

Approved 2/21/89 Date \_\_\_\_\_

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at \_\_\_\_\_  
Chairperson

9:02 a.m./~~pm~~ on February 14, 1989 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Pat Barnes, Kansas Motor Car Dealers Association  
Patricia M. Wiechman, Kansas Automotive Dismantlers and Recyclers Association.  
Mark Wettig, Department of Revenue  
Kevin Allen, Kansas Motor Car Dealers Association

Hearing on S.B. 128 - Requiring vehicle dealers to have a bond.

Pat Barnes, Kansas Motor Car Dealers Association, said this was a request for legislation which would deal with requiring vehicle dealers to post a \$25,000 surety bond with the state as a condition of licensing. He said this would offer the consumer more protection. A copy of his statement is attached. (Attachment 1).

Patricia M. Wiechman, KADRA, said they support this bill and have long advocated self-regulation and increased industry credibility through proper control. A copy of her statement is attached. (Attachment 2).

Mark Wettig, Department of Revenue, said passage of this bill would not affect State revenue and would incur only minimum costs. They had no formal recommendation. A copy of his statement is attached. (Attachment 3).

Hearing on S.B. 132 - Prohibiting certain vehicle Sunday sales.

Kevin Allen, Kansas Motor Car Dealers Association, requested this bill because opening on Sunday increases the cost of doing business without providing more sales and one less business day per week would not affect the car buying process. A copy of his statement is attached. (Attachment 4).

Mark Wettig, Department of Revenue, said this bill would have no impact on administrative problems or costs and they had no position. A copy of his statement is attached. (Attachment 5).

The meeting was adjourned at 9:40 a.m.

GUEST LIST

COMMITTEE: SENATE TRANSPORTATION & UTILITIES COMM.

DATE: 2-14-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
PAT BAROVES	TOPEKA	Ks. Motor Car Dealers Ass'n
KEVIN ALLEN	TOPEKA	Ks. Motor Car Dealers Ass'n
W. J. NIEL	TOPEKA	Ks. Mfg. Working
BOB GRANT	TOPEKA	(CC)
DALE LEHNING	WICHITA	KADRA
Pat Wiechman	Topeka	K.A.D.R.A.
Tom Whitaker	Topeka	Ks. Motor Car Dealers Ass'n
RICH DAMB	HOISINGTON	B.L.E.
JIM KEELE	PAOLA	B.L.E.
DON LINDSEY	OSAWATOMIE	UTU
Don Detwiler	Pratt	B.L.E.
Jerry Leonard	Topeka	KGSE
CHARLES BELT	WICHITA	WADA
MIKE STEVEN	WICHITA	WADA
HAND B. TURNSTINE	TOPEKA	DIVISION OF VEHICLES
Tom Skinner	"	"
MARK WATTIS	"	D of Rev
Stephen C Zimmerman	"	KDOT
Ken [unclear]	Topeka	KDOT
Anne Smith	Topeka	Heint Ebert - KAA
Ma [unclear]	"	KDOR

Statement Before The  
SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

By The  
KANSAS MOTOR CAR DEALERS ASSOCIATION

Tuesday, February 14, 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 \$25,000.00 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."

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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.

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

The cost of bonding is not expensive. The premium for a bond ranges in price from \$70.00 to \$350.00. For example, in 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 \$25,000.00.

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 \$25,000.00. It takes only a few units in this day and age to exceed \$25,000.00 in inventory. This is inventory which is being sold to consumers and, regrettably, 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.

A great concern which always arises is whether or not 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 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 some 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 paing 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.

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.

The Senate has acted responsibly on this subject in the past. I hope you will again 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

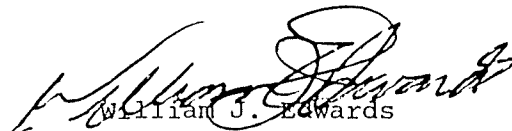
Dear Kevin:

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.

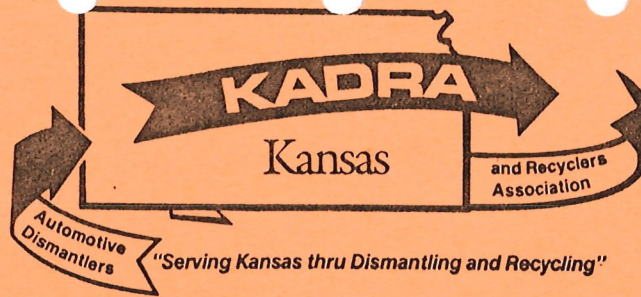
The question of bonding is brought up from time to time by the legislature and debated as to whether it should be a greater or lesser bond. However, it is my opinion that \$25,000 is probably as reasonable a plateau as you can get. It does not necessarily rule solid applicants from obtaining a dealer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

T r 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



SENATE COMMITTEE ON TRANSPORTATION  
AND UTILITIES

February 14, 1989

SENATE BILL NO. 128

Mr. Chairman, Members of the Committee:

I am Pat Wiechman, Executive Secretary for the Kansas Automotive Dismantlers and Recyclers Association.

K.A.D.R.A. wishes to express to you our support for SB 128. Our association has long been an advocate of self-regulation and increased vehicle industry credibility through proper control. It is the policy position of K.A.D.R.A. that bonding is a step toward instilling protection of consumers from unauthorized and improper activities of certain dealers.

We would urge the Committee's favorable support of SB 128.

Thank you for the opportunity to appear before you and present K.A.D.R.A.'s position. If you have questions, I will try to address them.

Respectfully submitted,

PATRICIA M. WIECHMAN  
Executive Secretary

ATT. 2  
T&U  
2/14/89

Executive Office

1101 W. 10 Topeka, Kansas 66604

913 - 233-1666

MEMORANDUM

TO: The Honorable Bill Morris, Chairman  
Senate Committee on Transportation and Utilities

FROM: Mark E. Wettig  
Special Assistant to the Secretary

DATE: February 14, 1989

SUBJECT: Senate Bill 128, As Introduced

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I appreciate the opportunity to appear before you today concerning Senate Bill 128.

BACKGROUND

Senate Bill 128 would require all new vehicle dealers, used vehicle dealers and brokers to furnish and maintain a \$25,000 bond with the Director of Vehicles. The Director currently has authority to require a bond between \$5,000 and \$20,000, if he has reasonable cause to doubt the financial responsibility or compliance of the applicant or licensee.

However, due to the nature of the automobile business, by the time the Director has "reasonable cause" to doubt the financial responsibility of the licensee, it is often too late for the consumer.

Passage of this bill would not affect State revenue and the Department of Revenue would incur only minimal costs.

RECOMMENDATION

As Senate Bill 128 deals with public policy decisions and does not affect the Division of Vehicles, the Department does not make a formal recommendation on this bill.

Thank you.

ATT. 3  
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2/14/89

Statement Before The  
SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES  
By The

KANSAS MOTOR CAR DEALERS ASSOCIATION  
Tuesday February 14, 1989

**Re: SB 132 Sunday Sales of Automobiles**

Mr. Chairman and Members of the Committee, I am Kevin Allen, Executive Vice President of the Kansas Motor Car Dealers Association, representing our 337 member franchised new car and truck dealers.

Presently, most automobile dealerships are closed on Sunday and most want to be closed. There are however, some surrounding states where Sunday sales of automobiles is prohibited. Having our dealerships open creates disharmony in some business communities and **most importantly** deprives dealership employees of at least "one day rest".

Some facts to consider:

- \* Sunday opening increases the cost of doing business without providing more sales.

- \* Dealerships are currently open several nights during the work week, as well as Saturdays, for "after hour" shoppers.

- \* Many customers like to look at cars on Sunday without pressure from sales persons.

- \* Purchasing an automobile is much different than buying a set of dishes or a pair of blue jeans. It takes time and consideration to compare and choose the right one for you. One less business day per week will not effect the car buying process.

**We urge you to support SB 132.**

ATT. 4  
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2/14/89

MEMORANDUM

TO: The Honorable Bill Morris, Chairman  
Senate Committee on Transportation and Utilities

FROM: Mark E. Wettig  
Special Assistant to the Secretary

DATE: February 14, 1989

SUBJECT: Senate Bill 132, As Introduced

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I appreciate the opportunity to appear before you today concerning Senate Bill 132.

BACKGROUND

Senate Bill 132, prohibiting vehicle dealers from conducting certain motor vehicle sales on Sunday would not impact State revenue nor cause the Department of Revenue any administrative problems or costs.

RECOMMENDATION

The Department of Revenue has no position on Senate Bill 132.

Thank you.

ATT. 5  
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2/14/89