

Approved March 18, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 14, 19 88 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Douville, Peterson and Vancrum, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Jerry Goodell, Kansas Bar Association
John Kuether, Washburn Law School
Jim Maag, Kansas Bankers Association
Bill Mitchell, Kansas Land Title Association
Carol Beard, Uniform Commercial Code, Secretary of State's Office
Richard D. Kready, KPL Gas Service Company, Director of Governmental Affairs
Bill Mason, Kansas Gas and Electric Company, EIDorado
Ralph E. Skoog, Counsel, Kansas Cable Television Association

The minutes of February 29 and March 1 were approved on March 9, 1988.

Hearing on S.B. 270 -- Capacity to sue or be sued

Jerry Goodell testified S.B. 270 provides that a partnership shall have the capacity to sue or to be sued as an entity itself and this provision is to be made a part of and supplemental to the Uniform Partnership Act.

The hearing was closed on S.B. 270.

Representative O'Neal moved and Representative Shriver seconded to report S.B. 270 favorable for passage and that it be placed on the consent calendar. The motion passed.

Hearing on S.B. 532 -- Concerning probate code, relating to qualifications of fiduciary

John Kuether testified this bill amends the probate code regarding qualifications of fiduciaries to provide that an oath shall not be required for any fiduciary of a trust where qualification of the fiduciary with the court has been excused, waived, or otherwise not required.

Jim Maag offered an amendment to specifically authorize bankers serving as conservators to invest in all deposits or accounts offered by their own bank, (see Attachment I).

The hearing was closed on S.B. 532.

A motion was made by Representative Shriver to adopt the amendment proposed by the Kansas Bankers Association. Representative Sebelius seconded the motion. The motion passed.

Representative Sebelius moved and Representative Snowbarger seconded to report S.B. 532, as amended, favorable for passage. The motion passed.

Hearing on S.B. 546 -- Concerning federal liens, relating to places of filing, duties of filing officers and fees

Bill Mitchell urged the Committee to recommend enactment of S.B. 546. The bill provides that notices of liens upon real property shall be filed in the Office of Register of Deeds of the county in which the real property is situated. The Senate Judiciary Committee amended the bill to provide that the notice of the lien shall remain filed for six years and increased the fees for various purposes to \$5.00.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 14, 1988

Carol Beard asked the Committee to recommend the bill for passage as it was amended by the Senate Judiciary Committee.

The hearing was closed on S.B. 546.

A motion was made by Representative Walker to recommend S.B. 546 favorable for passage. Representative Jenkins seconded the motion, and the motion passed.

Hearing on Substitute for S.B. 534 -- Concerning crimes and punishment, relating to theft of services.

Richard D. Kready urged the Committee to support Substitute for S.B. 534 which consolidates the significant language into one theft of services statute and permits two extraneous laws to be repealed, (see Attachment II).

Bill Mason testified Kansas Gas and Electric Company estimates they will recover \$400,000 from theft cases in the first year. He stated the recovery of this money is important to the honest rate payers who eventually must face higher costs if theft is not controlled, (see Attachment III).

Ralph Skoog testified this bill provides no new crime, no new penalties and establishes descriptions and definitions of prima facie facts and provides the opportunity through one clear statute for the Legislature to abolish the separate cable television theft of services statute as well as duplicative public utility theft of service statute in Chapter 17, (see Attachment IV). He recommended passage of this bill.

The hearing was closed on S.B. 534.

The Committee meeting was adjourned at 4:45 p.m. The next meeting will be Tuesday, March 15, 1988 at 3:30 p.m. in room 313-S.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 14, 1988

TO: House Judiciary Committee
FROM: James S. Maag, Director of Research
Kansas Bankers Association
RE: Amendment to SB 532

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association would like to propose an amendment to SB 532 which would clarify a presently confusing provision of K.S.A. 59-3019 relating to conservators rights and duties.

When a banker acts as a trustee under current Kansas law, the banker is allowed to deposit trust funds in the various forms of deposits available in that bank (see the attached provisions of K.S.A. 58-1203(c)(6)). However, when a banker acts as a conservator the provisions of K.S.A. 59-3019 (7)(G) are somewhat vague as to whether the banker can invest such funds in the available forms of deposit in the same bank. Over the years the practice has been for banker/conservators to invest funds in their own banks, but that practice was recently challenged in state district court.

The parties bringing the legal action contended that since K.S.A. 59-3019 did not specifically state that bankers acting as conservators could invest the funds in their own banks in the same manner that K.S.A. 58-1203 gave that authority to trustees it was therefore prohibited. The defendant bank contended the law was simply silent on the issue and that it was never intended that such investment by the conservator should be prohibited. The District Court of Lyon County on March 8, 1988, decided in favor of the bank on all counts.

However, our industry believes it would still be wise to amend the provisions of K.S.A. 59-3019(7)(G) to specifically authorize bankers ser-

ving as conservators to invest in all deposits or accounts offered by their own bank. This proposed amendment is attached to the testimony.

We have requested permission to offer this amendment from the Kansas Bar Association which was the primary sponsor of SB 532 and they have no objection to our request. The KBA obviously supports the other provisions of the bill as well.

Thank you for the opportunity to appear before the committee and explain our proposed amendment. Your favorable consideration will be greatly appreciated.

income or principal beneficiaries, or both, and in view of the manner in which persons of prudence, discretion and intelligence would act in the management of their own affairs.

History: L. 1968, ch. 202, § 1; L. 1983, ch. 49, § 85; May 12.

CASE ANNOTATIONS

1. If death of transferor makes no difference in rights of parties, transfer is not subject to inheritance tax. *In re Estate of Saroff*, 229 K. 446, 448, 625 P.2d 458.

58-1202. Powers of trustee conferred by trust or by law; prudent man rule. (a) The trustee has all powers conferred upon him or her by the provisions of this act unless limited in the trust instrument.

(b) An instrument which is not a trust under subsection (1) of K.S.A. 58-1201 may incorporate any part of this act by reference.

(c) Unless the instrument expressly states otherwise the prudent man rule, as expressed in K.S.A. 17-5004, shall apply as the standard for the exercise of the powers conferred upon a trustee by the uniform trustees' powers act.

History: L. 1968, ch. 202, § 2; L. 1972, ch. 212, § 1; July 1.

CASE ANNOTATIONS

1. Will incorporates "Uniform Trustees Powers Act." *McClary v. Harbaugh*, 231 K. 564, 565, 646 P.2d 498 (1982).

58-1203. Powers of trustees conferred by this act. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of powers including the powers granted by this act, a trustee has a duty to act with due regard to the obligation as a fiduciary.

(c) A trustee has the power, subject to subsections (a) and (b):

(1) To collect, hold and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(2) to receive additions to the assets of the trust;

(3) to continue or participate in the

operation of any business, partnership or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of such business, partnership or enterprise;

(4) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(5) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(6) to deposit trust funds in all available forms of deposit, including but not limited to, bank demand deposits, time deposits and savings deposits, including all such available forms of deposit at a bank operated by the trustee;

(7) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(8) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) to subdivide, develop or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(10) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(11) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(13) to vote a security, in person or by general or limited proxy;

(14) to pay calls, assessments and any other sums chargeable or accruing against or on account of securities;

(15) to sell or exercise stock subscription

or conversion right through a committee reorganization, consolidation or liquidation of other business enterprise;

(16) to hold a nominee or in other of the trust, subject K.S.A. 9-1607, and that title to the security, but the trustee nominee in connection held;

(17) to insure against damage against liability of sons;

(18) to borrow trust assets or other for the protection expenses, losses and the administration the holding or ownership for which advance trustee has a lien against the beneficiary;

(19) to pay or a claim by or against, arbitration lease, in whole or long to the trust claim is uncollectible;

(20) to pay tax sation of the trust incurred in the collection and protection;

(21) to allocate expense to either trust provided by law, serves out of income, lesence or amortization mineral or timber;

(22) to pay a beneficiary under liability to the trust the beneficiary or use of the beneficiary representative appointed none, to a relative;

(23) to effect and money in dividends and to adjust valuation;

(24) to employ neys, auditors, agents, even if the

in (A) such securities as are proper for the investment of trust funds, including securities approved by the comptroller of the currency of the United States for the investment of trust funds by national banks; (B) direct obligations of this state, any county or city or school district in this state; (C) direct obligations of the United States government, and obligations, the interest and principal of which are both unconditionally guaranteed by the United States government; (D) legally issued notes of the owner of unencumbered real property located in this state secured by first mortgage or deed of trust thereon, if the total debt secured by such encumbrance does not exceed fifty percent (50%) of the actual cash value of such real property at the time of such investment; (E) the entire fee simple title to real estate or an interest therein, and also, with the approval of the court, the conservator may acquire title to real estate whenever necessary to reasonably protect the investment or interest of the conservatee in such property. The title to real property acquired by the conservator shall in all cases be taken in the name of the conservatee; (F) shares or savings deposits in a federally insured savings and loan association; (G) ~~time deposits or in a savings account of an insured bank within the state of Kansas~~ (H) shares of investment trusts or mutual funds; (I) a contract or contracts for annuities or for life, health or accident insurance on the person of the ward, or of another in whom the ward has an insurable interest, or a combination of any such contracts, as long as any such contract is approved by the court, payable to the ward or to such ward's estate and is in the usual form and is issued by an insurance company authorized to do business in the state of Kansas. Any such contract shall reserve the right in the ward to change the beneficiary thereof after termination of his or her disability or incompetency; (J) any other investment as may be otherwise now authorized by the laws of the state of Kansas.

insured
accounts
in a
including such deposits
or accounts in a bank
operated by a conservator;

59-3019. Conservator; rights and duties. A conservator shall be subject to the control and direction of the court at all times and in all things. Said conservator shall (1) prosecute and defend for the conservatee; (2) sell assets of the estate when the interests of the conservatee and the estate require the sale thereof; (3) pay the reasonable charges for the support, maintenance, and education of the conservatee in a manner suitable to the conservatee's station in life and the value of the conservatee's estate; but nothing herein contained shall release a natural guardian from obligations imposed by law as to the support, maintenance, and education of such guardian's minor children; (4) pay all just and lawful debts of the conservatee and the reasonable charges incurred for the support, maintenance, and education of the conservatee's spouse and children; (5) possess and manage the estate, collect all debts and claims in favor of the conservatee, or with the approval of the court compromise the same; (6) possess and manage any going business that the conservatee was managing and operating prior to appointment of a conservator, when said conservator deems it in the best interest of the conservatee's estate; and (7) invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate,

nation thereof, in a reasonable amount for the benefit of the conservatee as such conservatee's interest may appear.

History: L. 1965, ch. 347, § 19; L. 1972, ch. 220, § 1; L. 1974, ch. 99, § 2; L. 1976, ch. 244, § 2; July 1.

Testimony Before
HOUSE JUDICIARY COMMITTEE

Substitute Senate Bill 534
Theft of Services

By Richard D. Kready
KPL GAS SERVICE
Director of Governmental Affairs

March 14, 1988

KPL Gas Service is in full support of the Substitute for Senate Bill 534, a bill which consolidates three statutes dealing with theft of (utility) services.

As originally introduced, SB 534 proposed to classify the penalty in KSA 17-1921, dealing with tampering and theft of electricity. While this law has been very beneficial throughout the past 50 years, some prosecutors recently have expressed reluctance to pursue the penalty under KSA 17-1921 because they don't consider a maximum fine of \$100 to be adequate justification for the amount of time it takes them to handle the case. Other prosecutors have questioned the propriety of having this law in the corporate section (chapter 17) of the Kansas statutes. They have suggested that penalties for this "crime" should be in the criminal statutes (chapter 21).

To address both of those problems, the Senate Judiciary Committee adopted substitute language to amend KSA 21-3704, a criminal statute dealing with theft of services (including electricity) which prescribed class A misdemeanor and class E felony penalties. Those amendments primarily copy two items from the earlier mentioned statute (KSA 17-1921). The Committee also added cable television service language from KSA 21-3752 so

Attachment II

this single statute will clearly cover this type of theft for any service.

To utilities, the most valuable part of KSA 17-1921 has been the prima facie evidence clause which allows for prosecution of thieves when we find evidence of the tampering and/or theft, even though we haven't actually witnessed them making the illegal contact with our facilities. The Senate agreed it is imperative that we continue to have the prima facie evidence clause since it is not practical for companies such as KPL Gas Service to post a 24-hour guard to watch for illegal activity near each of our 1.3 million meters. For this reason, a similar prima facie evidence clause is included as subsection 4 of this substitute bill.

The other amendment taken from KSA 17-1921 is a restatement of language used to define the term "tampering." Although KSA 21-3704 already included "mechanical tampering" as an illegal method for obtaining service, that term had not previously been defined in this chapter. The substitute bill strikes the word "mechanical" so that all three types of tampering previously included in the cable television statute (mechanical, electrical and electronic) can be covered by one definition.

Someone on the KCC staff has expressed concern that the wording in Substitute SB 534 may inadvertently broaden the definition of tampering on line 44 where the bill addresses "service which has not been authorized or measured." Her point is that someone might interpret this language to define "unauthorized" use of electricity as "tampering." If

interpreted that way, utilities could use this portion of the law to prosecute people who take service under a fraudulent name. That certainly has not been our intention. Furthermore, such language is not needed, since there are other statutory provisions to deal with that issue. The word "authorized" was added because most local telephone and cable television service is billed monthly, but not metered like electricity or natural gas. If the committee feels it is necessary to further clarify the tampering definition in subsection 3(d), the language could read: "knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity or natural gas which has not been measured; or any telephone or cable television service which as not been authorized."

In summary, Substitute SB 534 proposes to amend KSA 21-3704 to include a "tampering" definition and prima facie evidence clause similar to language which has existed for more than 50 years as KSA 17-1921 (theft of electric service). That 1937 statute can then be repealed, as can KSA 21-3752 (theft of cable television services) since this substitute bill proposes to make all of these services subject to the same provisions. KPL Gas Service urges your support for Substitute SB 534 which consolidates the significant language into one theft of services statute and permits two extraneous laws to be repealed.

I'll be happy to explain our position in greater detail and to respond to your questions.

TESTIMONY

HOUSE COMMITTEE ON JUDICIARY

MARCH 14, 1988

MY NAME IS BILL MASON, CENTRAL REGION MANAGER FOR KANSAS GAS AND ELECTRIC COMPANY IN EL DORADO. FOR THE PAST FEW MONTHS I HAVE SERVED AS THE CHAIRMAN FOR A FRAUD AND THEFT TASK FORCE. OUR GROUP WAS CHARGED WITH INVESTIGATING AND EVALUATING THE EFFECTS OF FRAUD AND THEFT PROBLEMS WITHIN OUR COMPANY.

IN A REPORT IN ELECTRICAL WORLD IN MAY, 1982, THE EDISON ELECTRIC INSTITUTE SECURITY COMMITTEE REPORTED THAT .5 PER CENT OF ALL UTILITY CUSTOMERS ARE SUSPECTED OF STEALING AND THAT TOTAL LOSSES TO INDIVIDUAL UTILITIES COULD BE AS HIGH AS 2.5 PER CENT OF REVENUES. THAT WOULD RELATE TO AS MUCH AS 12.5 MILLION DOLLARS PER YEAR FOR KG&E. ACCORDING TO THEIR RESEARCH, THE MINIMUM AMOUNT OF .5 PER CENT OF REVENUES WOULD BE NEAR 2.5 MILLION DOLLARS. THESE ARE CERTAINLY SIGNIFICANT FIGURES - BUT IS THIS A TRUE ASSESSMENT FOR KANSAS? OUR EXPERIENCE WAS SUPPLEMENTED BY OUR OWN FIELD AUDITS WHICH HAVE VERIFIED THAT THE PROBLEM IS SIGNIFICANT.

WE ARE IN THE PROCESS OF STARTING A THEFT AND FRAUD DEPARTMENT AND WILL AGGRESSIVELY SEARCH FOR INSTANCES OF THEFT. THEFT IS TO TAMPER WITH METERING AND/OR WIRING WITH INTENT TO STEAL. FRAUD IS RECEIVING A SERVICE BY USING INACCURATE NAMES AND/OR OTHER INFORMATION WITH INTENT TO STEAL OR THEFT BY DECEPTION.

Attachment III

OUR FIRST EMPHASIS WILL BE ON THE PROTECTION AND RECOVERY OF REVENUE; SECOND, THE DETERRENT TO THEFT, AND THIRDLY, THE PROSECUTION OF OFFENDERS. CRIMINAL PROSECUTION IS NOT COST EFFECTIVE BUT IT IS AN EFFECTIVE DETERRENT. THE BENEFITS OF PROSECUTION INCLUDE STOPPING THE INCENTIVE TO STEAL, DISCOURAGING THE SECOND OFFENDER, THE PROTECTION OF OTHER HONEST RATE PAYERS AND THE SAFETY OF OUR CUSTOMERS.

ONE OF THE MAIN PROBLEMS ENCOUNTERED IS STATUTE KSA ~~17~~-1921 THAT CARRIES A PENALTY OF NOT MORE THAN \$100 FOR THEFT OF ELECTRIC SERVICE, REGARDLESS OF THE AMOUNT - \$100 OR \$10,000.

BECAUSE OF THE SIGNIFICANT INCREASE IN UTILITY THEFT NATIONWIDE, MOST UTILITIES HAVE FIRMED UP THE PHILOSOPHY OF PROTECTING THEIR REVENUE BY AGGRESSIVELY PROSECUTING THEFT CASES. KANSAS COMPANIES ARE NO DIFFERENT BUT THEY ARE HANDICAPPED BY A STATUTE WITH GROSSLY INADEQUATE PENALTIES. THIS MAKES PROSECUTION ALMOST IMPOSSIBLE.

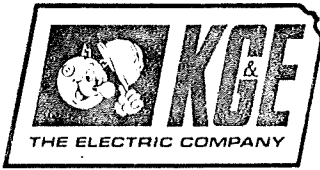
OUR PROJECTIONS INDICATE RECOVERIES OF \$700,000 IN THE FIRST YEAR - \$400,000 WOULD COME FROM THEFT CASES AND \$250,000 FROM FRAUD RECOVERIES. THESE RECOVERIES ARE IMPORTANT TO OUR COMPANY BUT THEY ARE ALSO IMPORTANT TO OUR HONEST RATE PAYERS WHO EVENTUALLY MUST FACE HIGHER COSTS IF THEFT IS NOT CONTROLLED.

THE RECOVERY AMOUNTS ARE SIGNIFICANT BUT THEY WILL PROBABLY NOT BE A REALITY WITHOUT ADEQUATE CRIMINAL PENALTIES. THE AFOREMENTIONED \$700,000 DOES NOT INCLUDE ANY MONIES FOR DETERRENCE. THIS VERY EASILY COULD BE SEVERAL TIMES THE VALUE OF THE RECOVERIES. THEFT OF SERVICES HAS AN IMPACT ON THE PUBLIC SECTOR AS WELL DUE TO THE LOSS OF FRANCHISE AND SALES TAXES ON THE STOLEN AMOUNTS.

WHILE I HAVE ONLY SPOKEN TO OUR SITUATION AT KG&E, ALL UTILITIES AND UTILITY RATE PAYERS IN THE STATE WILL BENEFIT FROM A STRONGER CRIMINAL PENALTY.

WE URGE YOU TO SERIOUSLY CONSIDER THE PASSING OF A SUBSTITUTE FOR SENATE BILL 534.

THANK YOU.



Kansas Gas and Electric Company News Release

Contact:

Bob Rives
Group Vice President
or
Lyle Koerper
Manager Corporate Communications

Phone:

(316) 261-6455

(316) 261-6207

March 10, 1988

Immediate Release

"We believe this program will benefit our customers. There is no question that cost savings will help hold down customer costs."

This is how Bob Rives, Kansas Gas and Electric Company group vice president, explains the benefits expected from a new theft and fraud work group the utility is establishing.

"National survey findings indicate that at least \$3 million a year is being lost in our area because of theft of electrical service," Rives said.

He pointed out that in Wichita alone, in 1986, fraud cases involved a potential loss of \$600,000. Present procedures cut the actual loss to \$400,000.

A recent field check in Wichita of residential electric meters indicated as many as 5,000 could be suspect--meter seals were broken, holes drilled in the meter, or meters not accessible to KG&E readers.

"Having 5,000 meters suspect does not mean that theft of electricity has or is taking place," Rives said. "But, each case needs to be investigated."

Rives explained that the new theft and fraud department will eventually be staffed by eight employees transferred from other KG&E departments. Within the first 12 months of full operation, the group will recover an estimated \$700,000.

Page two

"In addition to recovering stolen money, we believe vigorous preventive measures including a major public information effort will discourage others from stealing. Potential savings is in the millions of dollars." Rives said.

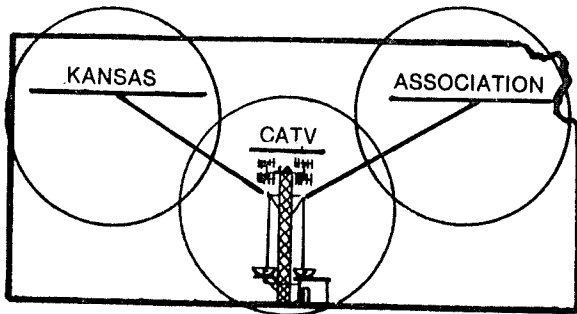
Rives emphasized that although the company is working on the premise that thieves should be caught and dealt with under due process of law, KG&E will not have any police power.

"We recognize a responsibility to prevent theft and fraud because it burdens the majority of our customers who are honest," Rives reported. "Any retail store or outlet must take prudent steps to prevent theft and catch those who steal just as employers must protect honest employees by identifying those who are dishonest."

KG&E is currently staffing the new department that will be fully operative this fall. Key managers will be company employees familiar both with the technological aspects as well as experienced in meeting customer concerns.

Rives concluded, "Our product is electricity, but our business is serving customers. We have investigated and pursued electric service theft and fraud for years. We now believe that additional steps are needed to prevent a major loss that penalizes honest customers who conscientiously pay for their electric service."

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P.O. Box 829
Junction City, KS 66441
TEL: 913/762-2570

**Testimony of the Kansas CATV Association
In Support of
Senate Substitute 534 as Amended
Before Kansas House of Representatives
Judiciary Committee**

3:30 P.M., Monday, March 14, 1988

Mr. Chairman and Members of the Committee:

The Kansas CATV Association is a trade association representing most of your local cable television service companies which provide cable television service to more than 60% of the residential households in the State of Kansas. Cable television service is provided by agreement between the cable television company and city or county government, which authorizes their use of the public ways in distributing the signals. The agreements are subject to substantial federal public policy standards and in Kansas the services are subject to sales tax on the gross revenues, as well as "franchise fees" payable to the local governmental entity of not more than 5% of the gross revenues. Most agreements are 15 years in length. I attach a copy of a list of the officers and members of the Board of Directors of the Association.

In 1976 this Legislature passed a theft of cable television service statute which appears in the Kansas Statutes as K.S.A. 21-3752. The problem persists and audits and other efforts to evaluate the nature and extent of the problem of theft of cable television services indicate that it continues to be a very substantial problem wherein the sales tax and franchise amounts that are being lost are estimated each to be in excess of \$100,000.00 payable to the state and local governments. We attach a report of the National Cable Television Association dated February 1987, entitled Unauthorized Reception of Cable Programming, the Nature of the Problem. The nationwide problem with reference to prosecution and enforcement of the cable company and local government rights to revenue from cable television service is hampered to some extent by the hesitancy of prosecutors to proceed in an area where they are not fully comfortable based on the conclusionary statutory description. As a result, many states have proceeded to carefully consider the problem and have adopted some presumptions, inferences, or descriptions of prima facie facts in order to obtain better cooperation from

Attachment IV

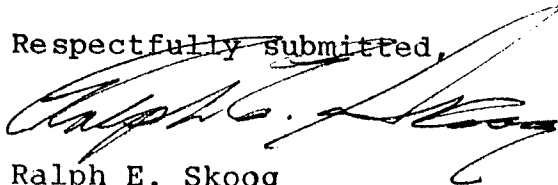
House Judiciary Committee
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prosecutors. A number of states report that with such provisions in the statute they can obtain better voluntary compliance with the law by reason of the statute being more understandable to the lay public. In 1987 the Senate Local Government Committee introduced the Uniform Cable Television Theft of Services statute for consideration by the Senate. The Bill was held over and early in this session after consultation with the Senate Sub-Committee which faced similar concerns from utilities and other theft of service issues, the Bill before you was passed.

It provides no new crime; no new penalties; establishes descriptions and definitions of prima facie facts and provides the opportunity through one clear statute for the Legislature to abolish the separate cable television theft of services statute as well as duplicative public utility theft of service statute in Chapter 17.

This Association supports the additional amendment clarifying the purpose of the original language "authorized or measured" and urges your support for the Bill as amended.

Respectfully submitted,



Ralph E. Skoog
Counsel

RES:bab
Attachments

KANSAS CABLE TELEVISION ASSOCIATION

1987
ASSOCIATION OFFICERS

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VICE PRESIDENT

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Ralph Skoog
Legal Counsel
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Topeka, KS 66603
913/235-3415

Date of election of present officers.....March, 1987
Usual site of association meetings.....Topeka, KS-Wichits,K

meta



**National
Cable Television
Association**

UNAUTHORIZED RECEPTION OF CABLE AND SATELLITE PROGRAMMING

The Nature Of The Problem, Its Effects, And The Need For Legislation

Prepared by
Office of Cable Signal Theft
National Cable Television Association

February 1987





UNAUTHORIZED RECEPTION OF CABLE AND SATELLITE PROGRAMMING

NATURE OF THE UNAUTHORIZED RECEPTION PROBLEM

In order to fully understand the nature of the unauthorized reception of cable services, it is important to break the problem down into its component parts. Unauthorized reception of cable services can be classified in two categories: (1) passive, and (2) active. Active unauthorized reception, or "piracy", can be further subdivided into consumer and commercial sub-classifications.

"Passive" unauthorized reception takes the form of reception by consumers of basic and premium cable services which results from internal cable operator procedures. In this sense, the consumers are really not culpably intending to violate any laws. The two most common instances of "passive" unauthorized viewership arise from improper disconnect procedures and the failure to properly enter a work-order.

"Active" unauthorized reception can occur at the consumer and commercial levels. Active consumer piracy occurs where individuals knowingly, and willfully, make illegal physical connections to the cable system or tamper with reception equipment in order to bypass cable system security, thereby enabling the consumer to "intercept or receive" cable services without payment of the lawful compensation. At the commercial level, piracy includes unauthorized reception as well as the manufacture and distribution of illegal decoder devices. Unauthorized commercial reception occurs in the same manner as individual consumer unauthorized reception by the making of a physical connection to the cable system or the use of an illegal or tampered reception device. However, because the reception of cable programming is in a commercial establishment, such reception results in financial gain to the proprietor. The typical violation here occurs in bars and hotels. There exists another class of active commercial pirates: those who are involved in the manufacture, sale and distribution of equipment which is intended to defraud cable operators of subscription fees. These cable decoder pirates, in many cases, facilitate the commission of active consumer and active commercial unauthorized reception by providing the illegal cable decoder.



THE EFFECTS OF UNAUTHORIZED RECEPTION

In 1983, Showtime/The Movie Channel, a national pay cable supplier, conducted a research study into the causes and effects of unauthorized reception of cable services. Showtime/The Movie Channel found that, on a national basis, unauthorized reception costs the cable industry nearly \$897 million annually.¹ The research methodology involved polling a sampling of cable operators across the nation. The conclusions are based on relatively simple mathematical calculations:

30,000,000 basic cable subscribers in 1983
12.3% unauthorized hook-ups receiving basic and pay services = 3,690,000
5% tampered/defeated decoders receiving pay services only = 1,500,000

Nationwide revenue loss:

3,690,000 x \$17.00 x 12 = \$752,760,000
(# of illegals (avg. bill) (months)
basic & pay)

1,500,000 x \$ 8.00 x 12 = \$144,000,000
(# of pay (avg. pay (months)
only illegals) rate)

TOTAL: \$896,760,000

Showtime/The Movie Channel's research also concluded that 47 percent of the unauthorized reception problem was attributable to "passive" problems resulting from cable operator error. The remaining 53 percent was the direct result of "active" piracy. Of the total problem, 14 percent was attributable to organized decoder rings.

In 1986, NCTA's Office of Cable Signal Theft revisited the Showtime/The Movie Channel research. Based on today's cable marketplace, approximately \$1.4 billion is lost to the cable industry.

37,124,000 basic cable subscribers in 1986²
12.3% unauthorized hook-ups receiving basic and pay services = 4,566,252
5% tampered/defeated decoders receiving pay services only = 1,856,200

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1. Showtime/The Movie Channel research, used with permission.
 2. Estimated by Paul Kagan Associates, Inc., used with permission.

Nationwide revenue loss:

4,566,252 x \$21.56 ^{2/} x 12 = \$1,181,380,717
(# of illegals (avg. bill) (months)
basic & pay)

1,856,200 x \$10.51 ^{2/} x 12 = \$ 234,103,944
(# of pay (avg. pay (months)
only illegals) rate)

TOTAL: \$1,415,484,661

Based on Showtime/The Movie Channel's finding that 14% of all revenue loss is attributable to illegal decoder distribution rings, approximately \$200 million is lost annually to the cable industry as a result of the these pirates' plundering.

Unauthorized reception costs the cable industry over \$1.4 Billion annually in lost revenues. It also has the effect of eroding investor confidence in the cable industry.³ In the market for cable systems, investors establish the market value of a cable system by multiplying the number of paying cable subscribers times a factor of approximately \$1,500 per subscriber.⁴ Assuming that 30 percent of the unauthorized viewers could be converted to paying status once detected, this represents approximately \$1.7 billion loss in equity value to the cable industry.

But the effects of illegal decoder sales and other forms of cable piracy are felt beyond the bottom line of the cable industry. In cable systems where the sale of illegal decoders flourishes, the lost cash flow negatively impacts the cable system operator's ability to maintain a high level of service quality. It also affects the cable system's ability to reinvest proceeds in the development of programming for the cable system.

Further, the proliferation of unauthorized devices in the cable system can prove detrimental to the technical integrity of the cable system. The problems manifest themselves in "noise" on the system. Such "noise" lessens the quality of the cable service for those customers who are legitimately paying for it. It also results in "egress." This is signal leakage which can interfere with FAA and other radio frequencies used by the public.

3. Showtime/The Movie Channel research.

4. Paul Kagan Associates, Inc. estimates that the average price for subscriber was \$1,428. Cable TV Investor, November 28, 1986.

The manufacture, sale and distribution of illegal cable decoding equipment is also detrimental to the program distribution mechanism. This mechanism works as follows. Programming produced in Hollywood and elsewhere is sold to program suppliers such as Home Box Office, Showtime/The Movie Channel, ESPN and The Disney Channel. In some instances, original programming may be produced by the supplier itself. These program suppliers in turn distribute this programming via satellite to cable system affiliates across the country. The cable system affiliates in turn sell these services to individual subscribers for a monthly fee. When a decoder pirate sells an illegal black box in the marketplace, it results in lost revenue to the cable system, as well as to each of the participants in the distribution chain.

Beyond the direct economic injury suffered by the cable industry, the sale of decoders translates into lost dollars for states and their political subdivisions which often tax cable systems based on gross revenues. The consumer who purchases an illegal decoder device is also defrauded of the money used for the purchase. In many instances, the defrauded consumer is unaware that the purchase, and use of such an unauthorized device, can subject him or her to criminal or civil liability under both state and federal laws.

THE NEED FOR STATE LEGISLATION IN THE AREA OF CABLE AND SATELLITE PIRACY

Along with the explosive growth of cable television and the direct to home satellite cable programming in the 1980s has come an expansive growth in piracy of both cable and satellite signals. As mentioned previously, National Cable Television Association's (NCTA's) Office of Cable Signal Theft (OCST) estimated that in 1986 over \$1.4 billion has been lost this year as a result of unauthorized viewership.

The cable industry has taken significant steps to police its own internal problems. Many cable operators have offered amnesty to those unauthorized viewers who have voluntarily come forward. A large number of cable companies have also conducted full-scale tap audits of their cable systems to detect unauthorized viewership and correct the problems by disconnecting unauthorized viewers, or converting them to paying status. These efforts have had a significant impact on reducing "passive" unauthorized reception.

But where individuals and commercial establishments continue to willfully defraud cable television companies through "active" forms of unauthorized reception, the industry must be able to turn to the courts. Many cable operators are finding that federal law enforcement officials are often unable to help them because of other pressing priorities, while state law enforcement agencies may not have the resources to be of assistance. Consequently, there is a need for a "dual enforcement mechanism."

The Cable Communications Policy Act of 1984 prohibits both satellite and cable piracy. And since federal law does not preempt in this area, 41 states already have laws on the books covering some of the illegal forms of "active" unauthorized reception described above. But nine states (Delaware, Kentucky, Maine, Mississippi, North Dakota, Utah, West Virginia, Wisconsin and Wyoming) and the District of Columbia still do not have cable-specific theft of service statutes. For those states that do have cable-specific theft of service laws, many of them have not kept pace with the development of new types of cable theft, or have penalties which are not stringent enough to act as a deterrent against cable theft. Moreover, no states, of which OCST is aware, specifically prohibit satellite piracy.

Consequently, OCST has developed a Uniform State Law which would cover both satellite and cable piracy. With the assistance of two Washington, D.C. law firms, Pierson, Ball and Dowd, and Fleischman and Walsh, OCST crafted a substantial piece of legislation which can be used by states, or their political subdivision as a model for passing new legislation or amending existing laws.