

Approved August 4, 1989
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~a.m.~~/p.m. on March 23, 1989 in room 519-S of the Capitol.

All members were present except:

Representatives Fry, Gross

Committee staff present:

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

Conferees appearing before the committee:

Mr. Pat Barnes, Kansas Motor Car Dealers Association
Mr. Hal Smith, Kansas Independent Automobile Dealers
Lt. William Jacobs, Kansas Highway Patrol
Mr. Mark Wettig, Kansas Department of Revenue

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on SB-128 concerning bonding requirements under the Vehicle Dealers' and Manufacturers' Licensing Act.

Mr. Pat Barnes, Kansas Motor Car Dealers Association, testified in support of SB-128. (See Attachment 1)

Mr. Barnes referred to a letter from Mr. Kevin Allen, Insurance Professionals, Inc. (See Attachment 2)

Mr. Hal Smith, Kansas Independent Automobile Dealers Association, testified concerning SB-128, and said many of their members do not favor bonding requirements. Mr. Smith said that as the bill is currently written, the Automobile Dealers Association is opposed to it, but would support a lower amount of bonding starting at \$10,000.

The hearing on SB-128 was concluded.

The next order of business was a hearing on SB-130 concerning lights on emergency vehicles.

Lt. William Jacobs, Kansas Highway Patrol, testified in support of SB-130. (See Attachment 3)

Committee discussion and questioning followed.

The hearing on SB-130 ended.

The next order of business was a hearing on SB-140 concerning denial, suspension or revocation of a vehicle dealers' license.

Mr. Mark Wettig, Kansas Department of Revenue, testified in support of SB-140. (See Attachment 4)

The hearing on SB-140 was concluded.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S Statehouse, at 1:30 a.m./p.m. on March 23, 1989.

Attention was turned to SB-141 concerning penalty for transferring ownership to a motor vehicle or mobile home and failing to show oneself on the transferred certificate of title.

After brief discussion, Chairman Crowell said action would not be taken at this time.

The next bill taken up was SB-237 relating to issuance of 30-day temporary motor vehicle registration permits.

A motion was made by Representative Shore that SB-237 be amended to be an unclassified misdemeanor. The motion was seconded by Representative Freeman.

Representative Shore withdrew his motion with permission of the second.

A motion was made by Representative Shore that SB-237 be amended to a Class C misdemeanor. The motion was seconded by Representative Freeman. Motion carried.

A motion was made by Representative Shore that SB-237 be recommended favorable as amended for passage. The motion was seconded by Representative Dillon. Motion carried.

The next bill taken up was SB-238 exempting certain carriers from the requirement to display KCC plates.

A motion was made by Representative Smith that SB-238 be recommended favorable for passage and placed on the consent calendar. The motion was seconded by Representative Wilbert. Motion carried.

The next bill taken up was SB-255 concerning the width and length of certain vehicles.

A motion was made by Representative Roenbaugh that SB-255 be amended in line 154, to 14 feet. The motion was seconded by Representative Lucas. Motion carried.

A motion was made by Representative Shore that SB-255 be recommended favorable as amended for passage. The motion was seconded by Representative Lacey. Motion carried.

The next bill taken up was SB-129 concerning the use of certain vehicle registration fees by the county treasurer. Chairman Crowell appointed a subcommittee consisting of Representatives Allen, Dillon and Empson, to further study SB-129.

The next bill taken up for Committee discussion and action was SB-142 concerning the standard for transferring certificate of public convenience and necessity.

A motion was made by Representative Smith that SB-142 be recommended favorable for passage. The motion was seconded by Representative Shore. Motion carried.

The meeting was adjourned at 2:45 p.m.


Rex Crowell, Chairman

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Samuel G Grant	Topeka	KHP
Tony Potter	Topeka	Intern - Roebough
Roger W BARR	Topeka	T.C.U.
Robert I Hopkins	Topeka	NATURE
Pam Pearson	Silver Lake	T.C.U.
Lt Bill Jacobs	TOPEKA	KHP
MAJ Ron Cranon	Topeka	KHP
Pam Sheehan	Tecumseh	SHS
Amanda J Morgan	Tecumseh (RT 1)	Shawnee Heights High School
Michelle Berry	Tecumseh	SHHS
David Auldridge	Topeka	Shawnee Heights High
Kane KUNARD KANE KUNARD	Topeka	Shawnee Heights High
Michelle Lutz Michelle Lutz	Berryton	Shawnee Heights
RAQUEL CORTAZ	TECUMSEH	Shawnee Heights High
Raquel Cortez	Tecumseh	Shawnee Heights High
Eric Loftis	Tecumseh	" " "
Matt Byrd	Tecumseh	" " "
Steven Kentro	Tecumseh	Shawnee Heights high
Blene Wamsley	TOPEKA	SHAWNEE Heights
Terri Meredith	Topeka	SHAWNEE Heights
Janin Pritchard	Topeka	" " " "
Donna Schiffelbein	Topeka	Shawnee Heights
Julie Withers	topeka	" " "
Senator Frank	"	Senate
Rick Farris	Edson KS	U.S. Custom Harvesters Inc.
Jim Deibert	Colby KANSAS	U.S. Custom Harvesters

Statement Before The
HOUSE COMMITTEE ON TRANSPORTATION AND UTILITIES

By The
KANSAS MOTOR CAR DEALERS ASSOCIATION

Thursday, March 16, 1989

Re: Dealer Bonding Requirements
Senate Bill No. 128

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, the state trade association representing franchised new car and truck dealers of Kansas. Today our association is once again before you to ask your support in passing legislation which would deal with requiring vehicle dealers to post a \$20,000.00 surety bond with the state as a condition for licensing.

This concept is not new to the legislature. Through an extensive interim study in 1986 which featured the testimony of 12 different groups, the interim committee then concluded, "it is the committee's judgment that the protection afforded by a bonding requirement merits its imposition. If Kansas were to enact such a law, it would join the vast majority of states which already have such legislation."

There are a number of reasons why bonding is an appropriate tool for enhancing consumer protection and insuring compliance with dealer licensing duties and regulations. Examples of those things which the bond would cover are found in

K.S.A. 8-2410 and include things such as material false statements in an application for a license, filing a false or fraudulent tax return, defrauding any retail buyer, negligently failing to perform a written agreement with a buyer, making a fraudulent sale or transaction, engaging in false or misleading advertising, and a host of other specified acts.

Additionally, the bill you have before you would allow one proving a consumer protection act violation to recover on the bond. At the time this bill passed the Senate, the underwriter we checked with indicated the bond would be readily available. This opinion was based on the assumption that our law was identical to the Missouri law. Unfortunately, since that time, it has been determined that our law is not identical due to the inclusion of the Consumer Protection Act as one of the items upon which recovery could be based. Given this revelation, we are asking that ~~the~~ reference to the Consumer Protection Act in line 139 on page 4 of the bill be stricken. Most of the goals to be achieved by this proposal will still be attained without that particular provision.

Sixty-five percent of the states we surveyed currently require the individual or entity to have a bond prior to being eligible for licensing as a dealer. In our immediate vicinity, the states of Iowa, Missouri, Nebraska, Colorado, Arkansas and Texas all have bonding requirements of some form or another. Oklahoma also has a form of bonding.

With the changes we have suggested, the cost of bonding

will not be expensive. In other states with bonding, the cost is not expensive. The premium for a bond ranges in price from \$70.00 to \$350.00. For example, with the changes we suggested, the Missouri bonding requirements are similar to the proposal you have before you and the costs for a bond in that state range between \$145.00 and \$250.00.

With this in mind, what does the particular proposal you have before you require? It requires the bond be a corporate surety bond issued by a company authorized to do business in Kansas. The bond is to be executed in the name of the State of Kansas for the benefit of any aggrieved party. It is an aggregate bond in that all claims for liability against the bond cannot exceed \$20,000.00.

As an alternative to providing the bond, an applicant may deposit cash, negotiable state or federal bonds, negotiable certificates of deposit, or irrevocable letters of credit. If the alternative methods are used, such as a cash deposit, then any interest on those funds shall accrue to the benefit of the person depositing the funds.

As you can see, the requirement of a bond is simply another form of financial responsibility. Anyone truly in the automobile business should be able to qualify for such a bond. If you will notice the inventories of virtually any legitimate dealer, you will also notice that even those dealers which cater to the lower end of the used car market will quite frequently have inventories far in excess of \$20,000.00. It takes only a

few units in this day and age to exceed \$20,000.00 in inventory. This is inventory which is being sold to consumers and, regretfully, some of that inventory is not up to consumer expectations. In the instances where substandard dealings are the design, rather than the exception, or where the dealer is insolvent, whether new or used, this bonding requirement would provide some measure of recovery for an aggrieved consumer.

Current Kansas law does allow the director of vehicles to require a bond if the director has reasonable cause to doubt the financial responsibility or compliance by the applicant or licensee with the dealer licensing laws. The present discretionary bond can range between \$5,000.00 and \$20,000.00. Even with this power, to the best of our knowledge, the Director of Vehicles has not yet exercised his discretion to require a bond of any applicant or licensee. Under present law, an applicant who is required to have a bond can claim discrimination by the Division of Vehicles against him simply because he was required to have a bond, while others were not. It is also hard for the Director to find solid criteria to question someone's financial responsibility or whether or not the person or entity might violate the dealer licensing act. These appear to be the main reasons why bonds have never been required, even though the authority to require bonding is present.¹

A great concern which always arises is whether or not

¹If this mandatory provision is accepted, then there would no longer be a need for the discretionary bond and it would seem that the discretionary bond provisions should be eliminated from SB128.

bonds will put dealers out of business. Virtually all of the licensing branches of the various states with bonding requirements which we have dealt with, and others connected with the automobile retail business, agree that these bonding requirements will not put new or used dealers out of business. It does require dealers to provide some proof of financial stability and good character, i.e., simple financial responsibility. This is not a unique requirement. Other businesses have similar requirements, although they may not be in the exact form of a bond. We require financial responsibility of contractors on public projects, financial institutions, warehouseman, insurance companies, and other areas of the economy which directly affect the public interest. (For example, look at the protection FSLIC and FDIC insurance provides account holders in financial institutions.)

As you know, we have from time to time worked with this legislature to strengthen laws dealing with the sales of automobiles in this state. One of the most recent examples is last session's revision of the odometer tampering law. In the same session, additional dealer disclosure laws were implemented. From time to time we hear examples of vehicle sales gone awry when an innocent purchaser sustained a loss. We cannot understand why we continually implement consumer protection measures or dealer licensing regulations designed to more efficiently and directly regulate the automobile business, but provide no financial source for the enforcement of those laws

when the dealer in question is insolvent or no longer in business.

Obviously, there will be a slight increase in the cost of doing business. In relation to overall costs, this will be minor. It is a cost which we are willing to accept because it provides a great deal of benefit to all concerned.

We presently allow a dealer to sell the second most expensive item a consumer will purchase, his car, by paying a \$50.00 licensing fee. When that dealer has violated the law and is no longer able to answer for it, or the product he sells turns out to be worthless, the public interest is injured. The bond would screen the unsuitable at the beginning and provide relief for those damaged by those who become unsuitable as they operate.

With the changes we have recommended, there is no question the bond will be available. In the past, we have heard companies such as Western Surety and Universal Underwriters indicate they would write bonds in this state. In evaluating dealer customers for the purpose of bonding them, these companies will examine the applicants from a number of standpoints. Some proposed dealers will not qualify, but you can expect these dealers to be the greatest risk to the consumers they service. Given the number of states who have bonds, and the attachments to this testimony, it is clear that dealer bonding does not eliminate legitimate business from the automobile retailing industry.

In closing, I want to provide an example of how this

bond can be of value. Assume a vehicle, which has been damaged by a major accident or by a flood, neither of which was disclosed at the time of sale. Also assume the dealer who sold the vehicle is no longer in business. Let's also assume the buyer was a low income person. If the consumer discovers the faults or has serious problems with the vehicle and the dealer is out of business, under the current statutes, the consumer has absolutely no protection. He is left holding a vehicle with serious problems with no way to recoup his damages, since the dealer is not in business, cannot be found, or has no assets which the consumer can claim to recover his damages. With this bond, this consumer will have a method whereby there can be a recovery of at least part, if not all, of the damages sustained.

The question you have before you is a policy decision. It is a question which has easily been answered in other states who have passed this bonding requirement. It is a missing link in our dealer licensing statutes which needs to be filled. If we are going to have an effective enforcement system for dealer licensing and controlling unfortunate practices in this industry, then the screening of financial responsibility a bond requires is a necessity.

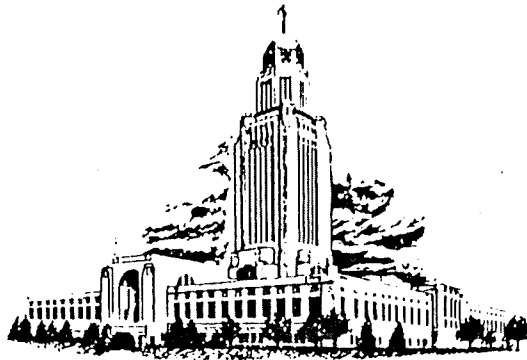
With this bill, Kansas will further strengthen its control over unscrupulous practices and substandard products. Please lend your support to this proposal. I have been exposed to a lot of information on this subject which I would be happy to share if any of you have questions. If I do not know the answer,

then perhaps I can get the information to you at a later date.
Thank you for your attention.

NEBRASKA MOTOR VEHICLE INDUSTRY LICENSING BOARD

STATE OFFICE BUILDING
BOX 94697,
LINCOLN, NEBRASKA 68509

Telephone:
402-471-2148



State of Nebraska

February 2, 1989

Mr. Kevin Allen
Kansas Motor Car Association
800 Jackson Street, Suite 808
Topeka, Kansas 66612

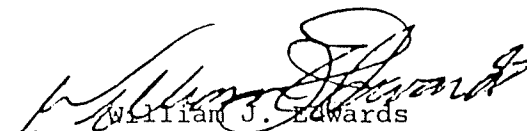
Dear Kevin:

In furtherance of our phone conversation this afternoon, please be advised that the State of Nebraska does require the filing of a \$25,000 surety bond in support of an application for a motor vehicle dealer's license. Incidentally, it is \$100,000 for an auction license. The bond is in essence a public protection bond guaranteeing the dealer to perform the terms and conditions of the license.

As you know, \$25,000 doesn't even cover the cost of some motor vehicles being sold today, so in that respect, the bond probably isn't adequate, however, I have observed that the bonding companies do a reasonably good job in screening applicants for bonds, and in most cases, there is actually more financial responsibility present than it would seem with this size bond. I suspect the aspect of the bond requirement is, as aforementioned, that it screens a lot of applicants who do not have the financial background or backing to be a legitimate applicant. The major complaint that I have heard since the bond was increased to \$25,000 a few years back is that the cost of the bond has risen disproportionately to the amount of the bond.

The question of bonding is brought up from time to time by the legislature and debated as to whether it should be a greater or lesser bond. However, it is my opinion that \$25,000 is probably as reasonable a plateau as you can get. It does not necessarily rule solid applicants from obtaining a dealer license, but at the same time, does keep some of the people who are not financially secure from obtaining a license.

Sincerely,


William J. Edwards
Executive Director

Deal bond information:

Alabama--\$5,000
Arizona--\$350 for \$25,000 bond
Arkansas--\$125 for \$25,000 bond
Colorado--\$200 for \$20,000 bond
Connecticut--\$5,000 bond required, average cost \$100
Delaware--none
Florida--\$25,000 bond, premiums vary from \$175 to \$250 or an irrevocable letter of credit \$25,000
Georgia--none
Hawaii--10% of the bond; in this case \$2,000 for a \$200,000 bond required of all new car franchised dealers
Idaho--\$200 for \$20,000 bond
Illinois--\$35 through association program - \$10,000 bond required
Indiana--none
Iowa--\$89 for \$25,000 new dealer; \$125 for \$25,000 used dealer
Kansas--none
Kentucky--none; motor vehicle commission could require if needed
Louisiana--yes
Maine--\$25,000 bond; \$10 per thousand dollars or \$250
Maryland--\$15,000 (\$1,000 for salesmen)
Massachusetts--none
Michigan--\$200 for \$10,000 bond
Minnesota--\$110 for \$25,000
Mississippi--none
Missouri--\$147.50 for \$25,000 bond
Montana--\$45
Nevada--yes, varies considerably because bond requirements range from \$5,000 to \$50,000
New Hampshire--\$25 - \$250 -
New Jersey--none
New Mexico--approximately \$200 annually for a \$20,000 bond
New York--none
North Carolina--\$200 for 3 years; supplemental location \$50 per year
North Dakota--\$10,000
Ohio--none

Oklahoma--none
Oregon--\$150 for \$15,000 bond
Pennsylvania--\$70 per year for a \$10,000 dealer bond
Rhode Island--\$125 for \$15,000 bond (new car dealers); \$225 for \$15,000 bond (used car dealers)
South Carolina--\$100
South Dakota--\$50 per year for \$10,000 bond
Tennessee--none
Texas--not required for franchised dealers; only for independent dealers
Utah--\$20,000 bond required, the premium is subject to market conditions
Vermont--none
Virginia--\$7
Washington--\$50 annually for a \$15,000 bond
West Virginia--Require \$2,000 bond, cost varies with agent
Wisconsin--none; optional \$8 per \$1,000. \$25,000 bond is optional in lieu of financial statement for annual license
Wyoming--\$5,000



**INSURANCE
PROFESSIONALS
INCORPORATED**

Jo own
Les own
Russ W. Brown
John Harrison
John E. Prechtel
Mark L. Stone
Dennis Blair

Mr. Kevin Allen
Executive Vice President
Kansas Motor Car Dealers Association
Suite 717
Merchants National Bank
Topeka, Kansas 66612

Re: Senate Bill No. 128
Vehicle Dealers Licensing Act

Mr. Allen:

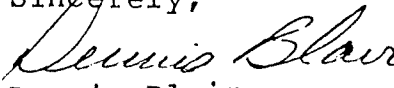
Russ Brown and I have been in contact with State Surety Company in regards to bonding that will be required due to Senate Bill No. 128. Vehicle Dealers Licensing Act. We selected State Surety Company due to the fact that they have worked with the Missouri Vehicle Dealers Association on a very similar bill. It is my understanding that State Surety is the primary market for the Motor Vehicle Dealers Bond in the state of Missouri.

State Surety has suggested that lines 121 through lines 130 be deleted from the current bill. In addition, State Surety has suggested that clarification within the bill would be desirable. All areas should be specific in that proceeds of the bond should be paid upon receipt by the director of a final judgment from a Kansas court of competent jurisdiction against the dealer and in favor of an aggrieved party.

With these modifications, State Surety should be able to provide favorable underwriting and pricing as they have been doing in the state of Missouri since 1984.

If we can assist you in any area, please feel free to contact Russ Brown or me.

Sincerely,


Dennis Blair

cc: Eddy Steven
Mike Steven
Harold Johnson

Jacobs

SUMMARY OF TESTIMONY

Before the House Transportation Committee

March 23, 1989

Senate Bill 130

Presented by the Kansas Highway Patrol

(Lieutenant William Jacobs)

Appeared in Support of Senate Bill 130

The Kansas Highway Patrol supports Senate Bill 130. Senate Bill 130, if passed, would permit the use of alternately flashing or simultaneously flashing head lamps on emergency vehicles. Those type lights are commonly referred to as "wig-wag lights".

The Patrol supports this legislation for two reasons. The main reason being safety. Emergency vehicles are more visible when these lights are used in emergency situations in conjunction with other required emergency equipment.

The second reason is that some emergency agencies in Kansas have installed, and are using these lights now, even though there is no provision for them in existing law. Passage of this Bill would bring these vehicles in conformance with the laws that govern emergency vehicle operation.

The proposed Bill would not mandate the use of "wig-wag lights", therefore, it would not be a burden to those agencies which do not presently have funds for conversion to the lights.

For reasons stated above, especially the safety aspect provided to operators of emergency vehicles and the public at large, we respectfully request your favorable consideration of Senate Bill 130.

W. stetg

MEMORANDUM

TO: The Honorable Rex Crowell, Chairman
House Committee on Transportation

FROM: Mark E. Wettig
Special Assistant to the Secretary

DATE: March 23, 1989

SUBJECT: Senate Bill 140

I appreciate the opportunity to appear before you today in support of legislation requested by the Department of Revenue. Senate Bill 140 is the result of a Department recommendation to require motor vehicle manufacturers to provide certain information.

BACKGROUND

The Division of Property Valuation is required to determine the correct value for motor vehicles for property tax purposes and must provide that information to the counties. The property tax has to be paid at the time the vehicle is registered, which must be within thirty days of the date of purchase. Most manufacturers release new make, model or series of vehicles throughout the year and do not notify the Division. When this occurs, there are taxpayers in the Treasurer's office wanting to register their new vehicles, for which neither the County nor the Division has sufficient information to determine value so property taxes can be paid.

Att. 4

Senate Bill 140 would permit the Director of Vehicles to deny, revoke, suspend or refuse to renew a first or second stage manufacturer's license under the Dealer Licensing Act, for failing to provide the Director of Property Valuation with information necessary for VIN identification and determination of vehicle classification at least 90 days prior to release for sale of any new make, model or series of vehicles. The bill would take effect on July 1, 1989.

RECOMMENDATION

The Department of Revenue requests the committee's favorable support of Senate Bill 140.

Thank you.