

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~/p.m. on March 4, 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

Conferees appearing before the committee:

Mrs. Mary Turkington, Kansas Motor Carriers Association
Mr. Jerry Taylor, Hillcrest Wrecker and Garage, Inc., Lawrence, Kansas
Mr. Scott Lambers, City of Overland Park, Kansas
Sgt. Bob Giffin, Kansas Highway Patrol
Mr. Steve Wiechman, Kansas Automotive Dismantlers and Recyclers Assn.
Mr. Harris Terry, McPherson County Sheriff
Ms. Bev Bradley, Kansas Association of Counties

Chairman Crowell called the meeting to order, and it was announced that the first order of business would be a hearing on HB-2526 concerning liens for providing wrecker or towing service.

Mrs. Mary Turkington, Kansas Motor Carriers Association, spoke in support of HB-2526. Mrs. Turkington introduced Mr. Jerry Taylor as a conferee on the bill.

Mr. Jerry Taylor, owner and operator of Hillcrest Wrecker and Garage, Inc., Lawrence, Kansas, testified in support of HB-2526. (See Attachment 1)

Committee discussion and questioning followed, concerning storage charges and the responsibility for personal property left in the vehicle.

Mr. Scott Lambers, City of Overland Park, Kansas, commented in favor of HB-2526 and requested that in Lines 24, 25 and 26, the words "at the direction of a law enforcement officer" be clarified to indicate when a law enforcement officer is in the capacity of his or her duty.

Sgt. Bob Giffin, Kansas Highway Patrol, testified in support of HB-2526. (See Attachment 2) He said the Highway Patrol believes legislation of this type is necessary to allow law enforcement agencies to continue to provide protection for motor vehicles and their contents. He added that it also provides a tow operator an avenue for obtaining compensation in specific instances.

Mr. Steve Wiechman, Kansas Automotive Dismantlers and Recyclers Association, testified in support of HB-2526. (See Attachment 3) He said at the present time when a tow truck operator is directed by law enforcement to tow and store a vehicle, there is no assurance that he will ever be paid for the time, manpower, equipment and storage involved, since the owner of the vehicle was not the person hiring the service.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xpm~~ p.m. on March 4, 1987.

Chairman Crowell appointed a subcommittee consisting of Representative Spaniol, Chairman, and Representatives Snowbarger and Justice, to further study HB-2526.

The next order of business was a hearing on HB-2513 providing for disposition of fines imposed for vehicular size and weight violations on roads under county jurisdiction.

Mr. Harris Terry, McPherson County Sheriff, testified in favor of HB-2513. (See Attachment 4) He said the return of the fines, under provisions of the bill, will facilitate more active enforcement of weight and size laws on county and township roads which will help to maintain the county's investment in its road system.

Ms. Bev Bradley, Kansas Association of Counties, gave favorable testimony concerning HB-2513. (See Attachment 5) She said all monies from fines imposed for size and weight violations adopted by counties or townships should be remitted to the county treasurer of that county which employs a law enforcement officer to enforce such provisions.

The hearing on HB-2513 ended.

The next order of business was Committee discussion and action on HB-2525 concerning the requirement for two license plates on vehicles registered for under 12,000 pounds.

A motion was made by Representative Freeman that HB-2525 be recommended favorable for passage. The motion was seconded by Representative Laird.

A substitute conceptual motion was made by Representative Snowbarger that HB-2525 be amended to allow county treasurers to recover mailing costs in the event tags are applied for by mail, and "\$1.00" in Line 89 be changed to read "\$2.00". The motion was seconded by Representative Harper. Substitute motion passed.

A motion was made by Representative Freeman that HB-2525 be recommended favorable for passage as amended. The motion was seconded by Representative Laird.

A substitute motion was made by Representative Shore that trucks be excluded from HB-2525. The motion was seconded by Representative Moomaw. Motion failed.

A substitute conceptual motion was made by Representative Dillon that the "beads on" process be used for making license plates as opposed to the current reflectorized sheeting. The substitute motion was seconded by Representative Gross. Substitute motion failed.

A substitute motion was made by Representative Dillon that HB-2525 be tabled. The motion was seconded by Representative Spaniol. Substitute motion failed 11-7 on a division.

Original motion passed 13-7 on a division.

Representatives Spaniol and Dillon requested to be recorded as voting "no".

The next business was Committee discussion and action on HB-2192 concerning the width of vehicles loaded with two combine headers. Chairman Crowell passed among Committee members copies of a letter from the U. S. Department of Transportation Federal Highway Administration, advising that if we passed HB-2191 concerning overweight permits, we would have sanctions imposed. The letter said if HB-2192 is passed, we would not be subject to sanctions, and Chairman Crowell said it is for that reason that HB-2192 would be taken up. (See Attachment 6)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on March 4, 1987

A motion was made by Representative Harper that HB-2192 be recommended favorable for passage. The motion was seconded by Representative Shore. Motion passed.

Representative Adam requested to be recorded as voting "no".

The next bill taken up for Committee discussion and action was HB-2189 concerning the building and financing of a Turnpike interchange near the intersection of the Kansas Turnpike and 71st Street, near Haysville.

A motion was made by Representative Gross to amend HB-2189 so that Sedgwick County could negotiate with the Turnpike Authority when and if they would be paid back. The motion was seconded by Representative Russell. Motion passed.

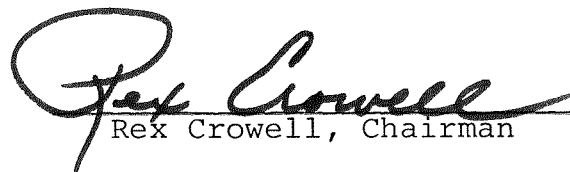
A motion was made by Representative Spaniol that HB-2189 be recommended favorable for passage as amended. The motion was seconded by Representative Moomaw. Motion passed.

The next bill taken up for Committee discussion and action was HB-2496, making inattentive driving a traffic infraction.

A motion was made by Representative Spaniol that HB-2496 be amended on Page 7, Line 101, to change the fine for unlawful Statehouse parking from \$5 to \$25. The motion was seconded by Representative Freeman. Motion passed.

A motion was made by Representative Spaniol that HB-2496 be recommended favorable for passage as amended. The motion was seconded by Representative Freeman. Motion passed.

The meeting was adjourned at 3:20 p.m.


Rex Crowell, Chairman

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Harris G. Terry	McPherson	McPherson Co. Sheriff
TERRY MADE	TOPEKA	Ks. Hwy Patrol
Bob Giffen	TOPEKA	Ks Hwy Patrol
Phil Anderson	Topeka	Budget Div
Karen Meehan	Hellon	Motor Salvage & Auto Sales
JEANNY TAYLOR	LAWRENCE	HILLCREST WRECKER
Gary R. Brown	Topeka	Brown's Super Service Inc
William B Barber	Topeka	Kansas Motor Carriers Assn
JAMES W. CYNOUR	Junction City	Bud's WRECKER SVC
Barbara L. Cynour	Junction City	Bud's Wrecker Service
BARNEY COOKE	MERRIAM, KS	MID AMERICA WRECKER SALES
SAMUEL R. SOILS	K.C. Kansas	MIDWEST TOW SERVICE
Alan h Worthey	KC KS.	Alandons Tow Ser
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Marge Turkington	Topeka	Kansas Motor Carriers Assn
Jerry Taylor	Lawrence	"
Bel Bradley	Topeka	Ks Assoc of Counties
Steven Wechsman	Topeka	Kansas Automobile Distributors & Retailer Assn.
John C. Bottenberg	TOPEKA	3M
Dale McNeil	Topeka	3M
SCOTT LAMBERS	OVERLAND PARK	OVERLAND PARK
PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.
CHARLES BELT	WICHITA	WICHITA ASSO DEALERS ASSOC.
RON CALBERT	NEWTON	U. J. U.
Leroy Jones	Overland Park	B. L. E.
Birk Green	TOPEKA	KCC
ED DE SOIGNIE	Topeka	KDOT

STATEMENT

By The

TOWING & RECOVERY DIVISION

KANSAS MOTOR CARRIERS ASSOCIATION

In support of House Bill 2526
which establishes a possessory
lien for persons providing wrecker
or towing service and provides for
the disposition of personal property
to satisfy such liens.

Presented to the House Transportation Committee,
Rep. Rex Crowell, Chairman; Statehouse, Topeka,
Wednesday, March 4, 1987.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Jerry Taylor, owner and operator of Hillcrest Wrecker and Garage, Inc., of Lawrence, Kansas. I also serve as president of the Kansas Motor Carriers Association and am past chairman of the Towing and Recovery division of KMCA. I appear here today on behalf of our Division members and the Association to support the passage of House Bill 2526.

There are a number of tow truck operators with me in the hearing room including Mr. Gary Brown, the current Division Chairman from Brown's Super Service, Inc. of Topeka. We will be pleased to respond to your questions at the completion of our presentation.

Att. 1

We wish to thank the members of this committee and of the Legislature for the consideration you have given the problems we have brought to you in previous sessions. As a result of your policy direction, we sincerely believe we are improving the quality of our service to the public and our citizenship as operators of towing and recovery services.

The proposal before you was developed by the Towing & Recovery Division over a period of several months as a result of a recent Kansas Court of Appeals case. That case, Hartford Insurance Company v. Overland Body Tow, Inc., 11 Kan. App. 373 (1986), dealt with the current Kansas lien laws. In that case, law enforcement authorities directed a tow operator to tow a car which had been stopped, resulting in the arrest of the driver. The tow operator towed the car to his place of business and stored it. Eventually, the insurance company, which had taken title to the car, demanded that the tow operator release the car. The tow operator demanded payment of its tow and storage charges, and refused to deliver the car until such charges were paid.

The insurance company sued the tow operator for possession of the car, and lost the case at the District Court level. Upon appeal to the Kansas Court of Appeals, the District Court decision was reversed and the Court of Appeals held that a lien relationship was not created between the owner of the car and the tow operator, as law enforcement authorities, and not the owner, had directed the tow operator to take custody of the vehicle.

Essentially, the Kansas Court of Appeals invited a change to the Kansas statutes, and indicated that at least one other state, (Oklahoma), had statutorily cured this inequity. This bill addresses that problem.

The proposal before you addresses three areas of concern:

1. The establishment of a lien relationship when law enforcement authorities direct the tow operator to take custody of the vehicle.

(This is the issue addressed in H.B. 2303 introduced by Rep. Art Douville).

2. The notice requirements which must be followed by the tow operator to satisfy his lien for charges resulting from the recovery, transportation, protection, storage or safekeeping of the towed vehicle.

(Remember that you, as an owner of an automobile, have every right to expect the tow truck operator to properly care for your car and everything in it while that car is in the possession of the tow truck operator.)

3. The manner in which funds are to be distributed if sale of the vehicle in question must be conducted.

Section 1 of the bill establishes a possessory lien whenever any person providing wrecker or towing service, as defined by law, while lawfully in possession of a vehicle, at the direction of a law enforcement officer or the owner, renders any service to the owner thereof by the recovery, transportation, protection, storage, or safekeeping of such vehicle.

The proposed legislation enables a law enforcement officer to create the lien relationship and also shortens the possessory period from six months to a minimum of 30 days. The lien shall amount to the full amount and value of the service rendered.

Any vehicle remaining in the possession of a person providing wrecker or towing service for a period of 30 days after such wrecker or towing service was provided may be sold to pay the reasonable or agreed charges for such recovery, transportation, protection, storage or safekeeping -- the costs of such sale -- the costs of notice to the owner of the vehicle and -- publication as required by the act.

If a court orders such vehicle to be held for the purpose of a criminal investigation or for use as evidence at a trial, then such order shall be in writing, and the court shall assess as the costs the reasonable or agreed charges for such services while the vehicle was held pursuant to such written order.

Personal property within the vehicle need not be released to the owner thereof until the reasonable or agreed charges for services have been paid, EXCEPT that personal wearing apparel and personal medical supplies shall be released to the owner thereof upon request.

Section 2 of the proposal, clearly sets out the manner in which notice of any sale of a vehicle shall be conducted.

1. The tow truck operator must request verification from the division of vehicles of the last registered owner and any lienholders, if any.
2. Notice of the sale shall be mailed by certified mail to any such registered owner and any such lienholders.

3. A notice of the time and place of sale (which must be at public auction), containing a description of the vehicle and any personal property must be published at least once a week for three consecutive weeks in a newspaper published in the county where the sale is advertised to take place. If there is no newspaper published in the county, the notice shall be published in a newspaper of general circulation in such county.
4. Notices given under this section shall state that if the amount due, together with storage, publication and notice and sale costs, is not paid within 15 days from the date of the mailing, the vehicle and personal property will be sold at public auction.

Sections 4 and 5 provide that the proceeds of such sale, after the payment of charges itemized in the act, shall be deposited with the treasurer of the county where the sale takes place by the person making such sale, such person taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto.

Proper documents shall be filed with the clerk of the county in which the sale takes place and such documents or copies thereof duly certified by such clerk shall be received as presumptive evidence of the matters therein contained.

By and large, a possessory lien does not become a reality with vehicles of any value. Owners claim their vehicle, pay the recovery and storage costs and go on their way. More often than not, the possessory lien becomes necessary and the sale at public auction eventually must be conducted for vehicles which have little or no value and which currently must be in possession of the tow operator for a period of six months.

House Bill 2526 clarifies the lien relationship when a law enforcement officer or the owner directs the tow operator to tow a vehicle.

Proper notice requirements for unclaimed vehicles are set forth in section 2.

The remaining sections of the bill prescribe workable, lawful procedures which can be followed uniformly to govern the distribution of funds which may be over and above the recovery, storage and related charges.

We have worked closely with the Kansas Highway Patrol, the Division of Vehicles, with the Kansas Motor Car Dealers Association, with AAA and AMOCO auto clubs, and with the Kansas Automotive Dismantlers and Recyclers Association, in finalizing the provisions of H.B. 2526.

We believe the legislation addresses an important area of public interest and provides workable solutions to these problems.

Thank you for your attention. We will be pleased to attempt to answer any questions you may have.

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SUMMARY OF TESTIMONY

Before the House Transportation Committee

March 4, 1987

Presented by the Kansas Highway Patrol

(Sergeant Bob Giffin)

Appeared in Support of House Bill 2526

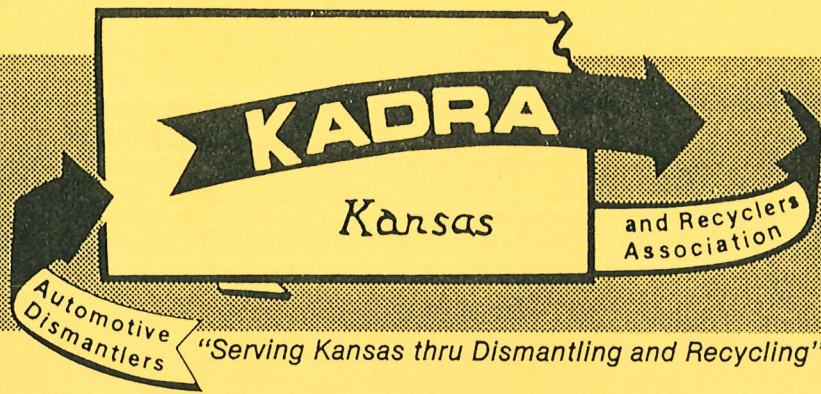
The Kansas Highway Patrol supports House Bill 2526. We feel this legislation, if implemented, would provide a fair and adequate means of dealing with problems facing law enforcement officials and tow operators regarding towing and storage of certain motor vehicles.

In July, 1986 the Kansas Court of Appeals ruled (Hartford Insurance Company vs. Overland Body Tow, Inc.) that the owner of a motor vehicle could not be held responsible for tow and storage costs when the vehicle was lawfully towed at the direction of a law enforcement officer without the knowledge or consent of the owner.

As a result of this ruling it is very difficult for a tow operator to collect for the services they provide. It also appears that any law enforcement agency requesting the lawful towing of a motor vehicle under similar circumstances may be held responsible for tow and storage costs.

House Bill 2526 provides a specific solution to this problem in Section 1 Line 0022 through Line 0029 by creating a first and prior lien in favor of the person or firm providing any tow and/or storage services at the direction of a law enforcement officer.

In closing, the Highway Patrol feels legislation of this type is necessary to allow law enforcement agencies to continue to provide protection for motor vehicles and their contents. It also provides a tow operator an avenue for obtaining compensation in these specific instances. With this in mind the Highway Patrol recommends House Bill 2526 favorable for passage.



HOUSE COMMITTEE ON TRANSPORTATION

March 4, 1987

HOUSE BILL NO. 2526

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I am Steve Wiechman, representing the Kansas Automotive Dismantlers and Recyclers Association. K.A.D.R.A. wishes to express our appreciation for allowing us to appear in support of HB 2526. Although, not all of our members are actively involved in the towing and storage of vehicles, a good many do own and operate wrecker and towing services; and, of these, most have experienced the problems addressed by this bill.

Often, the time and effort necessary to even hook onto the vehicle and get it into a position to be towed constitutes a substantial amount of time. The person towing the vehicle is out not only the actual expense of towing, but the manpower and equipment that is tied up and expended to, not only do the tow, but to ready the vehicle for towing. Additionally, the operator may also have the expense of having space in his lot taken by storage of the vehicle.

At present, when a tow truck operator is directed by law enforcement to tow and store a vehicle, there is no assurance that the person doing the tow and storage will ever be paid for the time,

HB 2526
March 4, 1987

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manpower, equipment and storage required, since the owner of the vehicle was not the person hiring the service.

K.A.D.R.A. urges your favorable passage of HB 2526. If you have any questions, I will be happy to try to address them.

Respectfully submitted,

STEVEN R. WIECHMAN
Legislative Counsel for
Kansas Automotive Dismantlers and
Recyclers Association



McPHERSON COUNTY

TESTIMONY BEFORE THE HOUSE TRANSPORTATION COMMITTEE

BY

HARRIS TERRY, MCPHERSON COUNTY SHERIFF
ON BEHALF OF THE
BOARD OF MCPHERSON COUNTY COMMISSIONERS
March 4, 1987

House Bill No. 2513 addresses an operational issue pertinent to McPherson County's enforcement of state laws and county resolutions regulating vehicular size and weights on **county and township roads**. This proposal would provide for the return to counties of monies from fines imposed for violation of weight and size laws and resolutions on county and township roads, in those counties employing a weight officer. McPherson County supports House Bill No. 2513, as it provides financial encouragement to those counties actively supporting the enforcement of weight and size laws on its roads. It is appropriate to consider the return of fines written in the county on **its** roads, by the **designated weight officer**, as an equitable approach to the administration of this local program.

Currently, the McPherson County Sheriff's Office has assigned a full-time deputy sheriff to the primary function of weight officer. The officer is furnished with portable, digital read-out, wheel-axel scales and a vehicle designed to allow easy access to the scales. This equipment provides the officer with the capability of weighing a potential over-weight violation at the location of the stop, as opposed to escorting the vehicle to an elevator or other legal-trade scale. This procedure saves time, and works to keep the officer on the county and township roads. The current cost, per year, for the operation of a weight officer in McPherson County is approximately \$25,000.

The Board of McPherson County Commissioners has adopted, by resolution, weight limits for county roads, which further restrict the size and weight of vehicles using county or township roads. The adoption of these resolutions are predicated on the fact that strict enforcement will extend the life of road surfaces located within the County's boundaries.

MCPHERSON COUNTY COMMISSIONERS

McPherson County
Courthouse

John C. Magnuson, Chairman
District 1

John W. Casebeer
District 2

Tony Wedel
District 3

Attach. 4
P.O. Box 676
Phone No. 316-241-8149

At present, ninety percent (90%) of the overweight citations written by the County's weight officer are on county roads, where the vehicle is over the locally posted weight limits. The County's weight officer does not patrol state roads, except in response to requests for assistance by the Kansas Highway Patrol. The yearly estimated revenue generated by the County's weight officer is \$20,000 - \$25,000.

While we are sensitive to concerns regarding this program's impact on state coffers, we would respectfully suggest that the limitations contained in the bill, (e.g. the return of only those fines written by the full-time County weight officer, on county or township roads) will severely restrict the financial impact. Given that most county's main source of revenue is property taxes, the funding of this critical program through fines levied for weight and size violations on county or township roads, will have a two-fold benefit: the weight officer's program will be funded through users of the system; and, the taxes needed to maintain the roads can be further stretched.

The return of the fines, under the provisions contained in this bill, will facilitate more active enforcement of weight and size laws on county and township roads, which will help to maintain the county's investment in its road system. We would respectfully request your support for House Bill 2513.

Kansas Association of Counties

Serving Kansas Counties

212 S.W. SEVENTH STREET, TOPEKA, KANSAS 66603 PHONE 913 233-2271

March 4, 1987

To: Representative Rex Crowell
 Members of the House Transportation Committee

From: Bev Bradley, Legislative Coordinator
 Kansas Association of Counties

Re: HB-2513 Disposition of Fines Imposed by Counties

Thank you Mr. Chairman and members of the committee. I am Bev Bradley representing the Kansas Association of Counties.

I appear today in support of HB-2513. We believe that all monies from fines imposed for size and weight violations adopted by counties or townships should be remitted to the county treasurer of that county which employes a law enforcement officer to enforce such provisions.

We understand cities have long ago been granted this authority.

Counties are having a difficult time with finances as the State is. I'm sure you are aware of the loss of Federal Revenue Sharing Monies, financing of at least half of reappraisal costs and lower valuations in most counties.

When counties try to protect their roads which are costly to build and maintain and impose limitations of weight or vehicle size, we believe they should be allowed to keep the fines to help fund the cost of enforcement as well as the maintenance.

We support HB-2513. Thank you very much.

Att. 5



Memorandum

U.S. Department
of Transportation

Federal Highway
Administration

Subject: Kansas Truck Size and Weight
Enforcement - Proposed Legislation

Date February 19, 1987

From: Regional Counsel
Kansas City, Missouri

Reply to
Attn. of: HRC-07


To: Mr. Robert J. Deatruck
Division Administrator (HEC-KS)
Topeka, Kansas

We have reviewed H.B. 2191 and H.B. 2192 from the 1987 Kansas legislature. H.B. 2191 would allow the granting of permits for the movement of overweight vehicles carrying grain and other seasonally harvested products on the Interstate System as well as on other Kansas roads and highways. H.B. 2192 would allow the granting of permits for loads in excess of 12 feet in width for vehicles carrying two combine headers. The following comments are offered.

23 U.S.C. 127 provides for the issuance of overweight permits on the Interstate System only for "loads which cannot be easily dismantled or divided...." Grain and the other seasonally harvested products contemplated by H.B. 2191 are divisible loads. Any procedure which would allow overweight vehicles with divisible loads on the Interstate System would put Kansas in conflict with 23 U.S.C. 127 and it is our opinion that the sanctions provided by 23 U.S.C. 127 would be imposed.

Federal limitations on vehicle widths are found in Section 416 of the Highway Safety Act of 1982 which allows the States to grant special use permits to vehicles that exceed 102 inches in width. There is no requirement that the load be nondivisible before overwidth permits can be granted. H.B. 2192 would allow the granting of special use permits for loads exceeding 12 feet in width. Even though we may question the safety aspects of this legislation, it does not conflict with Federal requirements.

Thank you for the opportunity to review these bills.


Donald C. Vosburgh