

Approved 3/8/88 Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

 a.m./p.m. on March 2, 1988 in room 254-E of the Capitol.

All members were present except:

Sen. Vidricksen 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:

Action on S.B. 527 - Motor vehicles, concerning warranties.

The Committee discussed (f) in this bill which would put the Lemon Law under the Consumer Protection Act. There was concern that now when a consumer has a problem there are already remedies available through warranties and federal laws. All of these have to mesh together and if the Lemon Law is drafted into the Consumer Protection Act it could cause confusion. The Committee discussed proposed amendments to the bill. A proposed amendment by Sen. Francisco is attached. (Attachment 1).

The Chairman asked for comments on both sides. Jeanne Kutzley, Attorney General's office, said since they did not have enforcement power they did not take cases to court. Pat Barnes, Car Dealers Association, said there is no need to change the law. There is no reason to believe the law now is not working. If the Attorney General's office needs enforcement power they should have it but it is a policy question. With the Lemon Law the consumer now goes back to the manufacturer and this bill would add confusion.

A motion was made by Sen. Doyen and was seconded by Sen. Francisco to report the bill adversely. Motion carried.

Action on S. B. 462 -Odometer tampering.

The Revisor had prepared amendments to S.B. 462. A copy of the bill with the amendments was distributed. A copy is attached. (Attachment 2).

A motion was made by Sen. Bond and was seconded by Sen. Frey to adopt the committee amendments. Motion carried.

A motion was made by Sen. Frey and was seconded by Sen. Bond to recommend S.B. 462, as amended, favorable for passage. Motion carried.

On a motion from Sen. Thiessen and a second from Sen. Francisco the Minutes of March 1, 1988 were approved. Motion carried.

Meeting was adjourned at 9:40 a.m.

DATE: March 2.

ROOM: 254-E

GUEST REGISTER
SENATE
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
PAT BARNES	Ks. Motor Car Dealers Ass'n.	Topeka
FRANK EATON	SE KS CITIES COALITION	MANHATTAN
Mary E Turkington	Ks Motor Carriers Assn	Topeka
D. Jannakulsky	AG	Topeka
Tom Whitaker	Ks Motor Carriers Assn	Topeka
Ron CALBERT	U.I.U	NEWTON
Rich DAME	B.L.E	HOISINGTON
James Bina	Marion High School	Marion
Randy Brock	Marion High School	Marion
Larry McLain	Marion High School	Marion
John Smith	Marion High School	Marion
J. J. Johnson	Marion High School	Marion

PROPOSED AMENDMENTS FOR S.B. NO. 527

Sec. . K.S.A. 1987 Supp. 50-646 is hereby amended to read as follows: 50-646. Nothing in this act shall in any way limit or affect the rights or remedies which are otherwise available to a consumer under the uniform consumer credit code, ~~or--to~~ any consumer under the consumer protection act, any person under the uniform commercial code, or ~~to~~ any person under any other law statutory or otherwise.

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SENATE BILL No. 462

By Special Committee on Transportation

Re Proposal No. 32

12-16

0018 AN ACT relating to odometers; prohibiting certain acts; relating
0019 to the admissibility of certain evidence; amending K.S.A.
0020 60-461 and K.S.A. 1987 Supp. 60-460 and repealing the exist-
0021 ing sections; also repealing K.S.A. 1987 Supp. 8-611.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. (a) For the purpose of this section, the fol-
0024 lowing words and phrases shall have the following meanings:

0025 (1) "Motor vehicle" means any vehicle other than a mo-
0026 torized bicycle, which is self-propelled and is required to be
0027 registered under the provisions of article 1 of chapter 8 of Kansas
0028 Statutes Annotated.

0029 (2) "Vehicle" means every device in, upon or by which any
0030 person or property is or may be transported or drawn upon a
0031 public highway, and is required to be registered under the
0032 provisions of article 1 of chapter 8 of Kansas Statutes Annotated
0033 except that such term shall not include motorized bicycles or
0034 mobile homes.

0035 (3) "True mileage" means the actual mileage the motor ve-
0036 hicle has been driven.

0037 (4) "Person" means an individual, partnership, corporation
0038 or association.

0039 (5) "Odometer" means an instrument for measuring and rec-
0040 ording the actual distance a motor vehicle travels while in
0041 operation, but shall not include any auxiliary odometer designed
0042 to be reset by the operator of the motor vehicle for the purpose of
0043 recording mileage on trips.

0044 (b) It shall be unlawful for any person to knowingly tamper
0045 with, adjust, alter, change, set back, disconnect or fail to connect

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0046 the odometer of any motor vehicle, or cause any of the foregoing
 0047 to occur to an odometer of a motor vehicle, so as to reflect a lower
 0048 mileage than the true mileage driven by the motor vehicle.

0049 (c) It shall be unlawful for any person to conspire with any
 0050 other person to violate the provisions of this section.

0051 (d) It shall be unlawful for any person, with the intent to
 0052 defraud, to operate a motor vehicle on any street or highway
 0053 knowing that the odometer of the motor vehicle is disconnected
 0054 or nonfunctional.

0055 (e) It shall be unlawful for any person to advertise for sale,
 0056 sell, use or install on any part of a motor vehicle or on any
 0057 odometer in a motor vehicle any device which causes the odom-
 0058 eter to register any mileage other than the true mileage.

0059 ~~(f)~~ (1) Nothing in this section shall prevent the service, re-
 0060 pair or replacement of an odometer, provided the mileage indi-
 0061 cated thereon remains the same as before the service, repair or
 0062 replacement. If the odometer is incapable of registering the same
 0063 mileage as before such service, repair or replacement, the
 0064 odometer shall be adjusted to read zero and a notice shall be
 0065 attached permanently to the left door frame of the vehicle by the
 0066 owner or owner's agent specifying the mileage prior to repair or
 0067 replacement of the odometer, the date on which it was repaired
 0068 or replaced and the vehicle identification number.

0069 (2) It shall be unlawful for any person to fail to adjust an
 0070 odometer or affix a notice regarding such adjustment, as required
 0071 under this subsection.

0072 (3) It shall be unlawful for any person to remove or alter any
 0073 notice affixed to a vehicle pursuant to the provisions of this
 0074 subsection.

0075 ~~(g)~~ Every action pursuant to this section shall be brought in
 0076 the district court of any county in which there occurred any act or
 0077 practice declared to be a violation of this section, or in which the
 0078 defendant resides or has such person's principal place of busi-
 0079 ness.

0080 ~~(h)~~ The provisions of this section shall not apply to antique
 0081 motor vehicles which could be registered under the provisions of
 0082 K.S.A. 8-166 *et seq.*, and amendments thereto, or to special

(f) It shall be unlawful for any person to sell or offer to sell, with the intent to defraud, a motor vehicle knowing that the odometer of such motor vehicle was tampered with, adjusted, altered, changed, set back, disconnected or failed to be connected so as to reflect a lower mileage than the true mileage of such motor vehicle.

(g)

(h)

(i)

0083 interest vehicles which could be registered under the provisions
 0084 of K.S.A. 8-194 *et seq.*, and amendments thereto.

0085 ~~(i)~~ Violation of this section is a class E felony.

0086 Sec. ~~2.~~ K.S.A. 1987 Supp. 60-460 is hereby amended to read
 0087 as follows: 60-460. Evidence of a statement which is made other
 0088 than by a witness while testifying at the hearing, offered to prove
 0089 the truth of the matter stated, is hearsay evidence and inadmis-
 0090 sible except:

0091 (a) *Previous statements of persons present.* A statement pre-
 0092 viously made by a person who is present at the hearing and
 0093 available for cross-examination with respect to the statement and
 0094 its subject matter, provided the statement would be admissible if
 0095 made by declarant while testifying as a witness.

0096 (b) *Affidavits.* Affidavits, to the extent admissible by the
 0097 statutes of this state.

0098 (c) *Depositions and prior testimony.* Subject to the same
 0099 limitations and objections as though the declarant were testify-
 0100 ing in person, (1) testimony in the form of a deposition taken in
 0101 compliance with the law of this state for use as testimony in the
 0102 trial of the action in which offered or (2) if the judge finds that the
 0103 declarant is unavailable as a witness at the hearing, testimony
 0104 given as a witness in another action or in a preliminary hearing or
 0105 former trial in the same action, or in a deposition taken in
 0106 compliance with law for use as testimony in the trial of another
 0107 action, when (A) the testimony is offered against a party who
 0108 offered it in the party's own behalf on the former occasion or
 0109 against the successor in interest of such party or (B) the issue is
 0110 such that the adverse party on the former occasion had the right
 0111 and opportunity for cross-examination with an interest and mo-
 0112 tive similar to that which the adverse party has in the action in
 0113 which the testimony is offered, but the provisions of this sub-
 0114 section (c) shall not apply in criminal actions if it denies to the
 0115 accused the right to meet the witness face to face.

0116 (d) *Contemporaneous statements and statements admissible*
 0117 *on ground of necessity generally.* A statement which the judge
 0118 finds was made (1) while the declarant was perceiving the event
 0119 or condition which the statement narrates, describes or explains,

(j)

See Attached Insert

10.

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

(a) "Supplier" means: (1) A licensed motor vehicle dealer; (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) "Set off" means 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 Sec. 3. (a) In addition to the penalties provided in section 6, 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 section 1 have taken place; and (2) that the mileage or use of the motor vehicle is materially 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 greater of the following but recovery shall not exceed the actual purchase price of the vehicle:

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

(2) Purchase price before trade-in allowance plus verified repairs less set off.

New Sec. 4. The attorney general shall enforce sections 2 through 8 throughout the state.

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

(b) In addition, the consumer may recover reasonable attorney fees if the consumer prevails in an action against the supplier.

New Sec. 6. (a) The commission of any act or practice

declared to be a violation of section 1 or section 9 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.

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

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

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