

Approved: 2-16-98
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:00 a.m. on February 10, 1998, in Room 254-E of the Capitol.

All members were present except:
Senator Keith Schraad - excused

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Mr. Charles E. Simmons, Secretary of Corrections
Mr. Steve Rarrick, Deputy Attorney General, Consumer Protection Division
Mr. Pat Barnes, Legal Counsel, Kansas Automobile Dealers Association, Topeka

Others attending: See attached list

The chair recognized Senator Biggs who introduced Sam Snyder, James Faris, and Tara Ala, students from Oskaloosa Middle School, who served as pages for the committee today. Senator Biggs told the committee the students had competed in a citizenship contest for the honor to serve as pages. Senator Oleen congratulated the students on successfully competing for the award.

Senator Oleen directed attention to **SB 518**, relating to the Kansas consumer protection act and disposal of surplus property, noting that there were three conferees and each would be allowed ten minutes to present their testimony. Before opening the scheduled hearing, she asked staff to brief the committee on the provisions of the bill.

Staff discussed the amendatory language in the bill which would exempt the disposal of surplus property by any governmental entity from the Consumer Protection Act. It was noted the fiscal note on **SB 518** indicated there would be no fiscal impact if passed; however, there would be a fiscal impact if the bill is not passed.

The hearing was opened on:

SB 518 **An act concerning the Kansas consumer protection act; relating to the disposal of surplus property.**

Charles E. Simmons, Secretary of Corrections, a proponent of the bill (Attachment #1), told the committee the Department of Corrections (DOC) had requested introduction of **SB 518**, and he provided background on the bill. He gave a brief history of the surplus property program, which is administered through a division of Kansas Correctional Industries. He referenced the catalogue of surplus items for sale, (a copy of which may be obtained from the State Surplus Property Center), and explained procedures in place for administering the program. Secretary Simmons said the issue before the committee today is because of the interpretation of the Attorney General's Office that the surplus property program is subject to provisions of the Kansas Consumer Protection Act; the DOC believes it does not. He explained that, if the program is subject to the act, it would require inspection of each item and a written description of all defects, and any defect not discovered and disclosed in writing to the purchaser would be subject to a full warranty of merchantability. Secretary Simmons told the committee that, in order to inspect and document the condition of all property sold through the property center, the Department estimates an additional 6 full-time positions would be necessary at an annual cost of \$146,376, with an additional \$135,050 per year expended in contracting for inspection of items requiring specialized expertise. He pointed out that these expenditures were in addition to the cost for inspection and documentation of property that remained in the possession of a consigning agency prior to sale.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:00 a.m. on February 10, 1998.

Secretary Simmons urged favorable consideration of **SB 518** to exempt the surplus property program from the Consumer Protection Act and provide for the purchase of property "as is".

Responding to a question from a committee member concerning what prompted the request for introduction of this bill, Secretary Simmons related an incident that took place last summer when an individual purchased a vehicle and the air conditioner did not work. He said a claim was filed by the individual and subsequent discussions with the Office of the Attorney General resulted in the Attorney General taking the position that the entire program is subject to the Consumer Protection Act.

C. Steven Rarrick, Deputy Attorney General for Consumer Protection, appeared in behalf of Attorney General Carla Stovall in opposition to **SB 518**, (Attachment #2), and told the committee that the same consumer protections against deceptive and unconscionable conduct should be afforded Kansas consumers. He discussed two incidents involving the purchase of vehicles from the Surplus Property Center and emphasized that inherent defects are subject to the Consumer Protection Act. Mr. Rarrick pointed out that, when misrepresentations are made or a vehicle is unmerchantable, a consumer suffers the same damages regardless of where the vehicle is purchased. On behalf of the Attorney General, he urged the committee not to take favorable action on the bill.

Mr. Pat Barnes, General Counsel for the Kansas Automobile Dealers Association, appeared before the committee to express the Association's opposition to **SB 518**, (Attachment #3). Mr. Barnes stated that the Association felt it was bad policy to exempt governmental entities from implied warranties in the sale of surplus property. He discussed implied warranties of merchantability and fitness and stated that disposition of vehicles by governmental entities rightly fall in that category. He pointed out that many vehicles sold by Surplus Property pass through dealerships and, not knowing or having previous history presents a liability to the dealership under the Consumer Protection Act.

The chair opened the meeting to questions and asked if the prices listed for items sold by Surplus Property were negotiable, and Secretary Simmons replied that they were.

Several committee members indicated an interest in whether purchasers of surplus property were aware that the property was being sold "as is", and Mr. Rarrick was asked how many consumer complaints had been filed as a result of property purchased from Surplus Property. He responded that two had been filed during his three-year tenure with the Consumer Protection Division.

The hearing was closed on **SB 518** and attention directed to **SB 497**, relating to the joint committee on corrections and juvenile justice oversight.

Staff briefed the committee on the provisions of **SB 497**, stating it was offered by the joint committee on corrections and juvenile justice oversight and amends statutes that created the committee, providing for members of the committee to be compensated for travel and subsistence expenses for meetings authorized by the chair, vice-chair, and ranking minority member.

The hearing was opened on:

SB 497 **An act concerning the joint committee on corrections and juvenile justice oversight**

Senator Oleen told the committee that written testimony (Attachment #4) had been submitted in support of **SB 497** by members of the joint committee on corrections and juvenile justice oversight. She explained that the bill would allow reimbursement for expenses of the joint committee members who attend meetings authorized by the chair, vice-chair, and ranking minority member.

Senator Becker, a member of the joint committee, commented on the amount of work the committee does in the area of corrections and juvenile justice and stated that **SB 497** would place the joint committee on the same level as other committees.

Senator Oleen explained the history of the bill and the reason it was before the committee.

Senator Becker moved that the bill be amended to be effective upon publication in the Kansas Register; that it be favorably reported to the full Senate and placed on the Consent Calendar. Senator Harrington seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:00 a.m. on February 10, 1998.

Senator Oleen advised that the committee would return to **SB 518** at a later date. She said a copy of the State Surplus Property catalogue would be made available to those who did not have a copy and wished to review it.

Senator Becker moved for approval of the minutes of the February 5 meeting. Senator Jones seconded the motion, and the motion carried.

The meeting adjourned at 12:00 noon. The next meeting is scheduled for February 12.



DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: February 10, 1998

TO: Senate Federal and State Affairs Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 518

SB 518 amends K.S.A. 50-635 to exclude the disposal of surplus property by governmental entities from the provisions of the Kansas Consumer Protection Act. This amendment would apply to the disposal of surplus property by the state, counties, municipalities, school districts and federal government.

Passage of SB 518 is sought due to discussions between the Department and the Attorney General regarding the applicability of the Consumer Protection Act to governmental entities. At issue is whether under current law, agencies that consign surplus property to the Department for disposal are assigning that property for sale in the ordinary course of their business. If the assignment is being made in the ordinary course of the agency's business, arguably the provisions of the Consumer Protection Act are applicable. SB 518 would clarify that the disposal of surplus property by governmental agencies does not fall within the scope of the Consumer Protection Act.

The disposal of state surplus property is a function of the Department of Corrections through a division of Kansas Correctional Industries. The property disposed through the Department's Surplus Property Program is diverse and includes motor vehicles, heavy equipment, shop and maintenance equipment, food service equipment, computers, office equipment and furniture, audiovisual equipment and medical equipment. Surplus property is first offered to state agencies and other governmental entities. Surplus property is offered to the public only if no governmental entity is interested in the property. Therefore, property sold to the public is not suitable for use by the state or other governmental entities, usually due to the equipment being outdated, damaged, or past the point where the useful life of the product justifies continued maintenance. The property is not new, state of the art equipment sold at a premium price. Many of the purchasers of surplus property are interested in using the equipment for parts.

MEMO: Senate Federal And State Affairs Committee

Re: SB 518

February 10, 1998

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Consistent with the state of the property sold, notices are conspicuously placed in all advertisements, posted at the property center, and stated on the sale invoice, that all property is sold "as is, where is" with no warranty whatsoever, expressed or implied". These notices are sufficient to exclude the warranty of merchantability pursuant to K.S.A. 84-2-316 of the Uniform Commercial Code.

It is the Department's belief that purchasers of surplus property understand the surplus property being offered for sale is not in premium condition and view the property in the same manner as items sold at auction or at a garage sale. However, if the provisions of the Consumer Protection Act are applicable to the sale of government surplus property, the posting of "as is, where is" notices would be unlawful. Additionally, either the governmental agency consigning surplus property for sale through the Department or the Department would be required to have inspected each item and prepared a written description of all defects discovered. Any defect not discovered and disclosed in writing to the purchaser would be subject to a full warranty of merchantability.

The Department's surplus property program consists of five full time state employees and nine inmate workers. Their duties include receipt and storage of the surplus property, maintaining the sale records for the property, forwarding the consigning agency's share of the sale price to that agency, advertising and showing the property to potential buyers. Some surplus property sold through the program is never delivered to the surplus property center, but rather remains at the consigning agency's location. In order to inspect and document the condition of all property sold through the property center, the Department estimates that an additional 6 full time positions at an annual cost of \$146,376 would be necessary. In order to inspect items requiring specialized expertise, an additional \$135,050 per year would be expended in contracting for those services. These additional expenses would not include the cost for inspection and documentation of property that remained in the possession of a consigning agency prior to sale. During the first six months of FY98, the surplus property program has only generated a profit of \$9,124. The profits and losses experience by the program for prior years is set out in the following table. All amounts have been rounded to the nearest thousand dollars.

FY97	\$191,000
FY96	\$223,000
FY95	-\$7,000
FY94	-\$42,000
FY93	-\$46,000

The Department urges favorable consideration of SB 518.

CES/TGM/nd

cc: Legislation file



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Federal & State Affairs Committee
RE: SB 518
February 10, 1998

Chairperson Oleen and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in opposition to Senate Bill 518. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General opposes SB 518, which exempts governmental entities selling surplus property from the prohibitions against deceptive and unconscionable acts and practices under the Kansas Consumer Protection Act (KCPA). It is difficult to imagine a justification for exempting governmental entities from laws designed to protect consumers, especially when those governmental entities are competing against private businesses that must comply with our consumer protection laws. Since both private businesses and these governmental entities are selling products to consumers, the same consumer protections against deceptive and unconscionable conduct should be afforded Kansas consumers.

Consumers buying vehicles from the State Surplus Property Program need the same protections that are available when buying from a used car dealer. When misrepresentations are made or a vehicle is unmerchantable, a consumer suffers the same damages regardless of where the vehicle is purchased. This reasoning is even more persuasive when you consider that many sales at the State Surplus Property Program are made by prison inmates on work release.

On behalf of Attorney General Stovall, I urge you to vote against Senate Bill 518. Thank you.

Sen. Federal & State Affairs Comm.
Date: 2-10-98
Attachment: # 2

**TESTIMONY OF KANSAS AUTOMOBILE
DEALERS ASSOCIATION BEFORE THE SENATE COMMITTEE
ON FEDERAL AND STATE AFFAIRS**

Mr. Chairman and members of the Committee, I am Pat Barnes, General Counsel for the Kansas Automobile Dealers Association. I appear on behalf of the members of the Kansas Automobile Dealers Association to respectfully express our opposition to Senate Bill 518.

As we understand Senate Bill 518 it would apply to all surplus property sold by a governmental unit and would exempt such entities from the provisions of the Kansas Consumer Protection Act. The provisions before you show the one narrow exemption from the Act which essentially is for publishing and broadcasting on behalf of others without actual knowledge of a violation of the Act.

Since many governmental units dispose of vehicles we understand the intent of this bill would be to allow such dispositions without implied warranties. This bill alone would not do that, but by removing the entity from the coverage of the Consumer Protection Act it would allow the seller of the vehicle to disclaim implied warranties of merchantability and fitness for a particular purpose.

Implied warranties of merchantability and fitness for a particular purpose are made automatically by law with every commercial sale of a vehicle. We believe that disposition of such vehicles by governmental entities rightly fall within that category given the quantities and knowledge of the property possessed by the seller. While one would still have to affirmatively disclaim implied warranties for them not to apply under these circumstances, this can simply be done with an advertisement or bill of sale offering the property "as is, where is" without any express or implied warranty.

Sen. Federal & State Affairs Comm
Date: 2-10-98
Attachment: #3

In the case of the sale of vehicles and with so many of them available through governmental entities as used vehicles, we feel it is bad policy to make this exception. Disclosure has become the norm and the rule for our business with respect to the condition of the vehicle and we feel that as a matter of policy it should be no different for anyone selling a vehicle. We eventually see many of these vehicles pass through our dealerships. Not knowing or having previous history disclosed to us presents a liability and Consumer Protection Act risk for us if we turn around and sell a vehicle without knowing of a problem that exists in it. Continuing to require the implied warranty will not totally resolve exposures of that nature, but it will contribute to more knowledge about the vehicle for the public which we hope would be conveyed to our members when they receive such vehicles in trade-in transactions or on purchases of their own.

I would be happy to respond to any questions you may have.

**TESTIMONY BEFORE THE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

SB 497

February 10, 1998

Members of the Senate Federal and State Affairs Committee:

We appreciate the opportunity to present written testimony on **SB 497**.

The bill was prefiled by the committee, along with several others for 1998 legislative consideration.

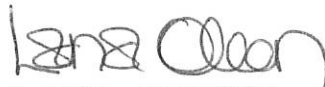
The committee---which meets more frequently in the interim---has had several occasions where sub-committee review would have been helpful. Other times, our committee members have attended juvenile justice meetings which are helpful for the committee's charge, but compensation has not been recognized.

The bill allows more flexibility for the House and Senate legislators to meet the charges of the committee. We request your favorable consideration of **SB 497**.

Thanks.



JOE KEJR
VICE-CHAIRMAN



LANA OLEEN
CHAIRMAN



GRETA GOODWIN
RANKING MEMBER