

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 8:30 a.m. on February 19, 2004 in Room 527-S of the Capitol.

All members were present except:

Senator David Adkins- absent
Senator Greta Goodwin (RMM)- excused

Committee staff present:

Hank Avila, Legislative Research Department
Bruce Kinzie, Revisors of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee:

Proponents:

Chris Peterson, Enterprise
Don McNeely, Kansas Automobile Dealers Assn.
Steve Kearney, Kansas Automotive Recyclers

Opponents:

Lee Wright, Farmers Insurance

Others attending:

See Attached List.

SB 500: Certificates of title for nonrepairable or salvage vehicle

Chris Peterson, Enterprise Rent-A-Car and a proponent for this bill, described problems with the current vague definition in Kansas law relating to a nonrepairable or salvage vehicle. She cited case law regarding a class action lawsuit pending in California. The proposed bill would clarify the law regarding when a damaged vehicle should be branded "salvage" and "nonrepairable" (Attachment 1). Don McNeely, President, Kansas Automobile Dealers Association. His organization supports this bill. However, they feel there are several items that need to be addressed. He provided historic background and addressed the issue of cost to consumers and dealers. He provided a balloon amendment containing recommendations to bring the legislation more into line with recommendations made by a past Federal Task Force (Attachment 2). Discussed why this bill is necessary. Kansas does not license rebuilders. They are supposed to put vehicles in a condition that is safe for Kansas roads, but there is no way to verify that. Nothing in this bill applies to antique vehicles. Steve Kearney, Kansas Automotive Recyclers Association also spoke in support of the bill. For more than a decade they have been trying to address "what is a nonrepairable vehicle versus a salvage vehicle," and how do you inform consumers that they are buying a car that has been crashed and rebuilt. Another concern is that of car theft and use of Vehicle Identification Numbers (VIN) numbers and titles for nonrepairable cars. He offered several suggestions to strengthen the intent of the bill (Attachment 3).

Carmen Alldritt, KDOR, Director, Motor Vehicles Division and Matt Moser, Chief, Titles and Registration Bureau were present to answer questions. Ms. Alldritt stated that titling can be a problem for her Division, especially if the title is not clearly marked. They have experienced difficulties with titles where a vehicle that is clearly a salvage vehicle gets turned into a vehicle with a regular title. Lt. John Eichkorn stated the Highway Patrol does VIN inspections. They have no problems with this bill. John Pinegar, Carfax was also present to answer question. They do not have any problems with the bill.

Bill Sneed, State Farm Insurance Company planned to testify. Unfortunately he had an emergency and wished to submit his testimony as written (Attachment 4). Lee Wright, Farmers Insurance, explained they have not had the opportunity to look at the proposed amendments. They have a problem with some of the issues involved. This bill looks like a work in progress and they are ready to help the other proponents to craft a bill that would adequately take care of the needs of the legislature, yet would not harm their policy holders (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE at 8:30 a.m. on February 19, 2004 in Room 527-S of the Capitol.

Discussed the need for this bill. On February 24, 2004 the Committee will continue hearings on SB 500.

Meeting adjourned at 9:28 a.m.

The next meeting is scheduled for February 24, 2004.

TESTIMONY
CHRIS PETERSON, ENTERPRISE CAR RENTAL
SENATE TRANSPORTATION COMMITTEE
SB 500
February 19, 2004

Mr. Chairman, Members of the Committee. My name is Chris Peterson and I am pleased to appear today as a proponent of SB 500. Kansas is one of a number of states that have confusing, and often times, subjective definitions or requirements determining when a damaged vehicle should be branded "salvage". These ambiguous definitions create uncertainty for the sellers of vehicles in terms of disclosing damage to a vehicle to consumers. From the consumer standpoint, these vague definitions may lead them to purchase a vehicle that has had significant damage without their knowledge.

The State of Kansas' current definition of a "salvage vehicle" is when the vehicle is in an "inoperable condition", a "hazard to the public safety" or would require "substantial repairs to rebuild or restor". (Kansas Statue 8-197(b)(2)).

This definition is obviously open to interpretation depending upon one's viewpoint.

To illustrate how an unclear, ambiguous definition of a "salvage" vehicle can lead to confusion and costly litigation, we offer a summary of an actual case:

A class action lawsuit is pending in *California* where the center of debate revolves around whether a used vehicle purchased and sold by a licensed dealer should have been branded "salvage". Under California law, a damaged vehicle is required to be branded "salvage" if the vehicle is "uneconomical to repair":

A rental care company sold a damaged vehicle to a licensed dealer (\$7,000 damage to a \$16,000 vehicle). Rather than repair the vehicle, the rental company sold the damaged vehicle to a dealer through an auction. That licensed dealer then improperly repaired the vehicle and re-sold it to a consumer. The consumer began having problems with the vehicle after the purchase and wound up suing the rental company stating that the vehicle should have been branded "salvage", because the rental company sold it for "economic reasons".

While the rental car company in this case did sell the vehicle for what could be interpreted as "economic reasons", it had nothing to do with the level of damage. Vehicles are revenue generators to rental car companies, so there are a number of factors taken into account when determining whether to repair a vehicle or not. Factors such as loss of use, total repair costs, how long the car has been in the fleet, etc. are carefully weighed before making a final decision. The bottom line is that there are many "economic" factors that are considered beyond the level of damage. However, the vague law in California has led to confusion and ambiguity -- and now serious litigation.

The term "inoperable condition" -- like "uneconomical to repair" -- can mean one thing to one person and another to someone else.

SENATE TRANSPORTATION COMMITTEE
- DATE 02-19-04 -
ATTACHMENT: 1

The vagueness in the current Kansas law should be a concern to any entity that buys and sells damaged vehicles.

Kansas' lack of a clear definition of when a vehicle should be "salvaged" creates an atmosphere of uncertainty.

SB 500 seeks to clarify the law regarding when a damaged vehicle should be branded "salvage" and "nonrepairable". It provides an objective, definitive standard that clearly dictates for sellers -- as well as for consumers -- the qualifications for making such a determination.

Based upon our experience and research, about half of the states have a percentage-based threshold that determines when a damaged vehicle should be branded "salvage". A standard such as requiring a vehicle to be branded "salvage" if the total estimated damages exceed 75% of the value of the vehicle is reasonable. This is an easily understood standard that everyone can determine.

We would urge your support of SB 500.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 19, 2004

To: Chairman Les Donovan and
Members of the Senate Transportation Committee

From: Don L. McNeely, KADA President

Re: Senate Bill 500

Chairman Donovan and Members of the Committee:

Good Morning, my name is Don McNeely, and I serve as President of the Kansas Automobile Dealers Association. I appear before you today to offer some comments in regard to Senate Bill 500. While KADA supports Senate Bill 500, we believe there are several items that need to be addressed.

This issue is not new to KADA or the Kansas Legislature, as there have been at least 3 attempts over the past 10 years to address the matter before you. Today, the practice of selling rebuilt salvage vehicles as undamaged used vehicles costs consumers and the auto industry more than \$4 billion annually. You may have noticed I said the consumers and the auto industry because dealers, as well as consumers, are often the unwitting purchasers of these rebuilt vehicles. It is reported that in some states, as many as 70 percent of all "salvaged" vehicles may return to the roads after being purchased by unsuspecting consumers and dealers. While most states require some type of disclosure on the title to indicate the vehicle history, the requirements vary from state to state. The various states use dozens of different terms and definitions for these types of disclosures or brands. Taking advantage of this confusion are unscrupulous rebuilders, which are victimizing both consumers and dealers by transferring "clean" titles for severely damaged vehicles that should have had branded titles. This has been made possible by the lack of uniformity among state motor vehicle title laws.

Realizing this fact, a congressionally mandated Motor Vehicle Titling, Registration and Salvage Advisory Committee was formed in 1994 to develop recommendations to address this problem. The Task Forces' recommendations were drafted into federal legislation, which encouraged the States to adopt a model Federal solution to the problem. The legislation represented years of public debate and a compromise between the industry, consumer groups, and the state attorney generals.

SENATE TRANSPORTATION COMMITTEE

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Unfortunately, the legislation which was introduced in 2 different congressional sessions never became law, despite the fact that one passed the House 336-72, and another had 57 Senate co-sponsors.

The reason I bring this to your attention, it is our opinion that if Kansas is going to enact legislation addressing title branding, it should be along the lines of the Federal Task Force recommendations, which our following proposed amendments represent.

1. We believe that current "fair market value" definition should be limited to a current national recognized database compilation of retail values or a market survey of comparable vehicles to avoid manipulation and extended dispute over the value of the vehicle, which the percentages would rely on to determine the appropriate title brand.
2. The "cost of repairs" definition should be clarified to mean the "retail" cost of parts and labor to avoid the dispute over "wholesale" versus "retail", and the "cost of labor" should be further defined to mean the hourly labor rate and time allocations that are reasonable and customary in the automobile repair industry in the community where the repairs are performed, as labor rates do vary by area.
3. Under the definition of "flood vehicle", the language "has no resale value except as a source of parts or scrap only" should be deleted or further clarified, as when does the damage due to water reach the point that the vehicle has no resale value except for parts or scrap, and who would make that decision.
4. We propose changing all violations of this section from a class C non-person misdemeanor (up to 1 month in county jail and/or a fine up to \$500) to a class A non-person misdemeanor (up to 1 year in county jail and/or a fine up to \$2,500), in order to provide an increased incentive to those who are currently choosing not to comply and continuing to defraud the public. Currently, there really is no incentive to comply, as we believe the unscrupulous rebuilders, actually look at the current penalties as a cost of doing business. In fact, unless the vehicle is totaled, it is not in the owner's economic interest to do so, as a branded title will reduce the vehicle value between 20 and 30 percent.
5. The current definition of a "salvage motor vehicle" should be deleted, as it is very confusing and is the reason we are here this morning.
6. As was pointed out by the Attorney General's office in 2000, we believe the damage necessary to reach 75 percent of the fair market value in order to be declared a "salvage vehicle" should exclude cosmetic damage resulting from a windstorm or hail, as such damage does not render a vehicle unsafe.

7. We believe the definition of a "rebuilt salvage vehicle" should be further defined as "any motor vehicle previously issued a salvaged title; which has been rebuilt or restored or is otherwise in a condition which will allow the registration of such vehicle", as the current definition in the bill is extremely vague.
8. In order to avoid the branding of older, highly depreciated automobiles, which can reach the 75 percent level of damage with something as minor as a sideswipe and cost the consumer up to 30 percent immediate depreciation in value because of a salvage title brand, we propose apply the branding requirements to vehicles seven years or newer or to vehicles having a value of \$7,500 or more. This value would continue to increase \$500 every five years to account for inflation.
9. Finally, as an added form of disclosure to would-be buyers of such vehicles, we propose a new section that would require a notice or label to be permanently attached to the driver's side door frame denoting that the vehicle is in fact a rebuilt salvage vehicle or a repairable flood vehicle, since the vehicle's actual title is rarely present at the time of sale.

On behalf, of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this morning, and I would be more than happy to respond to any questions the Committee may have.

Senate Transportation Committee
February 19, 2004
Testimony in Support of Senate Bill 500
Provided on behalf of
The Kansas Automotive Recyclers Association

Chairman Donovan and members of the Transportation Committee:

Thank you for considering this important matter. I am Steve Kearney and I am appearing today on behalf of the Kansas Automotive Recyclers Association. The Kansas Automotive Recyclers Association is a trade association of professional auto recyclers located throughout the state of Kansas. Their primary business is dismantling and reselling parts from salvage vehicles.

The subject matter of Senate bill 500 has been a topic of discussion in this industry for at least a decade. Enacting a statute that incorporates the concept of establishing a percentage of damage for vehicles, creating a presumption that they are unsafe to repair and return to Kansas roads under any circumstances, is long overdue. Large numbers of vehicles that are "non-repairable" are passing through auto auctions regularly on "salvage" titles. With a "salvage" title the purchaser can rebuild the vehicle and return it to Kansas roads, regardless how severe the damage sustained, allowing the potential for harm to an unsuspecting purchaser as well as endangering other Kansas motorists.

Another concern with no specific threshold of damage for "non-repairable" vehicles is the purchase of vehicles for the "salvage" title only to obtain a clear title and the VIN from the wrecked vehicle. The potential for aiding auto theft is great under this scenario. With a clear title and the VIN from a vehicle that should be designated "non-repairable" with a specific threshold, an auto thief need only find a like model and year to steal, use the "salvage" title and the VIN from the wrecked vehicle, retitle the stolen car and sell or drive it with no one the wiser.

I have attached to this testimony what we believe are constructive suggestions to this measure that should only serve to strengthen the intent of the bill. I understand there are several other stakeholders that have suggested changes and we are eager to work with them to come to an agreeable solution.

Thank you for your time and attention to this matter.

SENATE TRANSPORTATION COMMITTEE

DATE 02-19-04

ATTACHMENT: 3

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Kansas Automotive Recyclers Association suggestions for amendments to SB 500:

Page 1, line 39-43, move line 40-43 up to line 39-41 to read:

“(C) Any motor vehicle for which the cost of repair exceeds 90%.....at the time it was wrecked, destroyed or damaged, or”

“(D) meets the definition of a flood vehicle under this section.”

Page 2, line 20:

(5) “flood vehicle” means any motor vehicle other than a repairable flood vehicle as defined under K.S.A, 8-197, and amendments thereto.”

Page 2, line 22:

“settlement due to water damage, and”

line 24-28:

“reached over the door sill, has entered the passenger compartment or has exposed any non-sealed electrical, computerized or mechanical components to water submersion and therefore has no resale value other than as a source of parts or scrap only.”

Page 5, line 27:

“The nine preceding years; or” (Reason, to be in conformance with Federal odometer certification “definition”)

line 28-30:

Setting a dollar value requires constant statutory revision. Percentages automatically adjust to changing market values, and are therefore “self-maintaining.” Another consideration is the removal of the “late model” language as the average age of the national “fleet” goes up every year, and a “late model vehicle” could easily be one 15 years old or older in the foreseeable future.

line 37:

“which were damaged by water other than salt water; or”

line 40:

“components may be repaired or replaced, providing that the estimated cost of such repairs will not exceed 75% of the fair market value of the vehicle immediately preceding such water damage.”

Consider a “penalty clause” for knowingly writing an estimate underestimating the fair market cost of needed repairs.

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Memorandum

TO: THE HONORABLE LES DONOVAN, CHAIRMAN
SENATE TRANSPORTATION COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
THE STATE FARM INSURANCE COMPANIES

RE: S.B. 500

DATE: FEBRUARY 19, 2004

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of automobiles in the United States and Kansas. We appreciate the opportunity to testify on S.B. 500. S.B. 500 is an attempt to re-define what constitutes non-repairable and salvage vehicles. In its present form, my client opposes S.B. 500.

Although my client supports legislation that informs potential purchasers that a vehicle has been deemed to be unrepairable due to a covered loss, we believe that S.B. 500 will do more to provide misinformation and confusion than that which it proposes to correct. My client and the proponents of this bill have been in contact over the past few weeks, and we are aware that this is a major issue for them throughout the United States. We continue to stand ready to work with them in an attempt to come up with a uniform solution that satisfies their concerns, and at the same time, does not create a disruption in the marketplace. Although we believe there are several technically flawed provisions of the bill, we thought it best to provide general comments concerning our opposition to the bill as a whole.

First, the proposed legislation uses a percentage of damage compared to the vehicle's fair market value. This creates a challenge when hidden damage does not allow us to prepare a complete estimate on the damage. Our additional estimate may be less than the 75%/90% threshold stated in the bill, but further inspections after disassembly may increase the estimate amount above the threshold. We do not want to be forced into disassembling a vehicle simply to determine the "exact" amount of damage.

We believe that the definition of "late model vehicle," couple with the various thresholds, make this definition application difficult at best.

SENATE TRANSPORTATION COMMITTEE

DATE 02-19-04

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Next, the legislation attempts to require an insurance carrier to notify the state when an owner retains the total vehicle. This issue has been discussed several times by the Kansas Legislature and has been rejected due to costs (on both the state's and the insurers' side) and the creation of a potential new liability or exposure to the insurance carrier.

Next, the thirty-day time requirement found in the bill makes compliance almost impossible.

In general, this bill will create more unrepairable vehicles. Unrepairables cannot be registered for use on public roads. Under this bill, vehicles that sustain extensive cosmetic damage, i.e., from hail, but that may be driveable, may be classified as unrepairable simply due to the extent of damage as compared to ACV or the value of the car. This creates a situation where consumers who cannot afford a new car may not be able to register their current vehicle due to the title branding required by the statute.

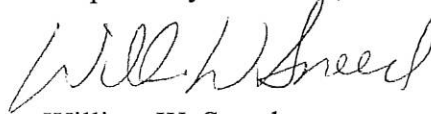
Also, as it relates to unrepairable flood vehicles, we find the definition to be confusing. Further, a portion of this section may require insurers and/or dealers to inspect the vehicle to determine repair or replacement. Insurance companies settle many claims on a cash settlement basis. We do not inspect the vehicle in all instances to determine that the repair has been done. Our concern with this, then, is twofold: (1) does this create a duty for insurers to inspect after repairs are complete; and (2) does it place a greater burden on the consumer's acceptance of a cash settlement?

As stated above, we understand the concerns being raised by the proponents of this bill. However, we believe that issues surrounding salvage vehicles are very complicated, and the best intentioned changes can lead to dramatic and substantial alterations that can affect not only insurance companies, but the public as a whole who attempt to purchase and sell vehicles.

We have worked on this area on numerous occasions, and stand ready to do so again. However, we believe that before any legislation like this is pursued, a more in-depth review is necessary. Thus, we respectfully request that the Committee not act favorably on S.B. 500.

I appreciate the opportunity to testify, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:kjb

4-2



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February 19, 2004

TESTIMONY ON SENATE BILL 500
SENATE TRANSPORTATION COMMITTEE

Thank you Mr. Chairman and members of the Committee. My name is Lee Wright and I represent FARMERS Insurance. FARMERS' has been insuring Kansas's drivers since 1930. We are the third largest auto insurer in the state with over 90,000 households choosing to insure their vehicles with us. We appreciate this opportunity to appear here in opposition to SB 500.

We have a particular problem with Page 1, Section 2 (C) of the bill that defines a non-repairable vehicle to include a damaged vehicle for which the cost of repair exceeds 90% of the fair market value. It is not uncommon for a hail damaged vehicle to exceed this 90% threshold, even though the damage is only cosmetic and repairing the vehicle would make it again safe to operate. If salvage rebuilders are no longer able to purchase these hail-damaged vehicles and repair them for road use, it is likely our salvage recovery values will be adversely impacted.

After visiting with some of the proponents, we understand there may be a number of amendments offered on this bill for the Committee's consideration. We have not yet had a chance to review any of the amendments, but would welcome the opportunity to assist all interested parties in crafting a bill that will not adversely impact our many Kansas policyholders and our insurance industry.

Thank you.

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