are used only as service loaners. If a service customer needs a vehicle while his is being repaired, the dealer will "loan" the customer a car for a nominal charge. In many cases a "rental agreement" is not filled out, the customer is simply given the vehicle and the additional charge is added to the repair bill. In my opinion, this type of activity would be included under the provisions of HB 2203, but I don't know if that was the intent.

Secondly, let's say that the dealer doesn't have specific set-aside vehicles. Maybe the operation is of a small enough size that the dealer can't justify doing this. However, one day a customer comes in for service and desperately needs a replacement vehicle for the day, or even for a couple of hours. The dealer, in an effort to keep his customer happy, let's him take one of the inventory cars and charges him $10-20 for the day. That evening, the vehicle is returned to inventory, and is sold at retail the next day. Is that a rental car under this bill? A good arguement could be made that it is.

While we understand, or at least we believe we do, what the author is trying to prevent with this bill, we strongly believe that serious consideration should be given to amending the bill to allow both the dealers and the courts, who will eventually have to interpret the act, some leeway rather than being limited to a strict interpretation.

There are several ways this could be accomplished, and probably all of them would require a major re-write of the bill as we now see it. As a matter of fact, the most appropriate thing to do might be to strike this entire section of the statute, and completely re-write this section of the act. It might not only be appropriate, it might be the only alternative.

We would suggest that the language necessary to accomplish what the author desired, yet be broad enough to allow for the unforeseen situations which cause no harm, would need to be in the form of a penalty provision of some type. For example, an amendment could read that it would be a violation of the act for a dealer to knowingly or intentionally fail to disclose that the vehicle had previously been used as a driver training vehicle or as a leased or rented vehicle. Additionally, a definition of both a lease vehicle and a rental vehicle should be included in K.S.A 8-2401, and possibly even the definition of a driver training vehicle.

Mr. Chairman and Members of the Committee, KMCDA does not condone the intentional or willful misrepresentation of any vehicle to a consumer. We continually counsel our 370 members to make full disclosure concerning anything they know about a vehicle prior to its sale. We have worked with state agencies to assist in getting the word out to dealers about this type of thing, and we will continue to work with anyone to assure that the consumers have adequate protection under Kansas law.

However, if a law becomes too stringent, then it chokes off business, and unfortunately, we believe this is the case with HB 2203 as it is now written.

We believe that the solution, or at least available remedies for consumers which have been injured, already exist in Kansas law. The Kansas Consumer Protection Act already prohibits the "intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled..." Additionally, dealers are subject to suspension, revocation or denial of renewal of their license if they are found to have "knowingly defrauded any retail buyer to the buyer's damage", "knowingly making a fraudulent sale or transaction", or, "willful misrepresentation, circumvention or concealment, through a subterfuge or device, of any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer."

Of course, to be granted relief under any of these provisions, the consumer would have to file suit against the dealer in a court of law, but the same would be true under the provisions of HB 2203, so consumers are getting no "quick fix" with this bill.

Mr. Chairman and Members of the Committee, we have tried to point out during my testimony the problems which we see with the bill, and at the same time, have offered solutions. While we feel that the current Kansas Consumer Protection Act and Dealer Licensing Act are adequate to protect the consumers, you may still believe that HB 2203 is necessary. If you do, we respectfully request that the language in the bill be amended to allow for the leeway which we have already discussed.

Thank you for your time and consideration, and I would be happy to stand for any questions.

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PATRICK R. HUBBELL
SPECIAL REPRESENTATIVE-PUBLIC AFFAIRS

MICHAEL C. GERMANN, J. D.
LEGISLATIVE REPRESENTATIVE

Statement of the
Kansas Railroad Association

Presented to the House Committee
on Transportation
The Honorable Rex Crowell, Chairman

Statehouse
Topeka, Kansas
February 17, 1987

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Mr. Chairman and Members of the House Committee on Transportation:

My name is Pat Hubbell. I am the Special Representative-Public Affairs for the Kansas Railroad Association. I would like to thank the Chairman and the Committee for giving me the opportunity to express the support of the Kansas Railroad Association for 1987 House Bill No. 2239.

1986 House Bill No. 2998 was enacted during the last session of the Legislature and is now codified at K.S.A. 1986 Supp. 66-525. The 1986 legislation arose out of the land sale practices of the trustee in bankruptcy for the Rock Island Railroad. The 1986 legislation was intended to establish an orderly and inexpensive means to clear title to abandoned railroad right-of-way.

Attach. 2

1987 House Bill No. 2239 would amend K.S.A. 1986 Supp. 66-525 to make two clarifying changes. The first proposed change appears in lines 34 and 35 of the bill. The existing language states that a rail line will not be deemed abandoned for purposes of the statute even though abandonment authority has been issued, if the railroad or some other entity "continues rail operations over the right-of-way." The proposed change would state that even though a railroad may have received abandonment authority a rail line will not be deemed abandoned for purposes of the statute so long as the railroad or some other entity "continues to use the right-of-way for railroad purposes."

K.S.A. 1986 Supp. 66-525 was not intended to force rail abandonments nor to close marginal branch lines. Its intent, as previously stated, was to establish an orderly and inexpensive means to clear titles. Although the existing language might be construed to permit the storage of cars and other equipment on lines which have been certified for abandonment by the Interstate Commerce Commission, the proposed language would remove any uncertainty. With the proposed change some rail lines certified for abandonment could be kept in a railroad's inventory for the purpose of returning to active status if new facilities were to locate on the lines or existing facilities were to return to rail shipping.

The second proposed change is intended to more precisely identify the class of property which is subject to the provisions of the statute. Kansas law establishes very clearly that "property acquired in strips for right-of-way" upon abandonment reverts to the servient estate. "Property acquired in strips for right-of-way" is the proposed language appearing in lines 83 and 84 of the bill.

The proposed language will focus the scope of the statute on that class of railroad property which indisputably reverts to the estate from which it was taken when it is no longer used for railroad purposes. Focusing the scope of the statute in this manner will address the vast majority of railroad property which is reversionary in nature, without unnecessarily raising the expectations of persons who do not possess reversionary property interests.

Thank you for the opportunity to present the railroad industry's position on 1987 House Bill No. 2239. We encourage your favorable consideration of this bill. I will try to respond to any questions which you may have.

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