

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:30 a.m. on March 3, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Cindy Shepard, Committee Assistant

Conferees appearing before the Committee:

Bob Bethell, Representative, State of Kansas
Marvin Spees, President, Capital City Oil
Don L. McNeely, President, Kansas Automobile Dealers Association

Others attending:

See attached list.

Chairman Umbarger called attention to the draft letter, requested at the February 16, 2010 meeting, letting the Gold Star Family Committee know the action taken on **SB 361**, and the Senate Transportation Committee's recommendations (Attachment 1).

The Chairman opened the hearing on **HB 2510 - Temporary vehicle registration, use of permit**. Bruce Kinzie, staff revisor, explained that the bill would change the time during which a newly purchased truck, truck tractor, or any combination could be operated with temporary registration, from the 48-hour limit to 30 days.

Bob Bethell, Representative, State of Kansas, appeared in support of **HB 2510**. He gave an example of a business that purchased a used tractor and also purchased a thirty-day tag expecting to be able to use the vehicle while the title was being transferred to his business. The current law only allows the tractor to be used for the first 48 hours, so during the time waiting for the title, the company is unable to use the tractor and loses potential revenue (Attachment 2).

Marvin Spees, President, Capital City Oil, presented testimony in favor of **HB 2510**. He stated that the two-day period is not a workable situation for which a truck may be operated in a laden condition. According to Mr. Spees, often new and used trucks are delivered without complete paperwork. The truck dealer often can't produce the Manufactures Statement of Origin or Certificate of Title. He concluded that if they had the opportunity to run on a 30-day, temporary tag, this would allow the paperwork to arrive while the truck is in service (Attachment 3).

Discussion followed in regard to drafting an amendment increasing 30 day tags to 45 days. Chairman Umbarger indicated he would wait to take action on the bill, allowing time to work on an amendment.

There being no further conferees, the hearing on **HB 2510** was closed.

The Chairman opened the hearing on **HB 2547 - Vehicle dealers and manufacturers licensing act, franchise agreements**. Bruce Kinzie, staff revisor, reviewed the bill.

Don L. McNeely, President, Kansas Automobile Dealers Association (KADA), appeared in support of the bill. According to Mr. McNeely, **HB 2547** proposes amendments to the Kansas Dealers and Manufacturers Licensing Act, which provides some degree of protection to new motor vehicle dealers against overreaching by the manufacturers. He spoke of the recent bankruptcies of two of our domestic automobile manufacturers, the termination 45 Kansas dealerships and the devastation to the employees and communities in which they were located. He noted what is even more frustrating is the fact that these dealerships, despite the bad business decisions by their manufacturers, were viable and profitable Kansas automobile dealerships. The

CONTINUATION SHEET

Minutes of the Senate Transportation Committee at 8:30 a.m. on March 3, 2010, in Room 152-S of the Capitol.

forced closure of these Kansas dealerships did absolutely nothing to insure the viability of the two manufacturers involved, as the dealers essentially cost them nothing. He reviewed the proposed changes stating that KADA is willing to work as much as possible with all parties affected by industry legislation. After negotiations with the parties involved, HB 2547 was amended twice before it was advanced by the House Transportation Committee.

In closing, Mr. McNeely noted that this legislation is similar to amendments being incorporated into franchise acts in a large number of states. Following the bankruptcies of General Motors and Chrysler, a large majority of states reviewed their existing franchise laws and subsequently incorporated changes to address inequities between the dealer body and the manufacturers (Attachment 4).

Questions and discussion followed Mr. McNeely's testimony. The Chairman announced that the hearing on HB 2547 would be continued tomorrow.

The meeting was adjourned at 9:30 a.m. The next meeting is scheduled for March 4, 2010.

SENATE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 3-3-10

NAME	REPRESENTING
KEVIN GREGG	KMCA
Kit Barnes	Ks. Automobile Dealers Assoc.
Don McNEELY	KADA
Whitney Jamon	KADA
Sandy Broden	Alliance for Auto Manufacturers
Joe Mosimann	Parca

State of Kansas
Senate Chamber

DWAYNE UMBARGER

SENATOR, FOURTEENTH DISTRICT
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(TTY FOR HEARING/SPEECH IMPAIRED)

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COMMITTEE ASSIGNMENTS

CHAIRMAN: TRANSPORTATION

MEMBER: WAYS AND MEANS

JUDICIARY

EDUCATION

ORGANIZATION, CALENDAR
AND RULES

JOINT COMMITTEE ON ARTS AND
CULTURAL RESOURCES

JOINT COMMITTEE ON HOME AND
COMMUNITY BASED SERVICES OVERSIGHT

JOINT COMMITTEE ON LEGISLATIVE
POST AUDIT

JOINT COMMITTEE ON STATE BUILDING
CONSTRUCTION

March 1, 2010

Gold Star Family Committee
Judith Dietz - Kansas Chairwoman
225 E Tall Tree Road
Derby, KS 67037-3156

Dear Ms Deitz:

On behalf of the Senate Committee on Transportation, I must tell you that the Committee has tabled SB 361, which would authorize the issuance of a Gold Star Family license plate this year.

The Committee strongly urges you and your committee to work with Director of Vehicles Carmen Alldritt on wording for a new bill to be introduced in 2011, wording that would resolve questions about eligibility for the plates and about certain aspects of the plates' productions, and that would conform to the other provisions in Kansas law. I also am certain that a representative of the Office of the Revisor of Statutes would be happy to work with you on the bill's wording. It has been suggested that eligibility could be limited to those who qualify for the Gold Star Lapel Button.

The Committee looks forward to hearing the revised bill.

Senator Dwayne Umbarger
Chairman Senate Transportation

DRAFT

Senate Transportation

3-3-10

Attachment 1

STATE OF KANSAS

BOB BETHELL
STATE REPRESENTATIVE, 113TH DISTRICT
104 E. THIRD, P.O. BOX 186
ALDEN, KS 67512
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COMMITTEE ASSIGNMENTS
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MEMBER: COMMERCE AND LABOR
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ELECTIONS
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TOPEKA

House Transportation
Room 152 S
HB 2510
March 3, 2010

Chairman Umbarger and members of the Senate Transportation Committee, I am Bob Bethell, Representative of the 113th District.

I appear before you today to support HB 2510.

Currently the statutes in Kansas provide for a thirty day tag when purchasing a tractor for a tractor trailer combination or a large truck. However the statute allows for only the first forty eight (48) hours. The time to receive a title and purchase a tag for the vehicle is beyond the 48 hours.

To give explanation: A constituent of the 113th District is the owner of a small business that removes trees and is currently working on the infrastructure for the electrical grid that is being constructed currently in Kansas. A used tractor was purchased a cost of approximately \$26,000.00. He also purchased a thirty day tag expecting to be able to use the vehicle while the title was being transferred to his business. Only to find out that the tractor could be used for the first 48 hours.

At the time of the purchase his company was working 70 hours a week. The company charges \$125.00 per hours for the use of the tractor and as you do the math you can see that during that time not only was his purchase of \$26,000.00 not beneficial but the company lost \$35,000.00 in revenue for the use of the tractor.

I respectfully request that you pass HB 2510 favorable for passage. Thank you.

Mr. Chairman I will stand for questions.

Senate Transportation
3-3-10
Attachment 2

SENATE TRANSPORTATION COMMITTEE
Senator Duane Umbarger, Chairman

In Support of H.B. 2510
March 3, 2010

Mr. Chairman and Members of the Senate Transportation Committee:

My name is Marvin Spees, President of Capital City Oil, Inc. (CCO) headquartered in Topeka. CCO also has additional facilities in Manhattan, Wamego, Lawrence, and Kansas City. We are a 50 year fuel and lubricants distributor that currently runs 11 class 8 heavy duty trucks.

I appear here today in support of HB 2510. Over the years we've purchased a number of new as well as used trucks. Often times, new and used trucks are delivered without complete paperwork. The truck dealer always seems to get his check right away, but they often can't produce the Manufacturers Statement of Origin (MSO) or Certificate of Title.

The current two day period is not a workable situation for which a truck may be operated in a laden condition. Our objective is to get the truck on the road as soon as possible after purchase. It usually takes a few days to get pumps, decals and other equipment installed and it is not uncommon for the truck to be ready to go and still not have enough paperwork to get the tag.

If we had the opportunity to run on a 30 day temporary tag, this would allow the paperwork to arrive and then CCO would be able to put the truck in service. Adoption of HB 2510 will not reduce the amount of registration fees the state will collect since these are figured from the date the title or MSO is transferred to the new owner.

On behalf of CCO, I respectfully request that the Senate Transportation Committee report HB 2510 favorably. Thank you for the opportunity to appear before you today. I would be pleased to respond to any questions you may have.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 3, 2010

To: Chairman Dwayne Umbarger
and the Members of the Senate Transportation Committee

From: Don L. McNeely, KADA President

Re: House Bill 2547 – Amendments to the Kansas Dealers and Manufacturers
Licensing Act.

Good morning Chairman Umbarger and Members of the Senate Transportation Committee. My name is Don McNeely and I serve as the President of the Kansas Automobile Dealers Association (KADA), which represents the franchised new motor vehicle dealers in Kansas. Joining me this afternoon is Mr. Pat Barnes, KADA's General Counsel and Mr. Whitney Damron, our Legislative Counsel.

I appear before you this morning in support of HB 2547 which proposes amendments to the Kansas Dealers and Manufacturers Licensing Act. As some members of the Committee may remember, Kansas new vehicle dealers operate under sales and service agreements, which are defined to be franchise agreements under Kansas law. These agreements and the policies instituted under them are contracts of adhesion, which means they are offered on a take it or leave it basis by the manufacturers and if left unchecked, can result in onerous obligations, increased costs, and in some instances, the loss of local business altogether.

It is the Kansas Dealers and Manufacturers Licensing Act which provides some degree of protection to new motor vehicle dealers against overreaching by the manufacturers. In fact, over three decades ago, the U.S. Supreme court spoke to the purpose and intent behind these laws in stating, "the disparity in bargaining power between automobile manufacturers and their dealers prompted Congress and States to enact legislation to protect retail car and truck dealers from perceived abusive and oppressive acts by the manufacturers."

Why have so many legislatures taken up the cause of local dealerships? It comes down to basic economics, fair play, maintaining healthy competition among dealerships, and protecting the rights of consumers.

The legislation before you does not attempt to turn back the clock prior to the bankruptcies of two of our domestic automobile manufacturers, which occurred last summer. Although the dealer terminations that resulted from those bankruptcies were devastating to the

45 Kansas dealerships named, the employees of those dealerships and the communities in which they were located. What is even more frustrating is the fact that these dealerships, despite the bad business decisions by their manufacturers, were viable and profitable Kansas automobile dealerships.

The forced closure of these Kansas dealerships did absolutely nothing to insure the viability of the two manufacturers involved, as the dealers essentially cost them nothing. The dealer owns the property, the building, the inventory, the parts and the tools. The costs finally disclosed during the congressional hearings were essentially per unit costs and these costs will occur whether they have 3500 dealerships or 100.

What brings us in front of you today is despite some of the manufacturers demonstrated inability to run their own companies, they continue want to tell Kansas dealers how to run their own dealerships, essentially forcing them to spend the last remaining amount of their own capital on renovating their dealerships; mandating that they remove other franchises from their dealerships, forcing them to build new facilities and underutilize their current facility; and turn control of the use of the dealership facility over to the manufacturer without any paid consideration.

The proposed legislation before you addresses the following issues:

- Prohibits the manufacturer from requiring a dealer to relocate, build a new building or renovate their current building unless it is deemed reasonable in light of existing financial and economic considerations.
- Prohibits the manufacturer from preventing a dealer from acquiring another franchise, as long as the dealer complies with reasonable facilities and capital requirements, unless the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted.
- Prohibits a manufacturer from requiring exclusive facilities or remove a current franchise from a dealership's facility, when doing so would be unreasonable in light of existing financial and economic considerations, unless the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted.
- Prohibits the manufacturer from controlling the use of the dealership facility, unless the parties have reached a voluntary agreement where separate and adequate consideration has been offered and accepted.
- Require the manufacturers' performance standards, sales objectives and programs for measuring dealer performance that have a material effect on a dealer be fair, reasonable, equitable and based on accurate information;
- Prohibit the manufacturer from requiring a dealer to pay the legal fees of the manufacturer related to a dispute between the parties.

- Establish a general dispute mediation mechanism to address disputes that may arise between a dealer and a manufacturer without involving the State of Kansas.
- Add voluntary termination of a franchise agreement to our current termination, cancelation, and non-renewal provisions, although the provisions shall not apply to voluntary termination by recreational vehicle dealer or to buy-sells, where the new vehicle dealer has voluntarily terminated their franchise agreement in conjunction with the sale of the business.
- Add that upon termination, a manufacturer must pay dealer cost for computers and data processing systems which are in usable condition and were leased or purchased within three years of the date of termination, cancellation or nonrenewal of the franchise agreement up to an amount equal to the cost of meeting the minimum standards and requirements for the dealer to participate in promotional/incentive programs or perform the franchise agreement.
- Assure that a dealer is paid for a customer's warranty claim, as long as the dealer presents reasonable documentation or other evidence to substantiate the claim for payment.
- If the claim is for warranty work, the amount of compensation shall not be reduced or disallowed on the grounds the dealer failed to submit the claim in less than 60 days after the dealer completed the warranty work.
- Limit the time period for the audit of incentive payments to 12 months after the date of payment, unless justified by evidence of fraud.
- Prohibit the manufacturer from withdrawing money from an account owned by a dealer while an audit or other claim is on appeal.
- Requires the manufacturer to either to approve or reject the entire successor agreement, and cannot reject it simply because it operates over a period time.
- Prohibits the manufacturer from requiring a dealer to waive their rights to state law or compel a Kansas dealer to consent to the jurisdiction of another state or forego any right to a jury trial.
- The manufacturers agrees to indemnify the dealer from claims made by a third party in relation to any vehicle, part or accessories manufactured or distributed by the manufacturer or any service system or procedures the manufacturer required or recommended the use of, as long as the dealer used them properly, as well as indemnifying the dealer for the improper use of non-public personal information obtained by the manufacturer from the dealer.

On behalf of KADA, I would like to thank the Committee for their time and consideration of this legislation, which we believe to be critical to the long-term viability of the franchised new vehicle dealers in Kansas.

As always, the members of KADA are willing to work as much as possible with all parties affected by industry legislation within the confines of the goals to be achieved. With respect to HB 2547, we have made every effort that we can to be responsible and responsive to the concerns of others to the extent we can do so given the reasons for which this legislation has been brought. After negotiations with the parties involved, we amended HB 2547 twice before it was advanced by the House Transportation Committee. Additional amendments requested by the opposition have been declined as being inconsistent with the intent and purpose of the proposed legislation

In closing, I would note that what we have brought to this Committee today is similar to amendments being incorporated into franchise acts in a large number of states last year and this year. Following the bankruptcies of GM and Chrysler, a large majority of states reviewed their existing franchise laws and subsequently incorporated changes to address inequities between the dealer body and the manufacturers. Most of our changes have been adopted in one form or another in other states and have been modified to work within the statutory framework of the Kansas Dealers and Manufacturers Licensing Act.

At this time, I will be pleased to respond to any questions you might have.

Thank you.