

Approved 2/10/88
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 February 5, 1988 in room 254-E of the Capitol.

All members were present except:

Senators Doyen, Francisco and Vidricksen were 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:

D. Jeanne Kutzley, Assistant Attorney General
Major David Hornbaker, Kansas Highway Patrol
Pat Barnes, Kansas Motor Car Dealers Association
Mark Wettig, Department of Revenue
Tom Whitaker, Kansas Motor Carriers Association

The Chairman said February 9 was the last day to get the Resolution in urging the Secretary of the United States Department of Transportation to allow the states to determine what class of persons or class of commercial vehicles should be exempted from the Commercial Motor Vehicle Safety Act of 1986. This Resolution was necessary because of the hardship which would be created on agriculture and small businesses. A motion was made by Sen. Hayden and was seconded by Sen. Martin to introduce the Resolution and have it sent directly to the floor. Motion carried. A copy of Resolution 7RS2263 is attached. (Attachment 1).

The Chairman said the committee would defer consideration on S.B.503 until the next meeting if there were no objections. There were none so it will be considered next week.

Hearing on S.B. 462 - Relating to odometers. Proposal No. 32.

Ben Barrett reviewed this bill with the committee. He said during the interim meetings the words "with intent to defraud was the centerpiece of the law. He said there was concern for the person who had no intent to defraud. During the interim there had been a request to provide for voiding a sale if the odometer had been tampered with.

D. Jeanne Kutzley, Assistant Attorney General, said cars with rolled back odometers create enormous problems for consumers and her office had some specific recommendations. Any person or business that engages in rollbacks or have knowledge of rollback will be held responsible. A copy of her statement is attached. (Attachment 2). She also submitted copies of her proposed amendments. A copy is attached. (Attachment 3).

Major David Hornbaker, Kansas Highway Patrol, spoke in favor of S.B. 462. He said the rollbacks rip off the consumer and it is a very simple thing to do. This legislation had been requested by the Highway Patrol. A copy of his statement is attached. (Attachment 4).

Pat Barnes, Kansas Motor Car Dealers Association, said they support this bill and his organization has long been involved in efforts to curtail tampering. Dealers are also victims of this kind of fraud. A copy of his statement is attached. (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 5, 1988.

Mark Wettig, Department of Revenue, said in addition to making this a crime it should also be a crime to knowingly sell or convey a vehicle.

Action on S.B. 505 - Prohibiting certain speeding violations from being considered by insurance companies.

A motion was made by Sen. Martin and was seconded by Sen. Hayden to recommend S.B. 505 favorable for passage. Motion carried.

Action on S.B. 444 - Instruction permits for class A or class B driver's licenses.

Tom Whitaker, Kansas Motor Carriers Association, said they had some problem with the bill concerning residency and also the period of time requirement which is now six months.

A motion was made by Sen. Bond and was seconded by Sen. Hayden to change the time requirement from six months to 90 days on line 29. Motion carried. The residency requirement will be handled later.

A motion was made by Sen. Martin and was seconded by Sen. Thiessen to recommend S.B. 444 as amended, favorable for passage. Motion carried.

Sen. Bond said his subcommittee was still working on H.B. 2203.

Action on S.B. 312 - License plates for special organizations or groups.

A motion was made by Sen. Bond and was seconded by Sen. Hayden to recommend S.B. 312 unfavorable for passage. Motion carried.

Action on S.B. 541 - Special license plates for alumni organizations.

Since the purpose of the special plates was to display the alumni organizations the committee felt there should be a plate for front and back of the car. A motion was made by Sen. Bond and was seconded by Sen. Martin to have two plates. Motion carried.

A motion was made by Sen. Bond and was seconded by Sen. Martin to recommend S.B. 541 as amended, favorable for passage. Motion carried.

On a motion from Sen. Bond and a second from Sen. Hayden the Minutes of February 4 were approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 2-5-88

ROOM: 254-E

GUEST REGISTER
SENATE

TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
PAT BARNES	Ks Motor Car Dealer Assoc.	Topeka
Pat Wiechman	Ks Auto. Dismantlers & Recyclers Assn.	Topeka
Paul Wade	Kans Highway Patrol	Topeka
ALVIN HORNBERGER	"	"
Maianne Kutzley	AG's office	Topeka
Tom Whitaker	Ks Motor Carriers Assn	Topeka
Woody Woodman	KCP&L	KC Mo.
Connie McGinnis	KEC	Topeka
Harold B. Jumbus	Division of Vehicles	Topeka
Mark Withy	Dept. of Revenue	Topeka
Tom Skinner	DMV	Topeka
Tom Taylor	KPH Gas Service	Topeka
BARB REINERT	KPOA	"
Ray Petty	TRCH	Topeka

SENATE RESOLUTION NO. _____

By Committee on Transportation and Utilities

A RESOLUTION urging the secretary of the United States department of transportation to allow the states to determine what class of persons or class of commercial vehicles should be exempted from the Commercial Motor Vehicle Safety Act of 1986.

WHEREAS, The Commercial Motor Vehicle Safety Act of 1986 was enacted; and

WHEREAS, The overriding concern of the legislation was to protect the public and to provide for the safe operation of commercial motor vehicles; and

WHEREAS, The Commercial Motor Vehicle Safety Act of 1986 has preempted the power of the states to determine those classes of persons or commercial vehicles which should be governed by such act; and

WHEREAS, The economy of the state of Kansas is dependent upon agriculture and small businesses; and

WHEREAS, The Commercial Motor Vehicle Safety Act of 1986 creates a hardship on agriculture and small businesses in the state of Kansas; and

WHEREAS, We appreciate the general thrust of the legislation, but feel that each state has unique situations that are better addressed by each respective state legislature after considering the public interest and safety: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we urge the secretary of the United States department of transportation to allow the states to determine what class of persons or class of commercial vehicles should be exempted from the Commercial Motor Vehicle Safety Act of 1986; and

Be it further resolved: That the Secretary of the Senate be

ATT. 1
T&U
2/5/88

directed to send enrolled copies of this resolution to Secretary James H. Burnley, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590; Department of Administration, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, S.W., Washington, D.C. 20590; Senator Bob Dole, 141 Hart Senate O.B., Washington, D.C. 20510; Senator Nancy Kassebaum, 302 Russell Senate O.B., Washington, D.C. 20510; Representative Pat Roberts, 1314 Longworth House O.B., Washington, D.C. 20515; Representative Jim Slattery, 1431 Longworth House O.B., Washington, D.C. 20515; Representative Jan Meyers, 1407 Longworth House O.B., Washington, D.C. 20515; Representative Dan Glickman, 2435 Rayburn House O.B., Washington, D.C. 20515; and Representative Bob Whittaker, 332 Cannon House O.B., Washington, D.C. 20515.

TESTIMONY OF D. JEANNE KUTZLEY
ASSISTANT ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION
BEFORE THE SENATE TRANSPORTATION & UTILITIES COMMITTEE
ON S.B. 462

February 5, 1988

Mr. Chairman & Members of the Committee:

As you are aware, cars with rolled back odometers create enormous problems for the consumers who buy them unaware of the true mileage. These cars often require costly repairs the consumers did not anticipate. Consumers are cheated of years of dependable transportation.

Last year Attorney General Stephan requested legislation to give the consumers a remedy when they discover their car's odometer has been rolled back. He asked that the purchase be voidable at the consumer's option and the consumer recover the entire purchase price. That recommendation was not adopted because of the interim committee's concerns.

Attorney General Stephan has addressed the concerns expressed by the interim committee in the following recommendations.

The consumer will have a remedy against a "supplier." "Supplier" is defined in this act as (1) a licensed motor vehicle dealer; or (2) any person or business which purchases, sells or exchanges 5 or more motor vehicles in any one calendar year; or (3) any person or business which in the ordinary course of business purchases, sells or exchanges motor vehicles. This definition means that those sellers most

ATT. 2
T&U
2/5/88

likely to be engaged in rolling back odometers and most likely to have knowledge of the rollback will be held responsible. That is reasonable. However, it also means that an individual or business who is an unwitting intermediate purchaser would not be held responsible. The Attorney General proposes a specific formula under which consumers could recover. The consumer would recover the purchase price of the car less its trade-in value. Trade-in value is specifically defined. If the consumer requests recovery for repair bills, the seller is entitled to a set off for use according to an established formula based upon miles used. If the consumer does not ask for recovery for repair bills, there is no set off for use.

The Attorney General would have the power to enforce this act. Consumers would also have a private right of action. There would be civil penalties available in an action by the Attorney General or in a private action. This parallels the Kansas Consumer Protection Act.

The Attorney General also requests that the completed odometer statement be a required document for a title application. This will make it easier to trace the title history on a suspected rollback.

This proposal is in addition to the remedies available under federal odometer law and penalties currently available under K.S.A. 8-611.

Thank you for your consideration.

NOTE: This is written as an amendment to K.S.A. 1987 Supp. 8-611. Language from that statute must be incorporated to put this act in final form.

An act relating to odometers; prohibiting certain acts; providing for remedies; amending K.S.A. _____.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Definitions:

- a) "Supplier" means (1) a licensed motor vehicle dealer; or (2) any person or business which purchases, sells or exchanges five or more motor vehicles in any one calendar year; or (3) any person or business which in the ordinary course of business purchases, sells or exchanges motor vehicles.
- b) "Consumer" means an individual or sole proprietor.
- c) "Trade-in value" means the trade-in value listed by the National Auto Dealers Association Official Used Car Guide in the Midwest edition in use at the time of the trade-in.

New Section 2.

- a) In addition to the penalties provided in this act, any consumer who has purchased a motor vehicle from a supplier and who proves (1) that any of the acts declared to be a violation of this act have taken place; and (2) that the mileage or use of the motor vehicle is materially

ATT. 3
T&U
2/5/88

different from that shown on the vehicle's odometer shall be entitled to a declaration from the court that the purchase of the motor vehicle is voidable at the consumer's request.

b) The consumer shall recover the following from the supplier:

- 1) Refund of the actual purchase price of the motor vehicle;
- 2) Less the trade-in value of any motor vehicle traded by the consumer to the supplier;
- 3) At the consumer's option, the consumer may also recover for the cost of verified repairs to the motor vehicle;
- 4) If the consumer recovers for repairs, the supplier shall be entitled to a setoff for a reasonable allowance for the consumer's use of the motor vehicle as calculated from the most recent edition of the United States Department of Transportation's cost of owning and operating automobiles and vans.

New Section 3. The Attorney General shall enforce this act throughout the state.

New Section 4.

- a) The consumer may recover in a private right of

action the damages in New Section 2.

- b) In addition, the consumer may recover reasonable attorney's fees if the consumer prevails in an action against the supplier.
- c) The consumer may recover civil penalties as listed in Section 5.

New Section 5. The commission of any act or practice declared to be a violation of this act shall make the violator liable to the aggrieved consumer, or to the state, for the payment of a civil penalty, recoverable in an individual action or in an action brought by the Attorney General in a sum set by the court of not more than \$2,000 per violation.

New Section 6. These remedies are in addition to any remedies available under federal odometer law.

New Section 7. The completed odometer statement shall be a required document for application for a title for a motor vehicle.

SUMMARY OF TESTIMONY
SENATE TRANSPORTATION & UTILITIES COMMITTEE

SENATE BILL 462

PRESENTED BY

MAJOR DAVID HORNBAKER

KANSAS HIGHWAY PATROL

FEBRUARY 5, 1988

The Kansas Highway Patrol appears in support of Senate Bill 462. This bill mirrors House Bill 2524 introduced during the 1987 Legislative Session. That particular piece of legislation was introduced at the request of the Kansas Highway Patrol.

Odometer fraud in the United States is a widespread crime, with annual monetary losses estimated at \$5 billion.

Odometer fraud is a "hidden" crime that secretes itself within a myriad of title transactions, odometer statements, duplicate titles and countless other "paper trails", making difficult if not impossible to determine the true criminal.

The proposed change in SB 462 will allow law enforcement to at least have a decent chance in the apprehension and prosecution of odometer fraud perpetrators.

The Special Committee on Transportation heard testimony from many conferees representing both the enforcement and industry side concerning motor vehicles.

This bill is the result of those hearings and of the conferees. We totally support the Committee's recommendations and ask favorable consideration of SB 462.

ATT. 4
T&U
2/5/88

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

Friday, February 5, 1988

RE: PROPOSAL #32 & SB462

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, trade association representing most franchised new car and new truck dealers in Kansas. We support SB462 dealing with odometer fraud.

I would like to thank you for the opportunity to appear before you today to share with you the thoughts of the franchised dealers regarding the \$3 billion per year fraud called odometer tampering.

KMCDA and the franchised dealers of Kansas have long been involved in efforts to curtail odometer tampering. KMCDA was active in supporting legislation requiring odometer disclosure in Kansas many years ago, prior to the federal law. In the past, KMCDA actively worked with the Kansas Congressional Delegation to secure passage of amendments to the Federal Odometer Act. In 1984, we were a very vocal supporter of the bill which increased the penalty for odometer tampering in Kansas

ATT. 5
T&U
2/5/88

from a misdemeanor to a Class "E" felony.

I can state without hesitation that KMCDCA again stands ready to assist this Legislature in any way possible in the continuing fight against odometer tampering.

Before I go much further, I would like to take a moment to provide you with a little background on what a dealer must do with regard to odometer certification.

I have attached a copy of the required federal odometer statement which must be completed each and every time a vehicle ownership change occurs. When you go to your local dealer and trade vehicles, federal law requires that you, as the transferor, certify to the transferee the odometer reading on the vehicle being sold. At the same time, the dealer, as the transferor of the new vehicle, must provide you with an odometer certification for the new vehicle. Then, when the dealer sells your trade-in, either at retail or at wholesale, he must provide an odometer certification to that purchaser. Federal law also requires the transferor to retain a copy of the odometer certification for a minimum of four years.

You will notice on the Odometer Statement there are two certifications which the transferor must make when completing this form. For the first certification, the transferor must certify that either:

1. The mileage on the odometer is the actual mileage,
or,
2. The mileage is in excess of the 99,999 mechanical
odometer, or

3. That the mileage is not the actual mileage of the vehicle.

After that, the transferor must certify that either:

1. The transferor did not alter, set back, or disconnect the odometer and has no knowledge of anyone else doing so, or
2. That the odometer was repaired or replaced while in the transferor's possession and that the mileage is identical to the mileage prior to the service, or
3. That the odometer was repaired or replaced and the mileage was reset to "zero." (When checking that box, the transferor must also state the mileage before the repair.)

I would also note that when an odometer is repaired/replaced and reset to zero, the law requires that a sticker be affixed to the left door post stating the mileage prior to the repair/replacement, and the date of the service.

You might have noticed that I have been very careful to use the word "transferor" rather than dealer, and there is a very specific reason for this. Federal law requires all transferors of vehicles, not just dealers, to give the odometer statement. Generally, the only ones who use odometer statements are vehicle dealers.

The franchised dealers of Kansas, and nationally, are extremely concerned about the growth in odometer tampering. Thousands of vehicles are bought and sold daily across the country, and it has reached the point that neither an individual or dealer really knows what he is getting when purchasing or

trading for a vehicle. Those involved in this fraud are very good at what they do, and they know not only how to spin the odometer, but how to clean the car and wash the title to make it virtually impossible to tell that there are more miles on the vehicle than what shows on the odometer.

Usually we hear about the new or used vehicle dealers who get caught, and tend to believe that the entire problem lies within the automobile industry itself. But, dealers are victims, too. Sometimes they are victims of other dealers, and sometimes they are victims of customers. What dealer would have had any reason to suspect that a very clean, three year old car with just over 20,000 miles was anything but a good, low mileage vehicle. A St. Louis dealer didn't and traded for it. Luckily for him, one of his mechanics discovered an inspection certificate in the vehicle which showed that the vehicle had accrued over 51,000 miles two years prior. The dealer sued the customer, and a jury awarded the dealer \$2,900 plus attorney fees, and with treble damages in Missouri, the award amounted to nearly \$11,000. The minister who had spun the odometer may still be paying off the fine. Last year an Overland Park, KS, dealer traded for a late model foreign car. Everything appeared to be in order until, through another dealership, he discovered mileage on the vehicle had been set back 20,000 miles. The customer repurchased the vehicle from the dealer.

These are two situations where the customer got caught, but most times it's the dealer who gets left holding the bag. Usually, the tampering isn't discovered until after the dealer has resold the vehicle. The customer then discovers that the mileage is wrong, and immediately sues the dealer from which the vehicle was purchased. While the dealer may be able to prove that he did not change the mileage, and had no knowledge of the tampering, the dealer still generally loses and has to compensate the customer. Of course, the dealer then has recourse against the person he got the car from, but his reputation at this point has already been damaged. Unfortunately, the person at the end of the chain of title may not be the person who actually altered the odometer. The title has been washed so well that it is impossible to determine who did what. Many times the person at the end is a dealer.

The franchised dealers wish there was an easy solution to this problem, but unfortunately, there is not. While, at least in our opinion, Kansas does not have the problem that other states have, we cannot afford to be complacent for two reasons. First, odometer tampering does occur in Kansas, and that must be stopped. Secondly, if we become complacent, the problem in Kansas will grow. Odometer tampering will not go away by itself.

In closing, Mr. Chairman and Members of the Committee, I would issue one word of caution. During your deliberations be

extremely careful not to make criminals out of honest citizens and business persons. Remember that many people this very day own vehicles that have been spun, and they don't know it, and might never know it. The selling of their vehicle to another person, and certifying the mileage as being true and exact, should not make them a criminal if it is later found that the odometer had been spun and they didn't do it. When dealing with the law, the simple word "knowingly" in line 44 of SB462 can mean the difference between guilt and innocence. We want to catch those who know they are doing wrong, but we don't want to prosecute those who didn't even know that anything wrong had been done.

Mr. Chairman and Members of the Committee, the Kansas Motor Car Dealers Association stands ready to assist you in any way possible. We want to rid this automobile industry of this fraud, and offer our full and complete cooperation. However, we don't want the blame placed upon us for the sake of convenience. We think SB462 is a good reflection of what the law should be in Kansas.

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

UNALTERABLE CARBONLESS PAPER - NO CARBON IS REQUIRED

ODOMETER (MILEAGE) STATEMENT

(FEDERAL REGULATIONS REQUIRE YOU TO STATE THE ODOMETER MILEAGE UPON TRANSFER OF OWNERSHIP. AN INACCURATE OR UNTRUTHFUL STATEMENT MAY MAKE YOU LIABLE FOR DAMAGES TO YOUR TRANSFEREE, FOR ATTORNEY FEES, AND FOR CIVIL OR CRIMINAL PENALTIES, PURSUANT TO SECTIONS 409, 412, AND 413 OF THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT OF 1972 (PUB. L. 92-513, AS AMENDED BY PUB. L. 94-364)) AND APPLICABLE STATE LAWS.

I, _____, STATE THAT THE ODOMETER
TRANSFEROR'S NAME - SELLER - PRINT
 MILEAGE ON THE VEHICLE

DESCRIBED BELOW NOW READS _____ MILES/KILOMETERS.
ODOMETER READING

CHECK ONE BOX ONLY:

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING AS STATED ABOVE REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED BELOW.
- (2) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING AS STATED ABOVE REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF DESIGNED MECHANICAL ODOMETER LIMIT OF 99,999 MILES/KILOMETERS OF THE VEHICLE DESCRIBED BELOW.
- (3) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING AS STATED ABOVE IS NOT THE ACTUAL MILEAGE OF VEHICLE DESCRIBED BELOW AND SHOULD NOT BE RELIED UPON.

MAKE	MODEL	BODY TYPE
VEHICLE IDENTIFICATION NO.	YEAR	DEALER STOCK NO.

CHECK ONE BOX ONLY:

- (1) I HEREBY CERTIFY THAT THE ODOMETER OF SAID VEHICLE WAS NOT ALTERED, SET BACK OR DISCONNECTED WHILE IN MY POSSESSION, AND I HAVE NO KNOWLEDGE OF ANYONE ELSE DOING SO.
- (2) I HEREBY CERTIFY THAT THE ODOMETER WAS ALTERED FOR REPAIR OR REPLACEMENT PURPOSES WHILE IN MY POSSESSION, AND THAT THE MILEAGE REGISTERED ON THE REPAIRED OR REPLACEMENT ODOMETER WAS IDENTICAL TO THAT BEFORE SUCH SERVICE.
- (3) I HEREBY CERTIFY THAT THE REPAIRED OR REPLACEMENT ODOMETER WAS INCAPABLE OF REGISTERING THE SAME MILEAGE, THAT IT WAS RESET TO ZERO, AND THAT THE MILEAGE ON THE ORIGINAL ODOMETER OR THE ODOMETER BEFORE REPAIR WAS _____ MILES/KILOMETERS.

TRANSFEROR'S STREET ADDRESS (SELLER)		
CITY	STATE	ZIP CODE
DATE OF STATEMENT	TRANSFEROR'S SIGNATURE (SELLER)	
	X	

TRANSFEREE'S NAME (BUYER)		
STREET ADDRESS		
CITY	STATE	ZIP CODE

I, X _____ HEREBY CERTIFY THAT I HAVE
TRANSFEREE'S SIGNATURE - BUYER RECEIVED A COPY OF THE ABOVE
 ODOMETER (MILEAGE) STATEMENT.