

Approved 4-25-89 Ginger Barr, Chm  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at  
Chairperson

12:36 ~~xxx~~/p.m. on March 29, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Mary Torrence, Revisor of Statutes Office  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI)  
Jack Paradise, Jayhawk Plastics  
Fred Meek, Meek's Inc.  
Larry Klenda, Klenda, Mitchell, Austerman & Zuercher Attorneys  
Ted Vlamis, Pioneer Balloon  
Molly Hundley, Multi-Service Corp.  
Jim Yonally, National Federation of Independent Business (NFIB)  
Terry Harmon, Kansas State Historical Society  
Chris Wilson, Kansas Grain & Feed Association  
John Wine, Assistant Secretary of State

SB 86

Representative Sebelius moved to report the bill favorably and request it be placed on the consent calendar. The motion was seconded by Representative Ensminger and carried on a voice vote.

SB 87

Representative Sebelius moved to report the bill favorably and request it be placed on the consent calendar. The motion was seconded by Representative Douville and carried on a voice vote.

SB 91

Representative Peterson briefly discussed the following conclusions drawn from the hearings on the bill:

1. the apparent question as to whether this really is a parental consent bill;
2. it is not clear when the minor comes in contact with the attorney;
3. the serious question of constitutionality; and
4. the likelihood of another review of the issue next year following the Supreme Court's ruling on Roe vs. Wade.

In view of the above, he moved to report the bill adversely, seconded by Representative Roper. Representative Long stated support for the bill but acknowledged its difficulties and called it unworkable in its present form. He made a motion to table the bill until March 1, 1990, permitting time for the committee to review the bill following the Supreme Court's decision. Representative Aylward seconded the motion which carried on a voice vote.

SB 243

Chairman Barr explained that other committees were also meeting requiring a number of the members to have to leave. She suggested conferees limit their testimony and stated all conferees would be heard with committee questions and discussion to follow.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 12:36 ~~xxx~~/p.m. on March 29, 1989.

Terry Leatherman explained that Kansas is only one of three states where corporations' balance sheets from annual reports are open for anyone to view, copy or analyze. The bill would permit some Kansas corporations to place their balance sheets in a confidential file held by the Secretary of State, Attachment No. 1.

Jack Paradise listed the following to support the bill:

1. Each report may be obtained from the Secretary of States's office for a fee of \$2 - seemingly taxpayers underwrite daily operating expenses of a major corporate credit rating company and others.
2. Kansas companies can divert their tax dollars by setting up out of state holding companies.
3. The accessibility of the balance sheets provides an unfair advantage to competitors, Attachment No. 2.

Fred Meek spoke as a proponent of the bill citing the unfair advantage to competitors, Attachment No. 3.

Larry Klenda restated some of the previous arguments. In addition, he cited the annual report as a tax return, traditionally confidential information, and emphasized the bill applies only to corporations with a net worth of \$5,000 or 20% of its assets; 35 or fewer stockholders; and never having been involved in bankruptcy, Attachment No. 4.

Ted Vlamis addressed arguments presented by opponents at the hearings in the senate:

1. Corporations "earn" the right to pay higher taxes, make capital investments and increase employment.
2. Only 25% of the requests for reports were from businesses other than the major corporate credit rating firm.
3. Two consecutive balance sheets could reveal detailed sensitive corporate information, Attachment No. 5.

Molly Hundley was a proponent of the bill stating no valid public interest is served. She suggested Section 1(a)1 be reviewed as it is not appropriate to all industries, Attachment No. 6.

Jim Yonally emphasized the corporation franchise tax owed is based on a corporation's net worth making it a tax document. If this bill were enacted, the fact that a corporation's records are closed would let the investigator know the net worth is 20% of its assets or more and has never been in bankruptcy, Attachment No. 7.

Betty Harmon read Professor Fran Jabara's statement in support of the bill, Attachment No. 8.

Terry Harmon neither supported nor opposed the bill but proposed amending it to a ten year limit on restricted public access to records, Attachment No. 9.

Chris Wilson opposed the bill and cited specific effects on farmers/producers by not having access to information on elevators and trucking firms, Attachment No. 10. She noted that 55% of the reports issued by the Secretary of State's office were to "interested parties" other than the major corporation credit rating firm.

John Wine explained that historically the legislature and the Secretary of State's office have opposed the frequent attempts to close the corporation records. The public policy has been one of maintaining open records. The secretary continues to oppose those efforts but will work with the committee regarding any specifics. He indicated the senate's apparent willingness to alter this policy.

Attachment No. 11 is a letter from Steve Brookner requesting his testimony in opposition to the bill be submitted to the committee. Attachment No. 11A is that testimony.

Written statements in support of the bill were submitted by:

Robert L. Jemison, Attachment No. 12.

Frank C. Norton, Attachment No. 13.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 12:36 ~~xxx~~/p.m. on March 29, 1989.

Committee Questions and Discussion

1. To John Wine - Of the sets of figures presented, please sort out which is accurate re: foreign inquiries and to what percent are they utilized for unfair advantage against Kansas businesses?

The response was that there is no particular number relative to foreign businesses. The office has no knowledge of how the information is used. The set of figures in Attachment No. 10 is correct re: reports issued.

2. To Ted Vlamis - Citing the balance sheet submitted by Ms. Wilson, is there more that needs to be filed re: income tax or is that the balance sheet to which you refer? No sales information is reflected on that sheet.

Mr. Vlamis explained by using the balance sheets from the previous and current year, net earnings may be determined by deducting retained earnings of the previous year from the current year. Sales may be fairly accurately estimated by dividing the accounts receivable (on the balance sheet) by the average day's collection. Margins are easily determined once the level of sales and profits are known.

Mr. Vlamis clarified the figures in his testimony arbitrarily eliminated attorneys as valid business requests.

3. To Larry Klenda - How many of the corporations with which you have dealt are Sub (s) and are any of the conferees Sub (s) corporations?

Mr. Klenda's reply indicated a variance based on tax considerations and the life of the corporation - during the first 6 - 9 months it is probably 30%, after which time they become a regular corporation. Overall, during a year's period, probably less than 10% are Sub (s) corporations. None of the business owner conferees were Sub (s) corporations. Though not all NFIB members are corporations, Jim Yonally indicated many would probably be Sub (s) since they are very small.

4. To John Wine - How long have we had this disclosure provision in Kansas?

Mr. Wine explained previous research indicated it had been in place since 1939 and how long prior to that time is unknown.

5. To John Wine - Whatever happened to the philosophy of "need to know"?

Mr. Wine explained his understanding to be the decision made by the legislature "years ago" was that a corporate franchise was an entitlement received from the state. The principal advantage was the limited liability for the investors. If the investors were not to be personally liable, there had to be some information on that entity's worth.

6. To John Wine - After hearing the testimony, why would we want to force our corporations to disclose this information?

The response indicated uncertainty as the amount of "real information" being disclosed. Mr. Wine described it as a snapshot - an accurate representation without viewing all the other components of that entity thus providing a general idea.

7. To Chris Wilson - re: your reference to the deletion of the amendment. Is that why you really want?

Ms. Wilson explained it is discriminatory regarding financial stability to determine whether or not the records are open. She stated it could be misleading referred to page two of her testimony. The previously stated \$5,000 minimum or 20% net worth could project the image the corporation was financially sound. She emphasized some businesses would not question it, conclude it met the state's test and called it a "state seal of approval".

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 12:36 ~~xxx~~/p.m. on March 29, 1989.

8. To Terry Harmon - Please explain the interest of the Historical Society in corporations' balance sheets.

Mr. Harmon cited the financial history of the state is as important as any other history ( e.g. legislative or military, etc.). He stated it has historical value for historians and economists. Since it is microfilmed, it is not a burden to store.

9. In a brief discussion with Ms. Wilson, it was determined that approximately 1/3 of the membership of the KGFA is comprised of cooperatives, most of which, wouldn't qualify under this bill due to the number of stockholders.
10. To Larry Klenda - Wouldn't it be more appropriate to put the definition of Sub (s) corporations as a guideline for corporations that do not have to disclose everything rather than what is listed?

Mr. Klenda disagreed citing an example of six individuals forming a corporation, anticipating being profitable. He stated income tax effects could be better scaled and adjusted as a regular corporation. He cited the seal from the Securities and Exchange Commission (SEC) which indicates a prospectus has been reviewed in detail but states there is no representation the stock is sound - the seal is found on the front of any corporate prospectus. He contended the purpose of the bill is to put Kansas corporations and stockholders on the same fair trade basis as foreign corporations and doesn't prohibit the exchange of financial information between two legitimate businesses.

11. To Larry Klenda - Is the fill uniform with other states?

The reply indicated most other states have closed the records "across the board with no exceptions and that would be the preference".

12. To Larry Klenda - Are there any conflicts for banks or would they be included?

The response was that any regulated industry such as banks or insurance companies could be excluded.

13. To Bud Grant (KCCI) - There are instances where dummy corporations have been revealed by the media. Do you have objection to access for the media?

The answer was affirmative.

14. To Bud Grant - A letter from Professor Redwood (author of the Redwood Report, University of Kansas) was referenced in which he stated there was no direct evidence to support the contention of unfair advantage to competitors.

Mr. Grant's response suggested the professor contact the conferees for firsthand experience.

15. To Larry Klenda - Would you comment on the state archivist's recommendation to open the records after 10 years?

Mr. Klenda called it an acceptable period of time though a longer one was preferred. It was noted that the Kansas Department of Revenue destroys tax returns - so noted as the proponents contended the balance sheets are part of a tax return.

The meeting was adjourned at 1:50 p.m.

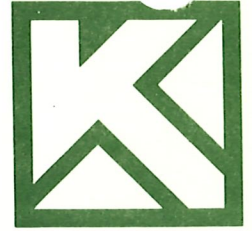
The next meeting of the committee will be on call of the chairman.



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 243

March 29, 1989

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Federal and State Affairs

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Madam Chairperson and members of the Committee, I am Terry Leatherman with the Kansas Chamber of Commerce and Industry. I wish to thank you for the opportunity to appear before you today in support of SB 243.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Around 64,000 corporations doing business in Kansas file an annual report with our Secretary of State. What supporters of SB 243 are concerned about is a portion of the

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 1  
3/29/89

annual report, called the balance sheet. The balance sheet portion of the annual report is where a corporation states the company's financial condition and is used by the Secretary of State's office to determine the franchise fee the corporation owes the state.

In 47 of 50 states, corporate financial information is kept confidential by state government. Kansas is one of only three states where balance sheet information on corporate annual reports is open for anyone to look at, copy, and analyze. KCCI, and many of its members, feel this open door policy places Kansas corporations at a competitive disadvantage.

Publicly-held corporations in Kansas are not the ones concerned about open access to their balance sheet. Those companies will supply that information, and often more, to anyone. Public corporations across the country play by the same rules by providing this information.

The scenario is much different for some privately-held corporations. The nature of being a private corporation means they may not supply financial information, upon request, like a publicly-held corporation. That means the cards are currently stacked against privately-held corporations in Kansas. Their competition can analyze financial balance sheets in Topeka. If Kansas companies ask for balance sheets in Jefferson City, Missouri or Lincoln, Nebraska or 45 other state capitols, their request is denied.

If SB 243 is adopted, some Kansas corporations will have the opportunity to have their balance sheets placed in a confidential file by the Secretary of State. In the past, opposition to the creation of a confidential file has largely come from credit rating companies, who argue that the balance sheet is their only source for corporate financial information. Others have opposed a confidential file because they feel they need the balance sheet to make credit decisions. If these arguments surface again in this hearing, a couple of questions need to be asked. First, how do credit rating companies and creditors do their work in the 47 states where balance sheet information is not available? Second, is it in keeping with the purpose of the annual reports for our Secretary of State to be a credit information bureau? Finally, it should be noted that SB 243 does recognize concerns by demanding corporations meet several requirements to qualify for the

confidential file. The first three of these four requirements will make a corporation show a solid financial history, or they will remain open for public inspection. The fourth requirement makes the distinction addressed earlier in my remarks. Private corporations, with more than 35 stockholders will remain in open files.

When you talk about creating a confidential file for corporate financial records, it can sound like big business is trying to hide needed information from the public. Opponents to this bill will no doubt try to equate open records with honesty, and confidential files with dishonesty. There is a provision in the bill to allow access for some legitimate concerns. In reality, this is a proposal to allow our privately-held corporations to compete with out-of-state businesses in a cut-throat marketplace. If everyone else had open corporate records, we would not be here today.

In the final analysis, SB 243 is an economic development decision. There are companies who have wavered in their decision to locate in Kansas because of our open door disclosure policy. There are other companies who took jobs out of Kansas to another state because of it. SB 243 will promote economic development in Kansas, at nearly no cost to the taxpayer. I urge you to support SB 243 and would be glad to answer any question.



Jack D. Paradise  
15285 S. Keeler  
Olathe, Ks. 66062  
(913) 764-8181

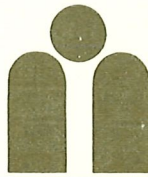
March 29, 1989  
Testimony on Senate Bill 243  
Recision of Kansas "Peeping Tom Law"

My name is Jack Paradise, I am a lifelong Kansan with primary business and investment interests in Kansas. I serve as President of Southview Business Association. This group of Kansas companies employes over 1,400 Kansas workers, has annual sales of \$173 million and a Kansas payroll of \$41 million. Our board unanimously supports SB 243.

There are several compelling reasons I urge your support of this bill:

1. Kansas has 64,000 corporations most of which are small and medium sized firms and are privately held. Last year the Secretary of States office issued 22,000 reports on Kansas companies. Of these about 10,000 went to Dun & Bradstreet, 5,000 went to attorneys and the balance to other businesses and credit type agengies. The cost for each report is \$2. As a taxpayer I resent underwriting the day to day operating expenses of Dun & Bradstreet and others.
2. By setting up out of state holding companies one can get around current law. This arrangement is becoming more and more attractive to existing businesses who feel their most intimate corporate financial information needs to be protected. The net result of such arrangements is a substantial tax loss to Kansas. I doubt any of these Kansas companies really want to divert their tax dollars out of Kansas and into Missouri and other border states, however, current law leaves no reasonable alternative.
3. From the business owners viewpoint, the single most damaging aspect of current law is that it exposes the entire cumulative financial history and accomplishments of every Kansas corporation. The balance sheet of a company is a scorecard of its financial accomplishments from the day the business started until today. It also exposes the financial strengths and weaknesses of the company. In doing so current law provides a specific game plan for a foreign competitor to determine just how much loss a Kansas competitor can stand before going out of that business or changing to some other line of work.

I urge you to pass this bill and say THANK YOU to the 64,000 corporations presently in Kansas and WELCOME to all other considering moving our starting up in our great state.



**MEEK'S INCORPORATED CONTRACT DIVISION**  
4026 HUNTOON • TOPEKA, KANSAS 66604 • 913-272-4750

March 28, 1989

The Honorable Ginger Barr,  
Chairwoman, House Federal and State Affairs Committee,  
Statehouse,  
Topeka, Kansas. 66612

Dear Ms. Barr:

Thanks for the opportunity to appear before your committee and for your courtesy in giving your attention to Senate Bill 243 during this busy session.

My wife and I are the sole stockholders of a Corporation which we started approximately 27 years ago and which now employs 25 persons.

Principally, our business is selling Office Furniture, supplies and accessories which is a very competitive business as you are no doubt aware. Now, with the expanding entry into our field by major discount houses, it has become a real struggle to survive. Giving competitors a leg-up, so to speak, by letting them continually have access to our annual financial statements for comparative analysis takes away our competitive position.

Private business is not required to make public their financial statements and since we are basically a privately owned firm we would appreciate having the same confidentiality.

Your support of Senate Bill 243 would be appreciated by all privately-held Corporations in Kansas and close the door on unwanted and unauthorized viewing of their financial statements by competitors in and out-of-state who could use this information in detrimental ways.

Sincerely,

MEEK, S, INC.

Fred D. Meek, CHB

FDM/sm

CC: All Members House Federal  
and State Affairs Committee

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 3  
3/29/89

KLEND, MITCHELL, AUSTERMAN & ZUERCHER

L. D. Klenda  
Alexander B. Mitchell II  
Bruce W. Zuercher  
Gary M. Austerman  
Michael R. Biggs  
Alan D. Herman  
John V. Wachtel IV  
J. Michael Morris  
David D. Broomfield  
Jeffrey D. Peier  
Ron D. Beal

ATTORNEYS AT LAW  
1600 EPIC CENTER  
301 NORTH MAIN STREET  
WICHITA, KANSAS 67202-4800

of Counsel  
Vincent L. Bogart,  
Chartered  
Ronald M. Gott

Telephone  
(316) 267-0331

Telecopy  
(316) 267-0333

Stephen B. Angermayer  
Scott A. Eads  
John B. Gilliam  
Paul F. Good  
Gregory B. Klenda  
Mark J. Lazzo  
Jacqueline K. Levings  
Christopher A. McElgunn

KANSAS HOUSE OF REPRESENTATIVES  
Federal and State Affairs Committee  
Hearings on S. B. 243  
March 29, 1989

May it please this Honorable Committee of the House of Representatives:

My name is L. D. Klenda. I am a corporate lawyer in Wichita, Kansas. My primary area of business has been assisting Kansas residents in setting up new Kansas corporations, maintaining those corporations, and buying and selling other Kansas and foreign corporations. During my 28 years of practicing law in the state of Kansas, I have been responsible for the creation of several hundred Kansas corporations. The better these corporations can compete and the more capital they can generate results in many more jobs which they can create. Senate Bill 243 now before this Committee permits Kansas corporations to be on an equal footing with their foreign competitors and therefore better compete in the corporate market place resulting in a greater capital base in the state of Kansas and considerably more jobs in the state of Kansas. Senate Bill 243 passed the Senate by a vote of 25 in favor to 11 opposing. Among the many reasons why Senate Bill 243 is good legislation for the state of Kansas are the following:

66,000 KANSAS CORPORATIONS AFFECTED.

S. B. 243 is a matter of significant concern in that there are 66,000 corporations in Kansas that are adversely affected by the present law in that their sensitive financial information is available to their foreign competitors. Correspondingly, the Kansas corporations cannot obtain the comparable sensitive financial information relative to their foreign competitors. Therefore, Kansas corporations cannot compete on an equal basis. Kansas is disadvantaged.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 4  
3/29/89

KLEENDA, MITCHELL, AUSTERMAN & ZUERCHER

KANSAS HOUSE OF REPRESENTATIVES  
Federal and State Affairs Committee  
Hearings on S. B. 243  
March 29, 1989  
Page 2

47 STATES HAVE ADOPTED ANTI "PEEPING TOM" LEGISLATION.

Kansas remains as only one of three states in the Union which does not protect its corporate residents from unfair competition being exercised by foreign corporations. This results in a decrease in the capital base of Kansas corporations and fewer jobs for the residents of the state of Kansas.

9,000 KANSAS CORPORATE REPORTS SOLD FOR PROFIT.

This matter is consequential in that over 9,000 Kansas corporate reports are purchased every year and sold for a profit presumably to foreign corporations competing with the Kansas corporations. This unfair business tactic should be stopped so that Kansas citizens can compete on equal footings with foreign corporations.

THE KANSAS ANNUAL REPORT IS A TAX RETURN.

The Kansas Annual Report was created for the purpose of being a tax return upon which the Kansas corporation pays taxes for the privilege of doing business within this state. The information reported on tax returns, traditionally both Federally and State, has been confidential information, and in most instances, it is a crime to disclose that information, much less sell it. The Kansas Annual Report return should be given the same degree of confidentiality extended to other tax-type reporting. To permit foreign business to have Kansas confidential information is a major detriment to the state of Kansas in loss of capital and loss of jobs.

RESTRICTED PROVISIONS OF S. B. 243.

S. B. 243 would be applicable only to those corporations which have a network of \$5,000.00 or 20% of their assets, whichever is higher, 35 or fewer stockholders and have never been involved in bankruptcy. By these restrictions, strong corporations have protected their sensitive financial information and corporations which are weak economically would have their financial information available to those who might legitimately need it.

KANSAS CORPORATIONS ARE KANSAS PEOPLE.

Kansas corporations are made up of Kansas people. These are Kansas citizens who have gotten together for the purpose of forming a Kansas corporation. In most instances, as these corporations are formed, they contain the economic capacity of Kansas citizens. The stockholders of Kansas corporations guarantee the debt of those corporations. The stockholders of corporations most frequently

KLENDA, MITCHELL, AUSTERMAN & ZUERCHER

KANSAS HOUSE OF REPRESENTATIVES  
Federal and State Affairs Committee  
Hearings on S. B. 243  
March 29, 1989  
Page 3

spend their working life for the corporation and the stockholders of the corporations raise their Kansas families with the income from these corporations. Kansas citizens who have formed corporations should be permitted to compete fairly on the same economic level as foreign corporations.

THE KANSAS REVENUE BASE MUST BE MAINTAINED.

Under the present law, in order for Kansas corporations to keep secret this sensitive financial information, they must move their sales efforts outside of the state of Kansas and put them inside foreign corporations which protect their corporate citizens. The result of this must be a material loss of revenue to the state of Kansas. This is grossly unfair to every single resident taxpayer of the state. Kansas corporations should be protected as to their sensitive financial data within Kansas so that they may remain within in Kansas, increase their capital base within Kansas, and increase the number of jobs for Kansas residents.

Because of the nature of my work over the last many years, I can speak with absolute certainty as to the negative effect that this "Peeping Tom" loophole in the Kansas law has on Kansas corporations. If this were not true, why would in excess of 9,000 Kansas corporate reports be bought and sold for a profit to foreign corporations competing with Kansas corporations.

I most respectfully solicit your favorable consideration for S. B. 243 and the capital and jobs of the citizens of our state.

Respectfully submitted,

L. D. Klenda

LDK/lah



# PIONEER Balloon Company

March 29, 1989

Subject: Testimony before the House Federal and  
State Affairs Committee  
In favor of Senate Bill 243  
The "Peeping Tom" Controversy

Thank you for the opportunity to address our concerns directly with you.

My name is Ted A. Vlamis, and I am President of Pioneer Balloon Company, headquartered in Wichita, Kansas. Our company employs about 200 people in the State of Kansas and over 1,000 totally in the U.S. and Canada.

I realize that the core issue of SB 243 pales in importance when compared to major issues facing our state, but I hope in the few minutes that we share together, I can convince you that our joint concern for Kansas economic well-being relies upon a continuing strengthening of the business climate ultimately yielding jobs and revenue in our state.

As you are aware SB 243 passed the Kansas Senate decidedly a few weeks ago. During the hearings before the Senate Committee, I listened very carefully to the testimony of the opponents of the bill. Their arguments revolved around three major themes:

1. "Kansas incorporation grants limited liability and therefore Kansas and its citizens are 'owed' financial disclosure."  
Nonsense !! Incorporation does grant limited liability, but the quid pro quo is that the corporation "earns" the right to pay higher taxes, to make capital investments, and to hire more people in Kansas, thus leading to greater revenues for our state and citizens.
2. "Kansas businesses need this public disclosure of financials to make informed credit decisions."  
Nonsense !! Only 25% of the 22,000 requests made of the Secretary of State were made by businesses other than D & B. Credit decisions are crucial - we make hundreds every day. So do thousands of companies around the country using a variety of information sources. Although our Secretary of State has many important responsibilities, one of these certainly is not being a governmental credit manager.
3. "A firm's balance sheet does not contain sufficient financial information to be competitively damaging."  
Nonsense !! Any business person familiar with financial accounting can put two consecutive balance

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 5  
3/29/89

Executive Offices: Continental American Center  
555 North Woodlawn Avenue • Wichita, Kansas 67208  
EasyLink Telex: 62823015 PIONEER WIC UD  
(316) 685-2266 FAX: (316) 685-2409



CONTINENTAL AMERICAN CORPORATION

sheets together and get exact net earnings, capital investments, and liquidity ratios, and very accurate estimates of sales, cost of goods, and margin analysis. This indeed is sensitive corporate information competitively invaluable to domestic and foreign competitors of loyal Kansas corporations.

The arguments for SB 243 were and still are, compelling ones and are summarized as follows:

1. "Many Kansas corporations have been damaged by public disclosure of sensitive financial information." Testimony before the Senate Committee, as well your committee, confirms this. My own company can attest to the damage that can result from the competitive disadvantage of one sided financial disclosure.
2. "Individuals suffer, not just 'corporations'." Most Kansas corporations are family owned or at best owned by a small number of stockholders. These owners not only invest their own capital, but also personally guarantee the corporation's debt. You cannot separate the "corporate entity" from the private person. A capricious financial disclosure is personally as well as corporately destructive.
3. "Senate Bill 243 levels the economic playing field for Kansas corporations leading to greater Kansas revenues." There is no more compelling argument for SB 243 than it is clearly in the economic best interest of our state !! If my company can be more competitive on a national basis, then we will grow vigorously, resulting in more Kansas jobs and Kansas revenue.

We know you are committed to the growth and well-being of our Kansas economic climate. We need your support now. Please don't come down on the side of "Peeping Toms." Stop Tom Peeping now !!

Thank you very much for your interest and consideration. I would be happy to address any questions you would like to ask.



Ted A. Vlamis  
President

TAV/bh

Statement of Molly Hundley, Multi Service Co  
Re:Senate Bill no.243  
to the  
House Federal & State Affairs Committee

March 29, 1989

My name is Molly Hundley and I am the Treasurer for Multi Service Corporation, a privately held credit card company located in Overland Park. Multi Service Corporation serves the corporate aviation and trucking industries. The Multi Service aviation card is accepted at over 2000 locations throughout North America as well as 600 other locations worldwide. The Multi Service trucking card is accepted at 1500 truck stops throughout North America. We have over 6000 customers worldwide.

Multi Service supports Senate Bill no. 243 in principle because it will correct a flaw in the current law which puts Kansas businesses, including Multi Service, at a disadvantage in the national marketplace. While Multi Service is headquartered in Overland Park where all our business is transacted, less than one percent of our merchants or creditors are Kansas corporations. To comply with current Kansas law, Multi Service must file an annual report which includes our balance sheet. Our financial statement becomes public record. Our competitors, all of whom are located outside of Kansas, now have access to our financial statements yet they need not make a public filing and we do not have access to their financial statements. This factor obviously could be used to our disadvantage in competitive bidding situations against non-Kansas companies. With Kansas providing an excellent geographical location for distribution and transportation, we cannot believe that our company is alone in suffering this competitive disadvantage.

Furthermore, we do not believe any valid public interest is being



served by requiring financial statements to be public record. There are no Kansas investors or creditors who would lose any protection by passage of Senate Bill no. 243. In fact, any parties who have legitimate interests in the financial condition of our company have full and complete financial statements, provided on a timely basis, which provide far more information than is required by the public filing. Interested parties, acting in a prudent business manner, would not invest or extend credit without obtaining financial statements directly from the company. Again, public financial information does not add any protection to legitimate interested parties.

This Bill should not be passed, however, without reconsidering Section 1(a)(1). Section 1(a)(1) formulates an equity base and an asset to equity ratio as a measure of a company's good "financial health". This section does not account for the differences between industries and their respective balance sheets. For example, our company offers credit card services. It is normal in our business to have large amounts of trade receivables, which turn very quickly, and to have corresponding trade payables. Therefore the ratio test proposed in the legislation is totally inappropriate for our industry. It would also be inappropriate for other industries that are capital intensive and have rapidly growing companies which may also be very profitable. If the legislation must provide some measure of financial health, it should be stated in more general terms such as, '..the company was profitable in the most recent year and has a net worth of at least \$5000, determined in accordance with generally accepted accounting principles'.

Thank you for your time and this opportunity to present our views on this subject.

# NFIB Kansas

National Federation of  
Independent Business

Testimony - House Committee on Federal and State Affairs  
March 29, 1989

Madam Chairman and members of the committee, my name is Jim Yonally, Kansas Director of the National Federation of Independent Business. I am pleased to appear today in support of Senate Bill 243, on behalf of the more than 8,000 small and independent businesses who are members of our organization.

Each year we submit a ballot to our members seeking their opinions of matters before the legislature. On a recent ballot, we asked our members, "Should that portion of the corporate annual report containing the statement of assets, liabilities, and net worth of the corporation be protected from public disclosure?". Of those members responding, 73% said "yes", with another 6% being undecided. We believe that these records should be treated no differently than income tax records, which are available to government agencies on a "need to know" basis. In fact, the amount of corporate franchise tax owed is based on the net worth of the corporation, thus it is a tax document.

We have heard, in the past, that if these records are closed, Kansas businesses will not be able to get needed financial information about other corporations who might be potential customers. That, quite simply, is not true. Kansas is one of only two states which make corporate balance sheets a matter of public record. If the claim made by opponents of this legislation were correct, then we wouldn't be able to get information on businesses located in the other 48 states.

We believe that the bill before you, SB 243, is very restrictive, but perhaps it strikes a fair balance between what we believe is an inherent right to privacy for Kansas corporations, and the need for information that is necessary for proper business decisions. The limitation on "35 or fewer shareholders" will not impact most small businesses in Kansas. If a corporation's records are closed, the person investigating will know, at least, that the company has net worth of equal to 20%, or more, of its assets, and that they have not been in bankruptcy. We believe this is more than sufficient to protect the public interest.

We sincerely request your favorable consideration of SB 243. Thank you for this opportunity to express the thoughts of Kansas small business.

State Office  
10039 Mastin Dr.  
Shawnee Mission, KS 66212  
(913) 888-2235



The Guardian of  
Small Business

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 7  
3/29/89

**PROFESSOR F. D. JABARA**

**DISTINGUISHED PROFESSOR IN BUSINESS**

March 28, 1989

Federal and State Affairs Committee  
Kansas House of Representatives  
Topeka, Kansas 66612

I have spent many years working at Wichita State University encouraging the entrepreneurial spirit for Kansas. The effect of the "Peeping Tom" law as it now stands discourages the spirit of free enterprise in that it allows foreign competitors to view at any time financial information on Kansas Corporations. This can have devastating effects, particularly for those small corporations who have only a few shareholders and are working very hard to maintain their market share. "We can be seen, but we cannot see." This places us at a distinct disadvantage when trying to encourage the Kansas business spirit.

In order to compete in the marketplace, our Kansas laws must encourage fair trade. Please keep our entrepreneurial spirit alive by voting in favor of Senate Bill 243. Your support is appreciated.

With regards,

  
Fran Jabara

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 8  
3/29/89

COMMENTS CONCERNING SENATE BILL NO. 243

Presented to the House Committee on Federal and State Affairs  
by Terry Harmon, Assistant State Archivist  
Kansas State Historical Society  
Department of Archives

March 29, 1989

I appreciate very much this opportunity to appear before the committee as a representative of the Kansas State Historical Society's department of archives.

The State Historical Society neither opposes nor supports Senate Bill No. 243. We do want to propose, however, that it be amended to place a time limit on the confidential status of the records which would be affected by it.

As custodian of the official state archives, the State Historical Society has responsibilities for identifying, acquiring, and preserving state and local government records with permanent value, and also for making information in such records accessible to the public. We therefore are quite interested in any legislative proposal, such as S.B. 243, which permanently would restrict access by researchers to information in records that someday will be transferred to the archives. It has been determined that the annual reports of corporations have substantial historical and research value, and we already have received a large quantity of them from the Office of the Secretary of State.

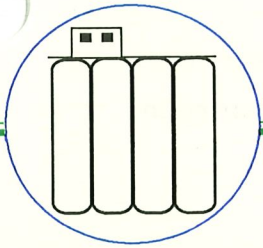
Restricting public access to portions of the data in corporation annual reports would not prevent future transfers of such records to the state archives. We have in our custody many types of confidential records, and in accordance with K.S.A. 45-407, the archives staff continues to limit disclosure to the same degree as would the agencies which transferred the records to us.

Our general position as archivists is that we should cooperate fully in protecting the privacy rights of individuals and corporations, but that the need for confidentiality usually diminishes after a number of years have passed. It eventually should be possible for the legislature to grant access by researchers to most types of confidential records without fear of damaging the individuals or corporations involved.

Since the primary purpose of this bill is to prevent competitors of a corporation from obtaining useful financial data, we believe that a ten-year limit on restricted public access to the records would be adequate. If the committee concludes that ten years would be too long, or not long enough, consideration might be given to other time periods. Although it seems far longer than necessary in this instance, seventy years is the maximum time period for which state and local government agencies are authorized by K.S.A. 45-221(f) to exempt numerous types of records from the disclosure requirements of the Open Records Act.

We hope the committee will agree that it would be reasonable to amend S.B. 243 in order to place a time limit on the confidential status of financial data in corporation annual reports filed with the Secretary of State, if this bill is approved.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 9  
3/29/89



## KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE KANSAS GRAIN AND FEED ASSOCIATION  
TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
REP. GINGER BARR, CHAIRMAN  
REGARDING SB 243  
MARCH 29, 1989

Madam Chairman and Members of the Committee, thank you for allowing me to present testimony here today. I am Chris Wilson, Director of Governmental Relations of the Kansas Grain and Feed Association (KGFA). KGFA is the trade and professional association of the state's grain handling, storage, processing and marketing industry. We have over 1,300 member firms.

KGFA opposes SB 243 and supports retaining the current system. Public records play an important part in conducting business in Kansas on a sound basis, and we should not attempt to close that door for those who use this information in making crucial business decisions.

Just a few years ago the Kansas legislature was concerned about grain elevator insolvencies and how they were affecting the farmer/producer. Throughout hearings on that issue there seemed to be one common conclusion that outweighed the potential solutions of all of the various bills being considered. That conclusion was that it is the producers' responsibility to know who they are dealing with. Yet we are here today considering a bill that in some instances would take away one of the producers' remaining tools to make sound business decisions.

Also, a few years ago, there were problems with tracking firms insolvencies which adversely affected grain elevators as well as farmers. In hearings held by the Legislature on that issue, the conclusion was the same: Know with whom you are doing business.

It is ironic that the Legislature is considering eliminating this tool. While the information filed in the Secretary of State's office is minimal, it does give some indication of a firm's financial stability.

You have probably heard statements to the effect that open records primarily benefit those firms selling credit information such as Dun and Bradstreet.

To help clarify this issue, we checked with the Secretary of State's office to determine who requests copies of annual reports. Their best estimate is as follows:

Dun & Bradstreet	45%	9,900 reports
Businesses	25%	5,500 reports
Attorneys	25%	5,500 reports
Others	5%	<u>1,100 reports</u>
TOTAL	100%	22,000 reports

While Dun & Bradstreet appears to be the largest single user, we cannot overlook the fact that 55% or over 12,000 reports were issued for the benefit of other interested parties.

Many of our members do use this information. For those who now use the information that is available, this bill would frustrate their efforts to obtain financial information and would possibly force them to use a financial information service firm at a much greater cost or it could result in their doing nothing in determining the financial stability of those they deal with, either of which would be a step backward.

There appears to be much criticism of the present system because it allegedly puts Kansas corporations at a competitive disadvantage to those in other states. Our members have no objection to the information they file being made public, nor do we feel that by doing so puts the corporations at a competitive disadvantage. For the committee's information, I have copied the balance sheet portion of four corporations of one of our members, each of which would qualify for confidentiality under SB 243. We believe that it is the farmer/producer's right to have access to this information and it should not be withheld from them. As for disclosing trade secrets or other competitive information, I would point out that no reference is made to grain volume or margin, storage income, freight or labor costs, items that are of a highly competitive nature.

We would further question the reliability of the 20% rule in SB 243. We believe it is dangerous to assume that a corporation with a capital account equal to 20% of total assets and a net worth of \$5,000 is a sound credit risk and is therefore entitled to confidentiality of its balance sheet. In theory a corporation balance sheet could look like this:

<u>XYZ CORP.</u>			
Current Assets	\$ 100,000	Current Liabilities	\$ 800,000
Fixed Assets	<u>900,000</u>	Net Worth	<u>200,000</u>
Total Assets	\$1,000,000	Total Liabilities	\$1,000,000

Here one could have a corporation with a negative working capital of \$700,000 yet it would qualify for confidentiality.

In conclusion, we ask that the present system be maintained and that you vote against SB 243.

I will be glad to respond to any questions you may have. Thank you.

###

3. Complete the following BALANCE SHEET for the corporation as of the end of the tax year which ended July 31, 1980  
(Month, Day and Year)

ASSETS			LIABILITIES AND SHAREHOLDERS' EQUITY	
	AMOUNT	TOTAL	AMOUNT	TOTAL
a. Cash		56,164	o. Accounts payable	19,145
b. Trade notes and accounts receivable	49,203		p. Mortgages, notes, bonds payable	
• Less allowance for bad debts	2,469	46,734	In less than 1 year	
c. Inventories		468,248	q. Other current liabilities	55,000
d. Government obligations			r. Loans from shareholders	702,186
• U.S. and instrumentalities			s. Mortgages, notes, bonds payable	
• State, subdivisions thereof, etc.			In 1 year or more	445,000
e. Other current assets		251,436	t. Other liabilities	
f. Loans to shareholders			u. Total liabilities	1,221,331
g. Mortgage and real estate loans			v. Capital stock:	
h. Other investments			• Preferred stock	
i. Buildings and other fixed depreciable assets	1,956,584		• Common stock	84,000
• Less accumulated depreciation	1,324,335	632,249	w. Paid-in or capital surplus	29,489
j. Depletable assets			x. Retained earnings—appropriated	
• Less accumulated depreciation			y. Retained earnings income fund—unappropriated	217,199
k. Land (net of any amortization)		15,496	z. Less cost of treasury stock	( )
l. Intangible assets (amortization only)	15,134		aa. Net worth (total shareholders' equity)	
• Less accumulated amortization	8,213	6,921	bb. TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	330,688
m. Other assets		74,771		
<b>TOTAL ASSETS</b>		<b>1,552,019</b>		<b>1,552,019</b>

(NOTE: Lines n. and bb. must be identical.)

Complete the following BALANCE SHEET for the corporation as of the end of the tax year which ended \_\_\_\_\_  
(Month, Day and Year)

ASSETS			LIABILITIES AND SHAREHOLDERS' EQUITY	
	AMOUNT	TOTAL	AMOUNT	TOTAL
Cash		39,355	o. Accounts payable	30,150
Trade notes and accounts receivable	175,929		p. Mortgages, notes, bonds payable	
• Less allowance for bad debts	2,173	173,756	In less than 1 year	
Inventories		1,985,111	q. Other current liabilities	2,754,635
Government obligations			r. Loans from shareholders	
• U.S. and instrumentalities			s. Mortgages, notes, bonds payable	
• State, subdivisions thereof, etc.			In 1 year or more	
e. Other current assets		1,198,666	t. Other liabilities	198,253
f. Loans to shareholders			u. Total liabilities	2,983,038
g. Mortgage and real estate loans			v. Capital stock:	
h. Other investments			• Preferred stock	
i. Buildings and other fixed depreciable assets	4,333,403		• Common stock	25,000
• Less accumulated depreciation	2,407,568	1,923,835	w. Paid-in or capital surplus	1,200,409
j. Depletable assets			x. Retained earnings—appropriated	
• Less accumulated depreciation			y. Retained earnings income fund—unappropriated	1,254,231
k. Land (net of any amortization)		115,385	z. Less cost of treasury stock	( )
l. Intangible assets (amortization only)			aa. Net worth (total shareholders' equity)	
• Less accumulated amortization			bb. TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	2,479,640
m. Other assets		26,570		
<b>TOTAL ASSETS</b>		<b>5,462,678</b>		<b>5,462,678</b>

(NOTE: Lines n. and bb. must be identical.)



## ASSETS

## LIABILITIES AND SHAREHOLDERS' EQUITY

(Do not write in shaded areas)

	AMOUNT	TOTAL		AMOUNT	TOTAL
Cash		35,089	p. Accounts payable	24,838	
Trade notes and accounts receivable	31,164		q. Mortgages, notes, bonds payable in less than 1 year	357,581	
• Less allowance for bad debts		31,164	r. Other current liabilities	181,760	
Inventories		211,466	s. Loans from shareholders		
Government obligations:			t. Mortgages, notes, bonds payable in 1 year or more	101,000	
• U.S. and instrumentalities			u. Other liabilities		
• State, subdivisions thereof, etc.			v. Total liabilities		665,179
Other current assets		349,803	w. Capital stock:		
Loans to shareholders			• Preferred stock		
Mortgage and real estate loans			• Common stock	29,000	
Other investments			x. Paid-in or capital surplus	4,970	
Buildings and other fixed depreciable assets	2,471,887		y. Retained earnings—appropriated		
• Less accumulated depreciation	1,589,663	882,224	z. Retained earnings—unappropriated	1,260,731	
Depletable assets			aa. Less cost of treasury stock	( )	
• Less accumulated depreciation			bb. Net worth (TOTAL SHAREHOLDERS' EQUITY)		1,294,701
and (net of any amortization)		41,217	cc. TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (must equal o.)		1,959,880
Intangible assets (amortization only)	3559				
• Less accumulated amortization	1237	2322			
Other assets		406,595			
TOTAL ASSETS (must equal cc.)		1,959,880			

ASSETS

LIABILITIES AND SHAREHOLDERS' EQUITY

(Do not write in shaded areas)

	AMOUNT	TOTAL		AMOUNT	TOTAL
Cash		30,112	p. Accounts payable	160,055	
Trade notes and accounts receivable	138,345		q. Mortgages, notes, bonds payable in less than 1 year	130,481	
• Less allowance for bad debts	2,003	136,342	r. Other current liabilities	1,983,510	
Inventories		1,224,155	s. Loans from shareholders		
Government obligations:			t. Mortgages, notes, bonds payable in 1 year or more	264,746	
• U.S. and instrumentalities			u. Other liabilities	50,625	
• State, subdivisions thereof, etc.			v. Total liabilities		2,589,417
Other current assets		650,220	w. Capital stock:		
Loans to shareholders			• Preferred stock		
Mortgage and real estate loans		100,000	• Common stock	30,000	
Other investments		1,000	x. Paid-in or capital surplus		
Buildings and other fixed depreciable assets	4,489,665		y. Retained earnings—appropriated		
• Less accumulated depreciation	2,961,225	1,528,440	z. Retained earnings—unappropriated	1,085,472	
Depletable assets			aa. Less cost of treasury stock	( )	
• Less accumulated depreciation		-	bb. Net worth (TOTAL SHAREHOLDERS' EQUITY)		1,115,472
Land (net of any amortization)		25,485	cc. TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (must equal o.)		3,704,889
Intangible assets (amortization only)	36,709				
• Less accumulated amortization	27,574	9,135			
Other assets		-			
<b>TOTAL ASSETS (must equal cc.)</b>		<b>3,704,889</b>			

State the value of agricultural and nonagricultural assets that are owned and controlled by the corporation, both within and without Kansas, and where they are

# Dun & Bradstreet Information Resources

**DB** a company of  
The Dun & Bradstreet Corporation

Steven Brookner  
Zone Manager

6800 College Blvd., Suite 400, Overland Park, KS 66211  
913-491-3210

March 27, 1989

Honorable Ginger Barr, Chairperson  
House Federal and State Affairs Committee  
Room 115-S, State Capitol  
Topeka, KS 66612

Dear Chairperson Barr:

Due to a scheduling conflict, I will not be able to attend the hearing on Senate Bill No. 243 scheduled for 12:30 P.M., March 29. I would like to request your permission to submit written testimony for the record on behalf of myself and Dun & Bradstreet. I have duplicated copies for all members of the committee.

If you or any members of your committee have any questions concerning this important legislation please do not hesitate to call or write me.

Sincerely,

  
Steve Brookner

SB:sjr

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 11  
3 /29/89

# Dun & Bradstreet Information Resources

 a company of  
The Dun & Bradstreet Corporation

Steven Brookner  
Zone Manager

6800 College Blvd., Suite 400, Overland Park, KS 66211  
913-491-3210

## TESTIMONY ON SENATE BILL NO. 243

Before the  
Committee on Federal & State Affairs  
of the  
Kansas House Of Representatives  
Representative Ginger Barr, Chairperson  
(March 29, 1989)

My name is Steve Brookner, I am Zone Manager for the Dun & Bradstreet office in Overland Park, Kansas.

Dun & Bradstreet Credit Services and Dun & Bradstreet Information Resources operate two facilities in Kansas. Our Wichita office was established in 1886. Our Overland Park office was originally established in 1872 in Kansas City, Missouri. In 1985, we moved to Overland Park. In addition three other operating units of The Dun & Bradstreet Corporation have offices in Overland Park, Shawnee Mission, and Wichita.

I appreciate the opportunity to testify in opposition to Senate Bill No. 243. I hope my testimony will assist the Committee in carrying out its duties.

It is my personal belief and the position of my company that it is in the best interest of the State of Kansas that the annual reports required to be filed by corporations, including the statements of assets, liabilities and net worth, remain totally open to the public.

For many decades, all corporations doing business in Kansas--whether incorporated in Kansas or in other states--have been required by statute to file annual reports with the Secretary of State. One element of this annual report is a balance sheet--the statement of the corporation's assets, liabilities, and net worth. It has been the long-standing policy of the State of Kansas that these annual reports are public records, and as such, are open to the public. This historic policy was reinforced by the Open Records Act of 1984. Senate Bill 243 would, in our opinion, be a step backward. For the following reasons, we respectfully ask you to support current law and oppose Senate Bill No. 243.

First some background. Senate Bill No. 243 is not the first time that this issue has come before the Kansas Legislature.

In 1985, the House Committee on the Judiciary rejected House Bill No. 2261 in favor of current law. In 1987, the House Committee on Economic Development declined to act on House Bill No. 2389, a bill that would have created a broad exceptions process to current law.

There is significant evidence of support for current law among the Kansas business community. A legislative survey of the members of the Kansas Grain and Feed Dealers Association summarized in Newsletter #5, March 9, 1987, reported that of the respondents "an overwhelming majority (70%) oppose" proposed legislation to close the balance sheet portion of corporate annual reports. A 1988 mail survey of over 700 Kansas businesses by Dun & Bradstreet resulted in responses from about one-third of those surveyed - an excellent response rate for mail surveys. Almost 93% of respondents favored current law. In past legislative hearings on this issue, several Kansas companies and associations have expressed support for current law.

Second, Senate Bill No. 243 must be evaluated in the context of Kansas policy about open public records. The Kansas Legislature has adopted a strong policy in favor of open public records. This is most clearly expressed in the Kansas Open Records Act, but also finds expression in other statutes including the one at issue today regarding the filing of corporate annual reports and the public's access to them.

The current law is a public disclosure statute. Public disclosure is clearly favored by Kansas policy. Thus, the burden falls heavily on the proponents of Senate Bill No. 243, who would close-off to public access certain records, to show a compelling public policy justification for non-disclosure. Mere speculation or perception is not enough. As Secretary of State Bill Graves said in 1987 on this issue (quoted in "Open Meetings a first step", by John Marshall, Editor, Harris News Service, March 14, 1987).

In lieu of more convincing evidence of corporate harm, I believe that if we err, we should err on the side of openness.

I believe that any possible benefit to the customer, however remote, should prevail over the mere perception of harm to corporations.

This presumption is in favor of open records.

Proponents of non-disclosure carry a heavy burden of proof that can only be met by substantial and overwhelming evidence.

Third, current law promotes business and trade in Kansas. It does not harm Kansas economic development. It enables vendors, lessors, banks, investors, insurers, developers, and others seeking to do business in Kansas to obtain information that enables them to make more informed business decisions. This decreases the risk element, lowers the cost, or speeds decision-making in a variety of commercial transactions --- especially among entities without close, personal experience and knowledge of one another.

On a day to day basis, there are countless business transactions conducted. The availability of basic financial information promotes and speeds credit, marketing, purchasing, and many other related business decisions. No prudent businessman would be willing to ship goods, furnish services or extend credit without reasonable assurance of payment.

For instance, in our business, we know that many companies will ship merchandise on credit to companies having a Dun & Bradstreet capital and credit rating without conducting a further credit check. In the absence of a rating, such companies would usually call the credit applicant and require a financial statement, a bank reference and trade references. Even if these were supplied by the applicant, this would tend to delay the shipment of merchandise. Were the requested information declined, the extension of credit might not be forthcoming. We require financial statements for evaluation to assign capital and credit ratings. Kansas and the other states which require the filing of financial statements are among those with the very highest percentage of rated businesses.

Moreover, when we write or revise a report on a business, we send a copy of the report to that business. We receive very few complaints regarding the inclusion of financial statements from public records in our reports. We particularly note in our reports when public information from the public records of the State of Kansas is included. We believe this is an indication Kansas businesses realize the value to them of this law.

Businesses outside the State of Kansas also indicate to us that this information on Kansas businesses enables them to better serve customers in Kansas in a variety of ways.

Finally, there is no evidence in the extensive and thorough Kansas economic development study by Professor Anthony Redwood that this law is in any way a hinderance to Kansas economic development.

Fourth, the current law does not infringe upon personal privacy. Corporations are artificial persons and are creatures of state law. They enjoy limited liability--that is, as a general rule, a corporation's owners are not personally liable for the debts and losses of their corporations. The current Kansas law requiring limited public financial

disclosure by corporations enables people to evaluate the financial soundness of those corporations with which they wish to do business. This is good public policy.

Fifth, the current law does not require disclosure of information that would give a competitor an unfair advantage in the marketplace. Most authorities would agree that a corporation's balance sheets, viewed individually or over time, would not by themselves provide critical operating data or disclose business or trade secrets that would give an unfair edge to a competitor.

At a 1985 House Judiciary Committee hearing on bill (House Bill No. 2261) to close these records, the Secretary of State's office brought in a financial consultant who used an overhead projector to demonstrate graphically how the balance sheet in the corporate annual statement cannot be used for unfair competitive reasons. Professor Redwood also wrote in a response to a question from Representative Elizabeth Baker in 1988 that "he could find no direct evidence to support the argument that a corporation's balance sheets viewed individually or over time disclose critical operating information that gives an unfair advantage to a competitor." He added: "Again, let me emphasize that there is no substantive evidence that the information that is on file with the Secretary of State is detailed enough to let this happen."

The Kansas Statutory requirement for limited financial disclosure strikes an appropriate balance between protection of the public and the legitimate business confidentiality of the corporation, as well as provides basic information that lubricates the engine of commerce.

In conclusion, we believe no compelling reasons have been given for allowing certain corporations to opt out of this current public disclosure statute as proposed by Senate Bill No. 243. The proposed criteria do not seem to further any compelling public need nor bear any relationship to the public policy purposes that underlie this long-standing public disclosure statute.

The proposed "net worth equal to 20% of assets" test bears no relationship to the evaluation of credit risks.

The proposed criteria will always seem arbitrary and discriminatory, especially to those corporations that fall just outside the safe harbor provided by the criteria.


The proposed mechanism would add unnecessary complexity and record-keeping burdens for the Secretary of State for no compelling public purpose. Moreover, it might create difficulties for the State of Kansas if the Secretary of State's office, in exercising its discretion under the statute, placed in a confidential file the balance sheet portion of the annual report of a company that later created problems for a person

who otherwise might have benefited from the information available under current law. Conversely, there might also be difficulties if the Secretary's office declined to exercise its discretion to place such information in a confidential file.

The proposed bill would create inevitable pressures for administrative or statutory expansion of the exceptions process. It would also create a precedent for exceptions procedures for other Kansas public disclosure statutes. All this would be contrary to the strong Kansas policy favoring open records.

In summary, a public disclosure statute about corporate annual reports should apply generally to all who fall within its reach. There should be a strong presumption against exceptions.

For these reasons, we respectfully request that you retain current law, support the Kansas policy of open records, and reject Senate Bill No. 243. Thank you.

  
Steve Brookner  
Zone Manager





Statement Concerning Senate Bill 243

My name is Robert L. Jemison and I am General Manager and CFO for DINA, a company based in Pittsburg, Kansas. Our company employs approximately 25 people in the State of Kansas and was a recipient of the 1988 Kansas Manufacturer of the Year award presented by the Kansas Department of Commerce.

Our business, which was started in 1980, manufactures a variety of unique decorative accessories for the home manufactured from cultured marble. Our business is people oriented, requiring highly skilled craftspeople to perform the majority of our manufacturing. Our market is worldwide with over 2000 accounts purchasing our products in the USA.

By many standards we are newcomers to the State of Kansas. In early 1987, DJNA opened a manufacturing operation here as an expansion of our manufacturing business in Texas. Our interest in Kansas was due to a number of business needs, primarily in the area of controlling operational costs.

Kansas people, with their strong work ethics and can-do attitudes, provided us with a valuable resource not available to us in Texas. After only a few months of operation in Kansas, a decision was made to close our Texas plant and to transfer all manufacturing into Kansas. This was done by the end of 1987 much to the delight of local economic development officials.

Fortunately, for Kansas, no one at the State level informed us of your "Peeping Tom" statute allowing access to our financial information. If we had been told before our move into Kansas that such a law was on the books, we would not have based our company here.

I find the idea of having our financials available to a few unscrupulous competitors, who are constantly copying U.S. based manufacturers' products and importing our goods illegally, totally offensive. As a smaller manufacturing firm who is expending tens of thousands of dollars in legal fees to fight off this type of unethical competition, I do not believe that our books should be open to their market researchers and strategic planners. This openness is damaging to our ability to be successful in Kansas and jeopardizes the basic fabric of the growing Kansas economy.

As a manufacturer serving a worldwide market we are proud of our growth and the financial records that support it. For those companies who need detailed financial information in order to do business with us, we are happy to provide it. But, to those others, who desire that information for other



reasons, financials must be protected as any company asset would be.

Please vote for the passing of this bill, as your vote will help create a more fair and equitable environment for Kansas business.

Thank you for the opportunity to address your committee.

NORTON, WASSERMAN, JONES & KELLY

ATTORNEYS AT LAW

815 SOUTH SANTA FE, BOX 2888

SALINA, KANSAS 67402-2888

TELEPHONE 913-887-8040

TELECOPIER 913-887-0588

FRANK C. NORTON  
KENNETH W. WASSERMAN  
ROBERT S. JONES  
NORMAN R. KELLY  
LARRY L. LIVINGOOD  
JAY D. VANIER

March 29, 1989

Kansas House Federal & State Affairs Committee

RE: SENATE BILL NO. 243

Ladies and Gentlemen:

I know that you have a great deal of testimony to read in connection with this and other bills, therefore, I will be brief.

1. I favor Senate Bill No. 243.

2. Why? Because it will improve the corporate climate in Kansas. We all agree that we need to provide a good corporate climate in Kansas in order to retain and advance existing corporate activity as well as to interest new corporations to do business in Kansas. The fact that Kansas is one of only three states in the nation that requires this corporate financial disclosure tells us how almost all other states feel about this requirement. We are in competition with those other states.

3. Why is this disclosure such a big deal? Because with many companies it is like requiring each of us to file, for public view, our income tax return at the Court House. In addition to information which is private in nature, making such disclosure also permits competitors to use the information to track certain business activities of a Kansas corporation. At a time when corporations must maintain confidential information for competitive purposes, this is a distinct disadvantage.

4. What is the argument against the bill? Apparently, credit rating services and competitive companies desire to know virtually all there is to know about all corporations. It certainly appears that they should not know all there is to know about those corporations which meet the four tests as set forth in the bill:

House Federal & State Affairs Committee  
March 28, 1989  
Page Two

- a. Net worth of 20% or more of the total assets.
- b. Must have never been subject to Chapter 7, 11 or 13 of the Federal Bankruptcy Laws.
- c. Must not be a public company.
- d. Must have 35 or fewer stockholders.

I urge you to consider the bill favorably in order to improve the corporate climate in Kansas.

Respectfully submitted,



Frank C. Norton

FCN/emb