

Approved March 15, 1989
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~/p.m. on January 30, 1989 in room 519-S of the Capitol.

All members were present ~~except~~

Committee staff present:

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

Conferees appearing before the committee:

Ms. Nancy Bauder, Kansans for Highway Safety
Lt. Bill Jacobs, Kansas Highway Patrol
Mr. Jerel Wright, Kansas Credit Union League.
Mr. Art Weiss, Deputy Attorney General
Mr. Pat Barnes, Kansas Motor Car Dealers

The meeting was called to order by Chairman Crowell, and the first order of business was a bill request dealing with drivers' license requirements, which had been requested by Judge Fred Lorentz, Fredonia, Kansas.

A motion was made by Representative Shore that this be drafted and introduced as a Committee bill. The motion was seconded by Representative Wilbert. Motion carried.

Chairman Crowell said it had been requested by Representative Martha Jenkins and Ms. Nancy Bauder that child restraint legislation be introduced.

Ms. Nancy Bauder, Kansans for Highway Safety, briefed the Committee concerning the need for legislation concerning child restraint when riding in motor vehicles.

Lt. Bill Jacobs, Kansas Highway Patrol, spoke to the Committee concerning the request for legislation covering the child restraint issue.

A motion was made by Representative Blumenthal that this be introduced as Committee legislation. The motion was seconded by Representative Roenbaugh. Motion carried.

Mr. Jerel Wright, Kansas Credit Union League, requested that legislation be introduced which would lower the fee for a dealers' license plate for lending institutions for vehicles which have been repossessed or are being held held for disposition, to \$25 per plate. (See Attachment 1)

A motion was made by Representative Empson that this be introduced as a Committee bill. The motion was seconded by Representative Wilbert. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~/p.m. on January 30, 1989

The next business taken up was a hearing on HB-2066 concerning automobile warranties.

Mr. Art Weiss, Deputy Attorney General, testified in support of HB-2066. (See Attachment 2)

Mr. Pat Barnes, Kansas Motor Car Dealers, testified in opposition to HB-2066. (See Attachment 3)

Committee discussion and questioning ensued.

Chairman Crowell announced a joint meeting of the House and Senate Transportation Committees would be held at 3:30 p.m., January 30, 1989, in Room 519-S.

The meeting was adjourned at 2:05 p.m.


Rex Crowell, Chairman

AN ACT concerning motor vehicles; relating to vehicle dealers license plates; amending K.S.A. 1988 Supp. 8-2406 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas

Section 1. K.S.A. 1988 Supp. 8-2406 is hereby amended to read as follows: 8-2406 (a) The annual fee for the first dealer license plate is \$250, and the annual fee for additional dealer license plates shall be an amount equal to the amount required to register a passenger vehicle having a gross weight of more than 3,000 pounds and less than 4,000 pounds, except that the annual fee for dealer license plates used by: (1) Mobile home dealers on mobile homes which they have purchased or own and are holding for resale shall be \$25 for each plate; ~~or~~ (2) Trailer dealers on trailers which they have purchased or own and are holding for resale shall be \$25 for each plate; or (3) Lending agencies on vehicles which they have repossessed or are holding for disposition due to repossession shall be \$25 for each plate. To determine the number of dealer license plates the dealer needs, the director may base the decision on the dealer's past sales, inventory and any other pertinent factors as the director may determine. After the end of the first year of licensure as a dealer, not more than one dealer license plate shall be issued to any dealer who has not reported to the division the sale of at least five motor vehicles in the preceding year. There shall be no refund of fees for dealer license plates in the event of suspension, revocation or voluntary cancellation of a license. The director is hereby authorized to designate by identifying symbols on a dealer's license plate the type of dealer's license that the person has been issued. If a dealer has an established place of business in more than one county, such dealer shall secure a separate and distinct dealer's license and dealer license plates for each established place of business.

(b) New motor vehicle dealers and used motor vehicles dealers may authorize use of dealer plates assigned to such motor vehicle dealers as follows:

(1) The licensed motor vehicle dealer and such dealer's spouse;

(2) the sales manager and all other sales personnel when such manager and sales personnel are properly licensed in Kansas, except that no dealer license plate shall be assigned to sales personnel who are working at the established place of business of the dealer less than 20 hours per week;

(3) any employee of such motor vehicle dealer when the use thereof is directly connected to a particular business transaction of such motor vehicle dealer;

(4) the customer when operating a motor vehicle in connection with negotiations to purchase such motor vehicle or during a demonstration of such motor vehicle;

(5) any school district and any accredited nonpublic school which has entered into an agreement with a dealer to use a motor

vehicle as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course.

(c) A wholesaler dealer may authorize the use of dealer license plates on vehicles purchased by the wholesaler for resale to a retail vehicle dealer as follows:

(1) To transport or operate a vehicle to or from a licensed retail or wholesale vehicle dealer for the purpose of buying, selling, or offering or attempting to negotiate a sale of the vehicle to a licensed vehicle dealer;

(2) to deliver a vehicle purchased from the wholesale vehicle dealer to a purchasing vehicle dealer.

(d) Salvage vehicle dealers may use dealer license plates only on vehicles which they have purchased for salvage, including dismantling, disassembling or recycling.

(e) Insurance companies may use dealer license plates only on vehicles purchased or acquired for salvage in the course of business of the insurance company.

(f) Mobile home dealers may use dealers license plates only on mobile homes which they have purchased or own and are holding for resale.

(g) Lending agencies may use dealer license plates only on vehicles which they have repossessed or are holding for disposition due to repossession.

(h) Trailer dealers may use dealer license plates only on trailers which they have purchased or own and are holding for resale.

(i) Brokers are not entitled to be assigned or to use any dealer license plates.

(j) Except as provided above, dealer license plates shall be used only in accordance with the provisions of K.S.A. 8-136, and amendments thereto. This subsection (j) does not apply to K.S.A. 1985 Supp. 8-2425, and amendments thereto, or full-privilege license plates issued thereunder.

Section 2. K.S.A. 1988 Supp. 8-2406 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.



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DEPUTY ATTORNEY GENERAL

BEFORE THE SPECIAL COMMITTEE ON TRANSPORTATION

HEARING ON HOUSE BILL 2066

JANUARY 30, 1989

Mr. Chairman and Members of the Committee:

When the Kansas legislature enacted the Lemon Law in 1985, the law was placed within Article 50 of the Kansas Statutes. This is the same article which contains the Kansas Consumer Protection Act. However, it was never made clear whether or not the Lemon Law was actually a part of the Consumer Protection Act. It was also unclear as to who had enforcement authority.

K.S.A. 50-645 imposes upon manufacturers of motor vehicles a duty to repair defects which occur during the warranty period. If the manufacturer is unable to complete repairs satisfactorily after a specified number of attempts, the manufacturer is required to either repurchase or replace the consumer's vehicle.

Att. 2

In order to force a manufacturer to replace or repurchase the vehicle, the consumer must first resort to the manufacturer's arbitration procedure. It has been the experience of the Attorney General's Office that in some cases, the consumer is not satisfied with the findings of the manufacturer's arbitration panel. In that case, the consumer is forced to file a lawsuit seeking enforcement of the Lemon Law.

As a service to Kansas consumers, Attorney General Stephan asks that this committee adopt the attached language clarifying the Attorney General's jurisdiction. The requested language would specify that the Attorney General would have jurisdiction to enforce this section. You have also been provided with language to clarify K.S.A. 50-646 which would make it clear that the consumer would still have his or her individual legal remedies as provided by any other law.

Specific language in the Lemon Law which conveys such jurisdiction to the Attorney General would settle the issue once and for all and clearly allow the Attorney General to enforce the provisions of the Lemon Law on behalf of Kansas consumers.

Thank you very much for this opportunity to address this committee.



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HB 2066

85 ~~(f)-This section shall be a part of and supplemental to~~
86 ~~the Kansas consumer Protection Act.~~

87 New Section (f) The Attorney General shall have
88 jurisdiction to enforce this section.

89 Sec. 2. K.S.A. 1988 Supp. 50-645 is hereby repealed.

90 Sec. 3. This act shall take effect and be in force from
91 and after its publication in the statute book.

92 Amended Section 50-646 Same; other remedies. Nothing
93 in this act shall in any way limit or affect the rights
94 or remedies which are otherwise available to a consumer
95 under the uniform consumer credit code, or to any person
96 under the uniform commercial code, or to any person
97 under this or any other law statutory or otherwise.

NOTES ON HOUSE BILL 2066

HB2066 makes the "lemon law" (presently K.S.A. 1988 Supp. 50-645 and 50-646) part of the Consumer Protection Act, K.S.A. 50-623, et seq.

1. The present bill excludes K.S.A. 1988 Supp. 50-646 which reserves a consumer's rights and remedies under any other law, statutory or otherwise, which necessarily includes the Consumer Protection Act. It would seem the Attorney General would have enforcement authority under this portion of the present law.

2. This bill would amend only K.S.A. 1988 Supp. 50-645; the companion section, K.S.A. 1988 Supp. 50-646 referred to above, would stand by on the books without reference and could become somewhat of a confusing statutory provision with the present proposal.

3. Grafting the present lemon law into the Consumer Protection Act would create unpredictable legal responsibilities, liabilities and conflicts in interpretation within the Act itself and the law in general.

4. To insure the Attorney General has authority to enforce this bill, if it is needed, a better approach would be to simply amend Section 1, part (f) to read:

(f) The Attorney General may enforce this Act throughout the state."

5. This identical bill, as SB527, was killed by the Senate Transportation Committee in the 1988 Session because consumer remedies were found to be adequate. The above amendment was made known, but not considered.

Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION AND UTILITIES

By The
KANSAS MOTOR CAR DEALERS ASSOCIATION

Monday, January 30, 1989

Re: House Bill 2066

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. I will be addressing this bill on its face and in its present form.

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 non-conforming 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 non-compliance is reported to the manufacturer, its agent or a dealer, as provided by law, repairs 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.

We do not need to have this law further 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 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. 1988 Supp. 50-646 is a companion to the "Lemon Law" which reserves to the consumer any right under any other law to further address consumer complaints about the condition of a vehicle. HB2066 does not deal with this section. The question as to whether or not this bill as presently written 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. However, HB2066, with its unpredictable effect could unduly penalize our members for mechanical or other material nonconformities created by the manufacturing or design process which cannot be cured by the dealer. We do fear applications or interpretations of this proposed law which cannot presently be contemplated and which are presently unpredictable.

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