Approved 2/2/88
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 January 27, 1988 in room 254-E of the Capitol.

All members were present except:

Sen. Doyen was excused.

Committee staff present:
Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Rep. H. Dillon
Art Weiss, Deputy Attorney General
Pat Barnes, Kansas Motor Car Dealers Association.

Hearing on H.B. 2203 - Requiring certain disclosures.

Rep. Dillon explained the bill to the Committee. This bill had passed the House by a vote of 120-2 but the Senate took no action. It was the subject of an interim committee last year. It would require that a vehicle dealer disclose, in writing, to the ultimate purchaser the fact that the motor vehicle was used in driver training or that it was used as a leased or rented vehicle. His nephew had purchased a vehicle and later found out it had been a leased vechicle. A copy of the background information on this bill is attached. (Attachment 1).

Art Weiss, Deputy Attorney General, appeared in favor of the bill. He said a consumer has the right to know whether the car has been leased or rented. There should be written disclosure. Some of these cars are sold as "new" cars. A copy of his statement is attached. (Attachment 2).

Pat Barnes, Kansas Motor Car Dealers Association, said they could not support the bill but were willing to work for changes. He cited several problems that they would have with the bill. There were also problems with definitions. A copy of his statement is attached. (Attachment 3).

Discussion followed on the bill and it was felt the consumer should be able to make an informed decision and the dealer should make an effort to find out where the vehicle came from. They discussed the problem Chrysler had with its "executive" cars.

A sub-committee was appointed to meet with all interested parties and report back to the full Committee. Members are Sen. Bond, Chairman; Sen. Frey and Sen. Francisco.

On a motion from Sen. Hayden and a second from Sen. Thiessen the Committee introduced a bill requested by the Attorney General concerning the Lemon Law. Motion carried.

Meeting was adjourned at 9:50 a.m.

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.

DATE: 1-27-88

ROOM: 254-E

GUEST REGISTER
SENATE

TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
Pat Wiechman	Ks. Automotive Dismantlers & Recyclers	Topeka
PAT BARNES	Ks. Motor Car Dealers Ass'n	Topeka
TOM SKINNER	DMV Dept of Rev	TOPEKA
Harold R. [illegible]	DMV. Dept of Rev.	"
Nancy Lindberg	Attorney General	Topeka
[illegible]	" "	"
Ed DeSoignie	Kansas Dept. of Transp.	Topeka

Certain Disclosures

Background

During the 1987 Legislative Session, Representative Herman Dillon introduced H.B. 2203 which presently is assigned to the Senate Committee on Transportation and Utilities. During the interim period, the subject matter of the bill was added to the Committee's study charge. The bill requires that a vehicle dealer disclose, in writing, to the ultimate purchaser the fact that the motor vehicle was used in driver training or that it was used as a leased or rented vehicle. Under present law, only the fact that the vehicle was used in driver training is required specifically to be disclosed. There is no requirement that this disclosure be in writing. A provision of the bill exempts from the disclosure requirement those vehicles leased or rented to customers while the customer's vehicle is being serviced. Remedies of the Attorney General and remedies found in K.S.A. 50-632 and 50-634 would apply to violators of the law.

Hearings

The Committee received testimony on this matter from the Attorney General's Office and the Kansas Motor Car Dealers Association. Principal concerns and recommendations of the conferees are summarized below.

Attorney General. The Attorney General supports the passage of 1987 H.B. 2203 for the following reasons:

1. The statute states a dealer "shall disclose" the fact a car was used as a driver training vehicle. It does not, however, state what will happen if the information is not disclosed. The statute provides no sanctions or penalties. Penalties for failure to disclose need to be known.

2. The fact that a vehicle was used as a lease or rental vehicle is equally as relevant to a consumer as is knowing that the vehicle was used for driver training.

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3. Current law states that the dealer "shall disclose," but does not require that the disclosures be written, inevitably resulting in a situation where verbal representations which cannot be proved are made by the dealer claiming disclosure was made and by the purchaser claiming that disclosure was not made.

4. Under federal law, vehicles used as driver training or lease/rental vehicles may be sold as "new" cars because the equitable or legal title to the vehicle has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser -- thus making disclosure of cars used as driver training or lease vehicles a very important issue.

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Testimony of Art Weiss
Deputy Attorney General, Consumer Protection Division
Before the Senate Transportation and Utilities Committee
January 27, 1988

Mr. Chairman and Members of the Committee:

I am here this morning to comment on proposed House Bill No. 2203. This bill repeals K.S.A. 1986 Supp. 8-2427 to require certain disclosures concerning motor vehicles. House Bill No. 2203 would require written disclosure of the fact that a motor vehicle was used as a driver training or lease vehicle.

Attorney General Stephan strongly favors passage of proposed Bill No. 2203 for the following reasons:

> K.S.A. 8-2427 states that "A vehicle dealer . . . shall disclose the fact that a motor vehicle was used as a driver training motor vehicle to any purchaser of such motor vehicle."

a) The statute states a dealer shall "disclose" the fact a car was used as a driver training vehicle. It does not,

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however, state what will happen if the information is not disclosed. The statute provides no sanctions or penalties; it is toothless.

b) K.S.A. 8-2427 addresses only disclosure of the fact that a vehicle was used as a driver training vehicle. The fact a vehicle was used as a lease or rental vehicle would be equally relevant to a consumer.

c) K.S.A. 8-2427 states a dealer "shall disclose," but does not require that the disclosure be written. Inevitably this results in a situation where the dealer will claim disclosure that the fact the car was used as a driver training vehicle was made. The consumer will claim disclosure was not made and the result is a battle of verbal representations, none of which can be proved.

d) The fact that a vehicle was used as a driver training or lease/rental vehicle would be highly relevant to a reasonable buyer because of irregular use, e.g. inexperienced drivers, excessive braking and acceleration, stripped gears, inadequate maintenance and other high stress use.

e) Vehicles used as driver training or lease/rental vehicles may be sold as "new" cars. Federal statute defines "new automobile" to mean "an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchase." 15 U.S.C. 1231

Because cars used as driver training or lease cars can be sold as "new," disclosure becomes a very important issue. "New carries connotations of very little use, mileage, or wear and can be a misleading and deceptive term if a car was used as a driver training or lease vehicle.

The possibility of misleading or deceptive acts and practices in the purchase of a driver training or lease vehicle is substantial. These cars are often sold as "demos" or "executive" cars implying they have been used only for demonstration or other limited purposes. Accordingly, the Attorney General strongly supports House Bill No. 2203.

STATEMENT BEFORE THE

SENATE COMMITTEE ON TRANSPORTATION

BY THE

KANSAS MOTOR CAR DEALERS ASSOCIATION

Wednesday, January 27, 1988

RE: House Bill 2203 and Proposal No. 32
Regarding Disclosure of Leased and
Rented Vehicles

Mr. Chairman and Members of the Committee: I am Pat Barnes, legislative counsel for 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 proposal that dealers disclose vehicles which were previously leased or rented, i.e., House Bill 2203 from this past legislative session (interim proposal 32). I cannot say we are wholehearted supporters of HB 2203 and its concept, but we always stand ready and willing to work with our representatives.

1987 House Bill 2203 would have amended a section of the statutes which was added in 1986 in conjunction with a request from the school districts that dealers be allowed to provide schools driver education 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 driver's education vehicle.

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The proposal in question adds further to that disclosure requirement. It requires a dealer to include a disclosure that a vehicle was used as a lease or Rental motor vehicle. The disclosure is required to be in writing.

The major concern which KMCDA has with this bill is the narrowness with which it is drawn by requiring disclosure to the "ultimate purchaser". KMCDA believes that the bill is unworkable and places a burden on new and used vehicle dealers which will make total compliance virtually impossible and possibly very expensive. Through no fault of his own, a dealer 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.

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, but 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. The proposal itself requires the dealer to

make the disclosure only to the ultimate purchaser of the vehicle, but this will be interpreted to apply to those buying the vehicle at any time in the future from any seller.

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 proposal. On a regular basis, the major manufacturers have sales at auto auctions 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 manufacturer may include vehicles in the sale which it has repurchased from major rental car companies such as Hertz, Avis and Budget, to name a few. These cars are those which were sold to the rental car companies with 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 things appear confused with three or four cars being auctioned at the same time, auctioneers calling the bidding, dealers shouting out bids, etc. In many cases, the dealers don't know if the car they're bidding on is an executive or a rental car, and things move so fast, it's sometimes 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 title is assigned, and then mailed to the purchasing dealer. One can usually expect a delay of several weeks before receiving title.

Let's assume that the vehicle purchased by the dealer was a rental car and there is no title or any other paperwork that indicates the vehicle was a Hertz car rather than an "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 the dealer suddenly 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 the proposed bill.

Another problem which could occur deals with the lack of a definition of what is a leased or rented vehicle. In talking last session 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. 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.

Secondly, some dealerships, particularly small ones, don't have specific set-aside vehicles. However, a customer may come in for service and desperately need a replacement vehicle

for the day, or even for a couple of hours. The dealer, in an effort to keep his customer happy, will let him take one of the inventory cars with a small charge for the day. That evening, the vehicle is returned to inventory, and is sold at retail the next day.

Under the provisions of HB 2203, these situations were addressed and excluded and we would like this exclusion to remain intact in the present proposal if the bill is to receive favorable treatment.

While we understand, or at least we believe we do, what is being remedied 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.

We would suggest that the language necessary to accomplish the desired result, 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 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. Unfortunately, we believe this is the case with the proposal before you.

We believe that the solution, or at least available remedies for consumers which have been injured, already exists 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. . ." (K.S.A. 50-624(b)(3).) 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 [made] 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." (K.S.A. 8-2410.)

We feel that the current Kansas Consumer Protection Act and Dealer Licensing Act are adequate to protect the consumers but you may still believe this proposal 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.