

Approved

3-25-91

Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Herman G. Dillon at  
Chairperson

1:40 ~~AM~~/p.m. on March 20, 1991 in room 519-S of the Capitol.

All members were present except:

Representative Delbert Gross - Excused

Committee staff present:

Hank Avila - Legislative Research  
Tom Severn - Legislative Research  
Bruce Kinzie - Revisor of Statutes  
Jo Copeland - Committee Secretary

Conferees appearing before the committee:

Joe Kisner - Assistant District Attorney, Sedgwick County  
Dan Kolditz - Deputy District Attorney, Consumer Protection  
Tom Whitaker - Ks. Motor Carriers Association  
Bill Fuller - Ks. Farm Bureau

Hearing on SB 136 was opened by Chairman Dillon.

SB 136 - Investigations of violations of odometer fraud statutes

Chairman Dillon introduced Joe Kisner who testified in support of SB 136. (Attachment 1)

Questions and discussion followed.

Chairman Dillon introduced Dan Kolditz who testified in support of SB 136. (Attachment 2)

Hearing ended on SB 136.

Chairman Dillon opened the Hearing on SB 345.

SB 345 - Drivers Licenses, Commercial Driver's License Act.

Chairman Dillon introduced Tom Whitaker who testified in support of SB 345. (Attachment 3)

Questions and discussion followed.

Chairman Dillon introduced Bill Fuller who testified in support of SB 345. (Attachment 4)

John Smith presented written testimony explaining the proposed changes in SB 345. (Attachment 5)

James D. Jones presented written testimony on SB 345. (Attachment 6)

Hearing ended on SB 345.

SB 283 - Reports on sales tax revenues for motor vehicles.

Chairman Dillon asked for discussion for final action on SB 283.

Discussion and questions followed. No action was taken on this measure.

Meeting adjourned at 2:02 p.m.



TO: Chairperson and Representative of the Kansas House Transportation Committee

BY: John J. (Joe) Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas.

RE: Senate Bill No. 136-An act concerning Consumer Protection; relating to Odometer Fraud.

**Problem:** The practice of tampering with the odometer readings of vehicles has been a major problem for many years. A recent story on the CBS program "60 Minutes" showed graphically that the problem continues to be one of the most extensive consumer frauds perpetrated against our citizens. The "60 Minutes" program went to Houston, Texas and ran title histories on a number of automobiles being offered for resale in the Houston area. The results indicated that many of these automobiles contained odometers which had been altered after sale and before resale. Odometer fraud is a national problem for the primary reason that thousands of dollars can be made by a middle man with just a spin of the dial. The Kansas Department of Motor Vehicles, the Attorney General's Office and County and District Attorneys throughout the state attempt to combat this problem. However, the investigation and prosecution of these criminals is hampered by statutes which do not allow for proper investigative powers to detect major players in this fraud.

**Solution:** Kansas presently has both civil and criminal laws sufficient to prosecute the illegal practice of odometer fraud. However, the civil statute lacks any investigative powers to be provided to the Attorney General or Kansas County and District Attorneys. Senate Bill No. 136 provides powers which would enable law enforcement officers to be able to investigate fraudulent odometer activity rather than having to wait for a completed case to walk through the door. The investigative powers set forth in Senate Bill No. 136 have been taken from the investigative powers set forth in the Kansas Consumer Protection Act.

A small but important change needs to be brought to the committee's attention on page two of Senate Bill No. 136 line number 10. The words, "imposed under subsection (a)(2) of K.S.A. 50-634 and amendments thereto" should be substituted by the following language, "imposed under section K.S.A. 50-651 and amendments thereto".

We do not believe there needs to be any other changes in the current odometer statute, as set out in K.S.A. 1990 50-647 through 50-653.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

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TESTIMONY OF  
DEPUTY ATTORNEY GENERAL DANIEL P. KOLDITZ  
ON BEHALF OF ATTORNEY GENERAL BOB STEPHAN  
BEFORE THE HOUSE TRANSPORTATION COMMITTEE

RE: S. B. 136

MARCH 20, 1991

Ladies and Gentlemen of the Committee:

My name is Dan Kolditz. I'm Deputy Attorney General and in charge of the Consumer Protection Division. I'm here today to testify for Attorney General Bob Stephan and in support of Senate Bill 136.

A present statute, K.S.A. 1990 Supp. 50-651(a), provides that any act or practice that is a violation of K.S.A. 21-3757 or K.S.A. 1988 Supp. 50-653 shall make the violator liable to the state for the payment of a civil penalty recoverable in an action brought by the Attorney General in a sum set by the court of not more than \$2,000 per violation. Odometer fraud violations may be enforced by the Attorney General under K.S.A. 50-649.

By authorizing the Attorney General and county prosecutors to administer oaths, subpoena witnesses and material, and collect evidence as a result of their own inquiries or from complaints, Senate Bill 136 would provide additional

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investigative tools for the investigation of odometer fraud matters.

For example, the current odometer law only allows us to ask for information, instead of order the disclosure or production of evidence. By requiring dealers to produce information on a vehicle, Senate Bill 136 will enable investigators of our office to conduct a more complete investigation and thereby help prevent and remedy consumer fraud from odometer violations.

The Attorney General's office recommends the passage of Senate Bill 136.

STATEMENT

by the

KANSAS MOTOR CARRIERS ASSOCIATION

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Concerning Senate Bill No. 345 relating to technical amendments to the Kansas Uniform Commercial Drivers' License Act.

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Presented to the House Transportation Committee, Rep. Herman Dillon, Chairman; Statehouse, Topeka, Wednesday, March 20, 1991.

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here today along with Mary Turkington, KMCA Executive Director; representing our 1,550 member-firms and the highway transportation industry in support of Senate Bill No. 345.

KMCA strongly supports a unified effort by the federal government, the states and the industry to establish a commercial drivers' license system that assures that unqualified persons cannot obtain a commercial drivers' license, and that unsafe commercial drivers who are engaging in unsafe driving practices can be identified through their license record and have their driving privilege suspended or revoked.

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Senate Bill No. 345 was introduced to further fine-tune the Kansas Commercial Drivers' License Act. The state has informed our industry that they will begin issuing CDLs on April 1, 1991. Expediting this legislation will ensure that the amendments are enacted prior to the April 1 issuance date.

We have worked with the Division of Vehicles to make Kansas law consistent with the federal regulations governing the commercial drivers' license. We bring to your attention two of the amendments found in SB 345.

The first amendment, found on page 6, lines 2 and 3, would require a driver of an oil field pulling unit to obtain a commercial drivers' license. An oil field pulling unit consists of mobile machinery mounted on a truck with a manufacturers gross vehicle weight rating in excess of 26,000 pounds which meets the commercial vehicle definition.

The amendment on page 21, lines 1 and 2, deletes the requirement that the operator of a farm vehicle obtain a commercial drivers' license if such driver transports hazardous materials required to be placarded. The federal regulations governing the transportation of hazardous materials supercede Kansas law when the hazardous material being transported is defined and listed as a hazardous substance. Anhydrous ammonia is listed as a hazardous substance and quantities in excess of 1,000 pounds require placarding. Currently, Kansas law would require a farmer to obtain a commercial drivers' license if he pulled, with a pickup truck, a "nurse tank" containing anhydrous ammonia.

KMCA has contacted the U.S. Department of Transportation and the Kansas Department of Revenue concerning this provision of our CDL law. US DOT has informed KMCA that removal of the language, "not used to transport hazardous materials which requires the vehicle to be placarded," would solve this problem. Farmers pulling anhydrous nurse tanks would not be required to get a CDL after the effective date of this Act.

Effective date for the bill is publication in the Kansas Register. The Department of Revenue has proposed additional amendments which we have reviewed and support.

Our industry strongly supports the Commercial Drivers' License and asks your favorable consideration of Senate Bill No. 345. We will be pleased to respond to any questions you may have.

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# PUBLIC POLICY STATEMENT

## HOUSE TRANSPORTATION COMMITTEE

Re: S.B. 345 - Amending the Kansas Commercial Drivers License Act

March 20, 1991

Topeka, Kansas

Presented By:  
Bill Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

Chairman Dillon and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We appreciate this opportunity to testify in support of Section 14 (page 21, lines 1-2) of S.B. 345. This proposal began as S.B. 71 which we supported. S.B. 345 contains those provisions and an additional 37 pages. We have no policy on the new sections of the bill. Our testimony is on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Few issues have caused our members more concern than the implementation and various interpretations associated with the commercial drivers license. We applaud the Federal Highway Administration's action that granted the farmer exemption which is currently a part of the regulations. While not all farming activities are exempt, exemptions are granted drivers of farm vehicles if the vehicle is:

1. Controlled and operated by a farmer;

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2. Used to transport agriculture products or machinery to and from a farm;
3. Not used in for-hire or contract-carrier operations;
4. Driven no further than 150 miles from the farm; and
5. Not used to transport hazardous materials that require the vehicle to be placarded.

Currently farmers who transport anhydrous nurse tanks to the farm or carry fuel tanks that have a capacity of more than 118 gallons are considered to be hauling hazardous materials and are required to have a commercial drivers license. S.B. 345 repeals the section concerning farm vehicles transporting hazardous material. We strongly support this proposal.

We do not believe it was ever the intent to require a C.D.L. for normal farming activities. Transportation of anhydrous ammonia by farmers from local fertilizer dealers to their farms or hauling fuel in their pickup tanks to farm machinery in the field are both common farming practices. We do not believe either activity should require a farmer to acquire a C.D.L.

We certainly appreciate the cooperation and support of the various organizations and agencies in developing S.B. 345. We encourage this committee to give S.B. 345 a favorable recommendation for passage. Thank you for allowing us to express the support of the farm and ranch members of Farm Bureau on this legislation. We would attempt to respond to any questions.

## MEMORANDUM

TO: House Transportation Committee  
Rep. Herman Dillion, Chairman

FROM: Department of Revenue

The following is an explanation of the proposed changes in Senate Bill 345.

Section 1: The criminal offenses for violating K.S.A. 8-1567 while driving a commercial motor vehicle or for having a .04 alcohol content while driving a commercial motor vehicle were removed from K.S.A. 8-1567 and placed in this proposed new section. This was done to eliminate possible confusion regarding the impact of a conviction for offenses in a commercial motor vehicle with regard to the various other statutes which require action based upon a conviction under K.S.A. 8-1567. A DUI or .10 violation in a commercial motor vehicle would be a violation of K.S.A. 8-1567 and this section. A .04 violation in a commercial vehicle would be a violation of only this section.

Section 2: This new section sets up a separate implied consent procedure to be used when the suspect was driving a commercial motor vehicle. This provision will apply in addition to the existing implied consent law applicable to any motorist. This statute is intended to clarify and simplify the procedures in handling test requests concerning drivers of commercial motor vehicles. The procedures will be similar to those in the existing implied consent law and will allow hearings to deal with issues arising under both statutes.

Section 3: This section amends the definitions in the commercial driver's license act to clarify that a "disqualification" means the suspension, revocation or cancellation of the privilege to drive a commercial vehicle and adds the definition of "director" as used in these statutes.

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Section 4: K.S.A. 1990 Supp. 8-2,142 is amended to reflect the changes in sections 1 and 2. The statutory language is also clarified regarding the use of an "occurrence" of a conviction or a .04 test result or test refusal for purposes of a disqualification of commercial motor vehicle driving privileges and for enhancement for subsequent occurrences.

Section 5: K.S.A. 1990 Supp. 8-255 is amended to eliminate the need for an administrative hearing on a license suspension based upon a conviction of an offense under K.S.A. 8-262, K.S.A. 8-1567, K.S.A. 8-254, or K.S.A. 8-2,142(a)(1), (2) and (3), as amended by section 4. This is to eliminate a duplication of administrative and court hearings in those cases where the person had a right to a hearing and appeal in the underlying criminal case. Since the only issue is the existence of the conviction and the identity of the offender, an administrative review procedure is established to resolve such issues.

Section 6: K.S.A. 1990 Supp. 8-259 is amended to treat a suspension based upon a conviction of driving while suspended and a disqualification for a conviction under K.S.A. 8-2,142(a)(1), (2) and (3) in the same manner as the other administrative suspensions or revocations based solely upon conviction in criminal cases. A provision has also been proposed to treat administrative hearings under section 2 in the same manner as under the existing implied consent law since the intention is that those matters be handled together.

Section 7: K.S.A. 1990 Supp. 8-1001 is amended to provide that a test request can be based upon the reasonable grounds of an officer to believe that a person was driving a commercial motor vehicle while having alcohol or other drugs in the person's system as well as the existing bases for a test request. This will eliminate the inconsistent dual standard for requesting a test presently in the statute. References to giving different notices for commercial drivers for test refusal and test failure are eliminated since the commercial driver notice is in section 2. The changes also make it clear that a commercial driver is subject to both the standard implied consent provisions and those concerning drivers of commercial motor vehicles instead of the either/or approach indicated by the present statute.

Section 8: This section has been amended to remove the references to the .04 standard for drivers of commercial motor vehicles which have been



placed in new section 2. The change in the reasonable grounds standard made in section 7 is also made here to make the standards for test requests uniform.

Section 9: K.S.A. 1990 Supp. 8-1567 is amended to eliminate the references to the .04 standard for drivers of commercial motor vehicles which have been placed in new section 1. This change will eliminate treatment of a .04 violation by a commercial driver from being used as the basis for violation of other statutes. A commercial driver who is DUI or has an alcohol content of .10 or greater would be subject to K.S.A. 8-1567 and new section 1. The provisions regarding the filing of a report of test results or refusals for commercial drivers were removed in favor of those set out in new section 2.

Section 10: K.S.A. 1990 Supp. 8-2115 is amended to provide for the inclusion of information in reports of conviction which is required by the guidelines in the Uniform Commercial Drivers' License Act which will provide necessary information for the administration of K.S.A. 8-2,125, *et seq.*

KANSAS DEPARTMENT OF TRANSPORTATION

Gary Stotts  
Secretary of Transportation

Docking State Office Building  
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Joan Finney  
Governor of Kansas

March 20, 1991

The Honorable Herman Dillon  
State Representative  
Chairman, House Transportation Committee  
Capitol Building  
Topeka, Kansas 66612

RE: Senate Bill 345

Dear Representative Dillon:

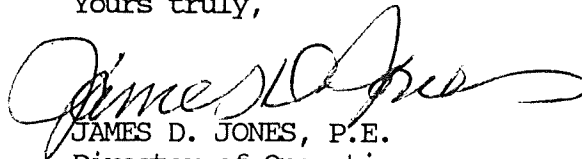
This bill modifies the existing statutes to incorporate the Federal CDL requirements into state law. KDOT has been aware of those rules for some time and in cooperation with the Kansas Department of Revenue have completed prior testing of our employees required to obtain CDLs. KDOT will be able, with considerable effort and expense on our part, to have all existing employees required to have CDLs obtain the necessary licenses in the time frame allowed.

KDOT will be required to have persons qualified to administer portions of the CDL testing. This will require one person from each of the six highway Districts half time to administer the testing and training requirements. This extra effort cannot be picked up by existing employees, and it is unreasonable to assume we could employ half time personnel to perform this function. The remaining time of the full time employee would be used in other necessary safety functions not presently being addressed.

The cost to KDOT to administer the CDL program will be the salary for 6 one-half time employees at \$114,610, transportation for the tester \$24,840, and lost production time of \$40,572 for a total of \$180,022 annually.

In addition to this our employees will have an out of pocket expense in excess of \$50,000 for the cost of the license.

Yours truly,



JAMES D. JONES, P.E.  
Director of Operations

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