

Approved 2-11-87
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 10, 1987 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
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Jim Sullins, Kansas Motor Car Dealers' Association
Charles Belt, Wichita Auto Dealers' Association
Dick Hatfield, Hatfield Chevrolet, Inc., Augusta
Terry Humphrey, Kansas Manufactured Housing Institute
Harold Turntine, Department of Revenue
Capt. David Hornbaker, Kansas Highway Patrol

HEARING ON S.B. 115 - Brokers' licenses; requirements

Jim Sullins, Kansas Motor Car Dealers' Association, spoke in favor of the bill. A copy of his statement is attached. (Att. 1). This type of transaction takes place only at the retail level. A broker generally acts as the representative of the seller. Several years ago attempts were made to bring brokers under the dealer licensing act. It was to assure that brokers operated as much like a regular used car dealer as possible, but they still do not have to collect the state and local sales taxes. This can provide a "loophole" where they can under-report the sales price of a vehicle. The industry feels as though they operate on the fringe of the motor vehicle industry in Kansas and they should not be permitted to do so. Cars could be brought in from out of state that have been in floods or may have had the odometer rolled back. These cars can be purchased by an unsuspecting consumer from a broker. Also, car dealers have made substantial investments in franchises and if brokering is allowed to continue in Kansas it could damage the markets of the franchised dealers who have made substantial investments.

Charles Belt, Wichita Auto Dealers Association, said he was representing 19 members in the Wichita area. They are also members of the Kansas Motor Car Dealers' Association. He said brokering was causing concern for the industry and consumers. Recall work is very important and the dealers are given the parts when there is a recall. They have to take care of their own customers first. Service facilities are very important and the dealers also train people, which brokers do not do. The average dealer employs 20 people.

Mr. Sullins was asked how many states have such a law against brokers. He was sure about Texas, Oklahoma and South Dakota. There were others but he could not be specific.

He said this bill would not prohibit a person in a gas station from putting a car on his lot that was for sale. The person would have to broker at least 5 vehicles a year before he would be included in the proposed bill.

Dick Hatfield, Hatfield Chevrolet, Inc., Augusta, said they were not trying to put anyone out of business but they were tired of having the reputation as "crooks" and wanted to get rid of the "crooks" who might sell cars from floods or tamper with odometers. They wanted these people to back up their cars.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-F, Statehouse, at 9:00 a.m. ~~p.m.~~ on February 10, 1987.

Terry Humphrey, Kansas Manufactured Housing, requested that manufactured homes be permitted to continue to be brokered by realtors and rental community operators. She thought this bill would end brokerage for manufactured homes. She asked for amendments to allow the continued practice of manufactured home brokerage. A copy of her statement is attached. (Att. 2).

Bruce Kinzie said technical amendments would be needed to accomplish this.

Harold Turntine, Department of Revenue, said they now have the authority to license brokers and if this should be repealed, the Department would have to impose sanctions if brokers continued in business.

HEARING ON S.B. 109 - Creating the vehicle identification number fee fund.

Capt. David Hornbaker appeared in support of S.B. 109. A question had been raised about the constitutionality of depositing money to the State General Fund as a result of money collected under K.S.A. 1986 Supp. 8-116a. It was recommended by the State's attorney that the money collected be credited to a fee account within the Highway Patrol. The money would be taken out of the general fund and put into a special fee fund. There was no fiscal impact and it would be a washout. (Attachment 3)

A motion was made by Sen. Vidricksen and was seconded by Sen. Doyen that S.B. 109 be recommended favorable for passage. Motion carried.

A motion was made by Sen. Thiessen and was seconded by Sen. Francisco that the Minutes of February 3, 1987 and February 4, 1987, with a typographical change, be approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 2/10

GUEST REGISTER
SENATE
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
CHARLES BELT	WICHITA AUTO DEALERS ASSOC.	WICHITA
Shelley Sutton	Ks Engineering Society	Topeka
JIM SULLINS	Ks Motor Car Dealers Assn	TOPEKA
Mike Reecht	AT+T	TOPEKA
Harold H. Teruter	KANSAS DEPT REU.	TOPEKA
Tom Whitaker	Ks Motor Carriers Assn	Topeka
Gene Bonaparte	KHP	TOPEKA
Donny	KHP	Topeka
Henry Humphrey	KMTI	Topeka

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Statement Before
the
SENATE COMMITTEE ON TRANSPORTATION & UTILITIES
by the
KANSAS MOTOR CAR DEALERS ASSOCIATION

Re: Senate Bill 115

Mr. Chairman and Members of the Committee. I am Jim Sullins, Executive Vice President of the Kansas Motor Car Dealers Association, the 370 member trade association representing the franchised new car and new truck dealers of Kansas.

First of all, I would like to thank the Committee for introducing Senate Bill 115 on our behalf.

The issue before you today is not new to this Committee as last year in SB 470, this Committee incorporated a similar provision concerning brokering at KMCDA's request. That bill passed this Committee and the full Senate, but stalled in the House Transportation Committee late in the session. In turn, an interim study was conducted concerning the main provision of SB 470, that being vehicle dealer bonding. The interim committee discussed the brokering provisions of SB 470 during the deliberations of the bonding issue, but could not specifically address the brokering provisions due to the narrowness of the charge given the interim committee by the Legislative Coordinating Council.

Before adequate discussion concerning this issue before you today can take place, we feel that first an explanation of what a broker is and does should be provided so that everyone fully understands what we are discussing.

As defined in K.S.A 8-2401 (ff), a broker is any "person who, for commission, money or other thing of value, is engaged in the business of: (1) selling or buying vehicles or mobile homes for other persons as an agent, middleman or negotiator; or, (2) bringing buyers and sellers of vehicles of mobile home 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."

In simpler language, a broker of a vehicle represents either the buyer or seller of a vehicle, and acts as the negotiator in the transaction. For example, let's say that you wanted to purchase a specific vehicle, such as a 1957 Chevrolet, which is fairly rare. If you employed a broker, that broker would attempt to find that specific vehicle and would negotiate on your behalf with the owner in an attempt to secure the purchase for you. If the owner was willing to sell, the transaction would be completed directly between the seller and you, with the broker never showing on the title documents. In turn, you would pay the broker a "commission" of some type for his efforts.

Generally, a broker, however, acts as a representative of the seller. Several franchised new car dealers have a broker license solely for the purpose of serving customers who would rather sell their vehicle directly than trade it in on a different vehicle, or, are disposing of a vehicle which they do not plan to replace.

I would also point out that this type of transaction only takes place at the retail level. At the wholesale level there are two separately licensed types of dealers who conduct business only with licensed new or used vehicle dealers. Those two types of dealers are (1) wholesalers, and (2) auction companies.

Both of these only deal at the wholesale level, and may legally only conduct business with and between licensed vehicle dealers.

Brokers have a rather questionable past in Kansas law. Several years ago, brokering of new and used vehicles began in Kansas when the statutes were mute on the subject. In an effort to regulate and control this new area, statutes were enacted to bring brokers under the dealer licensing act. Attempts were also made to assure that brokers operated as much like a regular used car dealer as possible. While these attempts were made, brokers continued to operate out of their homes with simply a telephone, rather than from an established place of business which was required of new and used vehicle dealers. Again, changes were made to assure that brokers had to meet the same established place of business requirements, sign requirements, etc., as other types of dealers.

Initially, KMCDA worked to assure that the so-called "level playing field" approach was maintained. If someone wanted to be in the automobile business, we felt that they should play under the same rules as all other dealers.

While these attempts were made, in reality, the level playing field has never been reached, although we have come close in some areas.

For example, brokers do not have to collect the state and local sales taxes. Since the broker never owns the vehicle and never shows on the title, he is not technically making the sale. Therefore, he is under no obligation to collect and remit sales taxes. This gives him a lower operating cost since he does not have the bookkeeping requirements, and

it provides a "loophole" by which the two parties involved can under report the sale price of the vehicle, thereby paying less sales tax to the state than would be due.

Also, since the broker does not show on the title, an inventory tax stamp is not required to be affixed to the title. Even though the broker is a regulated class of dealer, the county in which he is located does not receive any inventory tax money from the transactions which the broker conducts.

The one area in which we have been successful in putting the broker a little more on the front line is in the consumer protection area. In an opinion issued by the Attorney General last year, the Attorney General determined the the broker was, as defined by the Consumer Protection Act, a "seller" and therefore was subject to the implied warranty liabilities which all other "sellers" must face.

As we hope you can see, brokers seem to operate on the fringe of the motor vehicle industry in Kansas, and KMCDA feels that the time has come to delete this fringe element from the industry, as other states have already done.

On lines 189 and 190 of the bill a new subsection (q) has been added which simply prohibits a person from acting as a broker in the sale of any new or used vehicle after the effective date of the act which would be January 1, 1988.

This first question you are probably going to ask yourself is how many people would be put out of business by this act. According

to figures provided by the Dealer Licensing Bureau of the Kansas Department of Revenue, there are currently 168 licensed brokers in Kansas. That is out of some 3000 licensed vehicle dealers statewide, or about one-half of one percent. While you would be eliminating this class of dealer, you would not necessarily be completely putting an operation out of business.

For example, 20 of the 168 brokers are mobile home dealers, and another 25 are franchised new car or new truck dealers. That's 45 operations which would not be dramatically affected by the loss of their broker's license.

I would also suggest that most, if not all, other licensed brokers are licensed in conjunction with some other type of vehicle or associated business.

To make the point, I took the first 20 brokers listed in the 1986 Kansas Vehicle Dealer, which is a listing of all licensed vehicle dealers published by the Kansas Department of Revenue (D-28, Rev. 4-86). Of the first 20 brokers, 13 were also used vehicle dealers at the same location; 3 were new vehicle dealers at the same location; 2 were mobile home dealers at the same location; one was a credit union; and the other was a real estate agency.

If further investigation would hold true to the first 20, which I believe would in a vast majority of the cases, virtually no one would be "put of out business." Simply one part of another business would not be available, which in all likelihood is simply a convenience situation anyway.

I know for a fact that the franchised dealers who hold brokers licenses do so simply as a way to meet competition as a convenience to their customer. If someone comes in and wants them to sell their vehicle for them, either the franchised dealer can have a broker's license and get that business, or the customer will find a licensed broker or sell it himself.

Our purpose for seeking the repeal of this class of license is two-fold.

First, we feel that it can be seen as a consumer protection matter in the area of vehicles which might not normally reach the Kansas market without the broker. As we all know, there is a \$3 billion per year fraud which occurs nationally called odometer tampering. Mileage is taken off relatively late model vehicles, and then those vehicles are sold for an average of \$750-1000 per vehicle more than what they should be worth. We feel that brokering is a means by which the fraud can be transacted and unsuspecting consumers can be enticed into purchasing a vehicle which is not what it is represented to be. The consumer purchases a vehicle from an individual which they do not know and who in reality may not exist. It would be very simple to get a title in a fictitious name, and pass it on to an unsuspecting consumer. Additionally, this same type of fraud could occur with other types of damaged vehicles such as flood cars, wrecked cars, etc. If nothing else, doing away with brokers could stop some of this consumer fraud.

Secondly, the new car and new truck dealers of Kansas can see a growth in brokering on the horizon which could be very damaging to the franchised system.

The 370 members of KMCDCA have made very large investments in their businesses to acquire the franchises they have from their manufacturers. If brokering continues to be allowed in Kansas, there is nothing in the current statutes to prevent brokers from handling new vehicles and seriously damaging the markets of the franchised dealers who have made substantial investments. Some 155,489 new vehicles were sold by new vehicle dealers in Kansas during 1985 (new cars, trucks, motorcycles, mobile homes and trailers). Even with these substantial vehicle sales, the number of franchised dealers in Kansas continues to drop as smaller operations are not able to continue in today's economic climate.

If brokers are allowed to take away some of the limited business which currently exists, these franchised dealers with all of their investments, could be damaged to the point of having to close their businesses. Considering that the franchised new car dealers alone in Kansas employ some 7,000 people and generate over 15% of the state sales tax revenues, we feel that protection against the fringe type of dealer is justified.

Additionally, if brokers are allowed to grow and enter the new vehicle market, in turn putting some franchised dealers out of business, the very people who purchase vehicles from brokers are going to be the ones who get hurt. The consumer who has a problem with a vehicle he purchased through a broker may not have a franchised dealer nearby to service the vehicle while under warranty. Furthermore, if the vehicle is out of the manufacturer's warranty, the local franchised dealer is going to be less likely to offer special assistance to a consumer who purchased their vehicle from someone else.

As it stands today, brokering is not a big industry in Kansas. During 1986, only 2,512 vehicles were "brokered" out of a total of some 302,642 vehicles sold by new and used vehicle dealer. That is 8/10's of one percent of all vehicles sold in Kansas during 1986.

However, as we said, we can see this as a growing industry, and one which we do not feel is either necessary or beneficial for either dealers or consumers.

Mr. Chairman and Members of the Committee, the Kansas Motor Car Dealers Association strongly believes that brokering in Kansas should be eliminated now rather than waiting until some point in the future where either dealers or consumers, or both, have been injured beyond repair.

We respectfully request that you give this matter your strongest consideration, and that when you take action, you recommend SB 115 favorable for passage by the full Senate.

Thank you for your time and attention, and I would be happy to answer any questions.

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KANSAS MANUFACTURED HOUSING INSTITUTE

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**TESTIMONY BEFORE THE SENATE
COMMITTEE ON TRANSPORTATION & UTILITIES**

TO: Senator Bill Morris, Chairman
Senate Committee on Transportation & Utilities

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

DATE: February 10, 1987

Mr. Chairman and members of the Senate Transportation Committee, I am Terry Humphrey, Executive Director of the Kansas Manufactured Housing Institute and I appreciate the opportunity to appear before you on Senate Bill 115.

It is my understanding that Senate Bill 115 is intended to end brokerage for new and used motor vehicles, however, it is my concern that the bill goes beyond that and ends brokerage for manufactured homes as well. Manufactured homes are brokered by Realtors, rental community operators and it is important that this function be allowed to continue. Therefore, I respectfully request that technical amendments be made to Senate Bill 115 to allow the continued practice of manufactured home brokerage. Thank you.

ATT. 2
2/10/87

SUMMARY OF TESTIMONY
SENATE TRANSPORTATION & UTILITIES COMMITTEE
TUESDAY, FEBRUARY 10, 1987

SENATE BILL 109

BY

CAPTAIN DAVID HORNBAKER
KANSAS HIGHWAY PATROL

The Patrol appears today in support of SB 109.

Currently, pursuant to K.S.A. 1986 Supp. 8-116a, all monies collected as a result of this statute are deposited to the State General Fund.

Shortly after enactment of the statute, a civil lawsuit was filed in Riley County District Court, naming the State of Kansas as defendant. Among the issues raised by the plaintiff is a question of constitutionality of the statute in that it is a revenue-raising law disguised in regulatory clothing.

This particular issue was raised at, as the court stated, at the 11th hour, and as the issue was not identified at pretrial conference, the issue was not considered by the court. The court found in favor of the State on the lawsuit, but the plaintiff has appealed.

Based on this new issue, the State's attorney in this case, a Department of Revenue employee, recommends the present statute be amended to allow for all monies collected pursuant to the State be credited to a fee account within the Highway Patrol.

Your favorable consideration of this bill is appreciated.