



# KANSAS AUTOMOBILE DEALERS ASSOCIATION

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February 7, 2023

To: The Honorable Jeff Longbine, Chairman and Members of the Senate Committee on Financial Institutions and Insurance

From: Pat Barnes, KADA General Counsel

Re: SB 44 - AN ACT concerning financial institutions; relating to cybersecurity; enacting the Kansas financial institutions information security act; requiring certain covered entities to protect customer information; authorizing the state bank commissioner to adopt rules and regulations; providing penalties for violations of such act.

Good morning, Chairman Longbine and Members of the Committee, I am Pat Barnes, General Counsel for the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas. I am accompanied today by KADA's President Don McNeely and Legislative Counsel Whitney Damron. I appear this morning in opposition to SB 44 as it is currently drafted.

Our view of SB 44 is that it would change the law by enacting a new Act in Kansas that would essentially be used to enforce what has become known under federal law as the "Safeguards Rule" regarding customer and other financial information. What you need to be aware is that this law as applied to vehicle dealers is already in effect and applicable to our members by virtue of the federal rules which are currently reserved to and enforced by the Federal Trade Commission ("FTC"). Additionally, we are regulated by numerous agencies already as to various aspects of our business and really do not need more. It constitutes expense that ultimately is price inflationary to consumers, serves no real purpose and is burdensome as applied.

In fact, when the FTC adopted the Expanded Safeguard Rule on party-line vote of 3-2 in September of 2021, Commissioners Noah Joshua Phillips and Christine S. Wilson wrote in their dissenting statement..."Regularly reviewing our rules to ensure that they address the current environment is an important part of the FTC's regular process. But rules have far-reaching and frequently unintended impacts in the real world; when imposing additional legal obligations in the rulemaking context, we must do so with great care. The amended Safeguards Rule replaces a rule that has worked well for 20 years, a rule that took a principle-based approach in order to provide financial institutions flexibility to determine the appropriate and realistic security safeguards for their organizations. The record before us at best fails to convince that the changes are necessary and at worst raises concern about the substantial costs and risks in imposing these amendments. Accordingly, we dissent"

We respectfully request you exempt us from the proposed state act because it renders the interpretation and enforcement of the rules potentially expansive and conflicting with how the Federal Trade Commission applies the law, and that commission is not in any way loose in either its application or interpretation. They do their job as far as we can tell. The exemption is easily added to this bill by

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simply adding an exemption for dealers who are licensed under K.S.A. 8-2402 et seq. which is the dealers and manufacturers licensing act and would in no way release us from the application of the laws currently in force which this Act seeks to add into state law.

Expanding this act to dealers would subject them to potentially byzantine regulations and enforcement by various agencies, including OSBC, because it creates the likelihood of varying regulatory requirements and interpretations which may be at odds with the FTC itself though under the guise of the same law. It could mean rules that are unpredictable and not necessarily reconcilable or operate in tandem. Additionally, and of more concern is this proposed Act could actually lead to rules and regulations which extend well beyond the current Safeguards Rule and it isn't limited in its scope in doing so. Agency action can often be different from one administrator to the next and between state and federal authorities. We think this also essentially extends a federal law to well beyond its intended use and scope. These are already extremely expensive laws to comply with and due to federal rules that expense is already incurred, but it could be much more in addition thereto with a state Act.

We have valid concerns about over-regulation and stacking laws that already exist particularly since we are deemed under certain federal laws to be financial institutions, but are not banks and our personnel do a good job of navigating regulations, but they can't have a lawyer on their sleeve to determine every vagary or question which may arise. We already have a lot of exposure from all sorts of regulatory and third parties, and the question becomes what will even more regulation and oversight accomplish?

Our concerns include:

- the potential for expense, over-regulation and unintended invasiveness of business operations (already costing dealers and customers thousands of dollars for existing compliance without adding more);
- that such rules would open the door to conflicting or additional overreaching;
- potential misuse of the regulatory process due to breadth and lack of specificity;
- the reality of how statutes intended for specific purposes are being sought to be stretched for opportunistic purposes to unintended uses where there is no guidance to stop it without expensive/extensive litigation (e.g., using unintended laws to seek penalties for routine or innocent mistakes of no effect);
- existing ability to enforce FTC, federal reserve, and others rules commonly exercised by state regulatory authorities (E.g., see the Revisor of Statutes comments to both the Kansas Consumer Protection Act and the Kansas Uniform Consumer Credit Code);
- liability already exists in civil law for failure to address cyber-security and is well known in the headlines. In the end there is ample reason to conclude that our members have adequate incentive to protect data and customer information.

Exempting our dealers is reasonable given the regulatory attention already placed upon us. In the end the question becomes how a regular person like dealer personnel are supposed to navigate all of these laws together with so many people taking shots at them or enabled to do it. It impedes commerce at some point and makes consumer inflation law driven rather than market driven but adds the two together.

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