

Approved: 2/21/20  
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on February 20, 1996 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Hugh Taylor - Board of Public Utilities  
Louis Stroup, Jr. - Kansas Municipal Utilities, Inc.  
Norm Sherbert - Anderson & Associates, Denver, Colorado  
Bob Cucchi - Polk & Company  
Betty McBride - Director of Vehicles, Department of Revenue  
John Reinhart - John Reinhart, Kansas Press Association, Inc.

Others attending: See attached list

**SB 635 - RELATING TO BOARD OF PUBLIC UTILITIES; CONCERNING PROCEDURES FOR RATE INCREASES;**

Hugh Taylor appeared before the committee to urge approval of this bill which only affects the Board of Public Utilities. The proposed process would lengthen the time between the notice of publication of proposed rate increase and the date of hearing and provides that the proposed rate increase will become effective not later than 240 days from the date of notice. (Attachment 1)

Louis Stroup spoke on behalf of the Kansas Municipal Utilities in support of this legislation which would treat them in the same manner as the Kansas Corporation Commission and would provide that any increase would be subject to refund if a petition is filed in District Court. (Attachment 2)

**SB 632 - RELATING TO RECORDS OF THE DIVISION OF VEHICLES**

Norm Sherbert addressed this bill which would allow businesses the ability to access motor vehicle records. The Drivers' Privacy Protection Act requires that all states have procedures relating to the release of motor vehicle related records but recognize the importance of access to public records for legitimate purposes. It was pointed out that states must pass legislation to limit some access and provide consumers opt-out options by September 13, 1997. (Attachment 3)

Bob Cucchi presented a proposed "Kansas Option Out Procedure" with examples, forms and data from other states. (Attachment 4)

Betty McBride addressed some issues that she felt the Department should bring to the attention of the Committee. She stated that at the present time they are in full compliance with the federal Driver's Privacy Act. However, it was questioned as to whether it would be good public policy to offer driver's license records for public uses other than for what they were intended. While they could advertise the "Opt-out" provision it was felt that this would not give sufficient notice. Postage cost for a direct mailing would be very high and additional personnel would be needed to accomplish this. Concern was expressed that the department would lose control over users of records and would not be able to assure the proper use of this information. The Department is still legally responsible for the accuracy of recording and maintaining the opt-out records. To insure the accuracy and integrity of the Division's records it was felt that it would be more cost effective for the Department to administer the complete program should this legislation pass. Total costs to implement this would quite expensive. (Attachment 5) A news item was also distributed to the Committee for their review. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254-E  
Statehouse, at 9:05 a.m. on February 20, 1996.

John Reinhart requested the Committee consider an amendment to this bill which would allow those engaged in "bona fide academic or journalistic research" to make use of the provisions of state law to negotiate the cost of obtaining drivers' license records with the Secretary of Revenue. (Attachment 7)

The Committee asked questions of the Conferees but further discussion and decision will be made later.

Senator Jones made a motion to pass SB 635 favorably. It was seconded by Senator Papay and the motion carried.

A motion was then made by Senator Papay and seconded by Senator Harrington to approve the minutes of the February 15th and February 16th meetings. Motion carried.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for February 21, 1996.

# SENATE TRANSPORTATION AND UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 20, 1996

NAME	REPRESENTING
Louie Stroup Jr.	KANSAS Municipal Utilities
Hugh Taylor	K. C. BPU
Joe Dick	KCK BPU
Melissa Wangemann	Hein, Ebert & Weir
David B. Schlosser	Pete McGill & Assoc.
Don Miles	KCC
Ann Somerville	KS AUTO DEALER
Bob Totten	KS Contractors Association
BUTCH SPRAY	VENTURE CORPORATION
Jeff Fraser	INK
J. C. LONG	UtiliCorp United, Inc.
Jacques Dake	Ks. Ind. Auto Dealers
Bob Cucchi	The Polk Company
Norm Sheibert	The Polk Company
John Reinhart	KPA
GERRY RAY	Jo Co Board of Commissioners
Loy Kadyway	San Rock
Betty Mc Bride	KDOR - MVD
Sheila Walker	KDOR

(over)

Jara Bragg  
Steve Neske  
Rick Scheibe  
Ken Baker  
Tom Whitaker  
Wes Heet  
Anne Spiess

KDOR  
KSOR  
KDOR-DoV  
Economic Lifelines  
KS Motor Carriers Assn  
KS Co. Commissioners Assoc.  
KS Assoc. of Counties



TESTIMONY OF HUGH J. TAYLOR  
OF THE BOARD OF PUBLIC UTILITIES  
IN SUPPORT OF  
SENATE BILL NO. 635

My name is Hugh J. Taylor. I am Manager of Rates and Regulations for the Board of Public Utilities of Kansas City, Kansas. The Board of Public Utilities (BPU) is the largest municipally-owned utility in the State and serves electricity and water to the City of Kansas City, Kansas.

I appear before you to urge your approval of Senate Bill 635, on behalf of the Board of Public Utilities of Kansas City, Kansas. This legislation affects only the BPU, and it emulates the process used by the Kansas Corporation Commission in implementing rates of utilities under its jurisdiction.

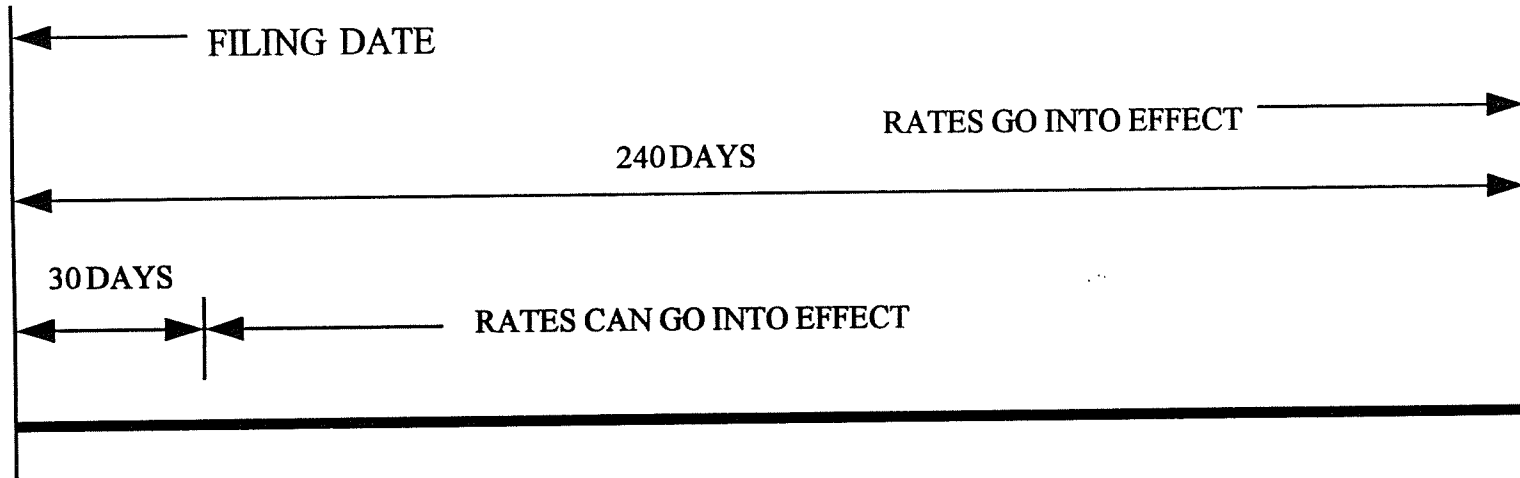
Presently, the process of implementing rates for the Board of Public Utilities starts with the Board publishing a notice of proposed rate increase and setting a hearing date not less than 90 days from the publication of notice. Following completion of the public hearing, the Board determines the appropriateness of the proposed rate increase and directs the implementation of the approved level. In the event there is intervention in the rate hearing process, and in the event there is disagreement between the parties, the intervenors can file for a stay of rates in the district court, with the finding of the district court subject to appeal. A stay of rates would, of course, deny the Utility

the necessary revenues to meet its operations until the court makes a determination, even though the courts might find the proposed rate increase reasonable and prudent. This might result in a substantial delay before rates could be increased.

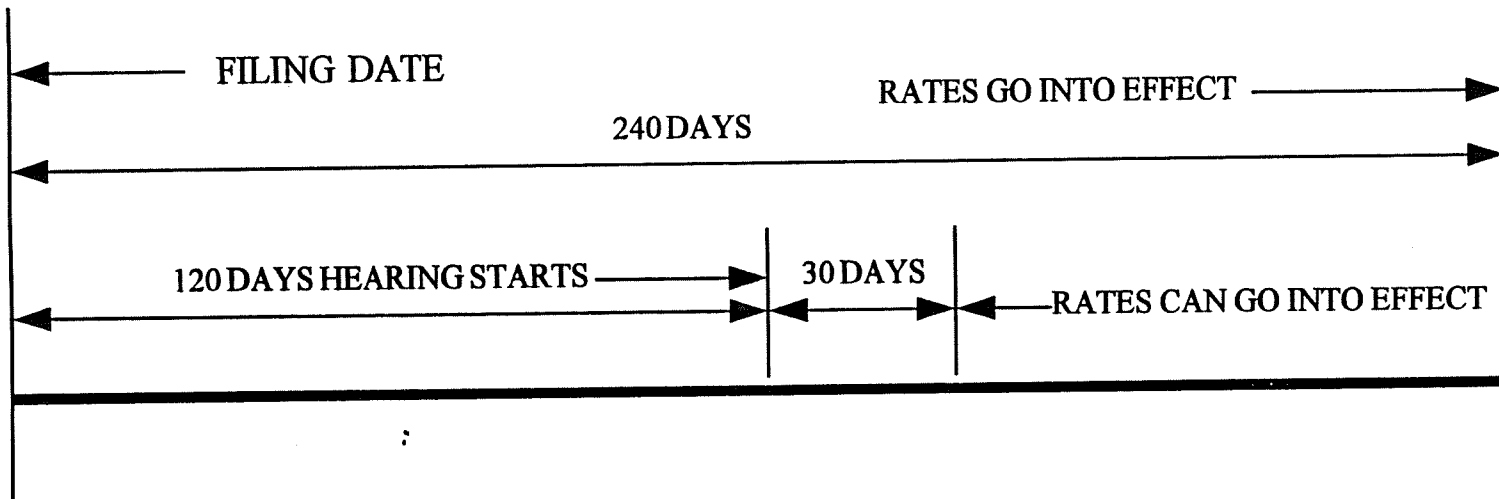
The proposed process does essentially two things, it lengthens the time between the notice of publication of the proposed increase and the date of hearing from 90 days to 120 days, thus giving customers more time to review the proposal. It also provides that the proposed rate increase will become effective, subject to refund, not later than 240 days from the date of notice, just like the Kansas Corporation Commission processes do. Such a process allows the rates to become effective so that revenues are not denied the Utility when court processes find such rates may be reasonable. In the event that an intervenor wishes to appeal the rates through the district court and later through an appellate court, that is still provided under the statute and would require that any overcharge as a result of implementing increased rates above and beyond any judged reasonable and prudent would be refunded to customers of record.

The Board of Public Utilities urges your approval of this legislation so that the Board of Public Utilities can operate on "a level playing field" with other utilities. I have attached a time line showing the implementation process of an investor-owned utility under the jurisdiction of the KCC and that of the proposed statute for the Board of Public Utilities. No other communities or municipal utilities are affected by the proposed legislation.

## INVESTOR OWNED RATE INCREASE TIMELINE



## PROPOSED MUNICIPAL RATE INCREASE TIMELINE



## **TESTIMONY ON SB 635**

Before Senate Transportation & Utilities Committee  
February 20, 1996

Mr. Chairman, members of the committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal electric, gas and water cities which was founded in 1928 and whose member cities provide utility services to more than 1 million Kansans.

### **KMU SUPPORTS SB 635**

KMU supports Kansas City Board of Public Utilities' request for SB 635 for a number of reasons, including:

1 - **Retail rates** - The change would treat Kansas City BPU in the same manner as jurisdictional utilities are treated by the Kansas Corporation Commission under K.S.A. 66-117. This basically says if the KCC doesn't issue a final order on a rate request within 240 days, the proposed rate request goes into effect automatically. SB 635 provides similar treatment for Kansas City. The BPU board could implement a new rate within the the 240- day time frame, but such action would be subject to a district court petition.

2 - **Subject to refunds** - The bill also provides that any increase implemented would be subject to refund if a petition is filed in district court. This basically is the same procedure used by the Federal Energy Regulatory Commission in Washington, D.C. when electric utilities file for "wholesale" rate increases.

See example shown on page 5 of attached FERC Order dated February 2, 1996 involving Midwest Energy and its municipal wholesale customers. This authority is contained in Section 205 of the Federal Power Act and is standard procedure in federal wholesale rate matters. KMU first began participating in wholesale rate cases before the Federal Power Commission (now FERC) in the early 1960s.

FERC normally suspends a rate request for a nominal period (usually less than 1 day) and then the new rate goes into effect subject to a final order and subject to refunds.



**66-117.** Change of rates or schedules; procedure; effective date; higher rates of return in certain cases; hearing. (a) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. The commission, for good cause, may allow such changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier to become effective on less than 30 days notice. Any such proposed change shall be shown by filing with the state corporation commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

(b) Whenever any common carrier or public utility governed by the provisions of this act files with the state corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier by delivering to such public utility or common carrier a statement in writing of its reasons for such suspension. The commission shall not delay the effective date of the proposed change in rate, joint rate, toll, charge or classification or schedule of charges, or in

any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, more than 240 days beyond the date the public utility or common carrier filed its application requesting the proposed change. If the commission does not suspend the proposed schedule within 30 days of the date the same is filed by the public utility or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, within 240 days after the carrier or utility files its application requesting the proposed change, then the schedule shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (1) for purposes of the foregoing provisions regarding the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which increases the amount sought by the public utility or common carrier or substantially alters the facts used as a basis for such requested change of rate, shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment, and (2) if hearings are in process before the commission on a proposed change requested by the public utility or common carrier on the last day of such 240-day period, such period shall be extended to the end of such hearings plus 20 days to allow the commission to prepare and issue its final order.

(c) Except as provided in subsection (b), no change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission, and within 30 days after such changes have been authorized by the state corporation commission or become effective as provided in subsection (b), copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

(d) Upon a showing by a public utility before the state corporation commission at a public hearing and a finding by the commission that such utility has invested in projects or systems that can be reasonably expected (1) to produce energy from a renewable resource other than nuclear for the use of its customers, (2) to cause the conservation of energy used by its customers, or (3) to bring about the more efficient use of energy by its customers, the commission may allow a return on such investment equal to an increment of from 1/2% to 2% plus an amount equal to the rate of return fixed for the utility's other investment in property found by the commission to be used or required to be used in its services to the public. The commission may also allow such higher rate of return on investments by a public utility in experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy and in energy conservation programs or measures which it determines after public hearing provides a reduction in energy usage by its customers in a cost-effective manner.

(e) Except as to the time limits prescribed in subsection (b), proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1911, ch. 233, § 20; R.S. 1923, 66-117; L. 1978, ch. 264, § 1; L. 1980, ch. 201, § 2; L. 1980, ch. 200, § 1; L. 1988, ch. 356, § 225; July 1, 1989.

#### Research and Practice Aids:

Public Utilities 6-119 et seq.  
C.J.S. Public Utilities §§ 15 to 20, 39 to 49, 55 to 58.

#### Law Review and Bar Journal References:

Review of history of regulations, Marion Beatty, 27 J.B.A.K. 186, 191 (1958).  
"Corporation Commission Practice," John E. Davis, 37 J.B.A.K. 87, 88 (1968).  
"Wolf Creek and The Rate-Making Process," Brian J. Moline, 33 K.L.R. 509, 510 (1985).

#### Attorney General's Opinions:

Public utilities; powers of KCC over municipal franchises and ordinances. 84-54.

#### CASE ANNOTATIONS

1. Telegraph station cannot be discontinued without permission of utilities commission. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298, 150 P. 544.
2. Special privilege cannot be granted unless tariff filed, etc. *Mollohan v. Railway Co.*, 97 K. 51, 154 P. 243.
3. Change in rates not made without consent of utilities commission. *Telephone Co. v. Utilities Commission*, 97 K. 136, 137, 154 P. 262.

4. Nonfeasance primarily under control of commission, mandamus refused. *City of Seaman v. Gas Co.*, 98 K. 812, 815, 160 P. 316.

5. Change in rates, rules, regulations, consent of commission necessary. *The State, ex rel., v. Gas Co.*, 100 K. 593, 595, 165 P. 1111.

6. Rates filed with commission cannot be changed without assent of tribunal. *Milling Co. v. Postal Telegraph Co.*, 101 K. 307, 309, 166 P. 493.

7. Section does not supersede provision relating to control by cities. *City of Wilson v. Electric Light Co.*, 101 K. 425, 428, 166 P. 512.

8. Power to cities to regulate utility; powers of utilities commission. *Street Light Co. v. Utilities Commission*, 101 K. 774, 778, 169 P. 205.

9. Telephone service discontinued; restoration; order not enforced by mandamus. *The State, ex rel., v. Telephone Co.*, 102 K. 318, 322, 170 P. 26.

10. Discount allowed by water company, discontinued; consent of city commission. *City of Great Bend v. Water Co.*, 106 K. 553, 555, 159 P. 146.

11. Changes and modification of rates must be filed with commission. *Railroad and Light Co. v. Court of Industrial Relations*, 113 K. 217, 230, 214 P. 797, 804. *State, ex rel., v. Telephone Co.*, 115 K. 236, 274, 223 P. 790.

12. Statute is valid exercise of police power. *State, ex rel., v. Telegraph Co.*, 117 K. 651, 232 P. 1038.

13. Special rate to landowner changed only on compliance with section. *Empire Natural Gas Co. v. Thorp*, 121 K. 116, 245 P. 1058.

14. Provision has no application to interstate rate. *Missouri Pac. R.R. Co. v. Red Star Milling Co.*, 122 K. 122, 251 P. 417.

15. Cited in construing reparations statute. *State, ex rel., v. Public Service Comm.*, 135 K. 491, 493, 11 P.2d 999.

16. Charges for hotel private telephone exchanges upheld though no tariff filed, individual contracts. *Tri-State Hotel Co., Inc. v. Southwestern Bell Telephone Co.*, 155 K. 358, 370, 371, 125 P.2d 728.

17. Nature and scope of appellate review of commission's judicial orders determined. *Union Pac. R.R. Co. v. State Corporation Commission*, 165 K. 365, 370, 194 P.2d 939.

18. Injunction enjoining commission from interfering with collection of increased telephone rates improperly granted. *Southwestern Bell Tel. Co. v. State Corporation Commission*, 169 K. 509, 515, 219 P.2d 377.

19. Mentioned; authority of city to grant to utility right to use streets determined. *Kansas Power & Light Co. v. City of Great Bend*, 172 K. 126, 128, 235 P.2d 544.

20. Hearing to determine rate base for increase requested hereunder not mandatory. *City of McPherson v. State Corporation Commission*, 174 K. 407, 408, 412, 413, 432, 257 P.2d 123.

21. Existing rates must adversely affect public interest to justify rate change. *Central Kansas Power Co. v. State Corporation Commission*, 181 K. 817, 821, 822, 824, 825, 826, 827, 828, 829, 831, 316 P.2d 277.

22. Commission cannot by approval limit liability of telegraph company for error in intrastate message. *McNally Pittsburg Mfg. Corp. v. Western Union Telegraph Co.*, 186 K. 709, 713, 353 P.2d 199.

23. Mentioned in construing electrical energy purchase contract between government and utility. *United States v. Kansas Gas and Electric Company*, 213 F.Supp. 532, 534, 535.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. ER95-590-000

-2-

Before Commissioners: Elizabeth Anne Moler, Chair;  
Vicky A. Bailey, James J. Hoecker,  
William L. Massey, and Donald F. Santa, Jr.

Midwest Energy, Inc. ) Docket No. ER95-590-000

ORDER GRANTING EXTENSION OF TIME  
TO CONFORM WITH FUEL CLAUSE REGULATIONS,  
GRANTING WAIVER OF NOTICE, AND ACCEPTING FOR FILING,  
SUSPENDING, AND SETTING FOR HEARING PROPOSED RATES

(Issued February 2, 1996)

Introduction

Midwest Energy, Inc. (Midwest) is an electric cooperative that provides power and transmission services to another cooperative and several municipal utilities. Shortly after it paid off all outstanding loans to the United States government, and thus became a public utility within the jurisdiction of this Commission, it filed with the Commission the rate schedules under which it has provided service to its customers. It subsequently filed an amended agreement with its cooperative customer as well as generally available, open access transmission tariffs. Intervenors have filed protests and requests for hearing and summary disposition.

As discussed more fully below, we will accept for filing, suspend, and set for hearing the proposed rates (to become effective, subject to refund, on the dates requested by Midwest). The terms and conditions of the tariffs will not be set for hearing and, instead, will be subject to the final rule in the Open Access NOPR proceeding. 1/

1/ See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice and Supplemental Notice of Proposed Rulemaking, 60 Fed. Reg. 17,662 (Apr. 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (1995).

Background

Recently, cooperatives with outstanding loans from the United States government were provided an opportunity to pay off their debt at a discount. Midwest, a generation and transmission cooperative, took advantage of this offer. As a result, this Commission now has jurisdiction over the rates Midwest charges for wholesale sales and transmission service in interstate commerce. See, e.g., Dairyland Power Cooperative, 37 FPC 12 (1967); Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375 (1983). As we held in Golden Spread Electric Cooperative, Inc., 39 FERC ¶ 61,322, reh'g denied, 40 FERC ¶ 61,348 (1987), Midwest, as a Commission-regulated public utility under the Federal Power Act (FPA), is required to file here the rate schedules that govern its jurisdictional transactions with its customers.

Midwest's Proposal

Midwest sells power and transmission services to Sunflower Electric Cooperative, Inc. (Sunflower) and seven municipal utilities (the Cities of Hill City, Lacrosse, Oakley, Jetmore, Colby, Radium and Seward, Kansas). On July 10, 1995, Midwest completed its filing by supplying additional cost support for its existing rate schedules. Those rate schedules govern firm and interruptible power service and transmission service it provides its customers. In addition, Midwest filed: (1) a superseding agreement with Sunflower; and (2) open access transmission tariffs. According to Midwest, the open access transmission tariffs are modeled on the pro forma transmission tariffs contained in the Commission's Open Access NOPR.

Midwest requests effective dates of January 12, 1995 for its existing rate schedules (the date Midwest paid off its United States government debt and became FERC-jurisdictional); July 1, 1995 for the superseding agreement with Sunflower; and November 10, 1995 (120 days after tender) for the open access tariffs. Midwest supports waiver of notice on the ground that it acted expeditiously and in good faith to tender the rate schedules after it became subject to this Commission's jurisdiction.

Notice of Filing and Interventions

Notices of Midwest's filings were published in the Federal Register, 60 Fed. Reg. 13,143 and 37,888 (1995), and 61 Fed. Reg. 63 (1996) with comments, interventions or protests due on or before January 5, 1996.

On July 31, 1995, Sunflower filed a motion to intervene in support of Midwest's filing.

On March 16 and July 31, 1995, the Cities of Hill City, Lacrosse, Jetmore, Oakley, Colby, Radium and Seward, Kansas, the Kansas Municipal Utilities and the Kansas Municipal Energy Agency (collectively, Kansas Cities) filed a protest, motion to intervene, and request for suspension, investigation and hearing. On January 2, 1996, certain of the Kansas Cities -- the Cities of Oakley and Colby, Kansas Municipal Utilities and the Kansas Municipal Energy Agency (Cities) -- filed a supplemental protest, motion to intervene, and request for investigation and hearing. (Their arguments, and Midwest's responsive arguments, are discussed in relevant respects in the following sections of this order.)

On August 15, 1995, Midwest filed an answer and request for a technical conference. Midwest stated that it wanted to avoid the time and expense of a hearing and argued that a technical conference, if instituted by the Commission, would permit Midwest to work with the protesters to resolve their concerns. On September 1, 1995, October 6, 1995, and December 7, 1995, Midwest requested that the Commission defer action on the instant filing in order to allow the parties an opportunity to resolve their differences in a consensual manner. As a result, on September 1, 5, and 8, 1995, the Cities of Jetmore, Lacrosse, Radium, Seward and Hill City withdrew their protests. On December 12, 1995, Midwest informed the Commission that it could not resolve its differences with the remaining intervenors (Cities) and requested that the Commission act on the instant filing.

#### Discussion

##### Preliminary Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1995), the timely, unopposed motions to intervene of Sunflower and Kansas Cities serve to make them parties to this proceeding.

Cities contend that Midwest's filing is deficient, and should be summarily rejected, because it does not include Statements AA through BM as required under section 35.13 of the Commission's regulations, see 18 C.F.R. § 35.13 (1995). We disagree. We find that the data submitted by Midwest meet the minimum threshold filing requirements and contain sufficient specificity to enable us to analyze Midwest's filing. Further, the open access transmission tariffs filed by Midwest in response to the Open Access NOPR qualify for the abbreviated cost support requirements of section 35.12, see 18 C.F.R. § 35.12 (1995). 2/

2/ See American Electric Power Corporation, et al., 71 FERC ¶ 61,393 at 62,543 & n. 20, order on reh'g, 72 FERC ¶ 61,287 (1995), reh'g denied, 74 FERC ¶ \_\_\_\_\_ (1996).

Accordingly, the filing is not deficient and should not be rejected.

##### Fuel Adjustment Clause

Midwest requests waiver of section 35.14 of our regulations, 18 C.F.R. § 35.14, or an extension of one year in which to conform its fuel adjustment clause to our regulations. We will deny the request for a complete waiver. Contrary to Midwest's claims, the differences between its fuel adjustment clause and our regulations are not cosmetic. The existing arrangement places no limits on Midwest's recovery of purchased power costs. Section 35.14 excludes certain purchased power costs entirely from fuel clause recovery and allows recovery of other costs only under certain conditions.

Nevertheless, we remain cognizant of the abrupt change in Midwest's jurisdictional status, and its attendant filing responsibilities, as of the date (January 12, 1995) it completed its loan repayment. Indeed, the regulations clearly recognize that fuel clause changes may require some time -- up to one year -- to implement. 3/ For these reasons, we will grant a one-year extension of time from the date it completed its filing, until July 10, 1996, for Midwest to conform its rate schedules with the requirements of section 35.14. 4/

3/ Section 35.14(a)(8) states as follows:

All rate filings which contain a proposed new fuel clause or a change in an existing fuel clause shall conform such clauses with the regulations. Within one year of the effectiveness of this rulemaking, all public utilities with rate schedules that contain a fuel clause should conform such clauses with the regulations. Recognizing that individual public utilities may have special operating characteristics that may warrant granting temporary delays in the implementation of the regulations, the Commission may, upon showing of good cause, waive the requirements of this section of the regulations for an additional one-year period so as to permit the public utilities sufficient time to adjust to the requirements.

4/ Midwest's revised fuel clause shall be filed in a new rate proceeding.

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 2-4

Rate Analysis

Our preliminary analysis of Midwest's submittal indicates that the proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise excessive. Accordingly, we will accept the proposed rates for filing, suspend them for a nominal period, and set them for hearing, subject to refund, as discussed below.

Midwest has adopted the terms and conditions of the pro forma tariffs without any material change. Consistent with our recent guidance orders on this subject, see supra note 2, we will resolve non-rate terms and conditions on a generic basis in the Open Access NOPR proceeding. All non-rate terms and conditions of Midwest's proposed transmission tariffs will remain subject to the outcome of the Open Access NOPR proceeding. If the parties believe any case-specific issues remain after we have issued a final rule in the Open Access NOPR proceeding, they may raise them at that time.

Waiver of Notice

Midwest requests waiver of notice to permit an effective date of January 12, 1995 (the date it completed its repayment of its loan on an accelerated basis and became a FERC-jurisdictional public utility) for the existing agreements. Midwest's situation is unusual in that its filing of the agreements is the result of an abrupt change in its jurisdictional status. While Midwest did not submit rates to the Commission until after January 12, 1995, we have no reason to suspect that it, unfamiliar with the jurisdictional responsibilities of public utilities, acted with anything less than expedition and good faith. Further, we note that Midwest's rates in its existing customer-specific agreements simply continue the rates previously charged its customers.

For these reasons, we will grant waiver of notice and allow the rates in the existing (newly FERC-jurisdictional) agreements to become effective as of January 12, 1995, subject to refund. Consistent with Midwest's request, we also will allow the superseding agreement with Sunflower and the proposed transmission tariffs to become effective, subject to refund, on July 1, 1995 and November 10, 1995, respectively.

Finally, we will deny Midwest's request (to the extent it continues to pursue this request) that the Commission convene a technical conference in lieu of setting any issues for hearing. Consistent with the Commission's Rules of Practice and Procedure, Midwest may use the Commission's settlement procedures to work directly with Cities and Commission Trial Staff, or make any other appropriate motion to the presiding judge, thus meeting the objectives of its proposed technical conference.

The Commission orders:

(A) Cities' request for rejection of Midwest's rates or for issuance of a deficiency letter is hereby denied.

(B) Midwest's request for a complete waiver of the Commission's fuel clause regulations is hereby denied. As discussed in the body of this order, its alternative request for a one-year extension of time, until July 10, 1996, to conform its fuel clause to the Commission's requirements is hereby granted.

(C) Midwest's motion for waiver of notice is hereby granted. Midwest's request for a technical conference is hereby denied.

(D) Midwest's existing agreements, its superseding agreement with Sunflower, and proposed transmission tariffs filed in Docket No. ER95-590-000 are hereby accepted for filing and suspended for a nominal period, to become effective on January 12, 1995, July 1, 1995, and November 10, 1995, respectively, subject to refund. In addition, the non-rate terms and conditions of the proposed tariffs remain subject to the outcome of the Open Access NOPR proceeding.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER95-590-000 concerning the justness and reasonableness of the proposed rates, as discussed in the body of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately 15 days after the date of issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

SENATE TRANSPORTATION  
DATE: 7/20/96  
ATTACHMENT: 2-5



Anderson & Associates  
Government Relations for the State of Colorado

February 15, 1996

Senator Lillian Papay  
State Capitol Building, First Floor  
Topeka, Kansas 66612-1590

VIA FAX: 913-296-6718  
Attention: Judy (296-7394)

SUBJECT: Senate Bill No. 632 - Relating to Records of the DMV

Dear Senator Papay:

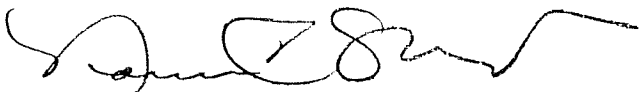
During our recent discussion on the subject bill, you asked that I send you a letter on the matter so you could be prepared for the Committee on Transportation and Utilities hearing next Tuesday, February 20, 1996.

Please find attached a description as to why this legislation has been introduced by me for my client, The Polk Company. In addition, I have attached a copy of the Drivers' Privacy Protection Act for your information.

Thank you for taking the time on this important subject matter.

Respectfully,

ANDERSON & ASSOCIATES

By   
Norman R. Sherbert

NRS:sak

Enclosures

SENATE TRANSPORTATION  
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PROPOSED KANSAS  
IMPLEMENTATION OF THE DRIVERS'  
PRIVACY PROTECTION ACT

The Drivers' Privacy Protection Act (DPPA), copy attached, was passed by Congress and signed by the President in an effort to restrict the use of public information by stalkers and abortion clinic protesters. DPPA requires that all states implement certain procedures relating to the release of motor vehicle related records. In passing DPPA, Congress recognized the importance of access to public records for legitimate purposes, yet made provision for individuals to opt out of certain uses. In order to fully comply with DPPA, states must pass legislation or implement by rule and regulation provisions to limit some access and provide consumers opt-out options with effectivity by September 13, 1997.

In writing the DPPA, Congress recognized the importance of allowing motor vehicle records to be used for direct mail communications between manufacturers, especially automakers, and consumers.

Congressman Jim Moran (Virginia), one of the legislation's sponsors, said in the Congressional Record:

"Marketers use DMV lists to do targeted mailings and other types of marketing. This amendment will allow them to continue to do so, as long as they agree not to market drivers who object to their personal information being used for marketing purposes. Eight states have already installed opt-out systems which allow drivers to restrict the use of their name for marketing purposes. This amendment will not alter those opt-out systems.

"My intent is for this provision to furnish states that proceed with opt-out systems with substantial flexibility in the operation of these systems, including the flexibility to furnish multipurpose users with a single list of license holders. Any driver that had notified the state that he/she did not want to receive direct mail solicitations would still be on that list, but the state would have to clearly identify to the purchaser the individuals to whom solicitations should not be directed and the purchaser would have to agree not to direct solicitations to that driver."

Mr. Moran's statement emphasizes that the federal law gives state motor vehicle departments flexibility to implement opt-out procedures so they are not burdensome to administer.

## KANSAS DPPA IMPLEMENTATION

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Present Kansas statutes are silent to the ability of businesses to access motor vehicle records, except under two specific areas--(1) motor vehicle repair campaigns and recalls and (2) insurance. In not addressing the availability of these records for marketing and/or survey, Kansas statutes presently will not allow for citizens to receive mail and important information that they might want and/or need to make good and educated buying decisions. For example, access to motor vehicle records for purposes other than repair campaigns or recall is critical to the automotive industry--an industry that is important to the economy of the State of Kansas. Use of motor vehicle record information by manufacturers and dealers are numerous, encompassing, and important to product quality and sales services:

- Product alteration, notifications, and safety/emission recalls
- Announcement of new product offerings
- Providing appropriate consumers with parts and service offers
- Market analysis for:
  - dealership locations
  - parts distribution
  - service outlets
  - product planning
- Communicating with owners to generate owner loyalty
- Conquesting new sales efficiently
- Providing consumers with special product offers and rebates
- Surveys on product and dealer satisfaction
- Delivering product information to appropriate segments of the marketplace
- Continued communication to assure customer satisfaction.

In addition to the automotive industry, the legislation would allow the Kansas Vehicle Division to release records for the following uses:

1. By government agencies for carrying out its functions;

## KANSAS DPPA IMPLEMENTATION

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2. By organizations for driver safety, theft, performance monitoring, vehicle research activities, and the removal of non-owner records from the original owner records of vehicle manufacturers;
3. By business to verify the accuracy of information submitted by the individual to that business;
4. In connection with a civil, criminal, administrative, or arbitral proceeding in a court;
5. In research activities and in producing statistical reports, so long as the information is not re-disclosed or used to contact the individuals who are subject of the personal information;
6. In providing notices to the owners of towed and impounded vehicles;
7. By a licensed private investigation agency for purposes permitted by this law;
8. In connection with the operation of private toll transportation facilities; and
9. For surveys, marketing and solicitation activities (if an individual has been given an opportunity to prohibit such uses).

As previously stated, DPPA must be addressed by September 13, 1997, by all states. States such as Illinois, New York, Oregon, Maryland, Delaware, Montana and Utah are already in compliance because they took measures before the federal law was passed. Other states such as Ohio, Missouri, Minnesota, Michigan, Tennessee, Kansas, West Virginia, Florida, Nebraska, and South Dakota have either introduced or will introduce legislation this year to comply with DPPA.

The Polk Company is committed to working with the Kansas Division of Vehicles to enable a direct mail opt-out to be administered. Polk and other industry resources are available to facilitate operation of this procedure.

The key issue that is addressed by the Legislature will ultimately be that of notice that the opt-out procedure is available. The DPPA says that motor vehicle departments must implement

"methods and procedures to ensure -

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(A) that individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such disclosure . . ."

Thus, the procedure would include a notice that the opt-out is available. For example, the notice can be accomplished by:

- Clearly displayed signs at DOV locations,
- Separate forms available at DOV locations, or
- Other format.

1 **TITLE XXX---PROTECTION OF PRIVACY**  
2 **OF INFORMATION IN STATE MOTOR**  
3 **VEHICLE RECORDS**

4  
5 **SEC. 300001. SHORT TITLE.**

6 This title may be cited as the "Drivers' Privacy Protection Act of 1994".  
7

8 **SEC. 300002. PROHIBITION ON RELEASE AND USE OF CERTAIN**  
9 **PERSONAL INFORMATION FROM STATE MOTOR VEHICLE**  
10 **RECORDS.**

11  
12 (a) IN GENERAL.---Title 18, United States Code, is amended by inserting  
13 after chapter 121 the following new chapter:  
14

15 **"CHAPTER 123---PROHIBITION ON RELEASE AND USE OF**  
16 **CERTAIN PERSONAL INFORMATION FROM STATE**  
17 **MOTOR VEHICLE RECORDS.**

18  
19 **"§2721. Prohibition on release and use of certain personal information from**  
20 **State motor vehicle records**

21 "(a) IN GENERAL.---Except as provided in subsection (b), a State department of motor  
22 vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or  
23 otherwise make available to any person or entity personal information about any individual  
24 obtained by the department in connection with a motor vehicle record.

25 "(b) PERMISSIBLE USES.---Personal information referred to in subsection (a) shall be  
26 disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor  
27 vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring  
28 of motor vehicle and dealers by motor vehicle manufacturers and removal of non-owner records  
29 from the original owner records of motor vehicle manufacturers to carry out the purposes of the  
30 Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the  
31 National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the  
32 Clean Air Act, and may be disclosed as follows:

33 "(1) For the use by any government agency, including any court or law  
34 enforcement agency, in carrying out its functions, or any private person or entity  
35 acting on behalf of a Federal, State, or local agency in carrying out its functions.

36 "(2) For the use in connection with matters of motor vehicle or driver safety and  
37 theft; motor vehicle emissions; motor vehicle product alterations, recalls, or  
38 advisories; performance monitoring of motor vehicles, motor vehicle parts and  
39 dealers; motor vehicle market research activities, including survey research; and  
40 removal of non-owner records from the original owner records of motor vehicle  
41 manufacturers.

42 "(3) For the use in the normal course of business by a legitimate business or its  
43 agents, employees, or contractors, but only---

44 "(A) to verify the accuracy of personal information submitted by the  
45 individual to the business or its agents, employees, or contractors; and

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“(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

“(4) For the use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

“(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

“(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting.

“(7) For use in providing notice to the owners of towed or impounded vehicles.

“(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

“(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.).

“(10) For use in connection with the operation of private toll transportation facilities.

“(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

“(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that---

“(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

“(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

“(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

“(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

“(c) **RESALE OR REDISCLOSURE.**---An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this title must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

“(d) **WAIVER PROCEDURES.**---A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

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1 "§ 2722. Additional unlawful acts  
2 "(a) PROCUREMENT FOR UNLAWFUL PURPOSE.---It shall be unlawful for any person  
3 knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not  
4 permitted under section 2721(b) of this title  
5 "(b) FALSE REPRESENTATION.---It shall be unlawful for any person to make false  
6 representation to obtain any personal information from an individual's motor vehicle record.  
7

8 "§ 2723. Penalties  
9 "(a) CRIMINAL FINE.---A person who knowingly violates this chapter shall be fined under  
10 this title.  
11 "(b) VIOLATIONS BY STATE DEPARTMENT OF MOTOR VEHICLES.---Any State department  
12 of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be  
13 subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each  
14 day of substantial noncompliance.  
15

16 "§ 2724. Civil action  
17 "(a) CAUSE OF ACTION.---A person who knowingly obtains, discloses or uses personal  
18 information, from a motor vehicle record, for a purpose not permitted under this chapter shall be  
19 liable to the individual to whom the information pertains, who may bring a civil action in a United  
20 States district court.  
21 "(b) REMEDIES.---The court may award---  
22 "(1) actual damages, but not less than liquidated damages in the amount of \$2,500;  
23 "(2) punitive damages upon proof of willful or reckless disregard of law;  
24 "(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and  
25 "(4) such other preliminary and equitable relief as the court determines to be  
26 appropriate.  
27

28 "§ 2725. DEFINITIONS  
29 "In this chapter---  
30 "(1) 'motor vehicle record' means any record that pertains to a motor vehicle  
31 operator's permit, motor vehicle title, motor vehicle registration, or identification  
32 card issued by a department of motor vehicles;  
33 "(2) 'person' means an individual, organization or entity, but does not include a  
34 State or agency thereof; and  
35 "(3) 'personal information' means information that identifies an individual,  
36 including an individual's photograph, social security number, driver identification  
37 number, name, address (but not the 5-digit zip code), telephone number, and medical or  
38 disability information, but does not include information on vehicular accidents, driving  
39 violations, and driver's status."  
40

41 (b) CLERICAL AMENDMENT.---The table of parts at the beginning of part I of title 18,  
42 United States Code, is amended by adding at the end the following new item:  
43 "123. Prohibition on release and use of certain personal information from State motor vehicle records ..... 2271"

44 **SEC. 300003. EFFECTIVE DATE.**  
45 The amendments made by section 300002 shall become effective on the date that is 3 years  
46 after the date of enactment of this Act. After the effective date, if a State has implemented a  
47 procedure under section 2721(b) (11) and (12) of title 18, United States Code, as added by section  
48 2902, for prohibiting disclosures or uses of personal information, and the procedure otherwise meets  
49 the requirements of subsection (b) (11) and (12), the State shall be in compliance with subsection  
50 (b) (11) and (12) even if the procedure is not available to individuals until they renew their license,  
51 title, registration or identification card, so long as the State provides some other procedure for  
52 individuals to contact the State on their own initiative to prohibit such uses or disclosures. Prior to  
53 the effective date, personal information covered by the amendment made by section 300002 may be  
54 released consistent with State law or practice.

## **Kansas Option Out Procedure**

1. Polk would advertise in statewide newspaper campaign notifying all Kansas drivers and vehicle owners that they have the ability to option out of the release of information for marketing and survey purposes. (See exhibit A which is similar to an advertisement used in the state of Maryland to achieve option out notification). This meets guidelines set forth by the federal law on the notification procedure.

2. Polk would create notices to be posted in all county treasurer offices. Notices would inform individuals of the option out forms, what purpose they serve and how to obtain them. These forms would be located behind the counter and could be distributed upon request. (see exhibit B).

3. Polk would create a document (see exhibit C) which would serve as an option out form. Exhibit C is identical to the current form used in Delaware. However it has been altered to fit Kansas needs.

4. Requesting individuals would then fill out the option out form and mail to a Post Office Box (acquired by Polk located in Topeka). Polk would pick up the notices and then data enter the opt outs thus creating an option out file.

5. Polk would send the option out file to the Director of Motor Vehicles on a monthly/quarterly basis. Any party requesting bulk purchases for marketing provided the Director approve this use would now receive the option out file in addition to the bulk file. Such a party would then have to take appropriate measures to suppress the option out names from the bulk file. Such a party would also be liable for any misuse or non-compliance by contract.

### **The State**

Would make option out forms available to requesting individuals at all county treasurer offices and post notices informing individuals of the opportunity to option out for marketing purposes. The state would also receive and store the option out file in which Polk would deliver to the state. The Director could also charge an additional fee to bulk purchasers requesting the option out file for marketing purposes.

### **The Polk Company**

Would handle all other procedures associated with the option out implementation mentioned above. Polk would also absorb the initial costs associated with the procedure described above. In return Polk would desire consideration for reimbursement, potentially in the form of some reduced rate for data acquisition. Polk would be willing to sign a contract to assume liability for this procedure.

**Exhibit A**

**PUBLIC NOTICE**

The Kansas State Motor Vehicle Division provides vehicle and driver records to legitimate businesses for safety recalls, manufacturer's warranty, statistical reports, surveys and marketing. You may request that your data NOT BE MADE AVAILABLE for marketing and surveys by picking up an option-out authorization at your local county treasurers office and mailing that form to:

P.O. Box 1212  
Topeka, KS 12345

Exercising this option will only affect marketing and surveys based on vehicle registration and drivers records. This may include marketing of new automotive product information, parts and service reminders and offers, and other automotive related materials. Your name will be retained for automotive manufacturer recalls. Choosing this option will result in minimal marketing and survey mail reduction.

## Notice

Kansas motor vehicle and driver records are made available to some organizations for legitimate business purposes such as marketing and surveys.

If you would prefer to have you name and address withheld from marketing and survey use you may request a form from the clerk at the counter and mail it to:

Division of Motor Vehicles  
P.O. Box 1212  
Topeka, KS 12345

**NOTE:** Choosing this option will likely only result in a minimal reduction of the marketing and survey information you receive. You may not receive information on automotive products and services.

STATE OF KANSAS  
DIVISION OF MOTOR VEHICLES  
P.O. Box 1212  
Topcka, KS 12345

REQUEST TO WITHHOLD NAME/ADDRESS FROM DMV RECORDS USED FOR MARKETING AND SURVEYS.

DRIVER LICENSE/ID CARD

VEHICLE REGISTRATION

- 1. Please PRINT. Complete all spaces.
- 2. Use your current LICENSE or ID CARD for correct information.

- 1. Please PRINT. Complete all spaces.
- 2. Use your current REGISTRATION for correct information.
- 3. PLEASE NOTE: You must complete a new form to have your name withheld each time you title add'l vehicles.

DRIVER #1

VEHICLE #1

DRIVER LICENSE NO.

ID CARD NO.

TAG NO.

YEAR

MAKE

NAME (PRINT LAST, FIRST, M.I.)

NAME (PRINT LAST, FIRST, M.I.)

ADDRESS

ADDRESS

CITY, STATE, ZIP

CITY, STATE, ZIP

SIGNATURE OF LICENSEHOLDER

SIGNATURE OF REGISTERED OWNER

DRIVER # 2

VEHICLE # 2

DRIVER LICENSE NO.

ID CARD NO.

TAG NO.

YEAR

MAKE

NAME (PRINT LAST, FIRST, M.I.)

NAME (PRINT LAST, FIRST, M.I.)

SIGNATURE OF LICENSEHOLDER

SIGNATURE OF REGISTERED OWNER

DO NOT WRITE BELOW THIS LINE

DMV USE ONLY

DO NOT WRITE BELOW THIS LINE

ENTRY DATE: / /

ENTRY DATE: / /

ADDITIONAL SHEETS REQUIRED FOR MORE THAN 2 DRIVERS OR 2 VEHICLES.

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 4-4



## STATE MOTOR VEHICLE RECORD AND DRIVERS RECORD OPTION OUT PROCEDURE

1. **STATE:** ILLINOIS
2. **DATE PROCEDURE INITIATED:** 1993
3. **HOW IS PROCEDURE OFFERED:**

Opt-Out Authorization forms are available upon individual request. Forms are mailed in to the Secretary of State.
4. **HOW ARE FORMS PROCESSED:**

Forms are received and data entered in to the state database thus creating a flag next to the opt out records.
5. **HOW IS NOTICE PROVIDED:**

Information is provided on a form or verbally in branch offices about the opt out authorization. Requests must be filled out on a form and sent to the motor vehicle division.
6. **COST OF PROCEDURE:**

Very low; exact amount NA.
7. **CITIZENS THAT OPTED OUT IN 1995:**

Out of 13,291,784 Polk received 15,404 opt out names from the Vehicle services department. The 15,404 records amount to .12% of the total registrations in 1995.
8. **HOW DOES POLK RECEIVE RECORDS?**

Polk receives all registration transaction record copies from the vehicle services department for recall, statistics and marketing. The records of those who have requested the opt-out are designated by a flag at that particular record. These records are kept out of the company's direct marketing database, but are routed to its recall, statistics and non-marketing databases.
9. **CONTACTS:** IL VSD: Dwight Meneley 217/785-3000

## STATE MOTOR VEHICLE RECORD AND DRIVERS RECORD OPTION OUT PROCEDURE

1. **STATE:** MONTANA
2. **DATE PROCEDURE INITIATED:** 1990
3. **HOW IS PROCEDURE OFFERED:**  
Individuals wishing to opt out must write to the motor vehicle division.
4. **HOW ARE FORMS PROCESSED:**  
Forms are received and data entered in to the state database thus creating a flag next to the opt out records.
5. **HOW IS NOTICE PROVIDED:**  
Information is provided verbally in branch offices about the opt out authorization. Requests must sent to the motor vehicle division.
6. **COST OF PROCEDURE:**  
Very low; exact amount NA.
7. **CITIZENS THAT OPTED OUT IN 1995:**  
Out of 1,476,353 Polk received 25 opt out names from the motor vehicle division. The 25 records amount to .001% of the total registrations in 1995.
8. **HOW DOES POLK RECEIVE RECORDS?**  
Polk receives all registration transaction record copies from the motor vehicle division for recall, statistics and marketing. The records of those who have requested the opt-out are designated by a flag at that particular record. These records are kept out of the company's direct marketing database, but are routed to its recall, statistics and non-marketing databases.
9. **CONTACTS:** MT MVD Daryll Schoen 406/846-1423

**STATE MOTOR VEHICLE RECORD OPT-OUT PROCEDURE**

12/4/95

1. **STATE:** DELAWARE

2. **DATE PROCEDURE INITIATED:** 1991

3. **HOW IS PROCEDURE OFFERED:**

"Request to Withhold Name/Address" forms are available at the four (4) Division of Motor Vehicles (DMV) branch offices in the state. DMV personnel provide these forms to persons who wish their records withheld for mail advertising purposes upon request. (See copy of form attached; this form is used for both motor vehicle and driver license record opt-outs).

4. **HOW ARE FORMS PROCESSED:**

Completed "Request to Withhold Name/Address" forms are sent by DMV courier with its other paperwork to Dover for data entry.

5. **HOW IS NOTICE PROVIDED:**

Display signs reportedly are used to indicate that "Request" forms are available.

6. **HOW IS DATA ENTERED INTO DATABASE:**

DMV personnel handle manually. Information from the "Request" forms is entered into the DMV computer record database; the records of individuals who file "Request" forms are marked accordingly.

7. **COST OF PROCEDURE:**

The one-time installation cost included some significant programming and file structure modifications, according to Cheryl Roe, Systems Administrator. The cost of branch office services and on-going data entry appear to be included in the normal budget for on-going administrative expenses.

8. **SUBSCRIPTION RATE:**

In the January through August, 1995, period, Polk received 374,480 records from the Delaware DMV for recall and other information services to the auto industry. Of those, 282 had opt-outs. This is less than 1%.

9. **HOW DOES POLK RECEIVE RECORDS?**

Polk receives all registration transaction record copies from the DMV for recall and other purposes. The records of individuals who have requested the opt-out are designated by a one-position code. Polk identifies these records in its preliminary data processing. These records are kept out of the company's mail advertising database, but are routed to its recall, statistics and non-advertising databases.

10. **CONTACTS:**

Delaware DMV: Cheryl Roe - System Administrator, 302-739-3194 or  
1-800-759-7243 (PIN = 5506548)

Maria Williams - Supervisor, Registration Section, 302-739-4467

SENATE TRANSPORTATION

DATE: 2/20/96

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STATE OF DELAWARE  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF MOTOR VEHICLES  
P.O. Box 698  
DOVER, DELAWARE 19903

(302) 739-4435

December 13, 1995

Mr. Daniel Trotman  
R.L. POLK & CO.  
1155 Brewery Park Blvd.  
Detroit, MI 48207-2697

Dear Mr. Trotman:

Pursuant to your request, enclosed is a copy of Title 21, Delaware Code, Section 305 relating to motor vehicle records.

The Division, as a result of the "privacy law", passed in 1991, modified its license and registration databases to comply. A flagging program was created under both the license and registration files. New fields were created on both files to accommodate the privacy indicator. Several batch programs were modified to read the privacy indicator and based on selected criteria, either write or ignore the record. The batch program for R.L. Polk was modified to include the privacy indicator byte and write the record as usual. Forms were created for individuals to request their records not be released by the Division. Staff training, notification and implementation took place October 10, 1991. The Division spent approximately \$5,000 to modify its' database and programs.

Should you require any additional information, please do not hesitate to contact me.

Sincerely,

  
Sheri L. Antonik  
Administrative Assistant

Enclosure

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 4-8

**STATE MOTOR VEHICLE RECORD OPT-OUT PROCEDURE**

12/4/95

1. **STATE:** MARYLAND

2. **DATE PROCEDURE INITIATED:** 1992

3. **HOW IS PROCEDURE OFFERED:**

Information is available to consumers in the 18 Motor Vehicle Administration (MVA) branch offices for persons who want to opt-out from mail advertising.

Persons who do not wish to receive mail advertising must send a letter of request to the MVA. The MVA confirms receipt of the opt-out request (see sample DMV letter attached).

4. **HOW ARE FORMS PROCESSED:**

The information from the letters of request are entered manually into a computer "opt-out" file.

5. **HOW IS NOTICE PROVIDED:**

Information is provided in branch offices, on a form or verbally from personnel, about the availability of the mail advertising "opt-out" procedure; requests from individuals to invoke the "opt-out" must be submitted to the MVA in writing.

6. **HOW IS DATA ENTERED INTO DATABASE:**

The "opt-out" file is loaded into the MVA record database monthly via a simple update program

7. **COST OF PROCEDURE:**

The cost to set-up the data processing procedure to record "opt-out" designations on the MVA computer file was relatively low. The cost of branch office services and on-going data entry appear to be included in the normal budget for administrative expenses.

8. **SUBSCRIPTION RATE:**

In the January through August, 1995, period, Polk received 2,121,196 record copies from the MD MVA. Of those, 46,832 had opt-outs. This is about 2%.

9. **HOW DOES POLK RECEIVE RECORDS?**

Polk receives all registration transaction record copies from the MVA for recall and other purposes. The records of individuals who have requested the opt-out are designated by a one-position code. Polk identifies these records in its preliminary data processing. These records are kept out of the company's mail advertising database, but are routed to its recall, statistics and non-advertising databases.

10. **CONTACTS:** MD MVA: Ned Kodeck, special assistant to the administrator  
410-768-7274

Maxine Hartman, data administrator  
410-768-7219

## STATE MOTOR VEHICLE RECORD AND DRIVERS RECORD OPTION OUT PROCEDURE

1. STATE: UTAH

2. DATE PROCEDURE INITIATED: 1993

3. HOW IS PROCEDURE OFFERED:

Opt-out is made available on registration and driver applications and renewals. However it has proven to be very uninformative and ineffective because individuals are confused and unsure of what they are opting out of. The current method is not clear or very descriptive and many individuals are "scared" into opting out.

4. HOW ARE FORMS PROCESSED:

Forms are received and data entered in to the state database thus creating a flag next to the opt out records.

5. HOW IS NOTICE PROVIDED:

On forms of issuance and renewal.

6. COST OF PROCEDURE:

NA

7. CITIZENS THAT OPTED OUT IN 1995:

Out of 2,511,636 Polk received 307,894 opt-out names from the motor vehicle division. The 307,894 records amount to 12.26% of the total registrations in 1995.

8. HOW DOES POLK RECEIVE RECORDS?

Polk receives all registration transaction record copies from the motor vehicle division for recall, statistics and marketing. The records of those who have requested the opt-out are designated by a flag at that particular record. These records are kept out of the company's direct marketing database, but are routed to its recall, statistics and non-marketing databases.

9. CONTACTS: NA

## STATE MOTOR VEHICLE RECORD AND DRIVERS RECORD OPTION OUT PROCEDURE

1. STATE: OREGON

2. DATE PROCEDURE INITIATED: 1993

3. HOW IS PROCEDURE OFFERED:

Opt-out is made available on registration and driver applications and renewals. However it has proven to be very uninformative and ineffective because individuals are confused and unsure of what they are opting out of. The current method is not clear or very descriptive and many individuals are "scared" into opting out.

4. HOW ARE FORMS PROCESSED:

Forms are received and data entered in to the state database thus creating a flag next to the opt out records.

5. HOW IS NOTICE PROVIDED:

On forms of issuance and renewal.

6. COST OF PROCEDURE:

NA

7. CITIZENS THAT OPTED OUT IN 1995:

Out of 1,121,974 Polk received 300,571 opt-out names from the motor vehicle division. The 300,571 records amount to 26.79% of the total registrations in 1995.

8. HOW DOES POLK RECEIVE RECORDS?

Polk receives all registration transaction record copies from the motor vehicle division for recall, statistics and marketing. The records of those who have requested the opt-out are designated by a flag at that particular record. These records are kept out of the company's direct marketing database, but are routed to its recall, statistics and non-marketing databases.

9. CONTACTS: NA

**STATE MOTOR VEHICLE RECORD OPT-OUT PROCEDURE**

12/4/95

1. **STATE:** NEW YORK

2. **DATE PROCEDURE INITIATED:** 1992

3. **HOW IS PROCEDURE OFFERED:**

The Notice of mail advertising opt-out, and signature box are printed on Application for Registration/Title, and Registration Renewal forms. The Application form is available from the Department of Motor Vehicle's (DMV) 120 branch offices. The Renewal forms are mailed out during the license plate renewal cycle. (See copies of forms attached)

4. **HOW ARE FORMS PROCESSED:**

- a) The Applications are taken "over-the-counter." Clerical personnel enter all the data provided by the applicant into the DMV's computer system "on-line." If the applicant elects the mail advertising "opt-out," the clerk makes only one keystroke on the computer screen to mark that person's motor vehicle record accordingly.
- b) Renewal forms are returned to branch offices in person; however, most are returned via mail. Opt-out designations provided on the mailed-in forms are entered by clerical personnel in centralized data processing centers.

5. **HOW IS NOTICE PROVIDED:**

A Notice of the "opt-out" availability and instructions on how to exercise are printed on the Application and Renewal forms.

6. **HOW IS DATA ENTERED INTO DATABASE:**

By DMV branch office clerks. Also, Renewal forms returned by mail are processed through a centralized DMV processing center. (See "4" above). Clerks enter "opt-out" designations along with the other data provided on Renewal forms, such as address changes, etc.

7. **COST OF PROCEDURE:**

The start-up installation cost was relatively low, according to Duncan MacPherson, director of district office operations. The work was incorporated into the DMV's on-going data processing system maintenance, and modifications to its Applications and Renewal forms.

8. **SUBSCRIPTION RATE:**

In the January through June, 1995, period, Polk received 4,114,293 first-time registration and renewal record copies from the NY DMV. Of those, 38,702 had opt-outs. This is about 1%.

9. **HOW DOES POLK RECEIVE RECORDS?**

Polk receives all registration transaction record copies from the DMV for recall and other purposes. The records of individuals who have requested the opt-out are designated by a one-position code. Polk identifies these records in its preliminary data processing. These records are kept out of the company's mail advertising database, but are included in its recall, statistics and non-advertising databases.

10. **CONTACTS:** Duncan McPherson, DMV Dist. Ofc. Operations, 518-474-2897

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 4-12



# STATE OF KANSAS

BILL GRAVES, GOVERNOR

Betty McBride  
Director of Vehicles  
Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66612-1588



(913) 296-3601  
FAX (913) 296-3852

**Department of Revenue**  
JOHN D. LaFAVER, SECRETARY

*Vehicle Director's Office*

**TO:** The Honorable Ben Vidricksen Chairman,  
Senate Transportation Committee

**FROM:** Betty McBride *Betty McBride*  
Director, Division of Vehicles

**DATE:** February 20, 1996

**SUBJECT:** Senate Bill #632

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Mr. Chairman, members of the Committee, I am Betty McBride, Director of the Division of Vehicles. I appreciate the opportunity to appear before you today on behalf of the Kansas Department of Revenue with regard to Senate Bill 632.

Mr. Chairman, the Department of Revenue neither opposes nor supports Senate Bill 632, but feels there are issues which the Department should bring to the attention of the Committee prior to considering passage of this legislation.

Currently, the Kansas State Motor Vehicle Division provides vehicle and driver records to legitimate businesses for safety recalls, manufacturer's warranties, statistical reports, and surveys. Records cannot be used for offering for sale, a product or a service. Due to the structure of Kansas statutes, the Department is currently in full compliance with the federal Driver's Privacy Act. Passage of Senate bill 632 would allow businesses fitting the current exemptions from the \$2.00 minimum per record rate, to use the names and addresses in distribution for survey and marketing purposes. The issue of allowing survey and marketing of Motor vehicle records in Kansas becomes a policy question for this Committee to decide.

SENATE TRANSPORTATION  
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Is it good public policy to acquire records from Kansas citizens for vehicle registrations and driver licenses and then offer these records for public uses other than what they were intended for? We feel certain public perception is that records retained are secure within the Department of Revenue.

The Federal act requires State motor vehicle departments authorizing the marketing of records, to provide each individual an opportunity, in a clear and conspicuous manner, to prohibit such disclosures. This is commonly known as an "Opt-out" provision. States must implement a procedure for prohibiting disclosures or uses of personal information for individuals who have selected the opt-out provision. The department could advertise in newspapers and post notices in our Driver License offices and County Treasurer's offices; however, we do not feel that is sufficient notice. If an individual had just renewed their vehicle registration or drivers license, it could be one to four years before they would be aware of the opt-out provision. The department is also concerned about possible legal repercussions related to this legislation. The Federal law simply requires the person to notify the Department. What would the liability of the Department be if an applicant notifies the drivers license side of their desire to opt-out, assuming that one notification would cover all Department records, and then finds that they were required to opt-out in each area. In order to provide the level of customer service we feel you would want the Department to give Kansas citizens in affording them this opportunity, we feel it would be necessary that we make a direct mailing to all individuals who have registered a vehicle or have secured a driver license in Kansas. Postage cost for the estimated 3.6 million mailings would be \$986,400 plus a cost of \$35,100 for envelopes. To ensure timely annotation of division files of opt-out information additional positions would be needed.

I have attached a copy of the Federal act for your review. You will note that provided in subsection (b) is a list of permissible uses for the full personal information vehicle record. At the present time, the Department provides complete vehicle records to requesting parties which are listed as permissible users under the Federal Act. Upon request, these entities would still be eligible to receive vehicle records on all individuals, even though the individual had opted out. They would not be able to use them for survey or marketing purposes. However, once these records have been released to a qualified requesting party, departmental control over the users of those records ends. The Department would not be able to assure proper usages.

The Department of Revenue makes every effort to provide excellent customer service. The Division feels that customer service in its Driver License Examining Offices could very well suffer, and longer lines could result due to the increased information that would have to be collected, and the associated explanations that would be required of our Examiners, to inform applicants of their options.

In studying the feasibility for the Department to authorize a third party to assist the Division of Vehicles in collecting and recording the data required for the opt-out provision, it should be understood that the Department would be legally responsible for the accuracy of recording and maintaining the opt-out records. The Federal Act provides that if a state Department of Motor Vehicles has a policy or practice of substantial noncompliance, they shall be subject to a civil penalty imposed by the Attorney General, of not more than \$5,000 a day for each day of substantial noncompliance. It was determined that the Department would also be required to post notices, answer inquiries and collect the data from individuals. To insure the accuracy and integrity of the Divisions records it was decided to be more cost effective for the Department to administer the complete program, should this legislation pass. Total cost to implement Senate Bill 632 as I have described above has been determined to be \$1,319,069.

Thank you again Mr. Chairman and members of the committee for allowing me to discuss this issue with you. I would stand for questions at this time.

TITLE XXX-PROTECTION OF PRIVACY OF INFORMATION IN STATE MOTOR VEHICLE RECORDS

SEC. 300001. SHORT TITLE.

This title may be cited as the "Driver's Privacy Protection Act of 1994".

SEC. 300002. PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS.

(a) In General .-Title 18, United States Code, is amended by inserting after chapter 121 the following new chapter:

"CHAPTER 123-PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

" 2721. Prohibition on release and use of certain personal information from State motor vehicle records

"(a) In General .-Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.

"(b) Permissible Uses .-Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act, and may be disclosed as follows:

"(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

"(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

"(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only-

"(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

"(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

"(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

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"(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

"(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

"(7) For use in providing notice to the owners of towed or impounded vehicles.

"(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

"(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.).

"(10) For use in connection with the operation of private toll transportation facilities.

"(11) For any other use in response to requests for individual motor vehicle records if the motor vehicle department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any business or person, and has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

"(12) For bulk distribution for surveys, marketing or solicitations if the motor vehicle department has implemented methods and procedures to ensure that-

"(A) individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

"(B) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

"(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains. [\*H8854]

"(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

"(c) Resale or Redisclosure .-An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b) (11)) that resells or rediscloses personal information covered by this title must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

"(d) Waiver Procedures .-A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

" 2722. Additional unlawful acts

"(a) Procurement for Unlawful Purpose .-It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title.

"(b) False Representation .-It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

" 2723. Penalties

"(a) Criminal Fine .-A person who knowingly violates this chapter shall be fined under this title.

"(b) Violations by State Department of Motor Vehicles .-Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than \$ 5,000 a day for each day of substantial noncompliance.

" 2724. Civil action

"(a) Cause of Action .-A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

"(b) Remedies .-The court may award-

"(1) actual damages, but not less than liquidated damages in the amount of \$ 2,500;

"(2) punitive damages upon proof of willful or reckless disregard of the law;

"(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

"(4) such other preliminary and equitable relief as the court determines to be appropriate.

" 2725. Definitions

"In this chapter- "(1) 'motor vehicle record' means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

"(2) 'person' means an individual, organization or entity, but does not include a State or agency thereof; and

"(3) 'personal information' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status."

(b) Clerical Amendment .-The table of parts at the beginning of part I of title 18, United States Code, is amended by adding at the end the following new item:

"123. Prohibition on release and use of certain personal information from State motor vehicle records

2271"

SEC. 300003. EFFECTIVE DATE.

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The amendments made by section 300002 shall become effective on the date that is 3 years after the date of enactment of this Act. After the effective date, if a State has implemented a procedure under section 2721(b) (11) and (12) of title 18, United States Code, as added by section 2902, for prohibiting disclosures or uses of personal information, and the procedure otherwise meets the requirements of subsection (b) (11) and (12), the State shall be in compliance with subsection (b) (11) and (12) even if the procedure is not available to individuals until they renew their license, title, registration or identification card, so long as the State provides some other procedure for individuals to contact the State on their own initiative to prohibit such uses or disclosures. Prior to the effective date, personal information covered by the amendment made by section 300002 may be released consistent with State law or practice.

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 5-7



Looking east on Douglas from Market shows how a proposed \$3 million streetscape plan would revitalize downtown Wichita. Courtesy photo

**Buy time?**  
Managers of Towne East and Towne West malls are excited about new stores, merchandise and a look. See Page 14A

**and**  
**nting**  
Kansas Masonic Home and Maple has a landmark in Wichita century. Its leaders will be around for century. See 9A

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# Lawsuit stakes a claim on the right to sell name

By Anne Gearan  
Associated Press

ARLINGTON, Va. — Ram Avrahami believes his name is worth something, and if magazines, record clubs and credit card companies can buy and sell it, he ought to get a share of the profits.

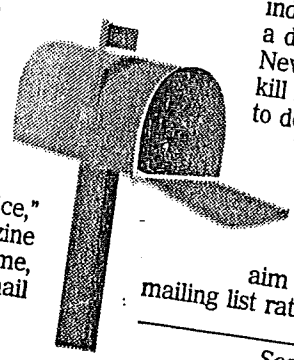
Avrahami, a 33-year-old former marketing manager for a phone company, is suing U.S. News & World Report, arguing that the magazine had no right to sell his name and address to another company without his permission.

"It is unfair to me. Actually it is unfair to me twice," he said Tuesday. "The magazine sells my name without asking me, and then I receive the junk mail for which I really have no use."

Representatives of the direct-marketing industry say the lawsuit is unfounded, and they fear devastating consequences if Avrahami prevails.

"Look at it this way: If I want to send you something and have to call you or write you to make sure it's OK to send you this material, do you know what it's going to do to the direct-marketing industry?" said Ed Burnett, a direct-mail consultant in New Jersey. "It's going to kill it, that's what it's going to do."

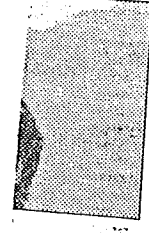
The lawsuit is not the first to challenge direct-mail marketing, but it apparently is the first to aim at the seller of a mailing list rather than the buyer.



See NAME, Page 8A

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SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 6



# Kansas Press Association, Inc.

5423 SW 7th Street, Topeka, KS 66606 Phone 913-271-5304, Fax 913-271-7341

Testimony on Senate Bill 632  
before  
Committee on Transportation and Utilities  
Tuesday, February 20, 1996

John Reinhart  
Director of Government Relations  
Kansas Press Association

Mr. Chairman, members of the committee.

I am here today on behalf of our association's 250 weekly and daily newspapers to request the committee consider a small amendment to this bill. That amendment, which is attached to my testimony, would allow those engaged in "bona fide academic or journalistic research" to make use of the provisions of state law to negotiate the cost of obtaining drivers' license records with the secretary of revenue.

Full and complete access to these records for scholarly and journalistic research--as with all public records--is vital if the public good is to be preserved. As the law now stands, the prohibitive fees for obtaining drivers' license records has a chilling effect on important research.

The excessive fees for obtaining these records effectively closes them to the public and prevents their scrutiny.

The outgrowth of public policy from scholarly and journalistic research has been well-documented. We encourage you to give this amendment your full consideration so that those efforts may continue unhampered in Kansas.

Thank you.

SENATE TRANSPORTATION  
DATE: 2/20/96  
ATTACHMENT: 7

## SENATE BILL No. 632

By Committee on Transportation and Utilities

2-7

9 AN ACT relating to the records of the division of vehicles; amending K.S.A.  
10 1995 Supp. 74-2012 and repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

...

8 under the provisions of section 3 of the military selective service act; ~~or~~  
9 *(D) assisting businesses authorized to receive records under subpara-*  
10 *graphs (A), (B) or (C) of this paragraph in bulk distribution for surveys*  
11 *or marketing, except that the division shall implement methods and pro-*  
12 *cedures to ensure that: (i) Individuals are provided an opportunity, to*  
13 *prohibit such uses by optioning out on a form and in a format authorized*  
14 *by the director; and (ii) the information will be used, rented or sold solely*  
15 *for bulk distribution for surveys or marketing and that such surveys and*  
16 *marketing will not be directed at those individuals who have requested in*  
17 *a timely fashion that they not be directed at them; or*  
18 *(E) bona fide academic or journalistic research.*