

Approved: March 18, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 17, 1999, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Jerry Donaldson, Legislative Research Department
Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

John Frederico
Ron Marnell, Vice-President Multimedia Cablevision
Melissa Wangemann, Legal Counsel, Deputy Assistant Secretary of State
Jonathan P. Small
T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants
Susan L. Somers, Executive Director, Board of Accountancy

Others attending: See attached list

Sub for HB 2076- Cable television; fees on delinquent accounts

Ron Marnell, Vice-President, Multimedica Cablevision, testified in support of **Sub for HB 2076** stating the bill codifies the cable industry's right to assess and collect reasonable cable delinquent fees. The legislation is needed due to class action suits being filed in states without specific statutory language which provides cable companies with the right to assess and collect delinquent fees. **Sub for HB 2076** sets a fee which cannot exceed 5% of the amount of the monthly delinquent balance or \$5 per month, whichever is greater, and would require that cable companies provide notice to the customer at least ten days prior to the date the late fee will be imposed. (Attachment 1)

HB 2161 - Secretary of State; filing procedures for various business associations

Melissa Wangemann, Legal Counsel, Office of the Secretary of State, testified in support of **HB 2161**, Stating the bill eliminates the requirement that corporations include the county in the registered office address on corporate filings; deletes the requirement that the Secretary of State return copies of foreign corporation filings to the resident agent; discontinues issuance of certificates of authority and certificates of withdrawal to foreign corporations and issue certified copies instead; eliminates the requirement that financial information for business trusts be certified by a CPA and instead allow the trustee to verify the information; simplifies fax filing for businesses by accepting fax filings as originals and not requiring an original document within seven days of the fax filing; allows faxed signatures, conformed signatures and electronically transmitted signatures for all business filings; and increases the foreign corporations' filing fee for certificates of qualification from \$75 to \$100. (Attachment 2)

Ms. Wangeman, in responding to questions from the Committee, stated fees are either prepaid or paid by credit card when filing by telefacsimile communication; and if the bill is amended to include additional electronic filing capability, the office does not have the infrastructure to accommodate such filings.

HB 2446 - Accountants; use of title; misleading names prohibited

Jonathan P. Small, representing KPMG Peat Marwick LLP, testified in support of **HB 2446**, stating the bill permit Certified Public Accounting firms to use trade names that are not false or

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on March 17, 1999.

misleading and to modify or change their names to reflect a more recognizable, useful and easier trade name. Current Kansas regulations provide that the name of a partnership or professional association is misleading if it fails to contain a personal name or names of individuals who are presently or have previously been partners, officers or shareholders. The original purpose was to insure that individual practitioners took personal responsibility for their work and that the public had access to accurate information. The rationale has eroded over time, as many firm names include names of partners who are no longer living, and no longer convey useful commercial information or the firm's current membership.

The Federal Trade Commission, in a 1990 Consent Order, concluded that a prohibition of fictitious trade names unreasonably restrained competition because it increased difficulty of establishing easily identifiable firm names and precluded the use of efficiently conveyed useful commercial information. The Supreme Court also recognized that trade names are a form of commercial speech entitled to constitutional protection. (Attachment 3)

T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants, testified in support of **HB 2446**, stating the legislation updates the accountancy law and rules and regulations as they relate to firm names. The language contained in **HB 2446** comes directly from the new Uniform Accountancy Act and is designed to bring state accountancy statutes into the 21st century and to deal with the now global practice of accountancy by CPA firms. (Attachment 4)

Susan L. Somers, Executive Director, Board of Accountancy, stated the Board does not oppose **HB 2446** as it is currently written. (Attachment 5)

Senator Steineger moved, seconded by Senator Donovan, that HB 2446 be recommended favorable for passage and placed on the Consent Calendar. The recorded vote was unanimous in favor of the motion.

Senator Steineger moved, seconded by Senator Gooch, that HB 2161 be recommended favorable for passage and placed on the Consent Calendar. The recorded vote was unanimous in favor of the motion.

Senator Steineger moved, seconded by Senator Barone, that Sub. for HB 2076 be recommended favorable for passage. The recorded vote was unanimous in favor of the motion.

Upon motion by Senator Barone, seconded by Senator Steinger, the Minutes of the March 16, 1999 meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 18, 1999.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 17, 1999

NAME	REPRESENTING
Jay Albargh	Multimedia Cablevision
Ron Marnell	Multimedia Cablevision
Fariba Pouraryan	Sec. of State
Melissa Wanyemaa	Sec of State
J. P. Small	KPMG Peat Marwick LLC
MARY FEIGHNY	Att. Gen
John Fedem	KCTA
Roger Traudo	KGC
Uyema Stan	Federics Consulting
Bob Marshall	ICCTA
Allen Hoff	Multimedia Cablevision
Percy Kirk	Multimedia Cablevision
Matt Knoblauch	Multimedia Cablevision
Markelley Smith	KMHA
Erik Sartorius	Johnson Co. Board of Realtors

Testimony in Support of Sub. For HB 2076

Senate Commerce Committee

March 17, 1999

Presented by Ron Marnell, Vice-President Multimedia Cablevision

On Behalf of the Kansas Cable Telecommunications Association

Good morning Madam Chair and Committee Members. My name is Ron Marnell, VP and Kansas Regional Manager for Multimedia Cablevision. Multimedia Cablevision is a Wichita-based corporation serving over 300,000 cable subscribers across Kansas. I appear before you today on behalf of the Kansas Cable Telecommunications Association in support of Sub. for HB 2076.

I. General Information

HB 2076 was introduced in an effort to codify the cable industry's right to assess and collect reasonable cable delinquent fees. I don't think anyone would dispute the right of the cable company to assess a reasonable late fee on cable subscribers who are delinquent in the payment of their cable bill. Much like other industries that come before you, it is a common business practice.

Please bear in mind that this bill will have no effect on approximately 90% of the cable subscribers in Kansas. This bill will effect the approximately 10% of cable subscribers who are delinquent in the payment of their cable bill. We maintain though that the components of Sub. for HB 2076 offers consumers protection by requiring that before any late fee is collected by the cable company, certain criteria be met.

II. Why is Sub. for HB 2076 Needed?

Cable customers who fail to pay their bills in a timely fashion cause significant costs in collecting and accounting for delinquent payments. Kansas cable operators attempt to recover a portion of these delinquent account servicing costs by assessing a delinquent payment on **only** those subscribers who do not pay their bill by the due date. The practice of assessing fees on delinquent accounts is a common business practice. However, cable companies in states without **specific statutory language codifying the right to assess and collect cable delinquent fees** have unfairly been the focus of an increasing number of nuisance lawsuits. We do not wish this to be the case in the state of Kansas.

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Attachment # *1-1 thru 1-3*

As the law now stands, Kansas cable companies cannot reasonably hope to charge such a fee without incurring the risk of expensive class action litigation and exposure for potentially limitless civil penalties. And of course, associated legal costs are ultimately passed on to all customers. We operate daily under legal uncertainty. Therefore, there is a definite need for a coherent and reasonable set of rules that will make it possible for the Kansas cable industry to collect reasonable late fees on delinquent accounts. Further, Sub. for HB 2076 will protect those cable customers who do pay their bills in a timely manner, from absorbing costs generated by those who don't, or as a result of avoidable and unnecessary legal costs.

III. What Sub. for HB 2076 "Does".

Sub. for HB 2076 has three principal components, all of which the cable industry is willing to accept as part of their everyday business practices.

1. First it would require cable companies to notify customers of the amount of the delinquent fee.
2. Secondly, it would require that cable companies provide notice to the cable customer at least ten days prior to the date the late fee will be imposed.
3. Lastly, passage of this bill would set a "cap" of \$5.00, or 5% (whichever is greater) on delinquency fees assessed against delinquent accounts. It is important to clarify that the \$5.00 figure is not a set fee that a company has to charge as a late fee, but rather a "ceiling" that the cable companies cannot exceed. Again, please be aware that currently there is no cap on late fees assessed on delinquent accounts.

IV. Closing

In closing Madam Chair, the cable industry is heavily regulated at the federal and local level and is extremely reluctant to further restrict our industry with additional state statutes. But, we feel strongly about the need to codify our right to recover some of our collection costs. We urge the Committee to pass Sub. for HB 2076 and introduce a measure of fairness and rationality to this troubling area.

Thank you for your time and consideration. I'll be happy to respond to any questions.



BACKGROUND INFORMATION ON SUB. FOR HB 2076

WHO INTRODUCED LEGISLATION

- The Kansas Cable Telecommunications Association (KCTA).
- **House Sub. 2076** has been introduced in an effort to codify the cable industry's right to assess and collect reasonable cable delinquent fees.
- **House Sub. 2076:**
 - 1) requires cable companies to notify customers of the amount of the delinquent balance
 - 2) Requires cable companies provide notice to the cable customer at least ten days prior to the date the late fee will be imposed
 - 3) Cable companies cannot assess a delinquent fee in excess of 5% or \$5.00, *whichever is greater* of the delinquent balance

HOUSE ACTION/AMENDMENT

Changes were made to the bill in the House Utilities Committee that inadvertently negatively impacted the cable television industry and shifted cost from those people who are delinquent in the payment of their monthly cable bill, onto those who pay their bills on time.

A House floor amendment suggested by the KCTA, and ultimately adopted by the Committee of the Whole, preserves the status quo without negatively impacting the consumer. The KCTA supports the changes the House made to Sub. for HB 2076.

WHY LEGISLATION IS NEEDED

- Cable companies in states without specific statutory language codifying the right to assess and collect cable delinquent fees have been the focus of an increasing number of "nuisance" suits. We do not wish this to be the case in Kansas.
- Cable customers who fail to pay their bills in a timely fashion cause significant costs in collecting and accounting for delinquent payments.
- Cable operators attempt to recover a portion of these servicing costs by assessing a delinquent payment on ONLY those subscribers who do not pay their bill by the due date.

GENERAL

- **House Sub. 2076** does not ask the legislature to set rates or fees. The bill only codifies the industry's right to recover some of their delinquent collection costs, as they have been doing since the inception of cable T.V.
- **House Sub. 2076** does not affect programming fees.
- Municipalities do not set delinquent fees.
- Cable television is not a utility - -Cable operates on risk capital, utilities have a guaranteed rate of return. Cable television is not an essential service like electricity or water.

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Ron Thornburgh
Secretary of State



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STATE OF KANSAS
TESTIMONY OF THE SECRETARY OF STATE
TO THE SENATE COMMERCE COMMITTEE ON HB 2161
MARCH 17, 1999

Madam Chairperson and Members of the Committee:

I appreciate the opportunity to appear before the committee today in support of HB 2161, a bill introduced by the Secretary of State's office. The bill's purpose is to clean up sections of the corporate code for the benefit of our customers and to promote uniformity and efficiency within the business services division of our office. The bill would accomplish the following amendments:

1. Eliminate the requirement that corporations include the county in the registered office address on corporate filings,
2. Delete the requirement that the Secretary of State return copies of foreign corporation filings to the resident agent,
3. Discontinue issuance of certificates of authority and certificates of withdrawal to foreign corporations and issue certified copies instead,
4. Eliminate the requirement that financial information for business trusts be certified by a CPA and instead allow the trustee to verify the information,
5. Simplify fax filing for business entities by accepting fax filings as originals and not requiring an original document within seven days of the fax filing, and
6. Allow faxed signatures, conformed signatures and electronically transmitted signatures for all business filings.

REGISTERED OFFICE ADDRESS

Corporations are required to maintain a registered office and an agent on record with the Secretary of State for purposes of receiving service of process. The corporate code as written in

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1972 requires the corporation's registered office to include the county in the address. The reason for this requirement probably relates to the requirement that the corporation's documents be recorded with the Register of Deeds in the county of the registered office. This recording requirement was repealed during the 1998 legislative session in a bill sponsored by the KBA.¹ Because the documents are no longer required to be recorded at the county level, the county name is not necessary to the registered office address. HB 2161 would eliminate the county from the registered office address. The modern business entities--limited liability companies, limited partnerships, limited liability partnerships--do not require the county as part of their addresses, probably because these entities never had the dual filing requirement. Corporate customers frequently forget to include the county as part of their registered office address, resulting in our rejecting the documents and delaying the corporation's filings. Eliminating this requirement will make corporate filings consistent with the laws on other business entities and lessen the likelihood that the documents will be rejected.

FOREIGN CORPORATION FILINGS

The corporate code requires the Secretary of State to return copies of foreign corporation filings (i.e., out-of-state) to the resident agent at the registered office address. The reason for this requirement is again probably related to recordation of corporate documents in the county of the resident agent. Because this recording requirement no longer exists, there is no reason to return copies of the documents to the resident agent. HB 2161 would eliminate this requirement, allowing the Secretary of State to return the documents directly to the filing party. This amendment would

¹ The KBA is proposing additional legislation this year to clean up some sections that were missed last year.

make foreign corporation filings consistent with all other filings in the Secretary of State's corporations division and provide better customer service.

HB 2161 would also discontinue the issuance of certificates of authority and certificates of withdrawal to foreign corporations and instead allow the Secretary of State to issue certified copies. Current law requires the Secretary of State to issue a certificate of qualification when the foreign corporation registers with the Secretary of State to do business in Kansas. When the foreign corporation leaves the state, the Secretary of State issues a certificate of withdrawal. These are the only two filings in the corporations division that receive "certificates." All other filings receive a certified copy in return. Eliminating this requirement would make the foreign corporation filing desk more efficient and would create consistency with all other filings.

BUSINESS TRUSTS

Kansas law requires business trusts to include with their application for registration a balance sheet certified by a certified public accountant. The business trust's annual report must also include a statement of assets and liabilities certified by a CPA. This requirement is very costly and burdensome on the business trust, as it requires the business trust to hire a CPA just to file with the Secretary of State's office.

In contrast, the balance sheet required on the foreign corporation application is verified by officers of the corporation. Annual reports that are filed by other business entities are also verified by officers. The business trust laws were enacted in 1961, and the legislative history does not explain the reason for the different standard for business trusts. K.S.A. 17-2035 subjects business trusts to laws applicable to corporations, and case law has noted that business trusts are to be regulated in a manner similar to corporations. However, business trusts are required to hire an outside professional prior to registering with our office, a requirement not found in the corporate

code nor in any statutes relating to other business entities. HB 2161 would allow the trustee to verify the financial information instead of a CPA. Allowing the trustee to sign the business trust application and the annual report would make business trust laws consistent with all other business entities that file with our office, while eliminating a costly burden on our business trust customers.

FAX FILING

Kansas laws allow business entities to file their documents by fax, so long as they send the original documents to the Secretary of State's office within seven working days. Customers often fail to file the original documents as required by law, and their fax filing becomes ineffective. HB 2161 would eliminate the need to follow up with the original documents and would consider the faxed documents the original filing.

This amendment reflects the modern trend among courts and other filing offices that accept faxed filings as originals. The state of Kansas often looks to the practices in the Delaware Secretary of State's office because the Kansas corporate code is modeled on the Delaware corporate code. The Delaware Secretary of State has accepted fax filings as originals since 1988. Kansas courts are now accepting fax filing of pleadings as well. Allowing this method of faxed filing would be consistent with the Revised LLC Act, which is being proposed by the KBA this year (HB 2276). The Revised LLC Act, modeled after the Delaware LLC Act, allows LLCs to fax file documents as originals. HB 2161 would make all other business entity filings consistent with other filing offices and the proposed filing procedures for LLCs.

SIGNATURES

The bill not only would allow faxed signatures but also conformed signatures and electronically transmitted signatures. This provision is again modeled after Delaware law, which

authorizes these modern methods of signing documents. The authority to accept electronic signatures would allow the Secretary of State to progress to electronic filing in the future.

HOUSE AMENDMENTS

HB 2161 was amended by the House Business, Commerce and Labor Committee. The first amendment rectified a drafting error that omitted a section on foreign corporation filings. The other amendment was proposed to neutralize the fiscal impact of the bill. Because HB 2161 eliminates certificates of qualification and withdrawal, for which the state general fund receives a \$20 filing fee, the original bill resulted in a loss of \$47,140 to the state general fund.² The House amendment raises the filing fee for a foreign corporation application from \$75 to \$100, which results in additional funds of \$48,925, offsetting the loss and causing a gain of \$1,785 to the state.

The Secretary of State would appreciate the committee's support of HB 2161. Thank you for your time and consideration.

Melissa Wangemann, Legal Counsel
Deputy Assistant Secretary of State

² In 1998 our office issued 1,957 certificates of qualification and 400 certificates of withdrawal at a \$20 filing fee. $2,357 \times \$20 = \$47,140$ in loss revenues if the certificates are no longer issued.

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March 17, 1999

Chairman Salisbury and Members of the
Senate Commerce Committee

Re: 1999 House Bill 2446

From: Jonathan P. Small
Representing KPMG Peat Marwick LLP
Certified Public Accountants

KPMG Peat Marwick LLP is a professional association of certified public accountants authorized to practice in Kansas. Its principal office here in Kansas is in Wichita and it is known internationally (outside Kansas) by its trade name KPMG.

HB 2446 - Purpose: Amends K.S.A. 1-316 to permit Certified Public Accounting firms to use trade names that are not false or misleading.

Current Kansas law: Current Kansas regulations provide that the name of a partnership or professional association is misleading if it fails to contain a personal name or names of individuals who are presently or have previously been partners, officers or shareholders. K.A.R. 74-5-406(c)(6).

Objective: Statutorily authorize Certified Public Accounting firms to modify or change their names to reflect a more recognizable, useful and easier trade name; *e.g.* KPMG Peat Marwick LLP to simply KPMG LLP (but not in a way to be misleading).

Supporting Argument:

- Original purpose of the Kansas Rule was to insure individual practitioners took personal responsibility for their work, and that the public had access to accurate information about whom they might engage.
- The rationale for the Rule has eroded over time - many firm names include names of partners no longer living (Arthur Andersen, Deloitte & Touche, Ernst & Young, etc.); such names no longer convey useful commercial information, nor reinforce practitioner responsibility or contain information about the firm's current membership.
- Requiring an accounting firm to retain in its trade name the last name of a deceased partner conveys no useful information about a firm of the scope and size of larger Certified Public Accounting firms, such as KPMG.
- Larger Certified Public Accounting firms, such as KPMG, can be found everywhere, since they must be licensed as a foreign limited liability partnership and obtain a firm permit in every state in which they offer services.

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- Most states and the American Institute of CPAs (AICPA) no longer require firms to include the last name of current or former partners, but do prohibit false or misleading names.
- Kansas can serve its interest through a lesser restriction by precluding only those firm names that are in fact false or misleading.
- The Federal Trade Commission's (FTC) rulings in this area are compelling: In a 1990 Consent Order with the AICPA, the FTC concluded that a prohibition of fictitious trade names unreasonably restrained competition because it increased difficulty of establishing easily identifiable firm names and precluded the use of efficiently conveyed useful commercial information.
- The FTC also stated that fictitious names "convey no less information to consumers about the identity of the accountant who will actually provide services than do firm names that contain names of deceased partners (Arthur Andersen, etc.)."
- The FTC has concluded that fictitious names are not inherently deceptive, therefore there is no state or substantial interest served by Kansas' fictitious name regulation.
- The U.S. Supreme Court has also ruled on this matter and has recognized that trade names are a form of commercial speech entitled to constitutional protection.
- KAR 74-5-406(c)(6) may violate the First Amendment and deprive Certified Public Accounting firms, such as KPMG, of their right to engage in commercial expression - to utilize a trade name of choice.
- The Kansas Rule may also be an unconstitutional restraint on interstate commerce, prohibited by the commerce clause of the U.S. Constitution, under which a state statute will be declared invalid if the burden imposed on commerce is clearly excessive when weighed against the local benefits.
- The National Association of State Boards of Accountancy and the American Institute of CPAs have, jointly, issued a revised Uniform Accountancy Act, a model law for use by State Boards of Accountancy, which prohibits the use of names that are false or misleading, but does not prohibit the use of trade names or require the inclusion of names of current or previous owners in a firm name [Section 14(i)].
- Any state interest in protecting the public is hindered by enforcing the Regulation, since KPMG is permitted to use the shortened name in most states, potentially resulting in greater confusion for consumers in Kansas.



Kansas Society of Certified Public Accountants

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Testimony on H.B. 2446

Presented to the

Senate Commerce Committee

by

T.C. Anderson
Executive Director
Kansas Society of Certified Public Accountants

March 17, 1999

Senate Commerce Committee

Date: 3-17-99

Attachment # 4-1 thru 4-2



Kansas Society of Certified Public Accountants

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March 17, 1999

Chair Salisbury, members of the Committee:

I am T.C. Anderson, Executive Director of the 2,600 member Kansas Society of Certified Public Accountants.

I appear before you today in support of HB 2446, which if enacted would update the accountancy law and rules and regulations as they relate to firm names.

A review of the Topeka Yellow Pages yesterday revealed the following professional business names that did not include the name or names of their owners: Architect One PA; Bankruptcy Law Office; Gage Center Dental Group PA; Alpha Engineering; and Lincoln Center OB/GYN, PA.

The language in HB 2446 comes directly from the new Uniform Accountancy Act which is a joint effort of the National Association of State Boards of Accountancy and the American Institute of CPAs. The act is designed to bring state accountancy statutes into the 21st century and to deal with the now global practice of accountancy by CPA firms.

HB 2446 is a good beginning for Kansas.

Chair Salisbury, I'll be happy to stand for questions.

STATE OF KANSAS
BOARD OF ACCOUNTANCY

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WRITTEN
TESTIMONY

HB ²⁴⁴⁶~~2354~~

Board of Accountancy
March 17, 1999

Senate Commerce Committee

Date: 3-17-99

Attachment # 5-1 thru 5-2

The Board's current regulations consider a firm name to be misleading if it doesn't contain the personal name of a present or former partner, officer, or shareholder. KPMG approached the Board a few months ago to request that we reconsider the regulation and possibly revoke it or exempt KPMG. At our Board meeting in January of this year, we decided to study the issue further to consider the ramifications of allowing the use of fictitious names.

When this bill was proposed, we discussed the matter with KPMG and concluded that the Board would not oppose the bill if KPMG struck the last sentence in the amendment, which would allow a firm name to contain the name of a person who is not a CPA as long as the firm didn't use the CPA designation in its firm name. That sentence was subsequently struck in the House Business Commerce and Labor Committee.

Absent reintroduction of this or similar language, the Board of Accountancy has no objection to the passage of this legislation as it is currently presented.

Thank you.

* * * *