Approved: March 29, 2006
Date

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 P.M. on March 14, 2006 in Room 519-S of the Capitol.

All members were present except:
Representative Jerry Henry- excused
Representative Kay Wolf - excused

Committee staff present:
Hank Avila, Kansas Legislative Research
Bruce Kinzie, Revisor of Statutes Office
Betty Boaz, Committee Secretary

Conferees appearing before the committee:
Bob Alderson, representing Mid-States Port Authority and Kyle Railroad Company
Don McNeely, President, KS Automobile Dealers Association
Kathy Olsen, KS Bankers Association
Bill Henry, Director of Governmental and Regulatory Affairs for the KS Credit Union Ass'n.

Others attending:
See attached list.

Chairman Hayzlett opened the meeting with a hearing on **HB 2854.**

HB 2854 - Conveyance of railroad right of way by a railroad company

The only proponent for **HB 2854** was Bob Alderson, representing Mid-States Port Authority and Kyle Railroad Company. (Attachment #1) According to Mr. Alderson, they support **HB 2854** because its enactment will clarify the circumstances under which railroad right-of-way may be conveyed and to whom it may be sold. The bill amends KSA 2005 Supp. 66-525, which deals, generally, with the disposition of railroad right-of-way upon its abandonment. He said this statute defines when right-of-way is to be considered abandoned, and it provides a procedure for restoring sole ownership and possession of abandoned railroad right-of-way to the owner of the servient estate.

There were no other proponents and no opponents. After questions were answered Chairman Hayzlett closed the hearing on **HB 2854** and opened **HB 2918.**

HB 2918 - Work-site vehicles, regulation of

The Chairman recognized Bob Alderson, appearing on behalf of SouthWestern Association, as a proponent for **HB 2918.** (Attachment #2) According to Mr. Alderson, the purpose of **HB 2918** is to distinguish between work-site/utility vehicles and ATV's and to permit sales of these vehicles to be exempt from sales tax when they are to be used only in farming or ranching operations.

There were no other proponents and no opponents. The Chairman closed the hearing on **HB 2918** after all questions were answered. Chairman Hayzlett opened hearings on **SB 558.**

SB 558 - Lien release on vehicles, penalties for failure to

Don McNeely, President of the KS Automobile Dealers Association was the first proponent of **SB 558.** (Attachment #3) According to Mr. McNeely, **SB 558** would expand the Division of Motor Vehicles current authority within KSA 8-135 and provide the Division with the authority to enforce the timely release of a motor vehicle lien or encumbrance through the implementation of a civil administrative penalty process, which includes notice, hearing, and assessment of financial penalties against the violating lienholders.

There were no other proponents.

MINUTES OF THE House Transportation Committee at 1:30 P.M. on March 14, 2006 in Room 519-S of the Capitol.

Chairman Hayzlett recognized Bill Henry, Director of Governmental and Regulatory Affairs, as an opponent to **SB 558**. (Attachment #4) Mr. Henry said their main objection is that this bill imposes civil penalties that border on the draconian i.e. a lien holder who is found in violation of this section "at the discretion of the director" may have civil administrative penalties assessed for a first violation of not less than $100 but not more than $500. The civil penalty for a second violation would go up from there.

There were no other opponents.

Kathleen Taylor Olsen, Kansas Bankers Association, was listed as being neutral toward **SB 558.** (Attachment #5) Ms. Olsen thanked the Kansas Automobile Dealers Association for working with them toward revoking the current provisions found in KSA 8-135 regarding lien release procedures, and putting new procedures and penalties for releasing liens on vehicles in place.

There were no other conferees. After questions were answered, the Chairman closed the hearing on **SB 558.**

It was the Chairman's desire to work **HB 2781** which he opened up to the Committee. Representative Olson made a motion to remove the contents from HB 2781, remove the contents from SB 35, and insert the contents of HB 2781 into SB 35 creating Substitute SB 35. This motion was seconded by Representative Long and the motion carried.

Representative Olson made a motion to favorably pass Sub. SB 35 out of Committee, seconded by Representative Long and the motion carried.

Chairman Hayzlett opened up **HB 2918** to the Committee to work. Representative Olson made a motion to remove the contents of HB 2918, remove the contents of SB 76, and insert the contents of HB 2918 into SB 76 creating Substitute SB 76. Representative Long seconded the motion and the motion carried.

The Chairman opened **SB 347** to the Committee to work. Representative O'Malley made a motion to amend SB 347 by adding "New Section 2. (a) The secretary of transportation shall jointly determine with the board of education of any school district having or school located adjacent to a rural school zone the appropriate maximum speed limit in and the appropriate signage for any such rural school zone. (b) Any maximum speed limit and signage established for a rural school zone under subsection (a), shall be approved by the secretary of transportation and such board of education. (c) As used in this section, "rural school zone" means that portion of highway located outside of any city which provides entrances and exits to any school located adjacent to such highway." Representative Peck seconded the motion to amend, the motion carried.

The Committee worked **SB 347, as amended**. Representative Peck made a motion to favorably pass **SB 347, as amended,** out of Committee, the motion was seconded by Representative O'Malley, the motion failed.

The Committee worked **SB 374.** Representative Olson made a motion to amend SB 374 by striking the words "safe and stable". Representative Humerickhouse seconded the motion and the motion carried.

Representative Olson made a motion to pass SB 374, as amended, Representative George seconded the motion and the motion carried.

Chairman Hayzlett drew the Committee's attention to Minutes of the Committee Meetings on March 2nd and 13th, 2006. Representative Ruiz made a motion to approve the Minutes as submitted, Representative Humerickhouse seconded the motion and the motion carried.

There being no further business before the Committee, the Chairman adjourned the meeting. The next meeting will be on March 15, 2006, at 1:30 p.m. in Room 519-S.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 3-14-06

NAME	REPRESENTING
BOB ALDERSON	USPA & SOUTHWESTERN ASSOC.
JEFFREY FLORA	SOUTHWESTERN ASSN
DIANE ALBERT	KDOR
CARMEN ALLDRITT	KDOR
Richard Crum	KDOR
Bill Henry	KS Credit Union Assn
[illegible]	Federico Consulting
Marilyn Michels	Ks Register of Deeds Assoc.
Stan Jones	Mr. John Peterson

HOUSE TRANSPORTATION COMMITTEE

DATE 3-14-06

NAME	REPRESENTING
Don McNeely	KADA
Whitney Damron	KADA
Kathy Olsen	Ks Bankers Assn
Tom Whitaker	Ks Motor Carriers Assn.
Allen Gilmore	Gilmore Crane Corp
Doug Lawrence	Polk Crane Company

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
MICHELLE L. MILLER
HOLLY A. THEOBALD

OF COUNSEL:
BRIAN FROST
SCOTT S. SUMPTER
THOMAS C. HENDERSON

*LL.M., TAXATION
**LICENSED TO PRACTICE IN KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON
ON BEHALF OF MID-STATES PORT AUTHORITY
AND KYLE RAILROAD COMPANY
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION

March 14, 2006

Chairman Hayzlett and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of Mid-States Port Authority (MSPA) and Kyle Railroad Company (Kyle) in support of House Bill No. 2854. Previously, in connection with my testimony in support of House Bill No. 2709, I attached to my testimony a Memorandum which provided an overview of MSPA's formation, its purposes and objectives, its organization and operation, including the financing thereof, and its relationship with Kyle. Therefore, I will not reproduce that Memorandum in connection with my testimony on HB 2854. I will reiterate only that MSPA is a joint port authority that was formed pursuant to Kansas statutes in 1980 by the Joint Cooperative Agreement of 14 Kansas counties in north central and northwest Kansas. It was formed in the wake of the bankruptcy and proposed liquidation of the Chicago, Rock Island and Pacific Railroad Company (Rock Island), which would leave these 14 Kansas counties without rail service. Thus, the purpose for creating MSPA was to serve the public purpose of restoring the rail service previously provided by Rock Island and insuring the continued availability of rail service in this region of the state into the future.

To that end, MSPA acquired from the Rock Island's Trustee in Bankruptcy about 465 miles of Rock Island's main line track in the states of Nebraska, Kansas and Colorado, extending from Limon, Colorado in the west to Belleville, Kansas, with lines running from that point to Clay Center, Kansas and to Hallam, Nebraska, the eastern termination point at that time. Today, as explained in the Memorandum previously submitted to the Committee, MSPA has right-of-way only in the states of Kansas and Colorado, and the operating portion of that right-of-way is leased to Kyle.

Kyle is one of the state's 17 short line railroads. It is headquartered in Phillipsburg, Kansas, which is centrally located with Kyle's outlying on-duty crew locations in Goodland and Concordia, Kansas. In addition to the right-of-way leased from MSPA, Kyle entered into a long-term lease agreement with Union Pacific in 1991, to operate the Missouri Pacific lines north of Interstate

House Transportation
Date: 3-14-06
Attachment # 1

Highway 70. This portion of Kyle's system, known as the Solomon Branch, contained nearly 200 track miles when it was acquired, and it provides Kyle with access to the Union Pacific interchange at Salina. Today, Kyle operates a rail system containing 543 miles of main line track, 24 miles of siding and 58 miles of yard track, for a total rail system of 625 miles.

Kyle serves 102 customers and handles more than 20,000 carloadings per year. The preponderance of Kyle's business is directly related to agriculture, with its primary commodity being Hard Red Winter Wheat, which accounted for 55% of its carloadings in 2005. Other commodities include scrap steel, milo, corn, sunflowers, sunflower oil, millet, soybeans, liquid feed and fertilizers. Kyle's largest customers, based on carloadings, are Tamko Roofing, Scoular Grain, Hansen-Mueller, Agmark and Midway Co-op. In addition, in 2005, Kyle acquired a customer that received 45 carloads of utility poles in Arriba, Colorado, and it is anticipated that this customer will continue to receive increasing numbers of carloads of utility poles. Other expected areas of carloading and revenue growth for Kyle include:

- The 40-million gallon ethanol plant in Phillipsburg, which is scheduled to be operational in September of this year;
- The Goodland Energy Center project, which will consist of a coal-fired electric generation facility, a bio-diesel plant and a 30-million gallon ethanol plant, all of which is scheduled to be operational in 2007;
- J.R. Simplot locating a second dry fertilizer facility at Scandia, Kansas in 2006; and
- An increase in the Sinclair Oil business transporting asphalt to supply Tamko Roofing and several state highway projects.

MSPA and Kyle support HB 2854, because its enactment will clarify the circumstances under which railroad right-of-way may be conveyed and to whom it may be sold. The bill amends K.S.A. 2005 Supp. 66-525, which deals, generally, with the disposition of railroad right-of-way upon its abandonment. This statute defines when right-of-way is to be considered abandoned, and it provides a procedure for restoring sole ownership and possession of abandoned railroad right-of-way in the owner of the servient estate. It also contains a statement in subsection (f) that concerns the conveyance of railroad right-of-way, regardless of whether the right-of-way is abandoned.

This statute was enacted in 1986, and it was premised on the commonly-held understanding that, regardless of how a railroad acquires its right-of-way, the railroad only acquires an easement in the property, and when the railroad ceases using the right-of-way for railroad purposes, the easement is extinguished. One of the leading cases limiting railroad ownership of real property taken for right-of-way is *Abercrombie v. Simmons*, 71 Kan. 538, 81 P.208 (1905), which states in Syllabus No. 3:

> An instrument which is in form a general warranty deed, conveying a strip of land to a railroad company for a right-of-way, will not vest an absolute title in the railroad company, but the interest conveyed is limited by the use for which the land is acquired, and when that use is abandoned the property will revert to the adjoining owner.

Nearly sixty years later, this rule of law was followed in *Harvest Queen Mill and Elevator Company v. Sanders*, 189 Kan. 536, 370 P.2d 419 (1962). In that case, the Kansas Supreme Court stated:

> We have held that when land is devoted to railroad purposes, it is immaterial whether the railroad company acquired it by virtue of an easement, by condemnation, right-of-way deed, or other conveyance. If or when it ceases to be used for railway purposes, the land concerned returns to its prior status as an integral part of the freehold to which it belonged prior to its subjection to use for railroad purposes. 370 P.2d at 541-542.

The Court continued this pronouncement as follows:

> Generally, a railroad company in acquiring land for railroad right-of-way, whether it be by grant or condemnation proceedings, is held to take not the fee, but only a special interest therein, usually termed an "easement" which special interest or title is taken for railroad purposes, that is, public purposes, so that the railroad has no right to take from such right-of-way any underlying minerals and appropriate them to its own use or convey them to others. 370 P.2d at 542.

The foregoing statements in the *Harvest Queen Mill* case set forth the general rule which was followed (with very few exceptions) by the courts until the decision of the Kansas Supreme Court in *Stone v. U.S.D. No. 222,* 278 Kan. 166, 91 P.3d 1194 (2004). Prior to the decision in this case, the general rule as to the interest acquired by a railroad in real property turned on how the property was used. If the property acquired by a railroad was used for right-of-way, the railroad acquired only an easement in the property, and when the property was no longer used for railroad purposes, the easement was extinguished and the unencumbered property returned to the sole ownership and possession of the servient estate owner. However, in *Stone,* the Supreme Court said that the "use" of the property was not the determining factor as to what interest a railroad held in property it acquired. Rather, the Court stated the general rule, as follows:

> The general rule is that deeds purporting to convey to railroads a strip, piece, parcel, or tract of land which do not describe or refer to its use or purpose or directly or indirectly limit the estate conveyed are generally construed as passing an estate in fee. 91 P.3d at 1203-1204.

In other words, if the instrument of conveyance by which a railroad acquires property is a general warranty deed, without restriction as to how the property is to be used, or otherwise limiting the railroad's use of the property, the railroad acquires a fee estate in the property, regardless of whether it is used for railroad right-of-way.

Both parties in *Stone* relied upon the *Abercrombie* case to support their positions. The Court in *Stone,* distinguished its decision from the decision in *Abercrombie*. It noted that the *Abercrombie* Court

> "was dealing with a deed that described the property in a manner that could be construed as a right-of-way, although it was ambiguous in that it referenced a railroad track which was never constructed. This ambiguity permits a court to look beyond the four corners of the deed to parol evidence which existed at the time the deed was made. 91 P.3d at 1203

However, in contrast to the situation confronted by the *Abercrombie* court, the Supreme Court in *Stone* was considering a deed which was unambiguous in conveying by warranty deed land in fee simple absolute to the railroad. Therefore, even though evidence was produced to show that the property was, in fact, used as railroad right-of-way, the Court said it was inappropriate to consider that extrinsic evidence, because there was no ambiguity in the language of the deed.

The Court in *Stone* did not reference the provisions of the statute being amended in HB 2854, which is due to the fact that neither of the parties in this case made mention of it in its brief. Unfortunately, therefore, the general rule announced by the Court in *Stone* is not consistent with subsection (f) of this statute, which declares that any conveyance by a railroad of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, with an exception provided for a conveyance made to the railroad's successor which shall maintain railroad operations on the right-of-way. Thus, even though the recent Supreme Court decision would permit a railroad to acquire property in fee simple by warranty deed, the statute would operate to preclude a conveyance of that property, except to the servient estate owner. Of course, if the railroad acquired the property in fee simple, in accordance with the general rule announced in *Stone*, the railroad is the servient estate owner.

Recently, MSPA has determined that some of its abandoned right-of-way was originally acquired by warranty deed in fee simple, without restriction as to its use, and elevator operators and other lessees of such property have inquired of MSPA as to purchasing the property. While the MSPA Board of Directors believes that the decision in *Stone* permits such conveyance, it also believes that the provisions of subsection (f) create some confusion. Therefore, MSPA and Kyle believe that the exception inserted in lines 30 and 31 on page 2 of the bill would clarify a railroad's authority to convey railroad right-of-way which it acquired in fee simple, pursuant to an unrestricted warranty deed. That exception would permit a railroad to convey such property without restriction.

I recognize that this is a somewhat legalistic, complicated situation. However, the bottom line is that the amendment proposed in subsection (f) will permit the general rule announced in *Stone* to operate without any actual or apparent conflict with the statute, and it will, likewise, permit the statute to continue to apply to those situations where the railroad has not acquired fee simple title to its right-of-way, but has acquired only an easement in such property.

Thank you for the opportunity to make this presentation to the Committee. I would respectfully request that the Committee report House Bill No. 2854 favorably for passage. I will be pleased to respond to any questions at the appropriate time.

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
MICHELLE L. MILLER
HOLLY A. THEOBALD

OF COUNSEL:
BRIAN FROST
SCOTT S. SUMPTER
THOMAS C. HENDERSON

*LL.M., TAXATION
**LICENSED TO PRACTICE IN KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON
ON BEHALF OF SOUTHWESTERN ASSOCIATION
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION

March 14, 2006

Chairman Hayzlett and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of SouthWestern Association in support of House Bill No. 2918. The SouthWestern Association is a retail trade organization serving approximately 3,500 retail farm equipment, industrial/construction equipment and outdoor power equipment dealers, as well as hardware, home center and lumber retailers located throughout an eight-state territory (Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma and Texas). The Association offers its members a comprehensive array of dealer-oriented legislative, educational and communication services, ranging from lobbying to legal, accounting and marketing support—all designed to help dealers achieve improved profitability and business success.

The Association was formed in 1889 in Abilene, Kansas, and it is currently headquartered in Kansas City, Missouri. It is the largest regional trade association in North America representing equipment dealers.

Many of the Association's dealers sell a type of vehicle referred to either as a "Work-Site Vehicle" or "Utility Vehicle." There are numerous manufacturers of these vehicles, and the various models are often known by their popular names, such as "Bobcat," "Mule," "Gator" and "Treker," to name a few. I have attached at the end of my testimony pictures of three of the popular models, to help the Committee visualize this type of vehicle.

Currently, with respect to the imposition of sales taxes on the sales of these vehicles, the Kansas Department of Revenue treats these vehicles identically with All-Terrain Vehicles (ATV's). That is, there are no circumstances under which the sale of any of these vehicles may be exempt from sales tax. However, work-site vehicles or utility vehicles are not identical to ATV's. They have unique characteristics which are not present in ATV's. Moreover, many of these vehicles are used

House Transportation
Date: 3-14-06
Attachment # 2

exclusively in farming or ranching operations; yet, as contrasted to other farming and ranching equipment, the sales of these vehicles are subject to sales tax.

The purpose of HB 2918 is to distinguish between work-site/utility vehicles and ATV's and to permit sales of these vehicles to be exempt from sales tax when they are to be used only in farming or ranching operations. Section 1 of the bill amends K.S.A. 2005 Supp. 8-126, which contains the definitions applicable to the vehicle registration and titling statutes. A definition of "work-site utility vehicle," a combination of the generic names for these vehicles, has been added to this statute in subsection (hh). This definition is to be contrasted with the definition of "all-terrain vehicle" in subsection (bb) of the statute. While the two types of vehicles have some overlapping characteristics, such as minimum widths and the vehicle's overall weight, it can be seen by comparison that there are features which distinguish a work-site utility vehicle from an ATV. For example, an ATV has a single seat to be straddled by the operator, while a work-site utility vehicle has bench or bucket-type seating allowing at least two people to sit side-by-side. Also, it is to be noted that, even though not present in the definition of an ATV, an ATV may have handlebars, while a work-site utility vehicle must have a steering wheel. A work-site utility vehicle has been defined in the bill so as to include smaller models of the various manufacturers. However, as a general rule, a work-site utility vehicle is larger than an ATV.

In Section 2, which amends K.S.A. 2005 Supp. 8-197, which deals with nonhighway vehicles and salvage vehicles, the work-site utility vehicle has been included in the definition of "nonhighway vehicle." This means that these vehicles will continue to be titled as nonhighway vehicles, but not registered for highway use, since they are not normally equipped as statutorily required for highway use. In the event that a work-site utility vehicle is equipped as required by statutes, in order to be operated on the streets and highways, those vehicles may be registered as other motor vehicles.

The titling of nonhighway vehicles is accomplished by K.S.A. 2005 Supp. 8-198, which is amended by Section 3 of the bill. The amendment provides a "grandfather clause" for persons who own these vehicles on July 1, 2006. They will be exempt from obtaining a nonhighway certificate of title unless and until such time any such person transfers an interest in the work-site utility vehicle to another person. A similar grandfather clause was included in this statute in 1996 for prior owners of ATV's.

The final section of the bill (Section 4) amends K.S.A. 2005 Supp. 79-3606, which sets forth the exemptions from sales tax. Subsection (t) provides the exemption for sales of farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. The definition of "farm machinery and equipment" set forth in that subsection has been amended to include a work-site utility vehicle equipped with a bed or cargo box for hauling materials. Thus, the sale of a work-site utility vehicle may be exempt from sales tax to the same extent that other farm machinery and equipment are exempt. That means, as stated in subsection (t), that each purchaser of a work-site utility vehicle requesting exemption from sales tax "must certify in writing on the copy of the invoice or sales ticket to be retained by the seller" that the work-site utility vehicle will be used only in farming or ranching. For such purpose, the statute provides that farming or ranching includes "the operation of a feedlot and farm and ranch work for hire and the operation of a nursery."

By the passage of HB 2918, a work-site utility vehicle will no longer be treated identically to ATV's. Although purchasers of new ATV's and work-site utility vehicles both will be required to obtain nonhighway certificates of title, as is the case currently, the sale of a work-site utility vehicle may be exempt from sales tax if the purchaser certifies, as required for all other farm machinery and equipment, that the work-site utility vehicle will be used only in farming or ranching operations. This change recognizes the fact that many of these vehicles currently are in use in farming and ranching operations.

I appreciate the opportunity to appear before the Committee in support of HB 2918, and I would respectfully request that the Committee report this bill favorably for passage. I will be happy to respond to any questions regarding this bill at the appropriate time.

- 4x2, 6x4 models
- Gas & Diesel engines
- Up to 1,400 lb. payload*

Ideal for everywhere from stadiums and work sites to farms and ranches.

2006 Gator™ Traditional Series

Nothing Runs Like A Deere™

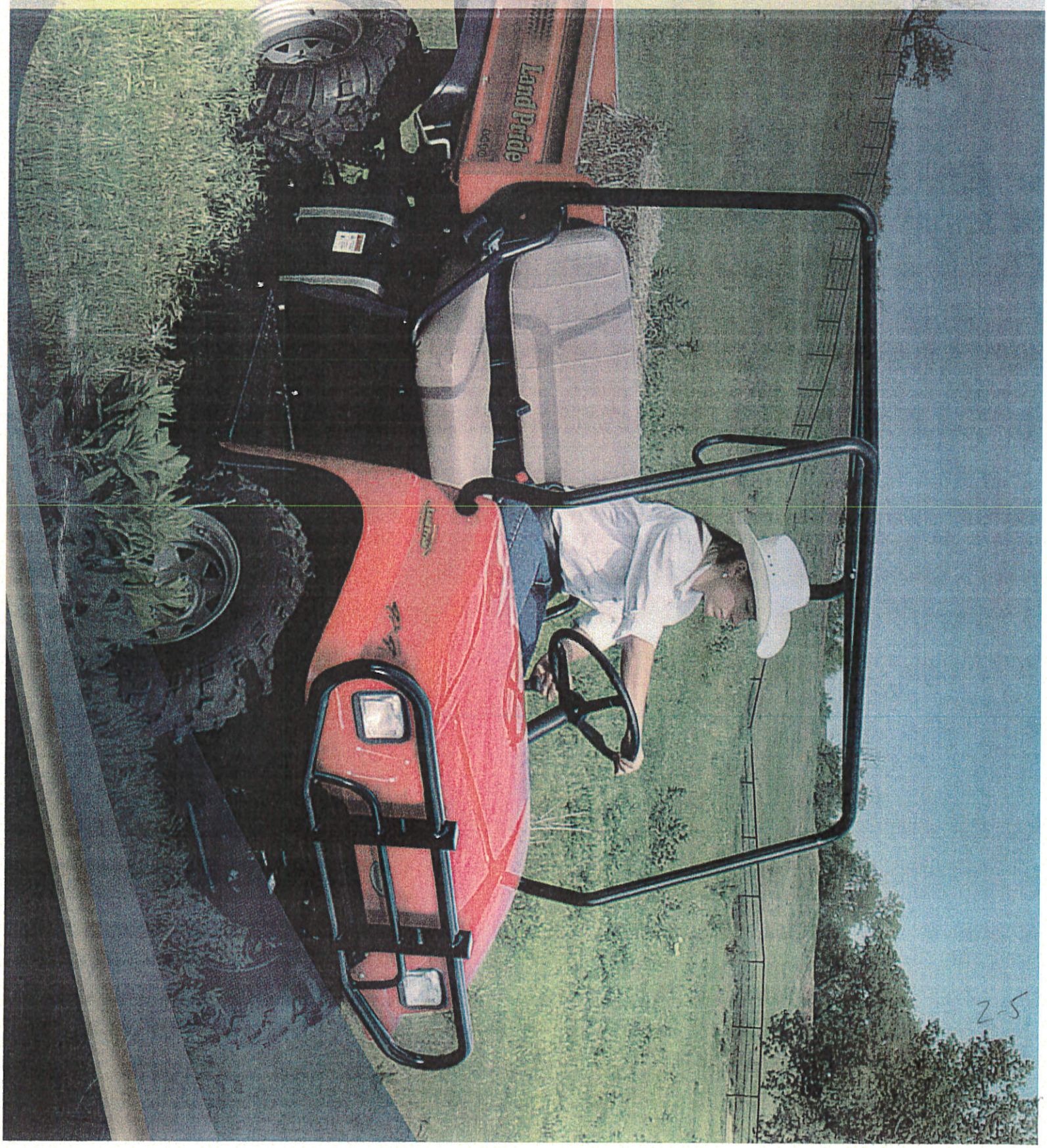
JOHN DEERE

2-4

UTILITY VEHICLES

TREKER - RUNABOUT - GONDO

Land Pride



MULE 600

MEET THE NEW RANCH HAND.

ıround, that is.
s it is capable.
ıously variable
comfortable?
:Pherson strut
d, a glove box
)0 pounds. As
a ranch hand.

le, quiet and
cations.
eatures a
ion on slippery

ission is operated
erformance belt
m dust and water.
s from the top of

andling and a
smooth ride.
lo fit into the

glove box and
yday items.
classy addition
anels resist

KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 14, 2006

To: Chairman Gary Hayzlett
and Members of the House Transportation Committee

From: Don L. McNeely, KADA President

Re: SB 558 - Lien Release on Vehicles; Penalties for Failure to.

Chairman Hayzlett and Members of the Committee:

Good afternoon, my name is Don McNeely, and I serve as President of the Kansas Automobile Dealers Association. Mr. Whitney Damron, KADA's Legislative Counsel, also accompanies me this afternoon. On behalf of the Kansas Automobile Dealers Association, which represents the interests of the state's franchised new motor vehicle dealers, we respectfully request your support of Senate Bill 558, an act concerning liens and encumbrances on vehicles, which addresses an inadequacy in the current motor vehicle titling law that results in the hindrance and delay of effective commerce for dealers and consumers alike.

Under current law, K.S.A. 8-135 (c),(6), establishes a timeframe for when a lien must be released upon the satisfaction of a security interest in a motor vehicle. When the indebtedness to a lienholder, whose name is shown upon a title, is paid in full, such lienholder within 10 days after written demand by restricted mail, shall furnish to the holder of the title a release of lien or execute such a release in the space provided on the title.

However, the reality of the situation is in stark contrast to the intent of the law. Dealers and consumers experience problems in two main scenarios:

The first scenario, new and used motor vehicle dealers have long been hampered by the situation they find themselves in when they take a used vehicle in trade or buy a used vehicle at a wholesale auction and they do not have a clear title due to a lien or an encumbrance on the vehicle. When a vehicle with an outstanding loan is taken in trade, the dealer makes a payoff to the lender from proceeds of the sale. Even though the lien payoff has been made, the sale of the traded or purchased vehicle cannot be completed to another purchaser until the certificate of title has been delivered to the dealer by the lienholder or cleared electronically through the Division of Vehicles. All titles on a motor vehicle with a lien or an encumbrance since January 1, 2003 are held electronically by the Division of Vehicles until the lien or encumbrance is released. Discussions and surveys of our member dealers show that substantial delays frequently occur, in violation of the current law.

House Transportation
Date: 3-14-06
Attachment # 3

731 S. Kansas Ave. • Topeka, KS 66603-3807

Telephone (785) 233-6456 • Fax (785) 233-1462

SB 558 - Testimony

March 14, 2006

The second scenario, a consumer pays off the loan on the vehicle, thereby satisfying the lien or encumbrance in the vehicle. The consumer wants to sell the vehicle privately, but the lienholder has not released the lien in accordance with current law. Therefore, the consumer cannot complete the sale of his/her own vehicle until the lienholder clears the encumbrance.

In either case, the delay in delivery of the title to the owner or dealer who has made the payoff has typically been two to three weeks, if the lien is held by a large national bank or captive finance company and in some cases as much as a month or two, due to the lienholder's failure to clear or release the lien in a timely fashion. Sometimes this is due to the lienholder's failure to recognize payment upon receipt. In other cases, the delay can only be attributed to poor procedure.

The primary contributing factor aggravating the chronic occurrence of these problems is the fact that the Kansas Division of Vehicles currently possesses no substantive enforcement authority to pressure lienholders into complying with the existing law, as enforcement is up to the individual or dealer by way of a private cause of action. As a result, financial institutions have been slow in complying with the statute resulting in inconveniences for consumers who wish to sell their vehicles and prospective purchasers of those vehicles. Further, dealers have a significant investment tied up in inventory which they can not sell until they have clear title or if they attempt to sell the vehicle, they face possibility of voiding the sale if they are unable to transfer clear title within 30 days from the date of sale, as required by Kansas law.

In order to correct this problem, Senate Bill 558 would expand the Division's current authority within K.S.A. 8-135 and provide the Division with the authority to enforce the timely release of a motor vehicle lien or encumbrance through the implementation of a civil administrative penalty process, which includes notice, hearing, and assessment of financial penalties against the violating lienholders.

Finally, the legislation would mandate that if the payment in satisfaction of the lien or encumbrance is made in cash or by intra-bank transfer of funds or wired funds, the payment shall be deemed to be cleared immediately upon receipt by the lienholder and the lienholder has 3 business days to release the lien or encumbrance, as is the requirement under current law . If the payment in satisfaction is made by any other means, cashiers or certified check, etc, the lienholder has 10 business days to release the lien or encumbrance. Thus, lienholders would not be allowed to unnecessarily delay titles when a payoff has been made.

On behalf of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this afternoon and I respectfully request the Committee's approval for Senate Bill 558. I also would like to thank the Kansas Bankers Association for their assistance in drafting this legislation and their support in addressing this problem, as we believe this legislation would go a long way towards alleviating the roadblocks that currently prevent today's market from operating efficiently and in the best interest of the consumer and the industry.

TESTIMONY FOR THE HOUSE
TRANSPORTATION COMMITTEE
SB 558
MARCH 14, 2006

Chairman Hayzlett, members of the committee I am Bill Henry, Director of Governmental and Regulatory Affairs for the Kansas Credit Union Association and I appear today in opposition to SB 558.

Our chief objection is that this bill imposes civil penalties that border on the draconian. In subsection (e), page 2 a lien holder who is found in violation of this section "at the discretion of the director" may have civil administrative penalties assessed for a first violation of not less than $100 but not more than $500.The civil penalty for a second violation would amount to not less than $500 up to $2,000.

Where a lien holder has been cited and penalized five or more times in the preceding calendar year each "subsequent violation would amount to not less than $1,000 but not more than $5,000."

In addition in subsection (h), page 2, any lien holder who fails to pay a civil administrative penalty after it becomes final shall be liable to the division "for up to three times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys fees.

Finally, the rate of interest set in this measure "shall be the rate of 10 % per annum."

Members of the credit union association were not involved in the pre-session discussions of the bill. However, in the Senate the need was expressed that the department has no monetary penalties

House Transportation
Date: 3-14-06
Attachment # 4

to "encourage" out of state financial institutions to release their liens pursuant to our state law's ten days.

We believe repeat offenders should face penalties which are significant to get them to comply with state law. However we believe a $100 to $500 penalty for a first time offense is using a sledge hammer on a gnat.

We suggest the committee reduce the penalty range for a first time offense to $50 up to $250 in lines 15 to 16.

Credit unions' main objection to this measure is that the provisions of this bill may be designed for closed-end lending but any financial institution doing open end lending will have a difficult time complying with this legislation. It is not designed to encourage open-end lending as currently practiced by financial institutions today.

We believe this measure would be a good subject for interim study to analyze the department's needs for these penalties.

Respectfully Submitted,

Bill Henry, Kansas Credit Union
Association

Kansas Bankers Association

March 14, 2006

To: House Committee on Transportation

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 558: Vehicle Lien Release

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today regarding **SB 558**, which will revoke the current provisions found in KSA 8-135 regarding lien release procedures, and put in place new procedures and penalties for releasing liens on vehicles.

We have had an opportunity to preview the contents of the bill and would like to thank the Kansas Automobile Dealers Association for working with us toward making these provisions functional for all parties involved.

With the amendments that were added in the Senate, we believe the bill provides a workable solution to the problem of getting vehicle liens released in a timely manner. Thank you for your time and attention to this matter.

House Transportation
Date: 3-14-06
Attachment # 5

610 S.W. Corporate View 66615 | P.O. Box 4407, Topeka, KS 66604-0407 | 785-232-3444 | Fax 785-232-3484
kbaoffice@ksbankers.com | www.ksbankers.com