

## MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Gary Hayzlett at 1:30 P.M. on February 7, 2007 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Hank Avila, Kansas Legislative Research  
Bruce Kinzie, Revisor of Statutes Office  
Betty Boaz, Committee Assistant

Conferees appearing before the committee:

Don McNeely, President, KS Automobile Dealers Association  
Kathy Olsen Representing KS Bankers Association  
Thomas Steele, Tiger Financial Management Services, LLC

Others attending:

See attached list.

Vice Chairman Virgil Peck opened the Committee meeting. He opened the hearing on **HB 2373**.

**HB 2373 - Certificates of title, second lien.**

Vice Chair Peck recognized Don McNeely, President of the Kansas Automobile Dealers Association as the first proponent. Mr. McNeely said passage of **HB 2373** would limit the number of liens on a certificate of title in Kansas after July 1, 2007 to one. Current law allows for up to two liens on a certificate of title. According to Mr. McNeely (Attachment #1) this bill is needed to protect the purchasers of motor vehicles, including dealers and individuals, from having a lien attached to a certificate of title after a transaction for sale has been concluded. Mr. McNeely concluded by saying that the Kansas Automobile Dealers Association believes legislation such as **HB 2373** is not only appropriate, but absolutely necessary to protect the integrity of the motor vehicle title process for dealers and individual consumers alike. Mr. McNeely introduced Pat Barnes, General Counsel for the Kansas Automobile Dealers Association. Mr. Barnes spoke briefly to the Committee about the Uniform Commercial Code entitled, Article 9 and other related issues and the implications on this bill.

Chairman Hayzlett introduced Kathy Olsen representing the Kansas Bankers Association. According to Ms. Olsen (Attachment #2) the perfection of security interests is governed by a body of law under the Uniform Commercial Code entitled, Article 9. She said perfection is important with regard to a security interest in that it is how a lender protects itself against claims from competing creditors and other third parties. With regard to vehicles, the way a lender perfects its security interest is by getting its lien noted on the certificate of title representing that vehicle. She said this bill will not prevent a lender from taking a second lien on a vehicle, but it will prevent the lender from "perfecting" its second lien. In other words, a borrower may still obtain financing and use his or her vehicle as collateral, but the lender will not be able to perfect its security interest.

There were no other proponents of **HB 2373** so Chairman Hayzlett called for the first opponent.

Thomas Steele, Tiger Financial Management, LLC, Wichita, KS, said his company objects to **HB 2373** (Attachment #3) in its present form. He said the proposed amendments create internal inconsistencies which should be harmonized with the existing language of the statute. Mr. Steele suggested the wording, "...On or after July 1, 2007, only one perfected lien shall be taken or accepted..." According to Mr. Steele, without the correction the proposed bill requires a lender obtaining a second security interest on a motor vehicle to file the application for a lien on the vehicle then, two sentences later, prohibits that same filing.

There were no other opponents to this bill so the Chairman closed the hearing on **HB 2373**. The Chairman asked Mr. Steele and Mr. McNeely to meet after the Committee meeting to resolve their differences.

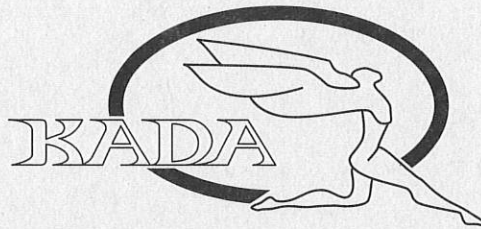
There being no further business before the Committee, Chairman Hayzlett adjourned the meeting. The next scheduled meeting will be on February 13, 2007 at 1:30 p.m. in Room 519-S.

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-7-09

NAME	REPRESENTING
Thomas Steele	Tiger Financial Mngt, LLC
Ken Gulenkant	KDOT





## KANSAS AUTOMOBILE DEALERS ASSOCIATION

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February 7, 2007

TO: The Honorable Gary Hayzlett, Chair  
And Members of the House Transportation Committee

From: Don McNeely, President

RE: HB 2373 - An Act concerning certificates of title; relating to liens on vehicles.

Good afternoon Chairman Hayzlett and Members of the House Transportation Committee. I am Don McNeely and I serve as the President of the Kansas Automobile Dealers Association. Accompany me today is Whitney Damron, our legislative counsel and Pat Barnes, our legal counsel, who you will address the committee after I conclude my remarks.

KADA stands before you today in support of HB 2373, which would limit the number of liens on a certificate of title in Kansas after July 1, 2007 to one. Current law allows for up to two liens on a certificate of title.

HB 2373 is needed to protect the purchasers of motor vehicles, including dealers and individuals, from having a lien attach to a certificate of title after a transaction for sale has been concluded.

This issue came to the attention of KADA in the spring of 2006 when several of our members in Sedgwick County market area traded for vehicles and paid off the primary lien only to be notified by the Kansas Department of Revenue at a late date that a second lien had been perfected on the vehicle. By that time, the vehicle, which had been traded in, had been sold, wholesaled or auctioned off, and the original seller was no longer available to remedy the situation. Under Kansas law a dealer is required to provide a title within 30 days of a transaction, which forced the dealers involved in these examples to pay off the outstanding second lien, which they were unaware of at the time of the original transaction, at their own expense, sometimes with accompanying interest and penalties.

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House Transportation  
Date: 2-7-07  
Attachment # 1

This problem can occur when a second lien is placed on a vehicle at the local level and the period of time it takes for the lien to be filed and ultimately perfected by the Kansas Department of Revenue.

When KADA was made aware of this issue last year, we contacted the Division of Motor Vehicles to see if there was any kind of administrative remedies we could implement to protect the purchaser of a vehicle and found there apparently was none available at this time.

Following those inquiries, we met collectively with the Kansas Department of Revenue Division of Motor Vehicles, Office of the State Bank Commissioner and the Kansas Bankers Association to attempt to craft a solution to this problem that is only going to expand as sub-prime motor lenders continue to expand their business in Kansas.

We explored the feasibility of a "real-time" lien verification system, but that proved impractical. The Department of Revenue is in the beginning stages of revamping their computer system that would include a real-time lien verification program, but that could take from 2-4 years or more to implement

In our review of this issue, we discovered that the State of Missouri prohibits a borrower from obtaining a title loan unless there is clear title (*Missouri Revised Statutes*, Chapter 367.527) and similar legislation is being introduced this year in several other states. We have patterned our legislative proposal after Missouri by limiting the number of liens in Kansas on a title to one, as current law allows for two liens to be perfected on a title.

Prior to the implementation of a paperless title system in Kansas, this was not an issue because a lien had to be physically affixed to the title for it to be valid and perfected. With a paperless electronic title, liens can cross in cyberspace, so to speak, and a lien can be lawfully attached to a title even after the vehicle has been transferred or sold.

Perhaps in the future, when the Department of Revenue has the opportunity to revamp its computer system there will not be a need for this kind of protection for the consumer and the Kansas dealers, as a real-time electronic data base could be accessed to ascertain the liens. However, at this juncture, the Kansas Automobile Dealers Association believes legislation such as HB 2373 is not only appropriate, but absolutely necessary to protect the integrity of the motor vehicle title process for dealers and individual consumers alike.

With the Committee's permission, I would like to ask our general counsel, Pat Barnes to explain the lien perfection process in more detail. After his comments, I would be pleased to stand for your questions. On behalf of the Kansas Automobile Dealers Association, I wish to thank you for your consideration of this legislation.



February 7, 2007

To: House Committee on Transportation

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2373: Second Liens on Vehicles

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of HB 2373. This bill amends the vehicle lien statute to effectively limit the number of liens which could be perfected against any vehicle to one.

The perfection of security interests is governed by a body of law under the Uniform Commercial Code (UCC) entitled, Article 9. Perfection is important with regard to a security interest in that it is how a lender protects itself against claims from competing creditors and other third parties. With regard to vehicles, the way a lender perfects its security interest is by getting its lien noted on the certificate of title representing that vehicle.

This bill will not prevent a lender from taking a second lien on a vehicle, but it will prevent the lender from "perfecting" its second lien. In other words, a borrower may still obtain financing and use his or her vehicle as collateral, but the lender will not be able to perfect its security interest (i.e., protect itself against the claims of competing creditors and other third parties).

We were unaware until late last summer that there was an interest on the part of some, in taking second lien on vehicles. Our concern stemmed from the fact that without "real time" recording of all liens, many original lenders will be unaware that another lien has been placed on the property unless and until foreclosure of the loan should occur. We believe that in most cases, the chances of both loans being paid successfully is reduced when there are two loans being secured by one vehicle.

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Attachment # 2

**Kansas Bankers Association**

Testimony on HB 2373

Page Two

Important to our industry is the proposed amendment on Page 5 of the bill which clearly states that refinancings are not subject to the restrictions of this bill. In many cases, when a lender refinances a vehicle loan, the lender will send in the paper work and pay the required fee before the first lien is actually released. So in theory, there could be a lapse time between when the refinancing lender's lien appears on the title and when the first lien is released. The exception on Page 5, lines 37-40, for refinancings will allow lenders to continue to conduct business as usual.

In conclusion, while we believe that the best answer to this issue is for liens to be recorded in "real time", that reality is not in the immediate future. As an alternative, we are supportive of HB 2373.

House of Representatives  
State of Kansas  
House Bill 2373  
Transportation Committee  
Hearing, February 7, 2007  
1:30pm – Room 519-S

Testimony of Thomas L. Steele  
Tiger Financial Management, LLC  
3527 North Ridge Road  
Wichita, Kansas 67205  
(316) 494-6537

Tiger Financial Management, LLC. is engaged in making loans, some of which are secured by automobile vehicles, in loan offices located in the Wichita, Hutchinson and Kansas City metropolitan areas.

Tiger Financial objects to HB 2373 in its present form. The proposed amendments to the statute KSA 2006 Supp. 8-135 create internal inconsistencies which should be harmonized with the existing language of the statute.

We suggest the following changes to HB 2373, Section 1 (c), subsection (5) and (6):

(5) ....*On or after July 1, 2007, only one perfected lien shall be taken or accepted.*.....

**Our Comment:** The entire proposed sentence can be deleted as it is redundant of the proposed language in subsection (6). Otherwise, please insert the work “perfected” as indicated. The insertion eliminates the any ambiguity in whether a motor vehicle would be the subject of a security interest that is not perfected. The Kansas Supreme Court case of *Kansas State Bank v. Overseas Motosport, Inc.*, 222 Kan. 26, 563 P.2d 414 (1977) makes it clear that a bank has the option as whether to not perfect or to perfect its security interest by filing a lien on the title certificate of the vehicle.

(6) ..... When a person acquires a security ~~agreement~~ **interest to be secured by a lien to be shown on the certificate of title** on a vehicle subsequent to the issuance of the original title.....

**Our Comment:** The suggested revision 1) uses proper commercial law language; 2) harmonizes the revised by the bill with the proposed change; and, 3) reaffirms existing law that all security interests do not have to be perfected by filing with the state. Without the correction the proposed bill requires a lender obtaining a second security interest on a motor vehicle to file the application for a lien on the vehicle then, in two sentences later, prohibit that same filing.

House Transportation  
Date: 2-7-07  
Attachment # 3