

Approved September 19, 1988  
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at  
Chairperson

7:00 ~~xxx/xxx~~ <sup>a.m.</sup> on March 30, 1988 in room 519-S of the Capitol.

All members were present except:

Representatives Adam, Russell, Laird, Justice, Sutter, Gross and Dillon

Committee staff present:

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

Conferees appearing before the committee:

None

The meeting was called to order by Chairman Crowell and SB-462 concerning odometer rollbacks was taken up.

Representative Snowbarger explained a proposed amendment to SB-462, requiring the purchaser of a vehicle to sign a disclosure statement acknowledging they had been informed a title search had not been made. (See Attachment 1)

A motion was made by Representative Snowbarger that SB-462 be so amended. The motion was seconded by Representative Shore. Motion carried.

Bruce Kinzie distributed a balloon to Committee members showing proposed amendments to SB-462. (See Attachment 2)

A motion was made by Representative Moomaw that SB-462 be amended as indicated by the balloon copy. The motion was seconded by Representative Shore. Motion carried.

A motion was made by Representative Wilbert that SB-462 be recommended as amended favorable for passage. The motion was seconded by Representative Sallee. Motion carried.

The next bill taken up was HB-3085. A vote was taken on the substitute motion which was left on the floor from the March 29, 1988 Transportation Committee meeting. The substitute motion, made by Representative Sallee, was that the fine be set at not more than \$1,000 in Line 602, and Pages 2, 3 and 4 of the balloon be adopted. Substitute motion failed.

On the original motion made by Representative Shore that Pages 2, 3 and 4 of the balloon be adopted, a vote was taken. Motion failed.

A motion was made by Representative Snowbarger that Lines 403 and 404 of HB-3085 be deleted. The motion was seconded by Representative Freeman. Motion carried.

A motion was made by Representative Freeman on Page 17, Line 602 of HB-3085 to strike "\$2,000" and insert "\$1,000". The motion was seconded by Representative Shore.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,  
room 519-S, Statehouse, at 7:00 a.m./~~xxx~~ on March 30, 1988

A substitute motion was made by Representative Sallee that the \$2,000 in Line 602 of HB-3085 be reduced to \$500. The motion was seconded by Representative Spaniol. Motion failed.

A vote was taken on the original motion to reduce the amount of the fine to \$1,000. Motion carried.

A motion was made by Representative Snowbarger that HB-3085 be amended as suggested on Page 11 and 16 of the balloon. (See Attachment 3) The motion was seconded by Representative Wilbert. Motion carried.

A motion was made by Representative Spaniol that HB-3085 be recommended as amended favorable for passage. The motion was seconded by Representative Lacey. Motion carried.

The meeting was adjourned at 7:40 a.m.

  
\_\_\_\_\_  
Rex Crowell, Chairman

## PROPOSED AMENDMENT TO S.B. NO. 462

On page 4, in line 140, before the period, by inserting the following: "and such disclosure statement shall be signed by the purchaser acknowledging such disclosure was made to the purchaser";

*Pat Crowell*

Attach. 2

0083 (g) (h) Every action pursuant to this section shall be brought  
0084 in the district court of any county in which there occurred any act  
0085 or practice declared to be a violation of this section, or in which  
0086 the defendant resides or has such person's principal place of  
0087 business.

0088 (h) (i) The provisions of this section shall not apply to antique  
0089 motor vehicles which could be registered under the provisions of  
0090 K.S.A. 8-166 et seq., and amendments thereto, or to special  
0091 interest vehicles which could be registered under the provisions  
0092 of K.S.A. 8-194 et seq., and amendments thereto.

0093 (i) (j) Violation of this section is a class E felony.

0094 New Sec. 2. As used in sections 2 through 8:

0095 (a) "Supplier" means: (1) A licensed motor vehicle dealer; (2)  
0096 any person or business which purchases, sells or exchanges five  
0097 or more motor vehicles in any one calendar year; or (3) any  
0098 person or business which in the ordinary course of business  
0099 purchases, sells or exchanges motor vehicles.

0100 (b) "Consumer" means an individual or sole proprietor.

0101 (c) "Set off" means a reasonable allowance for the con-  
0102 sumer's use of the motor vehicle as calculated from the most  
0103 recent edition of the United States department of transporta-  
0104 tion's cost of owning and operating automobiles and vans.

0105 New Sec. 3. (a) ~~In addition to the penalties provided in~~  
0106 ~~section 6,~~ any consumer who has purchased a motor vehicle from  
0107 a supplier and who proves: (1) That any of the acts declared to  
0108 be a violation of section 1 have taken place; and (2) that the  
0109 mileage or use of the motor vehicle is materially different from  
0110 that shown on the vehicle's odometer shall be entitled to a  
0111 declaration from the court that the purchase of the motor  
0112 vehicle is voidable at the consumer's request.

0113 (b) The consumer shall recover the greater of the following  
0114 but recovery shall not exceed the actual purchase price of the  
0115 vehicle:

0116 (1) Purchase price before trade-in allowance less set off; ~~or~~

0117 (2) Purchase price before trade-in allowance plus verified  
0118 repairs less set off; ~~or~~

0119 New Sec. 4. The attorney general shall enforce sections 2

If the purchase of a motor vehicle is voided under subsection (a),

; or

(3) The civil penalties in section 6.

(c) The consumer may recover reasonable attorney fees, if the consumer prevails in an action against the supplier under this section.

0120 through 8 throughout the state.

0121 New Sec. 5. (a) ~~The consumer may recover in a private right~~  
 0122 of action the ~~damages in section 3 or~~ civil penalties ~~as listed~~ in  
 0123 section 6 ~~whichever is greater.~~

0124 (b) ~~In addition,~~ the consumer may recover reasonable attor-  
 0125 ney fees if the consumer prevails in an action against the sup-  
 0126 plier.

0127 New Sec. 6. (a) The commission of any act or practice de-  
 0128 clared to be a violation of section 1 or section 8 shall make the  
 0129 violator liable to the aggrieved consumer, or to the state, for the  
 0130 payment of a civil penalty, recoverable in an individual action  
 0131 or in an action brought by the attorney general in a sum set by  
 0132 the court of not more than \$2,000 per violation.

0133 (b) The remedies provided in subsection (a) are in addition to  
 0134 any remedies available under federal odometer law.

0135 New Sec. 7. A completed odometer statement shall be a  
 0136 required document for application for a title for a motor vehicle.

0137 New Sec. 8. A supplier as defined herein shall disclose in  
 0138 writing to the purchaser of a motor vehicle at or before the time  
 0139 of entering into the purchase agreement whether the supplier  
 0140 has or has not performed a title search for such motor vehicle. A  
 0141 supplier who makes the foregoing disclosure shall have no lia-  
 0142 bility under sections 3, 5 and 6 to a purchaser of the vehicle in  
 0143 the event the mileage shown for the motor vehicle is inaccurate  
 0144 or untrue, unless such supplier violated the provisions of sub-  
 0145 section (f) of section 1.

0146 Sec. 9. K.S.A. 1987 Supp. 60-460 is hereby amended to  
 0147 read as follows: 60-460. Evidence of a statement which is made  
 0148 other than by a witness while testifying at the hearing, offered to  
 0149 prove the truth of the matter stated, is hearsay evidence and  
 0150 inadmissible except:

0151 (a) *Previous statements of persons present.* A statement pre-  
 0152 viously made by a person who is present at the hearing and  
 0153 available for cross-examination with respect to the statement and  
 0154 its subject matter, provided the statement would be admissible if  
 0155 made by declarant while testifying as a witness.

0156 (b) *Affidavits.* Affidavits, to the extent admissible by the

If the purchase of a motor vehicle is not voided under subsection (a) of section 3,

under this section

0228 offer bids and the private sale of such motor vehicles is to the  
0229 highest bidder.

0230 (kk) "Licensee" means any person issued a valid license  
0231 pursuant to this act.

0232 (ll) "Dealer" means a mobile home dealer or a vehicle dealer  
0233 as defined by this act, unless the context otherwise requires.

0234 (mm) "Insurance company" means any person desiring to be  
0235 licensed under this act and engaged in the business of writing or  
0236 servicing insurance related to vehicles.

0237 (nn) *"Supplemental place of business" means a business*  
0238 *location other than that of the established place of business. All*  
0239 *requirements which apply to an established place of business*  
0240 *shall apply to a supplemental place of business. A supplemental*  
0241 *place of business shall be operated on a continuous, year-round*  
0242 *basis.*

0243 Sec. 2. K.S.A. 1987 Supp. 8-2404 is hereby amended to read  
0244 as follows: 8-2404. (a) No vehicle dealer or mobile home dealer  
0245 shall engage in business in this state without obtaining a license  
0246 as required by this act. Any vehicle dealer or mobile home dealer  
0247 holding a valid license and acting as a vehicle salesman or  
0248 mobile home salesman shall not be required to secure a sales-  
0249 man's license.

0250 (b) No first stage manufacturer, second stage manufacturer,  
0251 mobile home manufacturer, factory branch, factory representa-  
0252 tive, distributor branch or distributor representative shall engage  
0253 in business in this state without a license as required by this act,  
0254 regardless of whether or not an office or other place of business is  
0255 maintained in this state for the purpose of conducting such  
0256 business.

0257 (c) An application for a license shall be made to the director  
0258 and shall contain the information provided for by this section,  
0259 together with such other information as may be deemed reason-  
0260 able and pertinent, and shall be accompanied by the required  
0261 fee. The director may require in the application, or otherwise,  
0262 information relating to the applicant's solvency, financial stand-  
0263 ing, or other pertinent matter commensurate with the safeguard-  
0264 ing of the public interest in the locality in which the applicant

0376 first stage converter, second stage converter or distributor unless  
 0377 the applicant for the vehicle dealer's license maintains an es-  
 0378 tablished place of business which has been inspected and ap-  
 0379 proved by the division. First stage manufacturers, factory  
 0380 branches, factory representatives, distributor branches, distribu-  
 0381 tor representatives and lending agencies are not required to  
 0382 maintain an established place of business to be issued a license.

0383 (k) Dealers required under the provisions of this act to  
 0384 maintain an established place of business shall own or have  
 0385 leased and use sufficient lot space to display vehicles or mobile  
 0386 homes at least equal in number to the number of dealer license  
 0387 plates the dealer has had assigned.

0388 (l) A sign with durable lettering at least 10 inches in height  
 0389 and easily visible from the street identifying the established  
 0390 place of business shall be displayed by every vehicle dealer.  
 0391 Notwithstanding the other provisions of this subsection (l), the  
 0392 height of lettering of the required sign may be less than 10  
 0393 inches as necessary to comply with local zoning regulations.

0394 (m) If the established *or supplemental* place of business or  
 0395 lot is zoned, approval must be secured from the proper zoning  
 0396 authority and proof that the use complies with the applicable  
 0397 zoning law, ordinance or resolution must be furnished to the  
 0398 director by the applicant for licensing.

0399 (n) An established ~~place of business, otherwise meeting the~~ or supplemental  
 0400 requirements of this act may be used by a dealer to conduct more  
 0401 than one business, provided that suitable space and facilities  
 0402 exist therein to properly conduct the business of a vehicle dealer.  
 0403 *Notwithstanding the above, no more than one dealer shall*  
 0404 *operate at an established* ~~place of business.~~ or supplemental

(p) ~~(o)~~ Any dealer selling, exchanging or transferring or causing  
 0405 to be sold, exchanged or transferred new vehicles or new mobile  
 0406 homes in this state must satisfactorily demonstrate to the director  
 0407 that such vehicle dealer or mobile home dealer has a bona fide  
 0408 franchise agreement or mobile home sales agreement with the  
 0409 first or second stage manufacturer or distributor of the vehicle or  
 0410 mobile home manufacturer, to sell, exchange or transfer the same  
 0411 or to cause to be sold, exchanged or transferred.  
 0412 (o) If a supplemental place of business is not operated on a contin-  
 uous, year-round basis, the dealer shall give the department fifteen (15)  
 days notice as to the dates on which the dealer will be engaged in business  
 at the supplemental place of business

0561 dealer's established or supplemental place of business;  
 0562 (26) ~~failure to comply with any provision of Kansas vehicle~~  
 0563 ~~registration statutes~~ in connection with such person's operation  
 0564 as a dealer;  
 0565 (27) any violation of K.S.A. 8-116, and amendments thereto;  
 0566 (28) any violation of K.S.A. 8-611, and amendments thereto;  
 0567 (29) any violation of K.S.A. 79-1019, and amendments  
 0568 thereto;  
 0569 (30) failure to provide adequate proof of ownership for  
 0570 motor vehicles in the dealer's possession.  
 0571 (b) The director may deny the application for the license  
 0572 within 30 days after receipt thereof by written notice to the  
 0573 applicant, stating the grounds for such denial. Upon request by  
 0574 the applicant whose license has been so denied, the applicant  
 0575 shall be granted an opportunity to be heard in accordance with  
 0576 the provisions of the Kansas administrative procedure act.  
 0577 (c) If a licensee is a firm or corporation, it shall be sufficient  
 0578 cause for the denial, suspension or revocation of a license that  
 0579 any officer, director or trustee of the firm or corporation, or any  
 0580 member in case of a partnership, has been guilty of any act or  
 0581 omission which would be good cause for refusing, suspending or  
 0582 revoking a license to such party as an individual. Each licensee  
 0583 shall be responsible for the acts of its salesmen or representa-  
 0584 tives while acting as its agent.  
 0585 (d) Any licensee or other person aggrieved by a final order of  
 0586 the director, may appeal to the district court as provided by the  
 0587 act for judicial review and civil enforcement of agency actions.  
 0588 (e) The revocation or suspension of a first or second stage  
 0589 manufacturer's or distributor's license may be limited to one or  
 0590 more municipalities or counties or any other defined trade area.  
 0591 Sec. 5. K.S.A. 1987 Supp. 8-2411 is hereby amended to read  
 0592 as follows: 8-2411. (a) When any licensee is found to be allegedly  
 0593 violating any of the applicable provisions of this act, or any order  
 0594 or rule or regulation adopted pursuant thereto, the director upon  
 0595 the director's own motion or upon complaint may commence a  
 0596 hearing against the licensee, which hearing shall be conducted  
 0597 in accordance with the provisions of the Kansas administrative

, with the exception that dealers selling new manufactured homes and new recreational vehicles may engage in business at other than their established or supplemental place of business for a period not to exceed fourteen (14) days  
  
 any violation of K.S.A. 8-126 et seq., and amendments thereto



0598 procedure act.

0599 (b) Any person who is found to have violated any applicable  
0600 provisions of this act, any rule and regulation adopted pursuant  
0601 thereto or any applicable order of the director shall be subject to  
0602 a civil penalty of not less than \$50 nor more than ~~\$1,000~~ \$2,000  
0603 for each violation or such person's license may be suspended or  
0604 revoked or both civil penalty and license suspension or revoca-  
0605 tion.

0606 (c) Any party aggrieved by the decision of the board may  
0607 appeal the same to the district court in accordance with the  
0608 provisions of the act for judicial review and civil enforcement of  
0609 agency actions.

0610 Sec. 6. K.S.A. 1987 Supp. 8-2401, 8-2404, 8-2409, 8-2410 and  
0611 8-2411 are hereby repealed.

0612 Sec. 7. This act shall take effect and be in force from and  
0613 after its publication in the ~~statute book.~~

Kansas Register