

Approved: 3/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 10, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Adkins (excused)
Representative Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Kyle Smith, KBI
John E. Cowles, Assistant District Attorney-Written only

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m.

HB 2055 **Nonprobate transfers of real estate.**

The Chair called for discussion and possible action on **HB 2055**.
The Chair referred to a balloon containing language requested by the SRS. The Chair stated that the language is inserted on line 14 of page 2 to allow for claims of the state of Kansas for medical assistance. (Attachment 1)

A motion was made by Representative Shriver and seconded by Representative Howell to amend **HB 2055** per SRS recommendations on line 14, page 2 to allow for claims of the state of Kansas for medical assistance and report the bill favorably.

Representative Shriver withdrew the motion and Representative Howell withdrew the second.

A motion was made by Representative Shriver to adopt the SRS balloon as an amendment. Representative Howell seconded the motion. The motion carries.

Representative Pauls made a motion to strike the sentence starting with "However" on line 17 through line 25 of page 2. Representative Ruff seconded the motion.

The motion is to delete on page 2, lines 17 through 25. The effect would be that if the grantee beneficiary dies before the owner of the property, the transfer would lapse.

Representative Pauls stated that in discussing this bill with several attorneys from her district the concern of increasing probate litigation was expressed.

The motion carries.

The Chair then stated that his concern is that on lines 16 and 17 of page 2 if the grantee beneficiary dies prior to the death of the record owner the transfer shall lapse. Revisor stated that to get to the intent a statement could be added saying: "unless otherwise provided on the deed the TOD lapses."

Representative Krehbeil made a motion, seconded by Representative Powell that would insert on lines 16 and 17 the language: "If the grantee beneficiary dies prior to the death of the record owner and an alternative grantee beneficiary has not been designated on the deed, the transfer shall lapse." The motion to amend carries.

A motion was made by Representative Powell, seconded by Representative Shriver to recommend **HB 2055** favorably as amended. The motion carries.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 10, 1997.

HB 2056: **Nonprobate transfers of motor vehicles.**

The Chair opened discussion on **HB 2056** and referred to a balloon distributed by the Revisor. The Chair stated that the balloon addressed concerns of two of the conferees, the Kansas Bankers Association and the Department of Transportation. The Chair related that the Revisor has requested some technical changes. on page 1 of the bill. The Chair related that on page 2, the Kansas Bankers Association's request would make it clear that the beneficiary still has to retitle the vehicle in their name within 30 days. The Chair stated that he had requested the change on page 3 that would delay the bill's enactment date to January 1, 1998 to address the fiscal effects of this bill. The Chair stated that the Department of Transportation has about a half year's supply of titles and this amendment would allow them to use those. (Attachment 2)

Representative Powell made a motion to amend per balloon. The motion was seconded by Representative Presta. The motion carries.

Representative Pauls made a motion, seconded by Representative Mays to recommend **HB 2056** favorably as amended. The motion carries.

HB 2059: **Kansas Digital Signature Act.**

The Chair opened discussion on **HB 2059** and passed out a balloon. The Chair stated that the first change suggested is to change the name of the bill to the Electronic Data Security Licensing Act. The Chair stated that the purpose of the bill is to license those entities that are going to provide this encryption service and provide the pass words. The Chair stated that digital signature is just one feature of the process. The amendments on the first page are proposed by the Secretary of State. The Chair referred to item (6) on the balloon and stated that it was a result of comments made by several of the Committee members after the hearing that perhaps these entities should be required to put up a surety bond. The Chair discussed changes that will make the use of digital signatures optional and stricken language/and inserted language concerning juvenile offender information. The Chair explained other changes contained in the balloon. (Attachment 3)

The Committee members discussed the changes contained in the balloon. The Committee members discussed whether the state should be involved with monitoring electronic transaction by way of licensing.

Representative Shriver made a motion to amend **HB 2059** by changing all references and enforcement from the Secretary of State to State Treasurer. Representative Garner seconded the motion. The motion fails.

The Committee members discussed issues concerning; the liability of those relying on a digital signature, authority given to the Secretary of State, and the ramifications of this legislation. The Chair discussed issues dealing with this developing technology and the role of the state in setting some parameters on those providing the encryption service. Representative Powell suggested having an interim study on this topic.

Representative Powell made a motion to table **HB 2059**. The motion was seconded by Representative Haley. The motion carries.

HB 2058: **Revision of statutes relating to computer crime and making false information.**

The Chair directed the Committee members attention to **HB 2058**. The Chair referred to the balloon offered by the KBI to eliminate tying the bill to theft. (Attachment 4)

Kyle Smith, KBI discussed with the Committee members instances where electronic means were used to hide/coverup a prior theft.

Representative Powell referred to the KBI balloon which recommended using the word "obstruct" instead of "impair" on page one. The Chair recommended replacing "theft or felony offense" with the word "crime" in the KBI balloon. Kyle Smith stated that the KBI would not have an objection to those changes.

A motion was made by Representative Powell, to replace "impair" with "obstruct" and to substitute the word "crime" for "theft or felony offense."

The Committee members discussed the ramifications of the suggested changes.

Representative Powell withdrew his motion.

Representative Powell made a motion, seconded by Representative Shriver to amend the KBI balloon by

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 10, 1997.

replacing the word "impair" with "obstruct" and amend the bill per the KBI balloon. The motion carries.

The Chair stated that the original KBI balloon had forfeiture language and the balloon before the Committee today does not. The Committee members discussed the use of the word "disclosure." with Kyle Smith.

Representative Pauls referred to KBI testimony, amendment to K.S.A.60-4104 (the forfeiture statute) last week on the last page and suggested inclusion of that amendment in this bill.

Representative Pauls made a motion, seconded by Representative Ruff to add an amendment to add forfeiture.

The Committee members discussed pros and cons for adding forfeiture to **HB 2058**.

The motion fails.

A motion was made by Representative Powell, seconded by Representative Shriver to recommend **HB 2058** favorably as amended. The motion carries.

Written testimony in support of **HB 2058** by John E. Cowles, Assistant District Attorney was distributed by Kyle Smith. (Attachment 5)

The Chair discussed upcoming Committee meeting agendas and adjourned the meeting at 4:40 p.m.

The next meeting is scheduled for February 11, 1997.

House Judiciary

2-10-97

Name	Representing
DAVID TAYLOR	KSA
Sim Morgan	
Jason Oldham	OJA
Brian M. Japp	SRS
David Debenham	Attorney General
Ken Jett	KS Farm Dairy Assoc
Chuck Stonos	ICBA
Patrick Randall	Wichita Junction, AA,
Matt Goddard	Heartland Community Bankers
JARED MUTH	ATTORNEY GENERAL
Jim Goss	MA Kansas
Melissa Wangeman	SOS
Jessica Dean	SOS
Jim Clark	KCDAA
Ken Clark	KDOR
Rick Schiebe	KDOR
Betty Mc Bride	KDOR
Joel Franke	BKIW
Kyle Smith	KBJ

HOUSE BILL No. 2055

By Committee of Judiciary

1-22

House Judiciary
Attachment 1
2/10/97

9 AN ACT concerning nonprobate transfers; relating to real estate.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) An interest in real estate may be titled in transfer-on-
13 death, TOD, form by recording a deed signed by the record owner of
14 such interest, designating a grantee beneficiary or beneficiaries of the
15 interest. Such deed shall transfer ownership of such interest upon the
16 death of the owner. A transfer-on-death deed need not be supported by
17 consideration.

18 (b) The signature, consent or agreement of or notice to a grantee
19 beneficiary of a transfer-on-death deed shall not be required for any pur-
20 pose during the lifetime of the record owner.

21 Sec. 2. An interest in real estate is titled in transfer-on-death form
22 by executing, acknowledging and recording in the office of the register
23 of deeds in the county where the real estate is located, prior to the death
24 of the owner, a deed in substantially the following form:

25 (Name of owner) as owner transfers on death to (name of beneficiary)
26 as grantee beneficiary, the following described interest in real estate: (here insert description
27 of the interest in real estate). THIS TRANSFER ON DEATH DEED IS REVOCABLE.
28 IT DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE
29 OWNER. IT REVOKES ALL PRIOR BENEFICIARY DESIGNATIONS BY THIS
30 OWNER FOR THIS INTEREST IN REAL ESTATE.

31 Instead of the words "transfer on death" the abbreviation "TOD" may be used.

32 Sec. 3. (a) A designation of the grantee beneficiary may be revoked
33 at any time prior to the death of the record owner, by executing, acknowl-
34 edging and recording in the office of the register of deeds in the county
35 where the real estate is located an instrument describing the interest
36 revoking the designation. The signature, consent or agreement of or no-
37 tice to the grantee beneficiary or beneficiaries is not required.

38 (b) A designation of the grantee beneficiary may be changed at any
39 time prior to the death of the record owner, by executing, acknowledging
40 and recording a subsequent transfer-on-death deed in accordance with
41 section 2. The signature, consent or agreement of or notice to the grantee
42 beneficiary or beneficiaries is not required. A subsequent transfer-on-
43 death beneficiary designation revokes all prior designations of grantee

21

1 beneficiary or beneficiaries by such record owner for such interest in real
2 estate.

3 (c) A transfer-on-death deed executed, acknowledged and recorded
4 in accordance with this act may not be revoked by the provisions of a will.

5 Sec. 4. (a) Title to the interest in real estate recorded in transfer-on-
6 death form shall vest in the designated grantee beneficiary or benefici-
7 aries on the death of the record owner.

8 (b) Grantee beneficiaries of a transfer-on-death deed take the record
9 owner's interest in the real estate at death subject to all conveyances,
10 assignments, contracts, mortgages, liens and security pledges made by the
11 record owner or to which the record owner was subject during the record
12 owner's lifetime including, but not limited to, any executory contract of
13 sale, option to purchase, lease, license, easement, mortgage, deed of trust
14 or lien, and to any interest conveyed by the record owner that is less than
15 all of the record owner's interest in the property.

16 (c) If a grantee beneficiary dies prior to the death of the record
17 owner, the transfer shall lapse. However, if a grantee beneficiary is the
18 spouse of the record owner or any relative of the record owner by lineal
19 descent or within the sixth degree, whether by blood or adoption, and
20 such grantee beneficiary dies before the record owner, leaving issue who
21 survived the record owner, such issue shall take the same estate which
22 the grantee beneficiary would have taken if the grantee beneficiary had
23 survived, unless a different disposition is made by the transfer-on-death
24 deed. As used in this subsection, "issue" means offspring, progeny, or
25 lineal descendants, by blood or adoption, in whatever degree.

26 Sec. 5. (a) A record joint owner of an interest in real estate may use
27 the procedures in this act to title such interest in transfer-on-death form.
28 However, title to such interest shall vest in the designated grantee ben-
29 eficiary or beneficiaries only if such record joint owner is the last to die
30 of all of the record joint owners of such interest. A deed in transfer-on-
31 death form shall not sever a joint tenancy.

32 (b) As used in this section, "joint owner" means a person who owns
33 an interest in real estate as a joint tenant with right of survivorship.

34 Sec. 6. The provisions of K.S.A. 58-2414, and amendments thereto,
35 apply to the grantor of a transfer-on-death deed.

36 Sec. 7. A deed in transfer-on-death form shall not be considered a
37 testamentary disposition and shall not be invalidated due to nonconform-
38 ity with the provisions of chapter 59 of the Kansas Statutes Annotated.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.

claims of the state of Kansas for medical assistance, as defined in K.S.A. 39-702, and amendments thereto, pursuant to subsection (g)(2) of K.S.A. 39-709, and amendments thereto,

HOUSE BILL No. 2056

By Committee on Judiciary

1-22

9 AN ACT concerning nonprobate transfers; relating to motor vehicles;
10 amending K.S.A. 1996 Supp. 8-135 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. A motor vehicle, as defined by subsection (b) of
14 K.S.A. 8-126, and amendments thereto, may be titled in transfer-on-
15 death, TOD, form by including in the certificate of title a designation of
16 a beneficiary or beneficiaries to whom the motor vehicle shall be trans-
17 ferred on death of the owner or the last survivor of the joint tenant with
18 right of survivorship owners, subject to the rights of all lien holders.

19 New Sec. 2. A motor vehicle is registered in transfer-on-death form
20 by designating on the certificate of title; the name of the owner, the names
21 of tenant in common owner or the names of the joint tenant with right
22 of survivorship owners, followed in substance by the words "transfer on
23 death to _____"
(name of beneficiary or beneficiaries)

24 Instead of the words "transfer on death to" the abbreviation "TOD" may
25 be used.

26 New Sec. 3. The transfer-on-death beneficiary or beneficiaries shall
27 have no interest in the motor vehicle until the death of the owner or the
28 last survivor of the joint tenant with right of survivorship owners. A ben-
29 eficiary designation may be changed at any time by the owner or all of
30 the joint tenant with right of survivorship owners then surviving without
31 the consent of the beneficiary or beneficiaries by filing an application for
32 a subsequent certificate of title.

33 New Sec. 4. Ownership of a motor vehicle titled in transfer-on-death
34 form for which an application for a subsequent certificate of title has not
35 been filed shall vest in the designated beneficiary or beneficiaries on the
36 death of the owner or the last of the joint tenant with right of survivorship
37 owners, subject to the rights of all lien holders.

38 New Sec. 5. A certificate of title in transfer-on-death form shall not
39 be considered a testamentary disposition or be invalidated due to non-
40 conformity with the provisions of chapter 59 of the Kansas Statutes An-
41 notated, and amendments thereto.

42 Section 6. K.S.A. 1996 Supp. 8-135 is hereby amended to read as
43 follows: 8-135. (a) Upon the transfer of ownership of any vehicle regis-

Kansas Bankers Association request

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Attachment 2
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1 tered under this act, the registration of the vehicle and the right to use
 2 any license plate thereon shall expire and thereafter there shall be no
 3 transfer of any registration, and the license plate shall be removed by the
 4 owner thereof. It shall be unlawful for any person, other than the person
 5 to whom the license plate was originally issued, to have possession
 6 thereof. When the ownership of a registered vehicle is transferred, the
 7 original owner of the license plate may register another vehicle under the
 8 same number, upon application and payment of a fee of \$1.50, if such
 9 other vehicle does not require a higher license fee. If a higher license fee
 10 is required, then the transfer may be made upon the payment of the
 11 transfer fee of \$1.50 and the difference between the fee originally paid
 12 and that due for the new vehicle.

13 (b) Subject to the provisions of subsection (a) of K.S.A. 8-198, and
 14 amendments thereto, upon the transfer ~~and sale of any vehicle by any~~
 15 ~~person or dealer, the new owner thereof, within 30 days, inclusive of~~
 16 ~~weekends and holidays, from date of such transfer shall make application~~
 17 ~~to the division for registration of the vehicle, but no person shall operate~~
 18 ~~the vehicle on any highway in this state during the thirty-day period with-~~
 19 ~~out having applied for and obtained temporary registration from the~~
 20 ~~county treasurer or from a dealer. After the expiration of the thirty-day~~
 21 ~~period, it shall be unlawful for the owner or any other person to operate~~
 22 ~~such vehicle upon the highways of this state unless the vehicle has been~~
 23 ~~registered as provided in this act. For failure to make application for~~
 24 ~~registration as provided in this section, a penalty of \$2 shall be added to~~
 25 ~~other fees. When a person has a current motorcycle or passenger vehicle~~
 26 ~~registration and license plate, including any registration decal affixed~~
 27 ~~thereto, for a vehicle and has sold or otherwise disposed of the vehicle~~
 28 ~~and has acquired another motorcycle or passenger vehicle and intends to~~
 29 ~~transfer the registration and the license plate to the motorcycle or pas-~~
 30 ~~senger vehicle acquired, but has not yet had the registration transferred~~
 31 ~~in the office of the county treasurer, such person may operate the mo-~~
 32 ~~torcycle or passenger vehicle acquired for a period of not to exceed 30~~
 33 ~~days by displaying the license plate on the rear of the vehicle acquired.~~
 34 ~~If the acquired vehicle is a new vehicle such person also must carry the~~
 35 ~~assigned certificate of title or manufacturer's statement of origin when~~
 36 ~~operating the acquired vehicle, except that a dealer may operate such~~
 37 ~~vehicle by displaying such dealer's dealer license plate.~~

38 (c) Certificate of title: No vehicle required to be registered shall be
 39 registered or any license plate or registration decal issued therefor, unless
 40 the applicant for registration shall present satisfactory evidence of own-
 41 ership and apply for an original certificate of title for such vehicle. The
 42 following paragraphs of this subsection shall apply to the issuance of a
 43 certificate of title for a nonhighway vehicle, as defined in K.S.A. 8-197,

or or upon any transfer in accordance with section 4,
 or re-registration

2-2

1 ership of such purchaser for the purpose of obtaining a certificate of title
2 to such motor vehicle and for registering the same. Any such purchaser
3 shall be allowed 30 days, inclusive of weekends and holidays, from the
4 date of sale to make application to the division for a certificate of title
5 and for the registering of such motor vehicle.

6 (9) Any dealer who has acquired a vehicle, the title for which was
7 issued under the laws of and in a state other than the state of Kansas,
8 shall not be required to obtain a Kansas certificate of title therefor during
9 the time such vehicle remains in such dealer's possession and at such
10 dealer's place of business for the purpose of sale. The purchaser or trans-
11 feree shall present the assigned title to the division of vehicles when
12 making application for a certificate of title as provided in subsection (c)(1).

13 (10) *Motor vehicles may be held and titled in transfer-on-death form.*

14 Sec. 7. K.S.A. 1996 Supp. 8-135 is hereby repealed.

15 Sec. 8. This act shall take effect and be in force from and after its
16 publication in the statute book.

January 1, 1998 and

HOUSE BILL No. 2059

By Joint Committee on Computers and Telecommunications

1-22

9 AN ACT concerning ~~digital signatures~~, relating to the effect of digital
10 signatures; providing for authentication and regulation of digital sig-
11 natures and licensure of certain entities to perform authentication;
12 amending K.S.A. 1996 Supp. 12-4516 and 21-4619 and repealing the
13 existing sections; also repealing K.S.A. 1996 Supp. 21-4619b.
14

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

16 New Section 1. (a) This act may be cited as the ~~Kansas digital sig-~~
17 ~~nature~~ act.

18 (b) As used in this act, "digital signature" means a computer-created
19 electronic identifier that is: (1) Intended by the party using it to have the
20 same force and effect as the use of a manual signature; (2) unique to the
21 party using it; (3) capable of verification; (4) under the sole control of the
22 party using it; (5) linked to data in such a manner that it is invalidated if
23 the data are changed; and (6) in conformity with any applicable rules and
24 regulations adopted by the secretary of state under this act.

25 (c) The secretary of state shall adopt such rules and regulations as
26 the secretary of state determines necessary to provide for authentication
27 and reliability of digital signatures and to minimize incidence of forged
28 digital signatures and fraud in electronic commerce. Such rules and reg-
29 ulations shall include but not be limited to:

30 ~~(1)~~ Provisions for authentication of digital signatures by the secretary
31 of state or entities licensed by the secretary of state, or both;

32 ~~(2)~~ procedures and standards for licensure and renewal of licensure
33 of entities to authenticate digital signatures;

(2) 34 ~~(3)~~ fees for application for licensure and license renewal in an amount
35 equal to the costs of processing the application, including costs of any
36 background investigation required; ~~and~~

(3) 37 ~~(4)~~ fees for licensure and license renewal in an amount equal to the
38 costs of such licensure or license renewal;

39 If the rules and regulations adopted by the secretary of state provide
40 for licensure of entities to authenticate digital signatures, such license
41 may be suspended or revoked in accordance with the Kansas administra-
42 tive procedure act for failure to maintain the required standards or pay
43 the required fees.

electronic data security licensing

. If the rules and regulations provide for licensure of entities to
authenticate digital signatures, the rules and regulations shall
include:

(1)

(4) provisions for reciprocal recognition of digital
signatures authenticated in accordance with the law of another
jurisdiction having standards for authentication that are
comparable to those of this state;

(5) limitations on liability incurred by a party authorized
to use a digital signature for the wrongful use of such digital
signature by a party other than a party authorized to use such
signature; and

(6) a requirement that the entity have a surety bond or
certificate of liability insurance in an amount as established by
the secretary of state

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1 (d) The secretary of state may recover any costs, including costs of
2 investigation, staff time and attorney fees, incurred by the secretary of
3 state in any administrative or judicial proceeding to enforce the provisions
4 of this act or rules and regulations adopted under this act if the secretary
5 of state prevails under the final order entered in the proceeding.

6 (e) No temporary or permanent rules and regulations adopted under
7 this act shall take effect earlier than 30 days after such rules and regula-
8 tions are submitted by the secretary of state to the joint committee on
9 computers and telecommunications for review and comment by the com-
10 mittee.

11 (f) The secretary of state may investigate the activities of an entity
12 licensed under this act material to the entity's compliance with this act
13 and rules and regulations adopted under this act. The secretary of state
14 shall require fingerprinting of all persons necessary to verify qualification
15 for a license to authenticate digital signatures. The secretary of state shall
16 submit such fingerprints to the Kansas bureau of investigation and to the
17 federal bureau of investigation for the purposes of verifying the identity
18 of such persons and obtaining records of criminal arrests and convictions.

19 (g) The secretary of state may receive from the Kansas bureau of
20 investigation or other criminal justice agencies, including but not limited
21 to the federal bureau of investigation and the federal internal revenue
22 service, such criminal history record information (including arrest and
23 nonconviction data), criminal intelligence information, and information
24 relating to criminal and background investigations as necessary for the
25 purpose of determining qualifications of an entity applying for or holding
26 a license to authenticate digital signatures. ~~Upon the written request of~~
27 ~~the secretary of state, the secretary of state may receive from the district~~
28 ~~courts such information relating to juvenile proceedings as necessary for~~
29 ~~the purpose of determining qualifications of an entity applying for or~~
30 ~~holding a license to authenticate digital signatures.]~~ Such information,
31 other than conviction data, shall be confidential and shall not be disclosed
32 except to employees of the secretary of state as necessary to determine
33 qualifications of such applicants and license holders. Any other disclosure
34 of such confidential information is a class A misdemeanor and shall con-
35 stitute grounds for removal from office or termination of employment.

, juvenile offender information

36 (h) The secretary of state may enter into agreements with the federal
37 bureau of investigation, the federal internal revenue service, the Kansas
38 attorney general or any state, federal or local agency as necessary to carry
39 out the duties of the secretary of state under this act.

40 (i) Unless otherwise specifically provided by law, when law requires
41 a signature or provides for certain consequences in the absence of a sig-
42 nature, a digital signature shall have the same force and effect as a manual
43 signature.

or other signature that under law may be used to authenticate a writing.

(j) The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this act shall require a public entity to use or permit the use of a digital signature. [Requested by Heartland Community Bankers Association]

1 *by the secretary of state pursuant to section I;*

2 (3) the court, in the order of expungement, may specify other cir-
3 cumstances under which the conviction is to be disclosed; and

4 (4) the conviction may be disclosed in a subsequent prosecution for
5 an offense which requires as an element of such offense a prior conviction
6 of the type expunged.

7 (f) Whenever a person is convicted of an ordinance violation, pleads
8 guilty and pays a fine for such a violation, is placed on parole or probation
9 or is granted a suspended sentence for such a violation, the person shall
10 be informed of the ability to expunge the conviction.

11 (g) Subject to the disclosures required pursuant to subsection (e), in
12 any application for employment, license or other civil right or privilege,
13 or any appearance as a witness, a person whose conviction of an offense
14 has been expunged under this statute may state that such person has never
15 been convicted of such offense.

16 (h) Whenever the record of any conviction has been expunged under
17 the provisions of this section or under the provisions of any other existing
18 or former statute, the custodian of the records of arrest, conviction and
19 incarceration relating to that crime shall not disclose the existence of such
20 records, except when requested by:

- 21 (1) The person whose record was expunged;
- 22 (2) a criminal justice agency, private detective agency or a private
23 patrol operator, and the request is accompanied by a statement that the
24 request is being made in conjunction with an application for employment
25 with such agency or operator by the person whose record has been ex-
26 punged;
- 27 (3) a court, upon a showing of a subsequent conviction of the person
28 whose record has been expunged;
- 29 (4) the secretary of social and rehabilitation services, or a designee of
30 the secretary, for the purpose of obtaining information relating to em-
31 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-
32 ments thereto, of the department of social and rehabilitation services of
33 any person whose record has been expunged;
- 34 (5) a person entitled to such information pursuant to the terms of the
35 expungement order;
- 36 (6) a prosecuting attorney, and such request is accompanied by a
37 statement that the request is being made in conjunction with a prosecu-
38 tion of an offense that requires a prior conviction as one of the elements
39 of such offense;
- 40 (7) the supreme court, the clerk or disciplinary administrator thereof,
41 the state board for admission of attorneys or the state board for discipline
42 of attorneys, and the request is accompanied by a statement that the
43 request is being made in conjunction with an application for admission,

or qualifications for employment with the secretary of state in connection with authentication of digital signatures by the secretary of state pursuant to section 1

or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; or

(10) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(11) ~~the secretary of state, and the request is accompanied by a statement that the request is being made to aid in determining qualifications~~ for licensure pursuant to section 1.

or qualifications for employment with the secretary of state in connection with authentication of digital signatures by the secretary of state pursuant to section 1

Sec. 3. K.S.A. 1996 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction if three or more years have elapsed since the person: (1) Satisfied the sentence imposed; or (2) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amend-

1 qualifications for employment with the Kansas lottery or for work in sen-
 2 sitive areas within the Kansas lottery as deemed appropriate by the ex-
 3 ecutive director of the Kansas lottery; (D) to aid in determining the pe-
 4 titioner's qualifications for executive director of the Kansas racing
 5 commission, for employment with the commission or for work in sensitive
 6 areas in parimutuel racing as deemed appropriate by the executive direc-
 7 tor of the commission, or to aid in determining qualifications for licensure
 8 or renewal of licensure by the commission; ~~or~~ (E) upon application for a
 9 commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and
 10 amendments thereto; (F) to aid in determining the petitioner's qualifi-
 11 cations to be an employee of the state gaming agency; (G) to aid in de-
 12 termining the petitioner's qualifications to be an employee of a tribal gam-
 13 ing commission or to hold a license issued pursuant to a tribal-state
 14 gaming compact; or (H) to aid in determining qualifications for licensure
 15 by the secretary of state pursuant to section ~~K~~.

or qualifications for employment with the secretary of state in connection with authentication of digital signatures by the secretary of state pursuant to section 1

16 (3) the court, in the order of expungement, may specify other cir-
 17 cumstances under which the conviction is to be disclosed;

18 (4) the conviction may be disclosed in a subsequent prosecution for
 19 an offense which requires as an element of such offense a prior conviction
 20 of the type expunged; and

21 (5) upon commitment to the custody of the secretary of corrections,
 22 any previously expunged record in the possession of the secretary of cor-
 23 rections may be reinstated and the expungement disregarded, and the
 24 record continued for the purpose of the new commitment. ¶

25 (g) Whenever a person is convicted of a crime, pleads guilty and pays
 26 a fine for a crime, is placed on parole, postrelease supervision or proba-
 27 tion, is assigned to a community correctional services program, is granted
 28 a suspended sentence or is released on conditional release, the person
 29 shall be informed of the ability to expunge the conviction.

30 (h) Subject to the disclosures required pursuant to subsection (f), in
 31 any application for employment, license or other civil right or privilege,
 32 or any appearance as a witness, a person whose conviction of a crime has
 33 been expunged under this statute may state that such person has never
 34 been convicted of such crime, but the expungement of a felony conviction
 35 does not relieve an individual of complying with any state or federal law
 36 relating to the use or possession of firearms by persons convicted of a
 37 felony.

38 (i) Whenever the record of any conviction has been expunged under
 39 the provisions of this section or under the provisions of any other existing
 40 or former statute, the custodian of the records of arrest, conviction and
 incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

43 (1) The person whose record was expunged;

1 (2) a criminal justice agency, private detective agency or a private
2 patrol operator, and the request is accompanied by a statement that the
3 request is being made in conjunction with an application for employment
4 with such agency or operator by the person whose record has been ex-
5 punged;

6 (3) a court, upon a showing of a subsequent conviction of the person
7 whose record has been expunged;

8 (4) the secretary of social and rehabilitation services, or a designee of
9 the secretary, for the purpose of obtaining information relating to em-
10 ployment in an institution, as defined in K.S.A. 76-12a01 and amend-
11 ments thereto, of the department of social and rehabilitation services of
12 any person whose record has been expunged;

13 (5) a person entitled to such information pursuant to the terms of the
14 expungement order;

15 (6) a prosecuting attorney, and such request is accompanied by a
16 statement that the request is being made in conjunction with a prosecu-
17 tion of an offense that requires a prior conviction as one of the elements
18 of such offense;

19 (7) the supreme court, the clerk or disciplinary administrator thereof,
20 the state board for admission of attorneys or the state board for discipline
21 of attorneys, and the request is accompanied by a statement that the
22 request is being made in conjunction with an application for admission,
23 or for an order of reinstatement, to the practice of law in this state by the
24 person whose record has been expunged;

25 (8) the Kansas lottery, and the request is accompanied by a statement
26 that the request is being made to aid in determining qualifications for
27 employment with the Kansas lottery or for work in sensitive areas within
28 the Kansas lottery as deemed appropriate by the executive director of the
29 Kansas lottery;

30 (9) the governor or the Kansas racing commission, or a designee of
31 the commission, and the request is accompanied by a statement that the
32 request is being made to aid in determining qualifications for executive
33 director of the commission, for employment with the commission, for
34 work in sensitive areas in parimutuel racing as deemed appropriate by
35 the executive director of the commission or for licensure, renewal of
36 licensure or continued licensure by the commission; ~~or~~

37 (10) the Kansas sentencing commission;

38 (11) *the state gaming agency, and the request is accompanied by a*
39 *statement that the request is being made to aid in determining qualifica-*
40 *tions: (A) To be an employee of the state gaming agency; or (B) to be an*
employee of a tribal gaming commission or to hold a license issued pur-
suant to a tribal-state gaming compact; or

43 (12) *the secretary of state, and the request is accompanied by a state-*

HOUSE BILL No. 2058

By Joint Committee on Computers and Telecommunications

1-22

9 AN ACT concerning crimes, punishment and criminal procedure; relating
10 to certain crimes involving information and computers; amending
11 K.S.A. 21-3755 and K.S.A. 1996 Supp. 21-3711 and repealing the ex-
12 isting sections.
13

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

15 Section 1. K.S.A. 1996 Supp. 21-3711 is hereby amended to read as
16 follows: 21-3711. Making, ~~generating, distributing~~ a false information is
17 making, *generating, distributing* or drawing, or causing to be made, gen-
18 erated, distributed or drawn, any written instrument, electronic data or
19 entry in a book of account with knowledge that such information falsely
20 states or represents some material matter or is not what it purports to be,
21 and with intent to defraud, ~~or induce official action.~~

22 Making a false information is a severity level 8, nonperson felony.

23 Sec. 2. K.S.A. 21-3755 is hereby amended to read as follows: 21-
24 3755. (a) As used in this section, ~~the following words and phrases shall~~
25 ~~have the meanings respectively ascribed thereto:~~

26 (1) "Access" means to ~~approach~~, instruct, communicate with, store
27 data in, retrieve data from, or otherwise make use of any resources of a
28 computer, computer system or computer network.

29 (2) "Computer" means an electronic device which performs work us-
30 ing programmed instruction and which has one or more of the capabilities
31 of storage, logic, arithmetic or communication and includes all input,
32 output, processing, storage, software or communication facilities which
33 are connected or related to such a device in a system or network.

34 (3) "Computer network" means the interconnection of communica-
35 tion lines, including microwave or other means of electronic communi-
36 cation, with a computer through remote terminals, or a complex consist-
37 ing of two or more interconnected computers.

38 (4) "Computer program" means a series of instructions or statements
39 in a form acceptable to a computer which permits the functioning of a
40 computer system in a manner designed to provide appropriate products
41 from such computer system.

42 (5) "Computer software" means computer programs, procedures and
43 associated documentation concerned with the operation of a computer

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obstruct *crime*
, impair the detection of a theft or felony offense

4-7

1 system.

2 (6) "Computer system" means a set of related computer equipment
3 or devices and computer software which may be connected or uncon-
4 nected.

5 (7) "Financial instrument" means any check, draft, money order, cer-
6 tificate of deposit, letter of credit, bill of exchange, credit card, debit card
7 or marketable security.

8 ~~[(8) (8) "Property" includes the fair market value of any services used and any~~
9 ~~expenses reasonably and necessarily incurred to verify that a data~~
10 ~~base, computer network, computer program or data was or was not~~
11 ~~lost, deleted, damaged or destroyed by a nonauthorized user.]~~

12 (8) (8) "Property" includes, but is not limited to, financial instru- (8)
13 ments, information, electronically produced or stored data, supporting
14 documentation and computer software in either machine or human read-
15 able form.

16 (9) (10) "Services" includes, but is not limited to, computer time, data (9)
17 processing and storage functions and other uses of a computer, computer
18 system or computer network to perform useful work.

19 (10) (IX) "Supporting documentation" includes, but is not limited to, (10)
20 all documentation used in the construction, classification, implementa-
21 tion, use or modification of computer software, computer programs or
22 data.

23 (b) (1) Computer crime is:

24 (1) (A) Intentionally and without authorization gaining or attempting
25 to gain access to accessing ~~of a computer system~~ and damaging, modi-
26 fying, altering, destroying, copying, disclosing or taking possession of a
27 computer, computer system, computer network or any other property;

28 (2) (B) using a computer, computer system, computer network or any
29 other property for the purpose of devising or executing a scheme or arti-
30 fice with the intent to defraud or for the purpose of obtaining money,
31 property, services or any other thing of value by means of false or fraud-
32 ulent pretense or representation; or

33 (3) (C) intentionally exceeding the limits of authorization and dam-
34 aging, modifying, altering, destroying, copying, disclosing or taking pos-
35 session of a computer, computer system, computer network or any other
36 property.

37 (e) (1) (2) (A) Computer crime ~~which causes a loss of the value of~~ is a severity level 8, nonperson felony.
38 ~~less than \$500 or a nonperson felony~~

39 (2) (B) Computer crime which causes a loss of the value of at least
40 \$500 but less than \$25,000 is a severity level 9, nonperson felony

41 (3) (C) Computer crime which causes a loss of the value of \$25,000
42 or more is a severity level 7, nonperson felony.]

43 (d) (3) In any prosecution for computer crime, it is a defense that the

43

1 property or services were appropriated openly and avowedly under a
2 claim of title made in good faith.

3 (c) (1) ~~Computer password disclosure is, disclosure of a number,~~ the unauthorized and intentional
4 ~~code, password or other means of access to a computer or computer net-~~
5 ~~work, knowing that the disclosure is without authority, when the disclo-~~
6 ~~sure causes a loss of the value of at least \$500.~~

7 (2) ~~Computer password disclosure is a class A nonperson misde-~~
8 ~~meanor.~~

9 (e) ~~Criminal computer access~~ (d) ~~Computer trespass~~ is intention-
10 ally, fraudulently and without authorization ~~gaining or attempting to gain~~
11 ~~access to~~ accessing or attempting to access any computer, computer sys-
12 tem, computer network or to any computer software, program, docu-
13 mentation, data or property contained in any computer, computer system
14 or computer network. ~~Criminal computer access~~ ~~Computer trespass~~ is a
15 class A nonperson misdemeanor.

16 (f) (e) This section shall be part of and supplemental to the Kansas
17 criminal code.

18 Sec. 3. K.S.A. 21-3755 and K.S.A. 1996 Supp. 21-3711 are hereby
19 repealed.

20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

PAUL J. MORRISON, DISTRICT ATTORNEY
JOHN E. COWLES, ASSISTANT DISTRICT ATTORNEY

February 8, 1997

Mr. Kyle G. Smith
Kansas Bureau of Investigation
By fax: (913)296-6781

Re: H.B. 2058

Dear Kyle:

One of your colleagues brought me a copy of your testimony to the state legislative committee studying the proposed amendments to the computer crime statute. We discussed these issues at our meeting last Friday of the Missouri - Kansas High Tech Crime Investigators Association, which is composed of about fifty members from both law enforcement and the private sector, all of whom specialize and have a great interest in computer system security issues. Companies such as Gateway, Sprint, and Yellow Freight are represented, together with detectives and prosecutors from all metro counties, both federal and state agencies. In discussing the proposed amendments and your testimony, our group asked me (our humble president of the association) to convey our strong support for your positions described in your testimony. In particular, we agree completely that the thrust of the computer crime statute should be to protect the integrity of the oftentimes very sensitive information contained within computer systems. This goal should not have a "value" element in order to establish criminal conduct on the part of those who snoop without authorization into highly confidential systems. You are certainly correct to equate computer crime to other statutes designed to preserve integrity of important communication, such as forgery and make false writing, which are not burdened with the irrelevant element of "value."

Let me add, that as a "front line" agency responding to computer crime, we can assure the committee that the problem is real and building geometrically. Hackers continually attack sensitive computer systems of private industry and also engage in indirect attacks through Internet service providers. Many thousands are spent by industry (perhaps millions) to constantly respond to new tactics of hackers. The result of the Allen case means that industry fights the battle alone, since government cannot effectively prosecute the offenders due to the "value" requirement. An obvious weakness in the currently proposed amendment which would simply include the cost of defensive measures within the definition of "value" is that companies typically spend the big bucks in response to numerous hacking attempts. It would be difficult for the State to prove which expenses for defensive measures were caused by the particular hacker being prosecuted.

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Finally, Kyle, let me wholeheartedly concur with your assessment that computer crime should also be listed in the asset forfeiture statutes to allow the state to seize (and put to use for the good guys) computers, printers, scanners, digital cameras, and similar equipment. Nothing is more frustrating than repeatedly discovering that the crooks have newer, more sophisticated equipment than government can afford to combat the problem.

Thank you Kyle for your efforts supporting the improvements toward a more effective computer crime statute. If I can be of any assistance in this regard, please let me know.

Sincerely,



John E. Cowles,
Assistant District Attorney
Economic Crime Unit Leader