

Approved: 4/1/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 4, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Kirk (excused)
Representative Adkins (excused)
Representative Swenson (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the Committee :

Jim Welch, Assistant Attorney General, Consumer Protection Division
Don McNeely, Auto Dealers Association

Others attending: See attached list

The Chair called the meeting to order.

SB 404: **Increasing the civil penalty for odometer fraud to not more than \$10,000.**

James Welch, Assistant Attorney General, testified in support of **SB 404**. The conferee stated that the Attorney General supports **SB 404**, which amends K.S.A. 50-651, the odometer fraud statute. The conferee stated that this bill would amend the odometer law by increasing the civil penalties from the current amount, \$2,000, to up to \$10,000 for violations of the criminal odometer fraud statute. Conferee stated that the Attorney General requests that the penalty be increased to \$5,000 per violation of the title search disclosure statute. Conferee Welch stated that the Attorney General has requested that additional language be added to **SB 404**. The suggested language would amend the odometer law to allow the Attorney General and county and district attorneys to recover reasonable expenses and investigative fees incurred in investigations of odometer fraud and disclosure violation cases. (Attachment 1)

Conferee Welch and Committee members discussed issues concerning recovering reasonable expenses for attorneys. Discussion as to the Attorney General's power to bring charges against small business followed.

Don L. McNeely, KADA Executive Vice President, representing the Kansas Automobile Dealers Association testified in support of **SB 404**. Conferee McNeely stated that not only will customers be helped by this bill, but also automobile dealers who can be victims of fraudulent acts. Conferee McNeely stated that his Association is opposed to civil penalties for violations of the title search disclosure requirements of K.S.A. 50-653. (Attachment 2)

Conferee McNeely discussed with Committee members issues concerning the title search procedure.

The Chair closed the hearing on **SB 404**.

The Committee members discussed the balloon requested by the Attorney General.

Representative Mays made a motion, seconded by Representative Powell to recommend SB 404 favorably for passage. The motion carries.

The Chair adjourned the meeting at 4:10 p.m.

The next meeting is scheduled for March 5, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-4-98

NAME	REPRESENTING
Alex M. Heabell	KTLA
Jim Welch	ASST A.G.
Frank P. P. P.	KS AG
Dan Mc...	KANSAS AUTO DEALERS ASSN.
Jim Clark	KCDAS
Steve Kanner	A.G.
Nancy Lindberg	AG



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
James J. Welch, Assistant Attorney General
Before the House Judiciary Committee
RE: SB 404
March 4, 1998

Chairperson Carmody and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to testify in support of SB 404. My name is Jim Welch and I am an Assistant Attorney General for Consumer Protection.

The Attorney General supports SB 404, which amends K.S.A. 50-651, the odometer fraud statute. However, the Attorney General would ask that additional language be added to SB 404, which is contained in the balloon amendment attached to my testimony.

The amendment to K.S.A. 50-651 contained in SB 404 was one of several automobile related proposals made by the Attorney General last session in SB 266. In 1995, a National Association of Attorneys General Report found serious problems in the auto repair industry, which led her to create an Attorney General Task Force to examine these problems. As a result of recommendations from that Task Force, the Attorney General submitted SB 266 last session. SB 266 was referred to the Special Committee on Judiciary, which ultimately recommended only the odometer portion of SB 266. Unfortunately, the language contained in SB 404 does not contain all of the amendments requested by the Attorney General relating to the odometer fraud statute.

The language proposed by the Attorney General would amend the odometer law by increasing the civil penalties from the current amount, \$2,000, to up to \$10,000 for violations of the criminal odometer fraud statute (K.S.A. 21-3757), and up to \$5,000 per violation of the title search disclosure statute (K.S.A. 50-653). The current version of SB 404 increases the civil penalty for criminal odometer fraud to up to \$10,000, but fails to increase the civil penalty for violations of the title search disclosure requirements of K.S.A. 50-653. The current penalty is simply too low to address the conduct involved, especially considering the \$5,000 penalty that can apply to other violations of the Consumer Protection Act.

The Attorney General's suggested language would also amend the odometer law to allow the Attorney General and county and district attorneys to recover reasonable expenses and investigative fees incurred in investigations of odometer fraud and disclosure violation cases. Recovery of investigative fees and expenses is allowed under the Kansas Consumer Protection Act, and Attorney

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Attachment 1

General Stovall believes recovery in odometer fraud cases should be allowed as well. Costs associated with these investigations should be paid by the violator, not by taxpayers.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 404 with our balloon amendment. Thank you.

SENATE BILL No. 404

By Special Committee on Judiciary

12-17

9 AN ACT concerning consumer protection; relating to the civil penalty for
10 odometer fraud; amending K.S.A. 50-651 and repealing the existing
11 section.

12

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

14 Section 1. K.S.A. 50-651 is hereby amended to read as follows: 50-
15 651. (a) The commission of any act or practice declared to be a violation
16 of K.S.A. 21-3757 or K.S.A. 50-653, *and amendments thereto*, shall make
17 the violator liable to the aggrieved consumer, or to the state, for the
18 payment of a civil penalty, recoverable in an individual action or in an
19 action brought by the attorney general in a sum set by the court of not
20 more than ~~\$2,000~~ per violation of K.S.A. 50-653, *and amendments thereto*,
21 *and not more than \$10,000 per violation of K.S.A. 21-3757, and amend-*
22 *ments thereto-*

following: (1)

\$5,000

and (2) reasonable expenses and investigation fees incurred by the attorney general, county, or district attorney.

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

25 Sec. 2. K.S.A. 50-651 is hereby repealed.

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



KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 4, 1998

To: The Honorable Chairman Tim Carmody
and Members of the House Judiciary Committee

From: Don L. McNeely, KADA Executive Vice President

Re: SB 404 - Support

Chairman Carmody and Members of the House Judiciary Committee:

Good afternoon, my name is Don McNeely, Executive Vice President of the Kansas Automobile Dealers Association, a state trade association representing the 302 franchised new car and truck dealers in the state of Kansas.

I appear before you this afternoon in support of the Special Committee on Judiciary's recommendation regarding 1997 legislation, SB 266, that resulted in SB 404, which would amend the odometer rollback statute, K.S.A. 21-3757, by increasing the penalty for criminal odometer fraud from \$2,000 to \$10,000.

I believe we would all agree that consumers should be protected from such illegal acts. However, I would be remiss if I did not respectfully point out that consumers are not the only victims of such acts. It is not unusual for our members to also become victims of such fraudulent acts perpetuated by individuals seeking to increase the value of the vehicle they are trading-in or those seeking to avoid excess mileage fees on vehicles which they have leased. In addition, it was recently reported that curbstoners and wholesalers are also perpetrators of such fraud, as they bring vehicles into dealerships with tampered odometers and attempt to get repairs to the vehicles covered under warranties with specific mileage limitations.

In closing, I would like to thank the Chairman and Committee members for allowing me to appear before you today. I would be pleased to stand for any questions.

DLM:md

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Attachment 2