

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~xxx~~/p.m. on January 20, 1987 in room 519-S of the Capitol.

All members were present ~~xxxxx~~

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Jim Sullins, Kansas Motor Car Dealers Association
Mr. David H. Moses, Sedgwick County District Attorney's Office

The meeting was called to order by Chairman Rex Crowell, and the first order of business was a hearing on HB-2026 concerning bonding requirements for vehicle dealers and vehicle brokers.

Hank Avila, Legislative Research, briefed the Committee on the bill and explained that the 1986 Interim Committee on Transportation studied the issue of whether the State should require surety bonds on new and used vehicle dealers. He said the Committee concluded that a bonding requirement should be imposed for the purpose of protecting consumers.

Chairman Crowell requested that Mr. Avila discuss the findings of the Interim Committee on Transportation concerning the cost of the bonds. Mr. Avila said insurance companies were contacted to determine the price of writing a bond and it was found that one company charges \$20 per \$1,000 of coverage. However, the consensus was that the average cost for the surety bond was \$10 per \$1,000 coverage.

Mr. Jim Sullins, Kansas Motor Car Dealers Association, testified in support of HB-2026. (See Attachment 1)

Mr. Sullins said that enactment of a mandatory bonding requirement for motor vehicle dealers will help customers feel more confident when purchasing a vehicle since they will know protection is being afforded them should the vehicle not be as it was represented.

Mr. Sullins said that dealer accountability will be fostered through a bonding requirement, as the State will be serving notice to any applicant for license that they are expected to treat the customer fairly and honestly.

He reported many states already require dealers to be bonded, and pointed out Missouri has had the bonding requirement for four years and there have been no instances where a dealer was unable to obtain a bond, to the best of his knowledge.

Mr. David H. Moses, Sedgwick County District Attorney's Office, gave favorable testimony concerning HB-2026. (See Attachment 2)

He said over a 17-month period, from January 1, 1985 through May of 1986, the Consumer Fraud Division of Sedgwick County handled 137 consumer protection cases involving new or used auto dealers. Mr. Moses reported 58 percent of the cases involved charges of misrepresentation; 10 percent involved failure to deliver title, and another 10 percent were warranty related.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~/p.m. on January 20, 1987

Mr. Moses stated he believes bonding as provided in HB-2026 is an important step towards protecting the consumer, and implementation of increased penalties for repeat offenders will help further deter violations.

The meeting was adjourned at 3:00 p.m.


Rex Crowell, Chairman

STATEMENT BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION
BY THE
KANSAS MOTOR CAR DEALERS ASSOCIATION

TUESDAY, JANUARY 20, 1987

HOUSE BILL 2026

Mr. Chairman and Members of the Committee, I am Jim Sullins, Executive Vice President of the 370 member Kansas Motor Car Dealers Association, the state trade association representing the franchised new car and new truck dealers of Kansas. We appreciate the opportunity to come before you today in support of House Bill 2026.

The Kansas Motor Car Dealers Association has been working with this issue since the 1985 session when major reforms took place within the Dealers-Manufacturer-Salesman Licensing Act. In both 1985 and 1986, the Kansas Senate has sent legislation to the House of Representatives similar to House Bill 2026, and both years this Committee failed to approve the previous proposals.

This year, you have before you yet another bill addressing this subject, however this bill was fostered by a summer-long study conducted by the Special Interim Committee on Transportation. After days of testimony by some twelve different groups, the interim committee concluded that, "a bonding requirement ... to be a consumer protection device..." The Committee report goes on to say that it is the Committee's judgment that, "the protection afforded by a bonding requirement merits its imposition."

Attachment 1

I would point out at the outset that this decision by the Committee was not made hastily and without due consideration. The Committee met on several different occasions during the summer to discuss this issue, and in each instance the discussion became quite lengthy and detailed.

As pointed out in the Committee Report, the merits of imposing such a requirement must be weighed against the financial hardship that would be placed on low-volume dealers. A chief concern of not only the Committee, but KMCDA and many other of the conferees, was what effect this requirement would have on the smaller dealers, and would the added cost of doing business have the effect of forcing closure of small, but reputable, dealerships. After considering the issue and hearing from all of the conferees, some several times, the Committee report states specifically, "No convincing testimony was presented to the Committee that this would occur."

Even with that, the Committee still proceeded cautiously, and left open other means for dealers who 1) might not qualify for a bond, 2) have a hard time finding a company to write a bond, or 3) want to provide their financial security by means other than a bond.

While the bill is several pages long, all of the changes can be found on pages 4 and 5, beginning on line 135. Basically, the bill requires that every applicant or current licensee that is or wants to be a new vehicle dealer, used vehicle dealer, or broker, must maintain a \$25,000 surety bond during the license period. That has been the proposal for the last two years.

Something new this year however, is that a few alternatives are found in lines 155 through 163. This would allow the applicant or licensees to

satisfy the bonding requirements by providing, instead of a bond, one of the following:

1. Negotiable bonds of the U.S. or Kansas; or,
2. Negotiable certificates of deposit; or,
3. An irrevocable letter of credit from any federal or state bank.

This section was added to provide options to those applicants or licensees who either could not or did not want to purchase a bond.

The bond itself is conditioned on the applicant or licensee complying with the provisions of the statutes applicable to the licensee, which in this case is the dealer licensing law, K.S.A. 8-2401 et seq. If the dealer does this according to the law, and does not violate any of these statutes, the bond will never come into play. However, if a dealer does violate one of these statutes and a consumer is injured, the consumer would have a remedy by which their money could be recovered either in whole or part. Of course, the only time the bond would come into play even in this situation would be if the dealership was either closed or out of business.

If I might, I would like to briefly walk you through a situation which might make all of this easier to understand. For example, let's say the Chairman purchased a used vehicle from a dealership. However, at the time of purchase he did not receive title to the vehicle, instead was told that the title was in process with the state, and would be delivered in a couple of weeks. This, by the way, is legally permissible under Kansas statutes, and as you know, you have 30 days to title and register the vehicle in the new owner's name. About 3 weeks later, the Chairman starts to become concerned since he still doesn't have his title and hasn't heard anything from the dealership. He goes back, and is told not to worry, that the

title will be in any day. Four weeks now pass, and still no title. The Chairman goes back to the dealership again, but this time finds that the dealership no longer exists. They are gone, out of business, and he's stuck with a car to which he has no title. Additionally, he's out the money he paid for the vehicle and possibly has an obligation to pay of the lending institution if he borrowed the money.

Without a bonding requirement, he's stuck. The state won't issue title without an assigned title. If he doesn't pay for the vehicle his credit rating will be ruined with the lending institution and with any other borrower since he would have defaulted on a loan.

However, with a bonding requirement, he has a way to recoup his loss. Granted, he would have to have an attorney file suit on his behalf, which will cost some money, but if the court finds in his favor, which it would, the bonding company would have to repurchase the vehicle thereby paying him for his loss. After that, he's taken care of and any further litigation is between the bonding company and the dealer who purchased the bond.

This is just one example of how a customer could be stuck without anywhere to turn. Other things which could lead to an injured consumer include fraud; failure to perform pursuant to a written agreement with the consumer; misrepresentation of the vehicle; fraudulent practices concerning the retail installment contract; and, cross-titling of the vehicle, plus others. Any act which could cause the dealer to lose his license to operate in the state of Kansas would trigger the bond if a consumer had been injured.

As to the cost of the bond to the dealer, testimony provided during the interim consistently showed that a bond of this type would cost approximately \$10 per \$1000 of insurance, or in this case, approximately \$250 per year. Additionally, at least one major insurance company offers bonds to new vehicle dealers at a rate of \$7 per thousand rather than the standard \$10 rate. Most insurance/bonding companies require the applicant to have a net worth at twice the value of the bond, or \$50,000. Also, some have working capital requirements, while others do not have a working capital requirement. The price of the bond, as well as the financial requirements, seem to be fairly consistent nationwide concerning those states that already have dealer bonding requirements. Prices of the bond may vary from state to state, but that is due to the specific risk within those states. For the most part, the price of the bonds within the Midwest fall in the \$10 per \$1000 range.

Mr. Chairman and Members of the Committee, over the past few years several reforms have taken place in the motor vehicle industry in an effort by the Legislature and the industry itself to "clean up" the industry. Stronger licensing and dealer tag provisions, combined with stepped up enforcement by the Division of Vehicles, have led the way in this clean up. The next step, we feel, is the enactment of a mandatory bonding requirement for vehicle dealers.

We believe that customer confidence will be heightened by a bonding requirement. Customers will feel more confident in buying a vehicle if they know that protection is being afforded them should the vehicle not be what it was represented to be.

We also feel that dealer accountability will be fostered through a bonding requirement. Effectively the state will be serving notice to any applicant for license that they are expected to treat the customer fairly and honestly. The state, we believe, will also be telling dealers that the "here today, gone tomorrow" way that some individuals conduct business will no longer be accepted in Kansas, and that simply closing the business would not relieve them of their obligations to their customer.

We think that after two years of discussion by the Legislature and a summer-long investigation by the interim committee, the facts are clear.

First, a dealer bonding requirement is definitely a consumer protection issue.

Second, many states already require dealers to be bonded.

Third, bonds are readily available at a reasonable cost to the dealer.

Fourth, no evidence has ever been presented that existing dealers would be forced out of business because of a bonding requirement or inability to acquire a bond.

Fifth, in the unlikely event that a dealer or applicant would not be able to purchase a bond, provisions have been included which allow for alternatives to the required bond.

Sixth, the proposal has the long standing support of not only consumer interest groups such as the Kansas Attorney General and various district attorney's offices, but of the motor vehicle industry itself, which in fact originally requested this requirement.

Mr. Chairman and Members of the Committee, what is left is a policy question which only you can answer and act upon. That question, simply put, is this: Do you want to afford the people of Kansas the protection which a mandatory dealer bond would provide?

The Kansas Motor Car Dealers Association strongly feels the answer to that question should be "Yes" and we urge you to give this your strongest consideration and recommend HB 2026 favorable for passage by the full House of Representatives.

Thank you for your time and attention, and I would be happy to stand for questions.

SEDGWICK COUNTY DISTRICT ATTORNEY

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TESTIMONY

TO: HOUSE TRANSPORTATION COMMITTEE

FROM: DAVID H. MOSES, DIRECTOR, CONSUMER FRAUD & ECONOMIC
CRIME DIVISION OF THE SEDGWICK COUNTY DISTRICT
ATTORNEY'S OFFICE

RE: HOUSE BILL 2026 - AN ACT AMENDING THE VEHICLE DEALERS'
AND MANUFACTURERS' LICENSING ACT

GIVEN: JANUARY 20, 1987 - STATE CAPITOL, TOPEKA, KANSAS

As Director of the Consumer Fraud Division of the Sedgwick County District Attorney's Office, I would like to offer comment on House Bill 2026, as it pertains to Kansas auto dealers.

Over a seventeen month period, from January 1, 1985 through May of 1986, our office handled 137 consumer protection cases involving new or used auto dealers. These cases constitute approximately twelve percent of our total caseload for this period. Fifty-eight percent of these cases involved charges of misrepresentation, while ten percent involved failure to deliver title. Another ten percent were warranty related. Clearly, there is a significant problem which needs to be addressed.

Attached to this testimony is a copy of my earlier testimony to the Special Committee on Transportation presented on June 23, 1986. The earlier testimony includes a study compiled of Consumer Fraud auto cases.

House Bill 2026 provides persons the opportunity to recover for any loss sustained by reason of any act by the licensee constituting grounds for suspension or revocation of the license. This provision should provide a viable option to these individuals.

The provisions of criminal penalties in New Sec. 3 is a very important step to encourage compliance with K.S.A. 8-2401 through 8-2422. It has been seen, however, in similar situations, that failure to provide for enhanced penalties stifles effective enforcement. It is my recommendation that incremental increases in both the amount of fine and imprisonment be provided for subsequent and repeat offenses. Failure to provide for

Attachment 2

Testimony
January 20, 1987
Page Two

enhanced penalties will make the fine of up to \$500 and the possibility of imprisonment merely an incidental cost of doing business. Although imprisonment is an option, in all likelihood it will rarely be ordered. The financial risk present if repeat violators are subjected to increased fines, will serve as a greater deterrent due to the economic impact on the violator's business.

In conclusion, I believe bonding as provided by House Bill 2026 is an important step towards protecting the consumer. Implementation of increased penalties for repeat offenders will help further deter violations.

Respectfully submitted,

A handwritten signature in cursive script that reads "David H. Moses". The signature is written in dark ink and is positioned above the typed name.

DAVID H. MOSES
Assistant District Attorney
Director, Consumer Fraud &
Economic Crime Division

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STUDY OF CONSUMER FRAUD AUTO CASES

1/1/84-5/31/86

	TOTAL	1984	1985	1986
NUMBER OF CLAIMS	209	72	107	30
PERCENTAGE OF CASES HANDLED BY THIS OFFICE	11%	10%	14%	10%
NUMBER OF CAR DEALERS	75	35	47	23
PERCENTAGE OF MAJOR CAR DEALERS	54%	61%	55%	33%
PERCENTAGE OF MINOR CAR DEALERS	46%	39%	45%	63%
PERCENTAGE OF CASES THAT INVOLVED MISREPRESENTATION	58%	56%	62%	52%
PERCENTAGE OF CASES THAT INVOLVED FAILURE TO DELIVER TITLE	10%	1%	13%	22%
PERCENTAGE OF CASES THAT WERE WARRANTY RELATED	10%	7%	8%	22%
PERCENTAGE OF CASES THAT HAD OTHER MISCELLANEOUS CLAIMS	22%	36%	17%	4%