

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Les Donovan at 8:30 a.m. on March 7, 2001 in Room 245-N of the Capitol.

All members were present except: Senator Pugh

Committee staff present: Hank Avila, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Jeff Bottenberg, Western Surety  
Don McNeely, Ks. Auto Dealers Assn.  
Jack Adolph, Ks. Independent Auto Dealers Assn.  
Sheila Walker, DMV, KDOR  
Dan Carlson, Ks. Independent Auto Dealers Assn.

Others attending: See attached list.

**HB 2114: Concerning Vehicle Dealers & Manufacturers Licensing Act; Re vehicle bonds**

Mr. Bottenberg provided background information on the bill, explaining the intent of the bond requirement was to help cover expenses incurred by consumers that had been harmed by fraudulent dealer transactions. He requested an amendment to exclude finance companies to clarify that proceeds of the bond should go to consumers and not financing companies. He also requested an amendment to add "or seller" after the word buyer in three places in the bill. He stated it was just an oversight that these changes were omitted from the original bill (Attachment 1).

Don McNeely, President, Kansas Automobile Dealers Association concurred with the requested amendment. He emphasized the importance of assurance of compliance with various licensing laws for both dealers and manufacturers in the State. His Association is also supportive of increasing the amount of the surety bond (Attachment 2).

Jack Adolph, Executive Director, Kansas Independent Auto Dealers Association, testified in support of the requested amendment to add "seller." However, his Association strongly opposes increasing the amount of bonds as proposed in **HB 2114** (Attachment 3).

Sheila Walker, Director, Department Motor Vehicles, Kansas Department of Revenue advised the Department supports the two proposed amendments. They researched regarding bond requirements and found that Kansas requirements are among the lowest. Michigan is the only state with a lower requirement. She also provided figures related to dealer costs related to increasing the bond. Ms. Walker requested that the committee consider making the effective date January 1, 2002 (Attachment 4). Information was provided that increasing the bond to \$30,000 would not excessively increase the cost of such bond.

Dan Carlson, President, Carlson Auction Service, Inc. requested passage of a balloon amendment to include the word "seller" as an eligible party because present bill language overlooks several vehicle sales transaction that take place on a daily basis (Attachment 5).

Discussed implications of the first two proposed amendments as well as the amendment to change the effective date for **HB 2114**. Senator Gooch moved a conceptual amendment incorporating the three changes. Senator Schodorf seconded the motion. Motion carried. Technical amendment is needed to further clean up the bill. Senator Harrington moved to strike Section 1. of the bill. Senator Jackson seconded the motion. Motion carried. Senator Gooch moved to recommend **HB 2114** as amended favorable for passage. Senator Jackson seconded the motion. Motion carried.

**Approval of minutes**

Senator Salmans moved to approve minutes of the March 1, 2001 meeting. Senator Goodwin seconded the motion. Motion carried.

Meeting adjourned at 9:15 a.m. The next meeting is scheduled for Thursday, March 8, 2001.

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: MARCH 7, 2001

| NAME               | REPRESENTING           |
|--------------------|------------------------|
| Tom Whitaker       | KS MOTOR CARRIERS ASSN |
| Michael L. Hunt    | Hearney Law Office     |
| Jeff Bollenberg    | Western Surety Company |
| Don McNEEL         | KS AUTO DEALERS ASSN.  |
| Whitney Zamora     | KS Auto Dealers Assn   |
| Jim Wolfe          | ASST A. G.             |
| Vignetta S. Walker | KPOR-DMV               |
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## Memorandum

**TO:** THE HONORABLE LES DONOVAN, CHAIRMAN  
SENATE TRANSPORTATION COMMITTEE

**FROM:** JEFF BOTTENBERG, LEGISLATIVE COUNSEL  
WESTERN SURETY COMPANY

**RE:** H.B. 2114

**DATE:** MARCH 7, 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. We appreciate this opportunity to appear in support of H.B. 2114, which was introduced by the Legislature 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 vehicle dealer surety bond to consumers, including vehicle dealers and auto actions. By way of background, in 1989 the Kansas Legislature required every new and used motor vehicle dealer to maintain a surety bond. 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 financing companies 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 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 to demand payment on the bonds. Such decision

SENATE TRANSPORTATION  
COMMITTEE -DATE: 3-7-01 -  
ATTACHMENT: 1

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Direct Number: (785) 233-1446  
jbottenberg@pswlaw.com

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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 and sellers to obtain the proceeds of the bonds when they have been defrauded. 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.

**The Legislature clearly intended that the surety bond would only cover consumer claims**

The Kansas Supreme Court disregarded the intent of the Legislature when it decided the Hartford case, for the Legislature clearly did not intend for the surety bonds to cover the claims of finance companies. Such legislative intent is easily inferred from the 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 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 this 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 relatively small further demonstrates the legislative intent that such bonds are to only cover the claims of consumers, for the Legislature would have greatly increased this amount if it wanted to cover the claims of financing companies. For example, it is not unusual for a floor loan to run into the hundreds of thousands of dollars. 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

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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.**

### Legislative history

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 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 Automobile Dealers Association. Mr. Barnes noted in his testimony 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.

### Legal Authorities from other states

Although Hartford is the first Kansas case to decide the issue of coverage under a vehicle surety bond, case law from other jurisdictions demonstrates 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 Hartford is not in line with the decisions from many other state courts concerning this issue.

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

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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.

**The proceeds of the bond should go to consumers and not financing companies that have a remedy under Article 9 of the Uniform Commercial Code**

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. Such situation is patently unfair as a consumer that has been cheated by a vehicle dealer may not have another remedy to recover the purchase 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 would be a security interest that may be redeemed or disposed by the financing company. Therefore if the court's interpretation is allowed to stand, aggrieved consumers may have no ability to recover the money they spent on the purchase of 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.**

**If the court's decision is not corrected by the Legislature, bond rates could increase**

Currently Western Surety charges \$120/year for a motor vehicle surety bond. However, if the Hartford decision is not corrected, our liability and underwriting expenses could 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 the total amount of the bonds. Furthermore, because of the increased risk, we will have to implement stricter underwriting rules, which will result in coverage being refused to dealerships that do not have stellar credit ratings and financial backgrounds.

**Amendment**

We also respectfully request that you amend the bill by adding the words "or seller" after the word "buyer" on lines 30, 37 and 43 of page 8 of the bill. This amendment will allow auto auctions to continue to make claims under the bond if a vehicle purchaser defrauds them.

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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

JSB  
Attachment

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1 new license and fees shall not be required for a change of address of a  
2 supplemental place of business, with respect to a new vehicle dealer, to  
3 a different county but within the dealer's area of responsibility as defined  
4 in their franchise agreement.

5 (h) Every salesperson, factory representative or distributor represen-  
6 tative shall carry on their person a certification that the person holds a  
7 valid state license. The certification shall name the person's employer and  
8 shall be displayed upon request. An original copy of the state license for  
9 a vehicle salesperson shall be mailed or otherwise delivered by the divi-  
10 sion to the employer of the salesperson for public display in the em-  
11 ployer's established place of business. When a salesperson ceases to be  
12 employed as such, the former employer shall mail or otherwise return  
13 the original copy of the employee's state license to the division. A sales-  
14 person, factory representative or distributor representative who termi-  
15 nates employment with one employer may file an application with the  
16 director to transfer the person's state license in the name of another  
17 employer. The application shall be accompanied by a \$2 transfer fee. A  
18 salesperson, factory representative or distributor representative who ter-  
19 minates employment, and does not transfer the state license, shall mail  
20 or otherwise return the certification that the person holds a valid state  
21 license to the division.

22 (i) If the director has reasonable cause to doubt the financial respon-  
23 sibility or the compliance by the applicant or licensee with the provisions  
24 of this act, the director may require the applicant or licensee to furnish  
25 and maintain a bond in such form, amount and with such sureties as the  
26 director approves, but such amount shall be not less than \$5,000 nor more  
27 than \$20,000, conditioned upon the applicant or licensee complying with  
28 the provisions of the statutes applicable to the licensee and as indemnity  
29 for any loss sustained by ~~any person a consumer retail or wholesale~~  
30 ~~buyer of a vehicle by reason of any act by the licensee constituting~~ \_\_\_\_\_ or seller  
31 grounds for suspension or revocation of the license. Every applicant or  
32 licensee who is or applies to be a used vehicle dealer or a new vehicle  
33 dealer shall furnish and maintain a bond in such form, amount and with  
34 such sureties as the director approves, in the amount of ~~\$15,000~~ **\$30,000**,  
35 conditioned upon the applicant or licensee complying with the provisions  
36 of the statutes applicable to the licensee and as indemnity for any loss  
37 sustained by ~~any person a consumer retail or wholesale buyer of a~~ \_\_\_\_\_ or seller  
38 ~~vehicle by reason of any act by the licensee in violation of any act which~~  
39 constitutes grounds for suspension or revocation of the license. To comply  
40 with this subsection, every bond shall be a corporate surety bond issued  
41 by a company authorized to do business in the state of Kansas and shall  
42 be executed in the name of the state of Kansas for the benefit of any  
43 aggrieved ~~party consumer retail or wholesale buyer of a vehicle.~~ \_\_\_\_\_ or seller





## KANSAS AUTOMOBILE DEALERS ASSOCIATION

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March 7, 2001

To: The Honorable Chairman Les Donovan and Members of the Senate Committee on Transportation

From: Don McNeely, KADA President

Re: House Bill 2114

Chairman Donovan and Members of the Committee:

Good Morning, 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. I appear before you this morning in support of 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. It is important to note the purposes behind the requirement of posting a surety bond at the time of licensure is not just the enhancement of consumer protection. Just as important is the assurance of compliance with the various dealer licensing laws, which are found in 8-2410, and include such things as filing material false statements in an application, filing a false or fraudulent tax return, 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 at the time of enactment, by no means was it the sole reason or purpose.

HB 2114, as amended by the House Committee on Insurance, is the result of discussions between Western Surety and KADA, as well as, a recommendation from the Kansas Division of Vehicles that the surety bond amount be increased to \$30,000. It is also our understanding that an amendment will be offered this morning by the used car dealers and the auto auctions which will add "seller" to the named entities that may file a claim against a dealer's surety bond. KADA is supportive of the recommendation by the Division of Vehicles to increase the amount of the surety bond to \$30,000, as the current amount barely covers the average selling price of one used vehicle, and we are also supportive of the proposed amendment to add "seller" to those named entities who may file a claim against a dealer's bond. 2-1

800 S.W. Jackson, Suite 1110

SENATE TRANSPORTATION

COMMITTEE - DATE: 3-7-01

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Telephone (785) 233-6456 • Fax (785) 233-1462

On behalf, of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this morning. I would be more than happy to respond to any questions the Committee may have. Thank you.



# KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION



529 Humboldt, Suite K • Manhattan, Kansas 66502-6073  
Phone: 785-776-0044 • FAX: 785-776-7085  
e-mail: kiada@bearkan.com

To: Senator Les Donovan;  
Chairman Senate Transportation Committee

From: Jack Adolph  
Executive Director; Kansas Independent Automobile Dealers Association

Date: March 7, 2001

Re: Testimony In Support Of  
HB 2114 (As Amended)

Thank you for the opportunity to testify before you today. My name is Jack Adolph and I am the Executive Director of the KIADA. I stand in support of certain provisions of HB 2114, ask that you support the proposed amendments offered by Mr. Carlson, and urge you to consider the changes I am about to propose related to the increase in amount of the bond.

With respect to the amendment offered by Dan Carlson, we wholeheartedly support his efforts. The KIADA feels it is incumbent upon this Committee, in the sake of fairness, to allow the "seller" of a vehicle to become an eligible party to recover from a bond should a dealer commit an act constituting grounds for suspension or revocation of the dealer's license.

Of equal concern to the KIADA, is the language in the bill, (offered by the Kansas Department of Revenue), that would increase the amount of the bond from \$15,000 to \$30,000. We of course realize that the average cost of cars and trucks have increased dramatically since the original law was signed into law. But, we are also (unfortunately), very aware of the cyclical nature of the automobile business. My members are experiencing a severe slowdown in sales over the course of the last six months and are extremely resistant to any legislation that would increase the costs of doing business.

Some may feel that the costs related to the increase in the amount of the bond would be "negligible." I can tell you with certainty, that when you are a small business struggling to survive in a recession, there is no such thing as a "negligible" cost!

In short, we are strongly opposed to an increase in the amount of bonds as proposed in HB 2114. We believe that at some point the amount should increase, but feel that now is not the best time to force this additional expense onto an industry facing shrinking sales. With that Mr. Chairman we respectfully ask that you amend HB 2114 to reflect a change

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back to the original bond amount of \$15,000 already required by law. Again we also ask that you give favorable consideration to the amendment offered by Mr. Carlson related to the inclusion of "seller." Thank you for your time and I would be happy to stand for questions.

1 new license and fees shall not be required for a change of address of a  
2 supplemental place of business, with respect to a new vehicle dealer, to  
3 a different county but within the dealer's area of responsibility as defined  
4 in their franchise agreement.

5 (h) Every salesperson, factory representative or distributor represen-  
6 tative shall carry on their person a certification that the person holds a  
7 valid state license. The certification shall name the person's employer and  
8 shall be displayed upon request. An original copy of the state license for  
9 a vehicle salesperson shall be mailed or otherwise delivered by the divi-  
10 sion to the employer of the salesperson for public display in the em-  
11 ployer's established place of business. When a salesperson ceases to be  
12 employed as such, the former employer shall mail or otherwise return  
13 the original copy of the employee's state license to the division. A sales-  
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23 sibility or the compliance by the applicant or licensee with the provisions  
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25 and maintain a bond in such form, amount and with such sureties as the  
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27 than \$20,000, conditioned upon the applicant or licensee complying with  
28 the provisions of the statutes applicable to the licensee and as indemnity  
29 for any loss sustained by ~~any person a consumer~~ **retail or wholesale**  
30 **buyer of a vehicle** by reason of any act by the licensee constituting  
31 grounds for suspension or revocation of the license. Every applicant or  
32 licensee who is or applies to be a used vehicle dealer or a new vehicle  
33 dealer shall furnish and maintain a bond in such form, amount and with  
34 such sureties as the director approves, in the amount of ~~\$15,000~~ ~~\$30,000~~ ————— \$15,000  
35 conditioned upon the applicant or licensee complying with the provisions  
36 of the statutes applicable to the licensee and as indemnity for any loss  
37 sustained by ~~any person a consumer~~ **retail or wholesale buyer of a**  
38 **vehicle** by reason of any act by the licensee in violation of any act which  
39 constitutes grounds for suspension or revocation of the license. To comply  
40 with this subsection, every bond shall be a corporate surety bond issued  
41 by a company authorized to do business in the state of Kansas and shall  
42 be executed in the name of the state of Kansas for the benefit of any  
43 aggrieved ~~party consumer~~ **retail or wholesale buyer of a vehicle**. The



Sheila J. Walker, Director  
Division of Vehicles  
915 SW Harrison St.  
Topeka, KS 66626-0001



(785) 296-3601  
FAX (785) 291-3755  
Hearing Impaired TTY (785) 296-3909  
Internet Address: www.ink.org/public/kdor

Division of Vehicles

TESTIMONY

TO: Senate Transportation Committee Chair Les Donovan  
Members of the Senate Transportation Committee

FROM: Sheila J. Walker, Director of Vehicles

*Sheila J. Walker*

DATE: March 7, 2001

RE: House Bill 2114

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

This bill would provide protection to retail and wholesale buyers of vehicles. In its current form, the bill may not provide adequate protection for wholesale auto (sellers) from the wrongful acts of other dealers (buyers). We support the amendment that provides protection to sellers as well.

After researching other states, the Kansas Division of Vehicles found that our bond requirements are low compared to surrounding states (see attached map). Kansas dealers are currently required by law (K.S.A. 8-2404(i)) to maintain a bond in the amount of \$15,000. As noted in the bill, we recommend increasing the bond amount to \$30,000.

A \$15,000 bond costs between \$60 and \$338. In Kansas, a \$15,000 bond averages between \$110 and \$120 – that's about \$7 or \$8 per \$1,000. A \$30,000 bond would cost between \$70 and \$500.

In addition, we respectfully ask the committee to consider making the effective date of this bill January 1, 2002. The Division could then work on increasing all dealers' bonds during their annual renewal (next December and January), rather than having to work with them all again at mid-year when we're trying to do their salespersons' renewals.

We appreciate your consideration of this amendment.

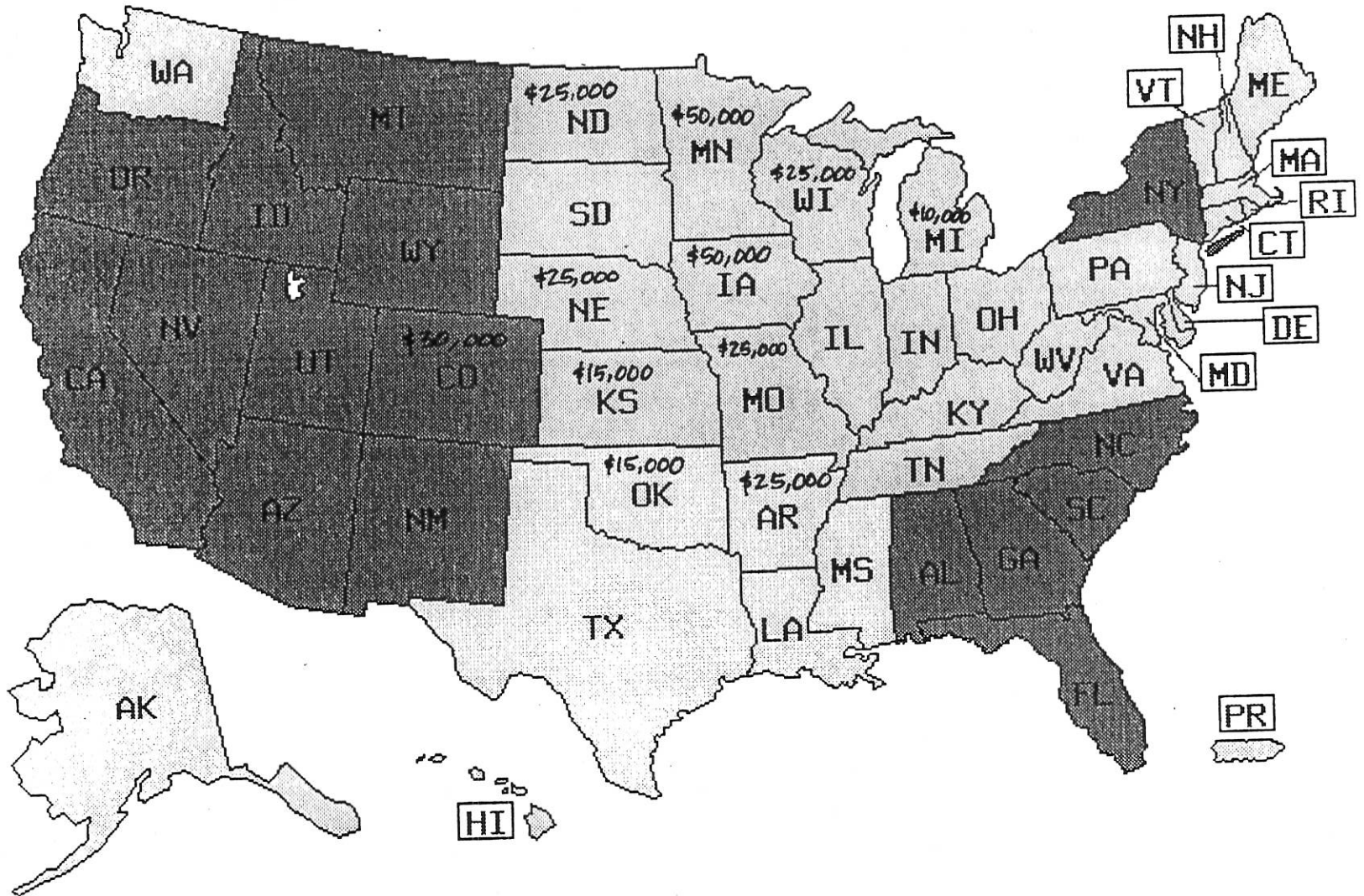
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SENATE TRANSPORTATION  
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ATTACHMENT: 4



KANSAS DIVISION OF VEHICLES  
JANUARY 25, 2001

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# Testimony Before the Senate Transportation Committee

## In Opposition to HB2114

March 7, 2001

My name is Dan Carlson and I am the President of Carlson Auction Service, Inc., the I-70 Auto Auction located in Topeka. Thank you for the opportunity to address the Committee and offer my strong opposition to HB2114. I would however, Mr. Chairman, offer suggestions for amendatory language that if adopted, would allow me to support the bill

In its current form, HB 2114 makes only a retail or wholesale "buyer" of a vehicle eligible to recover from the bond required of the dealer should the dealer commit an act constituting grounds for suspension or revocation of the dealer's license.

My concern about the bill stems from, what I hope is the "unintentional," exclusion of a "seller" of a vehicle as an eligible party to recover from a bond. I respectfully request that the bill be amended to include the word "seller" as an eligible party since the present language overlooks the tens of thousands of business-to-business, dealer-to-dealer sales transaction that take place in Kansas.

Further, it seems clear to me that passage of HB 2114 without the proposed amendment would create problems as it relates to "trade-ins," an integral part of the day-to-day business dealings of the automobile business.

Persons who trade-in a vehicle to a dealer, assign their interest in those vehicles to the dealer by assigning the certificate of title which identify them as "sellers." In exchange for the value of the trade-in, the "seller" receives value. It would appear then, that trade-ins are "sales" of vehicles to vehicle dealers.

It is common in the industry for trade-ins to be quickly sold to wholesale dealers at auctions such as mine, or to other retail dealers. Once they are sold, they become difficult to be physically recovered by aggrieved sellers who sold them to the original dealer. Such an aggrieved seller's only recourse is, usually, to try to get a judgment against the dealer, part of which judgment is represented by the value of the trade-in. Again, where such judgments include that value, under the current wording of HB 2114, those amounts could not be recoverable against the dealer's bond.

Arguably, if HB 2114 passes in its current form, it will result in the unequal treatment of two otherwise indistinguishable classes of vehicle buyers: buyers with trade-ins and buyers without trade-ins. Members of the former group will be effectively prevented from being made whole in actions they bring against vehicle dealers, since they cannot look to the dealer's bond for payment of judgments against dealers where a significant part of the judgment might be the

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value of the trade-in, the "selling" price. Compare this to members of the other group who will be able to obtain judgements and not be statutorily denied payment from the same source.

Because of the potential for unequal treatment of similarly-aggrieved parties, I have been advised that HB 2114 in its current form, would be unlikely to survive a court challenge.

In summary, I stand before you in opposition to the bill because of the arguments raised and concerns expressed related to the troublesome aspect that HB2114 will have on transactions involving a trade-in of a vehicle as part of a consumer vehicle purchase. Consumers' problems, as the Committee members know, are not just the problems of isolated individuals. Consumers' problems like the ones HB 2114 is bound to cause become problems for subsequent buyers of vehicles that have become the subject of litigation whether those later buyers are also consumers or car dealers. These problems can be anticipated and avoided.

I urge you to support my proposed amendment that would merely allow "sellers" to be included along with "retail or wholesale buyers," as an eligible party for the purposes of recovery from a bond. Thank you for your consideration and I will be happy to respond to any questions you might have.

Dan Carlson  
I-70 Auto Auction  
11048 SW Highway 40  
Topeka, KS 66615  
(785)478-4250

1 new license and fees shall not be required for a change of address of a  
2 supplemental place of business, with respect to a new vehicle dealer, to  
3 a different county but within the dealer's area of responsibility as defined  
4 in their franchise agreement.

5 (h) Every salesperson, factory representative or distributor represen-  
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11 ployer's established place of business. When a salesperson ceases to be  
12 employed as such, the former employer shall mail or otherwise return  
13 the original copy of the employee's state license to the division. A sales-  
14 person, factory representative or distributor representative who termi-  
15 nates employment with one employer may file an application with the  
16 director to transfer the person's state license in the name of another  
17 employer. The application shall be accompanied by a \$2 transfer fee. A  
18 salesperson, factory representative or distributor representative who ter-  
19 minates employment, and does not transfer the state license, shall mail  
20 or otherwise return the certification that the person holds a valid state  
21 license to the division.

22 (i) If the director has reasonable cause to doubt the financial respon-  
23 sibility or the compliance by the applicant or licensee with the provisions  
24 of this act, the director may require the applicant or licensee to furnish  
25 and maintain a bond in such form, amount and with such sureties as the  
26 director approves, but such amount shall be not less than \$5,000 nor more  
27 than \$20,000, conditioned upon the applicant or licensee complying with  
28 the provisions of the statutes applicable to the licensee and as indemnity  
29 for any loss sustained by ~~any person a consumer retail or wholesale~~  
30 buyer of a vehicle by reason of any act by the licensee constituting \_\_\_\_\_ , or seller  
31 grounds for suspension or revocation of the license. Every applicant or  
32 licensee who is or applies to be a used vehicle dealer or a new vehicle  
33 dealer shall furnish and maintain a bond in such form, amount and with  
34 such sureties as the director approves, in the amount of ~~\$15,000~~ \$30,000,  
35 conditioned upon the applicant or licensee complying with the provisions  
36 of the statutes applicable to the licensee and as indemnity for any loss  
37 sustained by ~~any person a consumer retail or wholesale~~ buyer of a \_\_\_\_\_ , or seller  
38 vehicle by reason of any act by the licensee in violation of any act which  
39 constitutes grounds for suspension or revocation of the license. To comply  
40 with this subsection, every bond shall be a corporate surety bond issued  
41 by a company authorized to do business in the state of Kansas and shall  
42 be executed in the name of the state of Kansas for the benefit of any  
43 aggrieved ~~party consumer retail or wholesale~~ buyer of a vehicle. The \_\_\_\_\_ , or seller

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