Approved: March 6, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on January 25, 2001 in Room 527-S of the Capitol.

All members were present except:	Rep. Carlos Mayans Rep. Jene Vickery
Committee staff present:	Bill Wolff, Research Ken Wilke, Revisor Mary Best, Committee Secretary
Conferees appearing before the committee:	Jeff Bottenberg, Western Surety Don McNeeley, Kansas Auto Dealers
Others attending:	See Attached Guest List

Upon calling the meeting to order, Chairman Tomlinson introduced Karen France, Kansas Association of Realtors. Ms. France came before the committee to present a bill addressing "Affiliated Title Companies." A copy of the request is (Attachment #1) attached hereto and incorporated into the Minutes by reference. This bill would allow Kansas Realtor members to own title insurance companies. Although there is a similar bill in place now (**HB 2692**), this bill would eliminate the 20% rule for all counties. "Additionally, the bill would allow additional requirements for entities owned by producers of business, as well as additional penalties for violation of the statutory requirements." Questions were asked by Rep. Grant and Ostmeyer. A motion was made by Representative Hummerickhouse to accept and hear the bill. The motion was seconded by Representative Huff. A vote was taken and the motion passed.

The next order of business was to hear testimony from Mr. Jeff Bottenberg, Western Surety. Mr. Bottenberg presented Proponent Testimony to the committee. A copy of the testimony is (Attachment #2 & 3) attached hereto and incorporated into the Minutes by reference. Mr. Bottenberg was offering an amendment to **HB 2114**, which limits the persons making a claim on a motor vehicle dealer surety bond to only consumers. This bond has a value of $15,000., with the purpose of giving the consumer some way to defray financial losses when fraud was present by the dealer transactions. The consumer must first obtain a legal judgement against the dealer. Mr. Bottenberg stated that as of right now a credit union or other financial business may also file claim and since they and not the consumer knows of the bill, then the financial business is able to claim the money first, as it is whom ever files first gets the money. Most consumers know nothing of this bill or their rights. Questions were asked by Rep.'s Tomlinson, McCreary, Sharp, Edmonds.

Ms. Sheila Walker, Kansas State Department of Revenue, was the next conferee to give Proponent Testimony. A copy of the testimony is (Attachment #'s 4,5,6) attached hereto and incorporated into the Minutes by reference. Ms. Walker offered an Amendment to the bill. The bond was raised from $15, 000 to $30,000, and the words "any person" and "party" were struck and the word "consumer" was inserted. She let the committee know that this bill would limit bond relief only to the individual who is a retail buyer and eliminates businesses, dealers, and other entities buying or securing interest in vehicles. Ms. Walker stood for questions.

Mr. Dan McNeeley, Kansas Automobile Dealers Association, offered Opponent Testimony. A copy of the testimony is (Attachment #7) attached hereto and incorporated into the Minutes by reference. Mr. McNeeley stated to the committee that **HB 2114** limited who can make a claim, and leaving corporations out of the loop. Mr. McNeeley stated that the KADA felt that dealers should be able to file against the bond for relief as well. It was also brought out that the bonds usually deal with used vehicles. Mr. McNeeley stood for questions. Rep. Kirk spoke in regards to companies vs individuals.

With no further discussions. The public hearings on the bill were closed, and the meeting was adjourned. The time was 4:10 p.m. The next meeting will be held Tuesday January 30, 2001.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Jan 25, 2001

NAME	REPRESENTING
Jeff Bottenberg	Westin Surety
Carrie Doner	NAII
Erik Sartorius	K.C. Regional Assoc. of Realtors
BILL YANEK	KAR
KAREN FRANCE	KAR
Anne Spiess	KAIFA
Brad Smoot	AIA
John C. Bottenberg	Western Surety
DON McNEELY	KANSAS AUTOMOBILE DEALERS ASSN.
PAT BARNES	" " " "
Sheila J. Walker	DMV
LARRY MAGILL	KAIA
Larrie Ann Lower	KAHP
Chuck Stones	KBA

Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
TELEPHONE 785/267-3610 • 1-800-366-0069
FAX 785/267-1867

TO: **HOUSE INSURANCE COMMITTEE**

FROM: **KAREN FRANCE, DIRECTOR OF GOVERNMENTAL RELATIONS**

DATE: **JANUARY 25, 2001**

RE: **BILL REQUEST RE: AFFILIATED TITLE COMPANIES**

On behalf of the Kansas Association of REALTORS®, I ask for the committee introduction of a bill that would allow our members to own title insurance companies.

This is, for the most part, the same language found in HB 2692 that passed the House in 1998 with 93 votes. Current Kansas law states requires that title companies which are owned by producers of business (such as real estate licensees or lenders) cannot have more than 20% of its title business come from its owners. However, the 20% rule does not apply to real estate transactions in counties with a population of 10,000 or less in the last decennial census.

This bill would eliminate the 20% rule for all counties. Additionally, the bill proposes additional requirements for entities owned by producers of business, as well as additional penalties for violation of the statutory requirements.

House Comm on Ins.
January 25, 2001

Attachment #1

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: THE HONORABLE BOB TOMLINSON, CHAIRMAN
HOUSE INSURANCE COMMITTEE

FROM: JEFF BOTTENBERG, LEGISLATIVE COUNSEL
WESTERN SURETY COMPANY

RE: H.B. 2114

DATE: JANUARY 25, 2001

Mr. Chairman, Members of the Committee, My name is Jeff Bottenberg and I represent Western Surety Company ("Western Surety"), an insurance company that specializes in providing commercial surety bonds. Western Surety is an affiliate of CNA Surety Company, which is the nation's largest provider of commercial surety bonds and one of the largest U.S. insurance groups. We appreciate this opportunity to appear in support of H.B. 2114, which was introduced by the Committee at our request.

H.B. 2114 amends the Vehicle Dealers and Manufacturers Licensing Act ("Licensing Act") by limiting the persons who may make a claim on a motor vehicle dealer surety bond to consumers. By way of background, in 1989 the Kansas Legislature required every new and used motor vehicle dealer to maintain a surety bond in the amount of $15,000. In order to make a claim on a bond, an aggrieved party must first obtain a legal judgement against the dealer. Upon determination from the Director of Motor Vehicles that such judgement resulted from a violation of the Licensing Act, the proceeds of the bond are paid to the party. The intent of the Legislature in drafting the bond requirement was that such bond would help cover the expenses incurred by consumers that had been harmed by fraudulent dealer transactions. Such intent is clear from the plain reading of the statute as well as the legislative testimony provided at the committee hearings, which is discussed in detail below.

Unfortunately the Kansas Supreme Court has disregarded the wisdom and intent of the Legislature when it recently held that the surety bond must cover the claims of any potentially aggrieved party in the case Hartford Insurance Company v. Credit Union 1 of Kansas. In Hartford, the plaintiff/financing company had financed a used car dealer with a floor loan secured by several purchased vehicles. When the dealer refused to remit the proceeds of the sale, the financing company made a claim on the bond. Such claim was refused by the surety, and legal action was initiated to determine whether the Legislature intended that the bonds be limited

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HSE Ins Comm
Jan 25, 2001
ATTACH # 2

to the claims of consumers. Although the Shawnee County District Court held that such bonds are limited to consumer claims, the Kansas Supreme Court reversed the decision of the lower court. This decision now allows financing companies and other commercial organizations to demand payment on the bonds. Such decision is not only contrary to the intent of the Legislature when it first passed the bonding requirement, but severely restricts the ability of innocent automobile purchasers to obtain the proceeds of the bonds when they have been defrauded by a car dealer. Therefore this bill is as much a consumer protection bill as it is an insurance coverage bill. The specific reasons to support H.B. 2114 are provided below.

A. The Legislature clearly intended that the surety bond would only cover the claims of consumers

The fundamental rule that a court must use when interpreting the meaning of a statute is that where a statute is plain and unambiguous, the court must give effect to the intention of the Legislature as expressed, rather than determine what the law should be. The Kansas Supreme Court therefore disregarded this basic rule of statutory construction when it decided that the Legislature intended the surety bond to cover the claims of any aggrieved person instead of a consumer. Such legislative intent is easily inferred from Licensing Act's declaration of public policy, contained at K.S.A 8-2402, which states that:

> It is further declared to be the policy of this state to protect the public interest in the purchase and trade of vehicles, so as to insure protection against irresponsible vendors and dishonest or fraudulent sales practices and to assist, provide and secure a stable, efficient, enforceable and verifiable method for the distribution of vehicles to **consumers** in the state of Kansas and provide a system of tracking the flow of vehicles and their parts as well as preserving supporting services for **consumers** purchasing or otherwise acquiring vehicles.

Based upon this clear, concise declaration of public policy, there can be little doubt that the Legislature intended that the Licensing Act, including the surety bond requirement, be for the protection of consumers. The Shawnee County District Court placed great emphasis on the above policy statement in holding that the bonds protect consumers

In further support of our position, it should be noted that most of the grounds for suspension or revocation of a vehicle dealer's license contained in the Licensing Act concern sales to consumers. For instance, a vehicle dealer license may be suspended for the following reasons: knowingly defrauding any **retail buyer** to the buyers damage; negligently failing to perform any written agreement with any buyer; knowingly making a fraudulent sale or transaction; and knowingly engaging in false or misleading advertising. These reasons all relate to consumer transactions, and further demonstrate that the Legislature intended for the bonding requirement to only cover the claims of consumers.

The fact that the amount of the bond is only $15,000 further demonstrates the legislative intent that such bonds are to only cover the claims of consumers, for the Legislature would have increased the amount if it wanted to cover the claims of financing companies or corporate

entities. For example, it is not unusual for a floor loan received by a dealer to finance purchased vehicles to run into the hundreds of thousands of dollars. Furthermore, a wholesaler may sell a dealer automobiles that cost well over $15,000. Therefore, the limited amount of the bond at question further demonstrates the legislative intent to limit its proceeds to individual consumers. A Louisiana appellate court, which decided that motor vehicle surety bonds were limited to consumers in that state, was persuaded in its decision by the fact that the motor vehicle surety bonds in Louisiana were only in the amount of $20,000. As the Court noted:

> A further indication that the bonds were not intended to protect financial institutions in their dealings with dealerships is the relatively small amount of the bond in comparison to the amount of financing ordinarily required by a dealership. Moreover, the bond is meant to cover the aggregate of any claims against the dealership in one year. If the intent had been to protect finance companies, certainly the bond requirement would far exceed $20,000.

Based upon the foregoing, it is readily apparent that the Legislature intended that the surety bonds cover the claims of individual consumers.

B. <u>The legislative history of the surety bond amendment demonstrates that it was intended to only cover the claims of consumers</u>

The legislative history of the bond requirement further strengthens the argument that the bond is limited to the claims of consumers. As noted above, the Licensing Act was amended in 1989 to require all vehicle dealers to obtain a surety bond in the amount of $15,000. In written testimony presented to the Senate Committee on Transportation and Utilities concerning the amendment, a Special Assistant to the Secretary of Revenue commented that:

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

Several other parties testified on the amendment, including Pat Barnes, who is the legislative counsel for the Kansas Motor Car Dealers Association, which is now referred as the Kansas Automobile Dealers Association. Mr. Barnes noted in his testimony that the amendment would allow "one proving a **consumer** protection act violation to recover on the bond." Mr. Barnes further stated that dealers have inventories in excess of the bonding requirement, and that such inventory:

> Is being sold to consumers, and regretfully, some of the 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** . . . 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.

Mr. Barnes's testimony also indicates that a consumer is an individual, and not a wholesale purchaser, such as an auto auction. For instance, Mr. Barnes noted that:

> 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. 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.

Thus the legislative history of the bonding requirement further demonstrates that the vehicle dealer surety bonds should only cover the claims of consumers.

C. Legal Authorities from other states support our interpretation of the bond requirement.

Although Hartford is the first Kansas case to decide the issue of coverage under a vehicle surety bond, the majority view in other jurisdictions, under very similar circumstances, is that the bonds protect consumers. Such is the settled law in several states, including Iowa, Michigan, North Carolina, Arizona, and Louisiana. Therefore the decision by the Kansas Supreme Court in the instant case is not in line with the decisions of many other states concerning coverage on surety bonds.

It should be noted that although Hartford was the first case that interpreted the surety bond amendment to the Licensing Act, the issue had previously been briefed and argued in the bankruptcy case In re Mott. Although Mott began as a bankruptcy case, one of the bankrupt's creditors, a financing company, opposed the petition of the bankrupt, a used car dealer, on the grounds of fraud. In order to secure payment for the dealer's fraudulent conduct, the financing company made a demand on the dealer's surety bond, which was issued by Western Surety. Although the fraud issue was eventually dismissed because it was not related to the bankruptcy, it is important to note that the financing company had joined Betty McBride, in her capacity as the Director of Motor Vehicles, as a defendant to the proceedings. Director McBride, in her answer filed with the court, agreed with Western Surety's interpretation of the bond requirement and affirmatively stated that the financing company was not entitled to the proceeds of the bond.

D. The proceeds of the bond should go to consumers, and not corporate entities that can absorb such loss.

Although the plain reading of the statute and the legislative history clearly indicate that the Legislature intended for the surety bonds to cover the claims of consumers, probably the most important reason to support this legislation is the impact of the court's decision on innocent purchasers of motor vehicles. For the surety bond covers all claims against a dealer in a year, and therefore there might not be any funds left for an aggrieved consumer if a surety pays all of the proceeds of the bond to a financing company or wholesaler. Such situation is patently unfair, as a consumer that has been cheated by a car dealer may not have another remedy to recover his or her money, while a financing company has a remedy under Article 9 of the Uniform

Commercial Code. This remedy is available because the dealer's inventory that is financed by the financing company would be a security interest that may be redeemed or disposed by such company. Furthermore, a wholesaler has protection from its corporate structure, and can absorb a loss much better than an individual. Therefore if the court's interpretation is allowed to stand, aggrieved consumers may have no ability to recover the money they spent purchasing a car. As was noted in the same Louisiana case discussed above:

> We hold that the bonds were intended to protect the ordinary consumer on the purchase or exchange of automobiles with such dealers. A more expansive interpretation would more than likely cause depletion of the bond funds, leaving innocent purchases without recourse against the bonds.

E. If the court's decision is not corrected by the Legislature, bond rates may increase

Currently Western Surety charges relatively low rates for a motor vehicle surety bond in Kansas. This cost is relatively inexpensive due to a small underwriting pool, which in turn creates a predictable and stable number of claims received from persons in this state. However, if the decision by the court in Hartford is not corrected, our liability and expenses will increase due to the expanded pool of potential claimants and increased costs. Such increased risk will drive up rates, for as discussed above, these claimants will routinely demand that the total amount of the bond be payable at once. This increased rate is another expense that the vehicle dealer must incur in order to transact business in this state, and may cause the insured dealer to leave the market as a consequence.

We appreciate this opportunity to present our testimony to the Committee. Based upon the foregoing, we respectfully request this Committee's favorable action on H.B. 2114. If you have any additional questions or comments, please feel free to contact me.

Respectfully Submitted,

Jeff Bottenberg

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./pxxxon February 14, 1989 in room 254-E of the Capitol.

All members were present exxxptx.

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, KADA, 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.

House Insurance Comm
January 25, 2001
ATTACHMENT # 3

3-1

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

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
T&U
2/14/89

KADRA
Kansas
and Recyclers Association
Automotive Dismantlers
"Serving Kansas thru Dismantling and Recycling"

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

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

WJE:m

1-3

3-4

Statement Before The

SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

By The

KANSAS MOTOR CAR DEALERS ASSOCIATION

Tuesday, February 14, 1989

Re: Dealer Bonding Requiremen s
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."

ATT. 1
T&U
2/14/89

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, 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.

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, buy 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 <u>does not</u> 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.

1-7

3-11

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:

DARYL RAY MOTT,
d/b/a B & M MOTORS,
and BRENDA KAY MOTT

Debtors

91-14066

GREAT AMERICAN ACCEPTANCE CORP.,

Plaintiff,

vs.

DARYL RAY MOTT,
d/b/a B & M MOTORS,
and BRENDA MOTT,

WESTERN SURETY COMPANY

UNITED STATES FIDELITY & GUARANTY

BETTY MCBRIDE, DIRECTOR OF VEHICLES,
Division of Vehicles, Department
of Revenue of the State of Kansas

92-5087

ANSWER TO AMENDED COMPLAINT OF GREAT AMERICAN ACCEPTANCE CORP. TO DETERMINE DISCHARGABILITY OF DEBT AND FOR DECLARATORY JUDGMENT

COMES NOW the defendant, Betty McBride and for her answer to the Amended Complaint of Great American Acceptance Corporation to Determine Dischargeability of Debt and for Declaratory Judgment responds as follows:

1. Defendant admits that some co-defendants issued motor vehicle dealer bonds to defendant, that exhibits 1 and 2 appear to be photocopies of those bonds;

3-12

9. Regarding the prayer for relief which is paragraph 26: defendant denies this paragraph.

10. Defendant denies the plaintiff's final prayer for relief.

AFFIRMATIVE DEFENSES

11. This defendant contends that plaintiff is not an intended or other beneficiary of any surety bond recited in plaintiff's petition.

12. This defendant contends that this court lacks jurisdiction to render declaratory relief on the question, whether the insurance companies or either of them who are co-defendants in this action are liable on the motor vehicle dealer bonds they issued pursuant to K.S.A. 8-2404(i).

13. Plaintiff, has failed to state a claim upon which relief may be predicated and granted.

14. Defendant contends that the matter of whether certain codefendants are liable on the motor vehicle dealer bonds they issued pursuant to K.S.A. 8-2404(i) is a matter which is not ripe for adjudication by this court.

15. Defendant contends that this court is not a "Kansas court of competent jurisdiction" as contemplated by K.S.A. 8-2404(i) and, therefore, has no case or controversy before it which it may adjudge.

16. Defendant contends that this action in a federal court is an attempt by plaintiff to circumvent the immunity provided this defendant by the XIth amendment to the United States constitution, that this court lacks jurisdiction because of the XIth amendment and that this action should be dismissed accordingly.

17. Defendant maintains that she has the right to file additional defenses or claims that may arise through discovery or during the course of this litigation and reserves that right to herself.

3-13

E OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REV E
Stephen S. Richards, Secretary

Sheila J. Walker, Director
Division of Vehicles
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Division of Vehicles

TESTIMONY

TO: House Insurance Committee Chair Bob Tomlinson
Members of the House Insurance Committee

FROM: Sheila J. Walker, Director of Vehicles Sheila J. Walker

DATE: January 25, 2001

RE: House Bill 2114

Chairman Tomlinson and members of the House Insurance Committee, my name is Sheila Walker, and I serve as Director of the Kansas Division of Vehicles. Thank you for the opportunity to provide neutral testimony on House Bill 2114.

This bill would limit bond relief only to the individual who is a retail buyer of a motor vehicle. Businesses, dealers and other institutions that buy or have a secured interest in vehicles would no longer be eligible for payment under a bond.

While this is your policy decision to make, the Division of Vehicles would simply like to point out that consumers are not always "natural persons."

In addition, we respectfully ask the committee to consider an amendment to this bill. Kansas dealers are required by law (K.S.A. 8-2404(i)) to maintain a bond in the amount of $15,000. After researching surrounding states, we recommend increasing the bond amount to $30,000.

A $15,000 bond costs between $60 and $338. A $30,000 bond costs between $70 and $500.

We appreciate your consideration of this amendment.

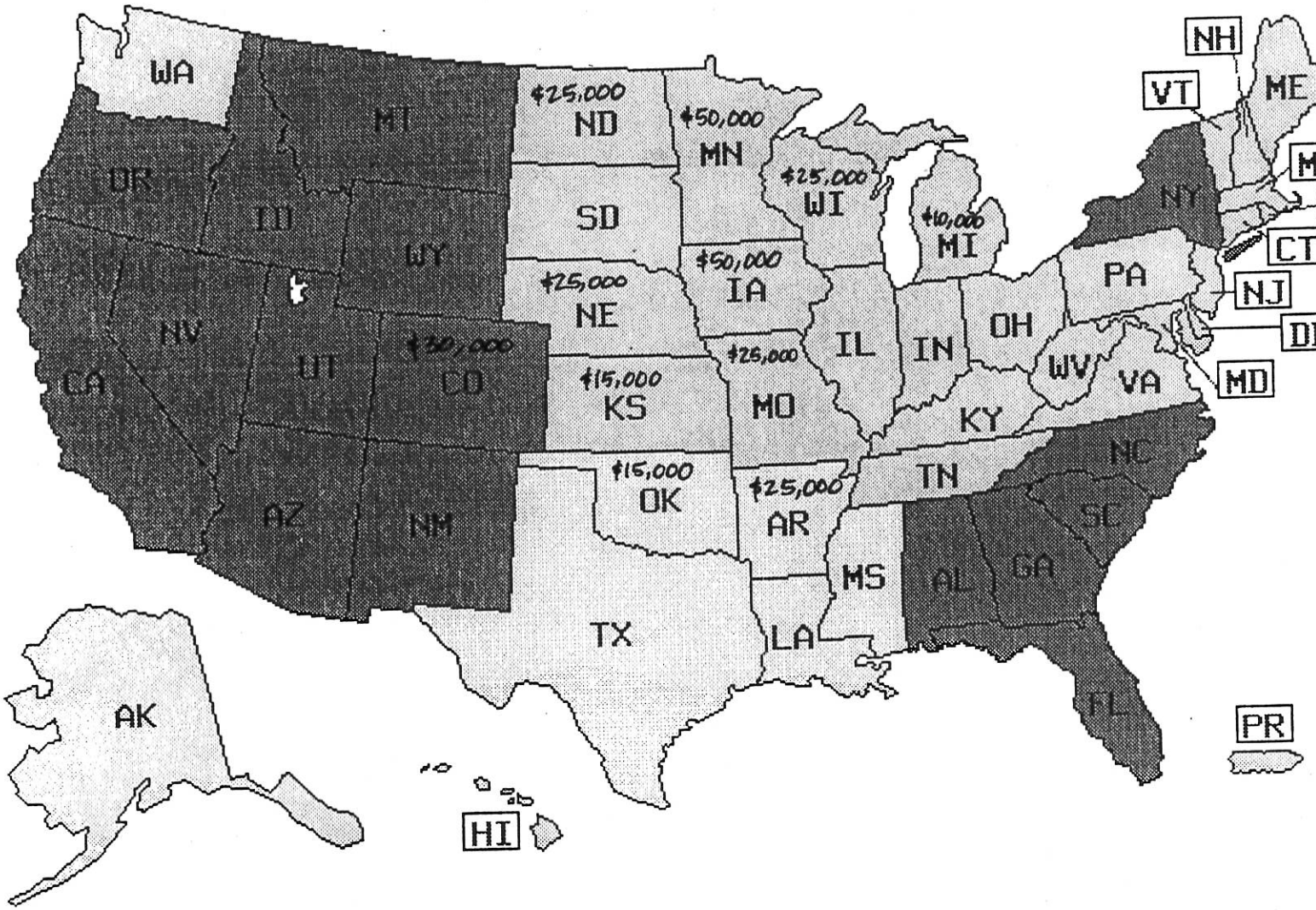
House Insurance Comm
January 25, 2001
ATTACHMENT # 4

supplemental place of business, with respect to a new vehicle dealer, to a different county but within the dealer's area of responsibility as defined in their franchise agreement.

(h) Every salesperson, factory representative or distributor representative shall carry on their person a certification that the person holds a valid state license. The certification shall name the person's employer and shall be displayed upon request. An original copy of the state license for a vehicle salesperson shall be mailed or otherwise delivered by the division to the employer of the salesperson for public display in the employer's established place of business. When a salesperson ceases to be employed as such, the former employer shall mail or otherwise return the original copy of the employee's state license to the division. A salesperson, factory representative or distributor representative who terminates employment with one employer may file an application with the director to transfer the person's state license in the name of another employer. The application shall be accompanied by a $2 transfer fee. A salesperson, factory representative or distributor representative who terminates employment, and does not transfer the state license, shall mail or otherwise return the certification that the person holds a valid state license to the division.

(i) If the director has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this act, the director may require the applicant or licensee to furnish and maintain a bond in such form, amount and with such sureties as the director approves, but such amount shall be not less than $5,000 nor more than $20,000, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by ~~any person~~ *a consumer* by reason of any act by the licensee constituting grounds for suspension or revocation of the license. Every applicant or licensee who is or applies to be a used vehicle dealer or a new vehicle dealer shall furnish and maintain a bond in such form, amount and with such sureties as the director approves, in the amount of ~~$15,000~~ [$30,000], conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by ~~any person~~ *a consumer* by reason of any act by the licensee in violation of any act which constitutes grounds for suspension or revocation of the license. To comply with this subsection, every bond shall be a corporate surety bond issued by a company authorized to do business in the state of Kansas and shall be executed in the name of the state of Kansas for the benefit of any aggrieved ~~party~~ *consumer*. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving

KANSAS DIVISION OF VEHICLES
JANUARY 25, 2001



House Gov. Comm
January 25, 2001
Attachment #6

H. Insurance
1-25-01
Attachment 6

KANSAS AUTOMOBILE DEALERS ASSOCIATION

January 25, 2001

To: Chairman Bob Tomlinson and Members of the House Committee on Insurance

From: Don McNeely, KADA President

Re: House Bill 2114

Chairman Tomlinson and Members of the Committee:

Good Afternoon, my name is Don McNeely, and I serve as the President of the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas. Joining me this afternoon is Mr. Pat Barnes, KADA's General Counsel. We appear before you today to offer some comments in regard to House Bill 2114.

The current bonding requirements as they appear in Kansas Statutes are the result of an extensive interim study in 1986 and legislation introduced at the request of KADA in 1989. The purposes behind the requirement of posting a surety bond at the time of licensure was not just the enhancement of consumer protection, but just as importantly the insurance of compliance with dealer licensing laws, which are found in 8-2410, and include such things as material false statements in an application, 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 to name a few. While consumer protection may have been the focus of the legislation, by no means was it the sole reason or purpose.

The amendments to the Kansas Dealers and Manufacturers Licensing Act which are contained in HB 2114, attempt to limit the ability of who can make a claim on a motor vehicle dealer's surety bond to one class of consumer, that of a natural person or a sole proprietorship, thus leaving other types of consumers, particularly corporations, without the same ability.

Under HB 2114, a small business, which is a corporation, could have the misfortune to purchase a motor vehicle from a licensed Kansas dealer who subsequently

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House Comm on Ins
January 25, 2001
Attachment #7

files bankruptcy, and that small business would not have the same ability to file a claim against the dealer's surety bond that an individual or sole proprietorship would possess. The question before you is one of policy, do you want to limit the protection presently accorded to only one class of consumer or injured party?

On behalf, of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this afternoon. Pat and myself, would be more than happy to respond to any questions the Committee may have. As a side note, Pat was very instrumental in the drafting and the enactment of the legislation in 1989.