

Approved 2/16/88 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 10, 1988 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 of Statutes  
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

D. Jeanne Kutzley, Assistant Attorney General  
Pat Barnes, Kansas Motor Car Dealers Association

The Chairman said he had received two requests for introduction of bills. One was from the Kansas Corporation Commission concerning pipeline safety. The other was from the Department of Revenue regarding commercial drivers' licenses. These changes were necessary to bring us into compliance with federal law. A motion was made by Sen. Francisco and was seconded by Sen. Doyen to introduce these two requests as committee bills. Motion carried.

Sen. Norvell asked about the feasibility study that had been made concerning Amtrak in the state. The Chairman said he would contact the Department of Commerce on this and they would bring in a report.

Hearing on S.B. 527 - Motor vehicles; concerning certain warranties.

D. Jeanne Kutzley, Assistant Attorney General, Consumer Protection Division, said this was not a substantive change in the "lemon law" but was enforcing authority. It is time consuming and expensive for a consumer to be pitted against a major manufacturer. Currently a consumer who prevails is not entitled to attorney fees. This would give Consumer Protection an additional tool for handling consumer complaints. A copy of her statement is attached. (Attachment 1).

Pat Barnes, Kansas Motor Car Dealers Association, said they are not necessarily opposed to this as long as it does not unduly penalize their members for mechanical or other material nonconformities created by the manufacturing or design process which cannot be cured by the dealer. They feared applications or interpretations of this proposed law. They feel the "lemon law" presently protects the consumer. A copy of his statement is attached. (Attachment 2).

Some question was raised that perhaps this could have the effect of being in conflict or nullifying parts of the "lemon law" and it could create a mess. Staff was directed to obtain a copy of the publication entitled "Lemonade in Kansas" and should determine whether we could make these changes and still leave the law intact and not nullify sections.

Ms. Kutzley said her department would not need additional staff at the present time to enforce this. They would still be working the same complaints but would have enforcement power.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 10, 1988

Action on S.B. 503 - Electric cooperatives.

A motion was made by Sen. Norvell and was seconded by Sen. Vidricksen to restore the language as it is in present law. A majority of all members should be required.

Sen. Bond felt it should be the same for consolidation and merger as it is for a total sale. A meeting could be packed and the will of the majority of the members might not be heard. Sen. Bond made a substitute motion to conceptually amend the bill in three places so the vote would be a majority of all members voting by proxy or by being present at the meeting. There was no second to this motion so the committee reverted back to the original motion by Sen. Norvell. This motion carried.

A motion was made by Sen. Francisco and was seconded by Sen. Thiessen to recommend S.B. 503, as amended, favorable for passage. Motion carried.

Sen. Frey made a motion to make it sure if this happened on private property it should be a traffic citation and not a complaint. Motion was seconded by Sen. Hoferer. Motion carried. it would be considered as a traffic violation and not as a complaint.

Action on S.B. 493 - Emergency telephone service.

A motion was made by Sen. Francisco and was seconded by Sen. Frey to recommend S.B. 493 favorable for passage. Motion carried.

Action on S. B. 484 - Tests for alcohol and drugs in blood of fatal accident victims.

The committee discussed withdrawing blood and it was felt it should be done within a certain period of time because temperature factors could alter the alcohol content in the blood. A motion was made by Sen. Frey and was seconded by Sen. Bond to delete "when possible" on line 32. Motion carried.

The committee questioned lines 45,46 and 47 of the bill and why it was in the bill. The revisor said it came from the uniform traffic code and was not really necessary. A motion was made by Sen. Frey and was seconded by Sen. Bond to strike these lines. Motion carried.

Sen. Norvell felt we should pass strict laws relating to alcohol but he does not like the concept of this bill. He questioned whether it was worth it just to gather statistics. The committee discussed the fact that in small towns, because of the low population, people would know who the deceased being tested were anyway. Since these figures were for statistical purposes only, a motion was made by Sen. Frey and was seconded by Sen. Francisco to change "may to shall" on line 43. Motion carried.

A motion was made by Sen. Doyen and was seconded by Sen. Vidricksen to recommend S.B. 484, as amended, favorable for passage. Motion carried with Sen. Norvell voting "No".

On a motion from Sen. Doyen and a second from Sen. Thiessen the Minutes of February 5, 1988 were approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: 2/10/88

ROOM: 254-E

GUEST REGISTER  
SENATE

TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
Connie Winness	KEC	Topoka
Michel Peters	KEC	Topoka
Jeddie Byers	KEC	Topoka
Nancy Lindberg	A.S.	Topoka
Jeanne Kutzley	AG	Topoka.
JAT BARNES	Ks Motor Car Dealers Assn	Topoka
Pat Wiechman	Ks Auto Dismantlers & Recyclers Assn.	Topoka
Woody Woodman	KCP&L	KC MO.
RON CALBERT	U.J.U.	NEWTON
DAN R. MCGEE	CENTEL ELECTRIC	GREAT BEND
Louie Stroup	KMU	W Pherson
Jerry Cooney	KGE	Topoka
Randy Burleson	Empire Electric	Columbus
Tom Taylor	KPL Gas Service	Topoka
Rich Dame	B.L.E.	Hoisington



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Testimony of D. Jeanne Kutzley  
Assistant Attorney General, Consumer Protection Division  
Before the Senate Committee on Transportation & Utilities  
Hearing on S.B. 527

February 10, 1988

Mr. Chairman & Members of the Committee:

Attorney General Stephan requested this bill be introduced. He strongly supports it.

The Attorney General does not propose any substantive changes in the 1985 "lemon law" itself. He is requesting enforcement authority.

Currently, a consumer who is stuck with a "lemon" of a car, does have a remedy. The consumer must first resort to the manufacturer's informal dispute resolution procedure, if any. Then, if the consumer is not satisfied with the result, he or she still has a private right of action. Bringing a private action is time consuming and it is expensive for the consumer. The consumer is pitted against a major manufacturer. A consumer who prevails in this private action is not entitled to attorney fees.

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Attorney General Stephan is asking that the lemon law be brought under his enforcement powers in the Kansas Consumer Protection Act. This will give Consumer Protection an additional tool for handling consumer complaints. This should not have a fiscal impact. It may, in fact, make it easier to negotiate with manufacturers because of the remedies available under the Kansas Consumer Protection Act if negotiations fail. The consumer would still go through the manufacturer's informal dispute resolution process. But a consumer who does not obtain an adequate remedy through that process could file a complaint asking the Attorney General to enforce the lemon law or the consumer could file a private action. It would still be the manufacturer who must provide the remedy if the consumer prevails.

Thank you for your consideration.

Statement Before The  
SENATE COMMITTEE ON TRANSPORTATION

By The  
KANSAS MOTOR CAR DEALERS ASSOCIATION

Wednesday, February 10, 1988

Re: Senate Bill 527

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, representing our member franchised Kansas new car and truck dealers.

During the 1985 session of the legislature Kansas enacted the so-called "Lemon Law". This law provided purchasers of new vehicles with another means of taking action against a motor vehicle manufacturer to enforce motor vehicle warranties on nonconforming vehicles.

When published into law the "Lemon Law" became K.S.A. 50-645 and K.S.A. 50-646. Both are located in the statutory supplement.

The "Lemon Law" applies to new vehicles of a registered weight of 12,000 lbs. or less and generally does not include customized vehicle parts later added or modified. If a new vehicle does not meet the express or implied warranties attaching to the vehicle, and this noncompliance is reported to the manufacturer, its agent or a dealer, as provided by law, repairs

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to conform the vehicle to its warranties must be made.

If the vehicle cannot be conformed to applicable warranties, after a reasonable number of attempts, then the manufacturer which built the vehicle must replace the vehicle with a comparable one under warranty, or refund the purchase price according to the statutory formula set forth.

Frankly, we are unaware of the need to have this law incorporated as part of the Consumer Protection Act since the Lemon Law sets forth specific rights and responsibilities required by law. A failure or refusal to carry these out would seem to constitute an unconscionable act or practice under the that portion of the present Consumer Protection Act, K.S.A. 50-627(b)(7), which requires a court to consider the following in finding whether or not an unconscionable act or practice has occurred:

"[Circumstances of which the supplier knew or had reason to know] That the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedies provided by law for a breach of those warranties."

We are unaware of any problems in enforcement of the present "Lemon Law" which currently exist. Perhaps by the time you hear this testimony we will have heard about the situations which have given rise to the need for the change in this law.

In addition to the above, K.S.A. 1987 Supp. 50-646 is a

companion to the "Lemon Law" which reserves to the consumer any rights under any other law to further address consumer complaints about the condition of a vehicle. SB527 does not deal with this section. The question as to whether or not this bill affects that section needs to be answered.

This "Lemon Law" is rightfully aimed at taking care of a consumer, and we feel the intent and purpose has been satisfied by the language found in the present act. While we do not see the need for the change proposed by SB527, we are not necessarily opposed to it so long as it does not unduly penalize our members for mechanical or other material nonconformities created by the manufacturing or design process which cannot be cured by the dealer.

SB527 seems to preserve this idea, but we must say that we do fear applications or interpretations of this proposed law which cannot presently be contemplated and which are presently unpredictable. We hope these fears are unjustified.

Thank you for your time and consideration. I would be more than happy to address any questions you may have.