

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Senator Les Donovan at 8:30 a.m. on March 12, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Goodwin
Senator Harrington
Senator Pugh

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Rep. Dennis McKinney
Tom Whitaker, Exec. Dir., KS Motor Carriers
Rep. Sharon Schwartz
Matt Moser, Titles & Registration, KDOR
Darrell Simnitt, Simnitt Bros., Inc.
L. N. Collier, Atty. Carlson Auction

Others attending: See attached list

HB 2693: Re traffic regulations; compression release engine braking system

Representative Dennis McKinney testified this bill is designed to enact a law which would provide for a standard method throughout the state to handle the noise made by the compression release engine braking system, or "Jake brakes" (Attachment 1).

Tom Whitaker, Executive Director, Kansas Motor Carriers Association, explained that "Jake Brake" is a registered trademark. He further addressed his Association's belief that this problem should be addressed as a statewide issue because of the safety problem posed by banning the use of these devices. 70% of all new heavy-duty trucks are equipped with Jake Brakes because such vehicles are more efficient, productive, and safer as they enhance driver control. KMCA supports **HB 2693** as amended by the House Transportation Committee. It targets trucks with engine brakes but without mufflers and should be more effective because it would double the fine for violations to \$60 (Attachment 2). Following committee discussion, Senator Schodorf moved the bill favorable for passage. Senator Jackson seconded the motion. Motion carried.

HB 2794: Re motor vehicles, 48 hour transport permit

An auctioneer constituent of Representative Sharon Schwartz requested this legislation to allow auctioneers to issue a "transport permit," which along with a bill of sale, would allow an auction buyer of a vehicle to drive the vehicle home (Attachment 3). Several questions raised regarding the 48 hour limit, since farm auctions, estate auctions, etc. often occur over three day week-end periods. Mathew H. Moser, Manager Title and Registrations/Dealer Licensing, Department of Revenue explained that **HB 2794** permits auctioneers to sell motor vehicles, under certain circumstances, without acquiring a motor vehicle dealer's license and would alleviate a major inconvenience presently experienced in these circumstances. The bill would allow the Division to design and implement a system that should be cost-effective and secure (Attachment 4). Darrell Simnitt, Simnitt Brothers, Inc. further discussed the problems involved in this issue. He presented written testimony from Richard H. Garvin, CAI, GPPA, Chairman of the Kansas Auctioneers Association (Attachment 5). 30-day tags are issued to dealers only. A non-dealer auctioneer would have to consult with the Division of Motor Vehicles if for any reason they were selling more than 3 vehicles at one time.

L. N. Collier, Attorney at Law, representing Carlson Auction Service, Inc., expressed concern that the 48-hour permit may encourage unlicensed motor vehicle auctions which would not be subject to the same requirements as properly licensed auction dealers. He further listed concerns related to Section (b) of the bill and asked for considered clarification of these

CONTINUATION SHEET

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE at 8:30 a.m. on March 12, 2002 in Room 245-N of the Capitol.

perceived problem areas. Since this bill can have a significant impact on auction motor vehicle dealers and consumers it was suggested that auction vehicle dealers, who are already subject to supervision by the Division of Vehicles, be included among those authorized to benefit from this less expensive temporary registration permit (Attachment 6).

Senator Jackson requested an amendment to **HB 2794** which, with necessary technical changes, would add an additional reassignment on certificates of title. The lack of reassignment space often leads to costly delays in transferring titles. Following a brief discussion, Senator Jackson moved to adopt the amendment. Senator Salmans seconded the motion. Motion carried.

Chairman Donovan requested that all those involved in concerns raised by last conferee, meet with Staff Revisor and the Director of Motor Vehicles to work out problems and the Committee will then return to the bill.

Approval of minutes

Senator Salmans moved to approve minutes of the March 6, 2002 meeting. Senator Jackson seconded the motion. Motion carried.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 13m 2002.

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TOPEKA

HOUSE OF
REPRESENTATIVES

ASSISTANT MINORITY LEADER
COMMITTEE ASSIGNMENTS
MEMBER: TRANSPORTATION
ENVIRONMENT
INTERSTATE COOPERATION
CALENDAR AND PRINTING

March 12, 2002

Senate Transportation Committee

House Bill 2693

Thank you for the opportunity to testify today on House Bill 2693.

House Bill 2693 was introduced to find a method to handle the noise made by "jake braking" trucks. While some cities have ordinances prohibiting compression braking, some trucks would use the brakes right up to the edge of town. Homeowner and business owners on the edge of town would then complain to their legislators.

In the House Transportation Committee the Kansas Motor Carriers Association presented a common sense solution to this idea: standardize muffler requirements for trucks. I think this is a good idea and I hope you will support the bill. HB 2693 reduces the noise level and provides a law which would be standard everywhere in the state.

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SENATE TRANSPORTATION
COMMITTEE -DATE: 3-12-02
ATTACHMENT: 1



KANSAS MOTOR CARRIERS ASSOCIATION

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Allied Industries Chairman

TOM WHITAKER
Executive Director

Legislative Testimony by the Kansas Motor Carriers Association

Testimony in Support of House Bill No. 2693

Presented before the Senate Transportation Committee
Senator Les Donovan, Chairman
Tuesday, March 12, 2002 Statehouse, Topeka, Kansas

MR. CHAIRMAN AND MEMBERS OF THE SENATE TRANSPORTATION COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear before you this morning representing our 1,400 member firms and the Kansas trucking and highway transportation industry.

As originally introduced, the provisions of HB 2693 would address the use of a compression release engine braking system, or "Jake Brake", within 1/2 mile of the city limits of any city which has passed an ordinance prohibiting the use of any compression release engine braking system which results in the excessive, loud, unusual or explosive noise from such motor vehicle.

KMCA believes now is the time to address this issue on a statewide basis. A number of communities have expressed concern over the noise associated with compression release engine braking systems. Several communities have actually banned the use of these devices because of complaints from residents. Unfortunately, banning the use of these devices could pose a safety problem. Rather than have more communities seek a ban on the use of these safety devices, KMCA supports a more constructive approach to the root of the problem.

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SENATE TRANSPORTATION
COMMITTEE -DATE: 3-12-02
ATTACHMENT: 2

What is a compression release engine braking system? Compression release engine braking systems, simply known as engine brakes or jake brakes, provide the truck with a supplemental retarding device, providing drivers a measure of reassurance while traveling hilly terrain, and saving on engine and brake wear and tear. Because of a critical value associated with engine brakes, over 70% of all new heavy-duty trucks are equipped with these devices. Vehicles equipped with these devices are more efficient and productive and are also safer as they enhance driver control.

Engine braking devices are not loud when the truck is equipped with a muffler. The problem is that a small percentage of trucks do not have mufflers. In tests conducted on these braking systems, trucks fitted with a standard muffler produced a noise level of 83dB with the engine brake on. This is under the federal noise limits. In contrast, those trucks with no muffler and the engine brake applied produce a noise level of 101 dB. To the human ear, this sounds twice as loud as a muffled truck.

What is current law? All new trucks, which have been manufactured during the past 20 years, have been required to have a muffler, which meets EPA noise specifications. Current state law requires that all vehicles must be equipped with a muffler. Violation of this law is a traffic infraction punishable by a fine (tripled last year) of \$30 plus court costs. Unfortunately, a limited number of truck owners have removed the mufflers from their vehicles. Because of the low fine, the existing law does not serve as a significant deterrent of this practice.

KMCA supports HB 2693 as amended by the House Transportation Committee. The bill targets only those few vehicles, which pose the greatest noise problem – trucks with engine brakes but without mufflers. Further, HB 2693 would double the fine for no muffler when using an engine brake and not affect those vehicles without engine brakes.

Mr. Chairman we respectfully ask that the Committee act favorably on HB 2693. We believe this will take care of the perceived jake brake problem in numerous communities throughout Kansas. Thank you for the opportunity to appear before you today. I would be pleased to respond to any questions you may have.



TOPEKA

HOUSE OF
REPRESENTATIVES

SHARON SCHWARTZ
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COMMITTEE ASSIGNMENTS
CHAIRPERSON: HOUSE AGRICULTURE &
NATURAL RESOURCES BUDGET
MEMBER: HOUSE APPROPRIATIONS
HOUSE ENVIRONMENT
HOUSE AGRICULTURE

HB 2794

This summer I was asked by an auctioneer to introduce legislation to clear up the legality of driving a vehicle purchased at an auction. At the present time, when a vehicle is purchased at an auction the options the purchaser has are:

1. Drive the vehicle without a tag and risk being ticketed.
2. Drive the vehicle tagged with the original tag of the former owner.

HB 2794 allows an auctioneer to purchase 48-hour transport permits authorizing the purchaser of a vehicle at an auction conducted by the auctioneer, to operate the vehicle for a period of 48 hours. The fee for each permit shall be \$2.00. This is a simple solution making it legal to drive a vehicle bought at an auction back to the purchasers residence.

Attached to this testimony is a letter from Mr. Bott, the auctioneer who asked for introduction of the legislation.

Thank you for the opportunity to appear in support of HB 2794.

SENATE TRANSPORTATION
COMMITTEE - DATE: 3-12-02
ATTACHMENT: 3

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February 11, 2002

Raymond E. Bott
Raymond Bott Realty & Auction
119 C. Street, Box 68
Washington, KS 66968

Rep. Sharon Schwartz
Kansas House of Representatives
Room 110S
Statehouse
Ste 477W
Topeka, KS 66612

Sharon:

I like the idea of allowing auctioneers to issue a "transport permit", which along with a bill of sale, would allow the buyer of a vehicle at an auction to drive the vehicle home. Buyers of vehicles at auction have been driving them home anyway, but many times there is some doubt about ownership and insurance coverage at the time of sale at an auction. There is also the small issue of the license plate that is on the vehicle. The seller either removes his, which leaves the buyer driving a vehicle without a license plate, or the seller leaves the plate on, which leaves the buyer driving a vehicle with someone else's license plate. A permit of this nature should help clear up those questions.

Sincerely,



Raymond

Raymond Bott Realty & Auction

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KANSAS AUCTIONEERS ASSOCIATION, INC.
MINUTES OF THE ANNUAL MEETING
10:15 A.M. February 3, 2002- Plaza Inn - Garden City

The 2002 Annual meeting of the Kansas Auctioneers Association, Inc. was called to order at 10:15 a.m. on February 3, 2002 in the South Ballroom of the Plaza Inn Hotel in Garden City, Kansas by President, Mike Gatlin.

The first order of business was the appointment of Bill Oswalt as parliamentarian by President, Mike Gatlin. The minutes of the 2001 Annual meeting of the Kansas Auctioneers Association, Inc. were read as printed in the convention packets by Secretary, LaDonna Schoen. John Shoemaker moved the minutes approved as presented, motion seconded by Wayne Wischropp, motion carried.

LaDonna Schoen presented the treasurer's report in the convention packet and reported to the assembly the continuation of the bond. The bond is set at \$100,000 and insured through Sentinel Insurance, Salina. The audit committee report was given by John Shoemaker, Chairman. The audit committee found the books to be in balance and commended the treasurer for her reports. John presented the budget for 2002, explaining the budget reduction due in part to the reduced amount of interest to be received on our investments. He also requested a budget item increase to cover an increase in the salary for the secretary/treasurer. Richard Garvin, budget committee member, also commended the records received for the audit and budget meeting. Vern Koch moved we accept the financial report as presented and the budget as prepared by the budget committee. Ron Shivers seconded the motion and motion carried. LaDonna thanked the assembly for the increase in salary and the kind words.

COMMITTEE REPORTS -

REAL ESTATE & EDUCATION - Garry Hostetler reported 47 received their 6 hours continuing education hours in real estate from Dave Goscha of Career Education.

FIVE YEAR PLANNING - Dave Webb presented the personal property agreement to each member as approved by the board of directors

MEMBERSHIP - Jerry Pimey reported 37 new members this year with 7 in attendance at the convention. He commended Mike and the other board members for their efforts at the mini meetings held throughout the state for membership awareness.

VENDORS - Richard Schoen reported 6 vendors with representatives and 4 vendors with publications HISTORY & MEMORIAL - Leon Thompson conducted the memorial service, with assistance from the KAAA members, following the inspirational service. Remembered were Jerri Brown - Mother of Scott Brown; Troy Hostetler - Son of Garry Hostetler; Red Wallace, member; Virginia Brown - Wife of Earl Brown and Mother of Jay Brown; Dent Worrell, member and Son of George Worrell; Lawrence Welter, member; Milton Anderson, member; Don Kinser, member; Irene Koch - Mother of Vern Koch; Elsie Potter - Mother of Gary Potter; Mr. ___ Walsh - Father of Ron Walsh; Bertha VanSickle - Mother of Ralph VanSickle; Jeff Johnson - Son of Roger Johnson; Jean Deffenbaugh - Mother of Randi Deffenbaugh.

LEGISLATIVE - John Brugnoli stated you can provide temporary tags for vehicles purchased at auction but the insurance is quite prohibitive. Driving a vehicle purchased at auction without a tag may find your purchaser receiving a ticket, let them be aware of this situation. Sales tax should be collected by a charitable organization when conducting a second auction.

CONVENTION - Mike Gatlin reported a good convention in spite of the weather conditions making a few changes in the plan. There were 111 in attendance at the Friday night banquet, 51 at the KAAA luncheon, 206 at the Saturday night banquet and plans for 85 at the Sunday Luncheon. Appreciated the large attendance at the Inspirational service this morning. He also reported \$3575.00 received in sponsorships.

FUN AUCTION - Don Hamit reported a great fun auction with over \$6,000 raised for St. Jude's, Madison Marshall Care Fund, KAAA, KAA, NAF and the Scholarship fund. He thanked his committee for their help. He also thanked Terry Hamit and Debra Kisner for their clerking and cashiering the auction.

BID CALL - Roger Kisner thanked all for their help at the state fair on Sept. 12. He expressed his thoughts that the fair and the contest lacked some enthusiasm due to the 9/11/01 attack on the USA. He felt we have a champion qualified to succeed at the national contest.

POLICY MANUAL - Rick Brock stated no changes have been made.

RECEPTION STATE CONVENTION - Lester Edgcomb pleased by the attendance and was especially pleased by the attendance of the new members. He commended the members for making the new attendees feel welcome.

Titles and Registrations/Dealer Licensing
Mathew H. Moser, Manager
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Division of Vehicles

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TESTIMONY

TO: Chairman Les Donovan
Members of the Senate Transportation Committee

FROM: Mathew H. Moser, Manager *Mathew Moser*
Titles & Registrations

DATE: March 12, 2002

SUBJECT: House Bill 2794 – 48-Hour Auctioneer Permits

Mr. Chairman, members of the Committee, I am Mathew Moser, Manager of the Title and Registration Bureau for the Division of Vehicles. I want to thank you for the opportunity to testify regarding HB 2794 and the issuance of 48-hour transport permits.

K.S.A. 8-2401 permits auctioneers to sell motor vehicles, under certain circumstances, without acquiring a motor vehicle dealer's license. Auctions held on the weekends do not afford purchasers access to a county motor vehicle office where they may obtain a 30-day permit to transport a vehicle purchased at a weekend auction.

HB 2794 grants the Division of Vehicles new authority to create a 48-hour permit that auctioneers would be able to issue to their customers, for the purpose of transporting their vehicles from the place of purchase. The bill gives the Division sufficient latitude to design and implement a system that should be cost-effective and secure.

HB 2794 will alleviate a major inconvenience experienced by auctioneers, their clients and customers.

I would like to thank the committee for permitting my appearance today and will stand for any questions you may have.

SENATE TRANSPORTATION
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March 12, 2002

Senate Transportation Committee

Reference: HOUSE BILL No. 2794 (48 Hours permit)

Members of the Committee,

This is to inform the Senate Transportation Committee that the Kansas Auctioneers Association is strongly in favor of House Bill No. 2794, which allows for a 48-hour permit for vehicles sold at auction.

This would allow a buyer of a vehicle purchased at auction to drive the vehicle from the auction facility, or site of the auction, without fear of receiving a citation for "no tag".

At present when a vehicle is purchased at auction, it legally can not be driven away from the auction without first getting a tag or a 30 day permit for the vehicle. A process that is both time consuming as well as frustrating for all involved. On more than one occasion, after a vehicle was purchased at auction, the new owner was stopped by local law enforcement or a Kansas State Trooper and received a citation for not having a permit or a tag. Although, the officer was right in issuing the citation, the purchaser often blamed the seller or the auctioneer for their citation.

The situation of buying a vehicle at auction and not being able to legally drive it away from the auction site has been overlooked for far too long. A situation that the Kansas Auctioneers Association feels can be remedied by the passage of House Bill No. 2794.

Respectfully,



Richard H. Garvin, CAI, GPPA
Chairman of the KAA Legislative Committee

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SENATE TRANSPORTATION
COMMITTEE -DATE: 3-12-02
ATTACHMENT: 5

L.N. Collier

Attorney at Law
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785-354-9385
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March 12, 2002

TESTIMONY BEFORE THE SENATE TRANSPORTATION COMMITTEE CONCERNING HOUSE BILL 2794

Chairman Donovan, Members of the Transportation Committee, thank you for allowing me to appear today concerning House Bill 2794. I am L.N. Collier, an attorney, and I represent the Carlson Auction Service, Inc., doing business as the I-70 Auto Auction.

For more than twenty years, my client has done business as a licensed auction motor vehicle dealer here in Topeka. As a licensed dealer, it is required to have in place for the protection of the public a bond--raised from \$15,000 to \$30,000 by the last legislature--policies of liability insurance, statutorily mandated premises requirements and is subject to inspection for compliance by both agents of the Division of Vehicles and law enforcement including the Kansas Highway Patrol.

My client has always taken these licensing requirements very seriously, understanding them as the necessary safeguards for an ordered society and business community and has taken an active interest in legislative and administrative matters affecting the automobile industry. So, when this Bill came to its attention last Friday, my client's president, Mr. Daniel Carlson, asked me to appear today.

From time to time, it becomes necessary during the administration of an estate, for example, in the liquidation of the assets of that estate, to auction a motor vehicle owned by the estate. That will always be necessary and a matter to be anticipated and provided for by specific legislation since the buyer of the vehicle at such an auction must have a way to remove the vehicle and, as expeditiously as possible, obtain registration for it.

Similarly, the repossession of vehicles by lenders and the subsequent disposing of those vehicles, sometimes at auction, have been with us for as long as there have been motor vehicles and will persist so long as there are defaulting borrowers. The buyers of those vehicles also need a way to drive these cars away from the sale and get license plates.

My client and the other, properly-licensed auction motor vehicle dealers in the state would have no difficulty with this bill if it were confined to the situations generally described in K.S.A. 8-2401(a) and involved but few vehicles per auction event; however,

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it is our suggestion that the creation of the proposed 48-hour transport permits may encourage the proliferation of unlicensed motor vehicle auctions, not subject to the same safeguards required of licensed dealers, not subject to inspections by the Department of Revenue or law enforcement authorities and leave the public exposed to unregulated and unlawful practices.

Section (b) of the Bill would appear to be replete with uncertainty. While the original bill was amended by the House to include the phrase "whose primary place of business is in Kansas," probably intending that only Kansas auctioneers may buy permits from the Director of Vehicles, the Bill does not really say that. Further, by including the modifier "primary," the door seems left open to allow out-of-state auctioneers to buy 48-hour transport permits so long as their primary business locations are in Kansas.

Next, while the "name of the purchaser" is required to be shown on the application for the permit, it seems unclear whether the term "purchaser," as it is used, is the auctioneer purchasing the permits from the Director of Vehicles or the purchaser of the vehicle at auction. Clearly, the permit eventually displayed on a vehicle should be traceable to a specific owner of the vehicle, who was the vehicle's auction purchaser, without the necessity of law enforcement personnel having to obtain the auctioneer's sale records in order to determine whether registration is proper.

Next, while section (b) provides that "[O]nly one such permit may be used by the same purchaser on the same vehicle," there appears to be no requirement that the permit bear identifying information about the vehicle on which it is intended to be displayed. At minimum, the vehicle's year, make, model and vehicle identification number should be included on the permit in order to make enforceable the sanction the Bill provides and, again, to enable law enforcement personnel to be able to determine proper registration.

In regard to that sanction, the Bill says that "the division of vehicles may deny any auctioneer the authority to purchase 48-hour permits if the auctioneer is found to have issued more than one 48-hour transport permit to the purchaser of a vehicle." Thus, implicitly, the Bill would make available to auctioneers who are not licensees of the Director of Vehicles, certain administrative procedures in the event the auctioneer's authority to purchase permits is denied. We would suggest that the Division of Vehicles has not considered this implication and that consideration of it could change the Department of Revenue's fiscal note, previously submitted.

Finally, in the area of vehicle licensing concerns, the creation of yet another, temporary registration (and this would be the fourth, temporary registration which would exist in the vehicle registration statutes) would add to the uncertainty surrounding the time at which such permits are issued, the sequence in which such permits might be issued and the length for which eventual, permanent registration is defrayed. For example, the Bill does not say that the 48-hour transport permit can only be issued immediately subsequent to the purchase of the vehicle at auction. It is not outside the

realm of possibility that a purchaser at auction could obtain the temporary, 30-day registration which already exists in the statutes and then be issued a 48-hour transport permit. While the outcome in this situation should be that the vehicle was required to have been registered as of the thirtieth day after it was purchased, there would be a vehicle operated on the highway with seemingly valid registration.

It is our desire that this Committee consider amendments to the Bill in order to come to terms with the troublesome areas brought to its attention during this testimony. Further, my client has asked me to request that in the event the Committee determines that it is appropriate to create yet another form of temporary registration, that the eventual statute also provide for licensed auction motor vehicle dealers to be able to obtain and issue them to their purchasers of vehicles. We suggest that auction vehicle dealers, who are already subject to supervision by the Director of Vehicles, should also be allowed to benefit from this less expensive temporary registration since we have established a history with the State of accountability and familiarity with registration issues.

Thank you, again, for your permission to testify. I remain confident that the Committee will weight my remarks in light of the public purpose intended to be served by permitting the temporary registration of motor vehicles and in light of the potential impact that this Bill, passed, could have on auction motor vehicle dealers and consumers. I would be pleased to respond to any questions the Committee may have.

Respectfully,



L.N. Collier