Approved 3/24/87
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 March 20, 1987 in room 254-E of the Capitol.

All members were present except:
Sen. Doyen and Sen. Frey

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:
Rep. Martha Jenkins
Rep. H. Dillon
Jim Sullins, Kansas Motor Car Dealers Association
Steve Wiechman, Kansas Automotive Dismantlers and Recyclers Association

HEARING ON H.B. 2138 - Amelia Earhart Memorial Highway

Rep. Jenkins explained H.B. 3138 and said this would designate a portion of Highway 73 as the Amelia Earhart Memorial Highway. It had been requested by a constituent who wanted to note the anniversary of the 50 years since her disappearance. She was asked if this would be any problem since part of it was the existing Lewis and Clark Expedition Route. She said the Lewis and Clark route was on the Missouri side of the Missouri River.

Ed DeSoignie, KDOT, said the Department has no problem with this and it was up to the Legislature.

A motion was made by Sen. Bond and was seconded by Sen. Vidricksen to recommend H.B. 2138 favorably for passage and requested it be placed on the Consent Calendar. Motion carried.

HEARING ON H.B. 2203 - Disclosure of leased or rented vehicles.

Rep. Dillon explained this bill to the Committee and said it was a consumer protection bill. He said this was brought about by a constituent who had purchased a car with low mileage and had been told by the dealer that it was an "executive car". After he had the car for about three months he experienced problems and found out it had been a leased car. There was nothing that could be done about it because the dealer denied he had told him it was an "executive car". Rep. Dillon felt there should be disclosure when a car has been used in this manner. Under the Consumer Protection Act there was no way to pursue it because there was no way to prove what the dealer had told the consumer.

Jim Sullins, Kansas Motor Car Dealers Association, said he agreed with full disclosure but felt Kansas already had this with the Consumers Protection Act. He said there was probably some difficulty with the words "ultimate purchaser" and there should be a better definition. It should mean the first person to buy the vehicle after the leasing. A copy of his statement is attached. (Att. 1).

Steve Wiechman, KADR Association, said he did not see difficulty in the original bill but he has some problems with it now. On line 31 the "vehicle dealer" should specify which dealer is involved. A car could be moved from dealer to dealer and it should be determined which one would be liable under this disclosure. What does "ultimate" mean and when does it end? Also, how do you control out-of-state cars? Many are sold through an auction and the buyer might now know of leasing. He suggested "title

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

branding"where leasing should be put on the title. He also said a consumer could request full disclosure to be written on the agreement. (Att. 2).

Rep. Dillon said you do not receive title until about 10 days after purchase and you would not know where the car came from until it was too late.

It was suggested that something should be put into the bill about extent of knowledge or "knowingly" selling a leased or rented car. It should cover number of miles if it gets much use and "ultimate" should be defined.

A motion was made by Sen. Francisco and was seconded by Sen. Thiessen to approve the Minutes of March 19, 1987. Motion carried.

Since it has been difficult to get a quorum at 9:00 a.m. the Chairman said next week meetings would be held at 9:07 a.m. in order to give all members time to get to the meetings on time.

Meeting was adjourned at 9:50 a.m.

DATE: 3-20-87
254-E

GUEST REGISTER
SENATE

TRANSPORTATION AND UTILITIES COMMITTEE

| NAME | ORGANIZATION | ADDRESS |
|---|---|---|
| PAT BARNES | Ks MOTOR CAR DEALERS ASS'N | TOPEKA |
| Ed DeSoignie | Ks. DEPT OF TRANSPORTATION | TOPEKA |
| JIM SULLINS | Ks Motor Car Dealers Assn | TOPEKA |
| Martha Jenkins | Representative | " |
| Tom Whitaker | Ks Motor Carriers Assn | Topeka |

Statement Before The

SENATE COMMITTEE ON TRANSPORTATION & UTILITIES

by the

KANSAS MOTOR CAR DEALERS ASSOCIATION

Friday, March 20, 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 of House Bill 2203. While I cannot say that we come before you today as proponents of HB 2203, I want you to know from the outset that KMCDA strongly agrees that full disclosure of material facts concerning automobiles being sold to consumers in this state should be made and that we continually remind our dealers of the current requirements under the Kansas Consumer Protection Act.

You will note that lines 25 through 30 of HB 2203 have been stricken, and that new language has been added by the House Transportation Committee on lines 31 through 45. The original bill, in KMCDA's opinion, was extremely restrictive & it would have been next to impossible for the dealers of Kansas to comply with the law. The House Committee recognized the problems which KMCDA pointed out during testimony, and added new language which makes the bill much more clear and workable.

ATT. 1
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Basically, the intent of the original bill is unchanged, that being to require dealers to disclose in writing that the vehicle had been previously used as a lease, rental, or drivers ed vehicle. The major clean-up can be found on lines 32 and 33, and in lines 39 through 42.

On lines 32 and 33, the words "ultimate purchaser" were added which was extremely important to KMCDA. With this addition, the dealer would have to disclose it to the customer who purchases the vehicle immediately following the vehicle's use as a lease, rental or driver's ed vehicle. However, a dealer would not be required to disclose the prior use to subsequent purchasers of the "ultimate purchaser."

Consider the dilemma of a dealer who takes the vehicle in on trade a few years following the sale to the ultimate purchaser without this language. A vehicle has come out of lease service and has been sold, with full disclosure, by a dealer to an ultimate purchaser, who two years later trades that vehicle in on another. The second dealer has no way of knowing that the vehicle has previously been used as a lease car and sells it to another consumer. Sometime later, the second consumer discovers that the vehicle had been a lease car. Without the "ultimate purchaser" language in the bill, an unsuspecting dealer could be in violation of the law without any intent to misrepresent the vehicle. Therefore, if you find it necessary to enact HB 2203, the language on line 32 and 33 is very important.

Another important change for dealers is found in the definition of a leased or rental vehicle beginning on line 39. Many times, dealers will loan a vehicle to a customer who is having their vehicle serviced at the dealership. In some cases, dealers have certain cars

specifically set aside for this purpose. However, in some cases, dealers will take a vehicle off their lot for this and the question arose as to whether this constituted a rental situation under the original bill. Generally, dealers charge a nominal fee to the customer for the use of the vehicle, but in many cases it is a one-time use of the vehicle and not a repeating "rental" of the same vehicle. KMCDA's concern was that a dealer might be found in violation of the act if a vehicle was used just one time for one day in this type of situation. We did not feel that this was the intent of the author, and the House Committee agreed by adding this language concerning the so-called "service rental." Again, this is very important to KMCDA, and if you decide to pass HB 2203, we ask that this language be left intact.

At the outset I said that we did not come before you today as a proponent of HB 2203. While we agree disclosure should be made by dealers to consumers, we have a hard time supporting legislation which duplicates existing statutes, and we do feel that the provisions of HB 2203 are already found in other sections of the Kansas statutes.

We believe that the solution, or at least available remedies for consumers, already exists in the Kansas Consumer Protection Act, which HB 2203 references on line 43 through 45, as well as in the Kansas Dealer-Manufacturer-Salesman Licensing Act in K.S.A 8-2401 et seq.

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 dealer's license

if they are found to have "knowingly defrauded any retail buyer to the buyer's damage", "knowingly (made) a fraudulent sale or transaction", or, made "willful misrepresentation, circumvention or concealment, through a subterfuge or device, or any material particulars, or the nature thereof, required by law to be stated or furnished to the retail buyer."

The passage of HB 2203 will simply track what is already in the statutes, and will even make the remedies available to the consumers the same which are found in the Kansas Consumer Protection Act. Enactment of HB 2203 will not be a "quick fix" for consumers as court action will have to be taken by the consumer to receive relief under HB 2203 or the Consumer Protection Act.

Mr. Chairman and Members of the Committee, while we feel that the current Kansas Consumer Protection Act and Dealer Licensing Law are adequate to protect the consumers, you may still believe it necessary to enact HB 2203. If you do, we respectfully request that the language which we have highlighted this morning be left intact.

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

KADRA Kansas Automotive Dismantlers and Recyclers Association

"Serving Kansas thru Dismantling and Recycling"

**SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES**

March 20, 1987

**HOUSE BILL NO. 2203**

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

As I had indicated that I would do, I have prepared the following written statements confirming my testimony of March 20, 1987.

I am Steven R. Wiechman, representing the Kansas Automotive Dismantlers and Recyclers Association. K.A.D.R.A. appreciates the opportunity to provide input on legislation.

H.B. 2203 addresses a problem that could be resolved under the Kansas Consumer Protection Act had all of the evidence been in place at the time the claim was made. The act and case law both support the requirement to disclose the information. This bill creates an obligation to put information and vehicle history in writing. The language of the bill does create some problems and I will attempt to address those language problems.

Line 31 uses the language "a vehicle dealer". The problem with that language is that it is indefinite as to which dealer in the chain of dealers is required to make the disclosure. It is most difficult to disclose something that you do not even know occurred.

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This becomes even more apparent for vehicles coming from other states. There is no way of knowing if the vehicle was a driver education vehicle or a rental car in Missouri, Colorado, Oklahoma or any other state.

Line 32-33 uses the language "ultimate consumer". The problem with this language is that the ultimate consumer may be the salvage dealer who scrapes the vehicle. This language does not clearly address the problem sought to be corrected by the legislation. Likewise, a salvage dealer may be in the chain of title and may not know the vehicle's use by previous owners or dealers.

Although salvage vehicle dealers are generally not in the rental business, it would seem that the language in section (b) is unmanageable and subject to various interpretations. Therefore, some standard as "days rented" or "rental miles in excess of 10,000" or some such similiar standard may be a more workable solution and subject to better scrutiny by reviewing the records, should the need arise.

Part of the problems that exist may be addressed with a form of record keeping called "branding" on titles. This record would allow a continuing permanent record in the title history files. Once a consumer received the title and if it was not known that the vehicle was a rental vehicle or a drivers education vehicle, the transaction could be voidable (subject to being set aside) at the option of the consumer for a reasonable period of time, like 30 days after delivery of the title unless the title was, in fact, delivered at the time of sale and delivery of the vehicle. Acceptance of the title at the time of sale would be a waiver as to the claim of not

knowing the vehicle was a driver education vehicle or a rental car. The consumer would know all of the facts and it could be the basis of the bargain.

These are some of our concerns and possible alternatives to deal with some of those concerns.

Respectfully submitted,

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