

Approved: March 30, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice Chairperson Tim Carmody at 3:30 p.m. on February 14, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Phill Kline - Excused
Representative Michael O'Neal - Excused
Representative Tony Powell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Jim Morrison
Kyle Smith, Kansas Bureau of Investigation, Assistant Attorney General
Janet Chubb, Assistant Secretary of State
Debra Luling, Information Network of Kansas
Matthew Goddard, Heartland Community Bankers Association
Rich Hayse, Kansas Bar Association
Jeff Bottenberg, Kansas Sheriffs' Association
Captain Greg Schauner, Sedgwick County Sheriff's Department

Hearing on **HB 2896 - Internet Privacy Protection Act**, was opened.

Representative Jim Morrison explained that the purpose of the bill was to prohibit internet providers from disclosing personally identifying information.

Kyle Smith, Kansas Bureau of Investigation, Assistant Attorney General, appeared before the committee as a proponent to the bill. He was concerned about subparagraph (c) which prohibits disclosure of information not only from marketing, but for other purposes without the knowledge and affirmative consent of that subscriber. The language could be interpreted to interfere with a legitimate criminal investigation. He requested an amendment which would allow law enforcement to request a court order so they can have access to that information. (Attachment 1)

Hearing on **HB 2896** was closed.

Hearing on **HB 2879 - Kansas Electronic Signature Act**, was opened.

Representative Jim Morrison stated that this legislation is technology specific to enable electronic commerce to take place.

Kyle Smith, Kansas Bureau of Investigation, Assistant Attorney General, appeared as proponent to the bill. He suggested two amendments: the first would require that a consumer contract and agreement, that is done in written form, include a separate acknowledgment and agreement if any part thereof would be done by electronic means; second would be a new paragraph (g) to clarify that changes would exclude legal notices where failure to respond could result in loss of service or property. (Attachment 2)

Janet Chubb, Assistant Secretary of State, appeared as a proponent of the bill. She commented that the proposed bill was a minimalistic bill that had sound legal standing. While it is not comprehensive, it provides for electronic signature and can grow as technology does. (Attachment 3)

Debra Luling, Information Network of Kansas, informed the committee of those key representatives who formed the Electronic Commerce Work Group and suggested the bill. (Attachment 4)

Matthew Goddard, Heartland Community Bankers Association, was concerned with Section 4, which recognizes electric signatures the same as written signature. He suggested an amendment which would clarify

CONTINUATION SHEET

that it would not be mandatory that a person or entity use or accept a digital signature in lieu of a manual signature. (Attachment 5)

Representatives from the Kansas Insurance Department & Kansas Chamber of Commerce & Industry did not appear before the committee but requested their testimony be included in the minutes. (Attachments 6 & 7)

Hearing on **HB 2879** was closed.

Hearing on **HB 2905 - service of process**, was opened.

Rich Hayse, Kansas Bar Association, appeared before the committee in support of the bill. He explained that process servers have found that when they use certified mail, the person may not be home and a note is left asking the person to pick up his letter at the post office. Several weeks go by when it is finally sent back to the sender. This bill would incorporate provisions of **HB 2805** and allow delivery to include priority mail, commercial courier service, overnight delivery services or another reliable personal deliver service. It would also clarify that first class mail could be used when other methods have failed. (Attachment 8)

Hearing on **HB 2905** was closed.

Hearing on **HB 2805 - service of process**, was opened.

Jeff Bottenberg, Kansas Sheriffs' Association, appeared before the committee and stated that **HB 2905** would be the preferred bill dealing with service of process.

Captain Greg Schauner, Sedgwick County Sheriff's Department, appeared as a proponent of the bill. By using personal services the Sedgwick County Sheriff's Department could save \$130.00. He recommended the committee amend the bill to do away with the default provision, thus saving the counties more money. (Attachment 9)

Hearing on **HB 2805** was closed.

Representative Pauls made the motion to approve the committee minutes from January 27 & 31, February 1, 2, 3, 7, & 8. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 4:30 p.m. The next meeting was scheduled for February 15, 2000.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
IN SUPPORT OF HB 2896
FEBRUARY 14, 2000

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General with the Kansas Bureau of Investigation (KBI), and appear today in support of HB 2896, with one small amendment. HB 2896 strengthens personal privacy by prohibiting the commercial sale of personal identifying information by Internet service providers. The concern arises in subparagraph (c), which prohibits disclosure of information not only for marketing, but for "other purposes without the knowledge and affirmative consent of that subscriber".

Our primary concern is that broad language may be interpreted to interfere with legitimate criminal investigations, fraud investigations, or other administrative actions. For instance, in a child pornography investigation where email is commonly used as the means of distribution, it would be imperative for us to be able to obtain information identifying a subscriber without their knowledge. Therefore, we would request the committee amend HB 2896 to include the attached language clarifying the prohibition does not apply to legitimate investigations and other authorized inquiries. The committee may also want to consider including a penalty for violating the act, either a criminal offense or a consumer per se violation.

I would be happy to answer any questions.

HOUSE JUDICIARY
2-14-2000
ATTACHMENT I

Proposed Amendment to HB 2896

Session of 2000

HOUSE BILL No. 2896

By Select Committee on Information Management
2-8

9 AN ACT enacting the internet privacy protection act; prohibiting certain
10 internet service providers from disclosing personally identifying infor-
11 mation about certain subscribers.

12

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

14 Section 1. (a) This act shall be known and may be cited as the inter-
15 net privacy protection act.

#

42 (c) No internet service provider that provides direct internet access
43 services to residents of Kansas shall disclose any personally identifying
Page 2

1 information about a Kansas subscriber to a third party for marketing or
2 other purposes without the knowledge and affirmative consent of that
3 subscriber.

4 (d) The provisions of this section shall be deemed to be incorporated
5 into any service agreement or contract between an internet service pro-
6 vider and a Kansas subscriber that is executed or renewed on or after the
7 effective date of this section.

(e) *Nothing in this act shall be construed so as to prevent the following:*

- (i) *Disclosure to duly authorized law enforcement officers pursuant to an ongoing criminal investigation;*
- (ii) *Disclosure required by a federal, state, or local law or regulation;*
- (iii) *Disclosure made under a search warrant, court order or subpoena, including administrative subpoena; or*
- (iv) *Disclosure to the subscriber.*

8 Sec. 2. This act shall take effect and be in force from and after its
9 publication in the statute book.



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
IN SUPPORT OF HB 2879
FEBRUARY 14, 2000

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General with the Kansas Bureau of Investigation (KBI), and appear today on behalf of the Attorney General's Office and the KBI in support of HB 2879. We believe the prudent use of digital signatures will assist citizens in accessing information from government agencies as well as commercial transactions. The demand for legally valid and secure communications is growing every day. HB 2879 seems to be a carefully crafted approach with workable safeguards.

In speaking with the Consumer Division of the Attorney General's Office, however, concerns were raised with potential problems between the growth of e-commerce and consumers. For instance, where consumers are notified of default cancellation or other notice is given by electronic means, how can we be sure a consumer received the legal notice before their property was repossessed. Discontinued e-mail cannot be forwarded like regular mail and does have a greater potential for going awry, particularly since e-mail addresses are changed so frequently.

HOUSE JUDICIARY
2-14-00
ATTACHMENT 2

While the problems and uncertainty are diminishing, as society becomes more digital, it is imperative to protect consumers who may not have the resources or expertise to enter this brave new world. As such, we would request the committee consider two amendments.

First, would be a new paragraph (e) in section 4, dealing specifically with consumer contracts and agreements. This basically requires that a consumer contract and agreement, which is done in the traditional written format, rather than electronic format, must include a separate express acknowledgement and agreement if any part thereof would be done by electronic means. Again, this is designed to make sure that a consumer entering into an agreement, where notice or billing may occur via electronic means, is made specifically aware of that fact and agrees with the manner in which it will be conducted. Second, would be a new paragraph (g) would be a clarification that the changes in HB 2879 would exclude legal notices where failure to respond can result in loss of service or property. This is designed to ensure that consumers would in fact, be put on notice of the threat of legal consequences. In short, this would require that notices which could result in loss of service, such as electricity, or to property such as eviction, would continue to be served in the manner currently required by law.

We believe these amendments will not affect the goals of this legislation, but will serve as important protection for consumers, especially those who are not computer literate.

I will be happy to answer any questions.

Proposed Amendment to HB 2879
The Kansas Electronic Signature Act

14 Sec. 4. (a) A record or signature may not be denied legal effect or
15 enforceability solely because it is in electronic form.

16 (b) A contract may not be denied legal effect or enforceability solely
17 because an electronic record was used in its formation.

18 (c) If a law requires a record to be in writing, an electronic record
19 satisfies the law.

20 (d) If a law requires a signature, an electronic signature satisfies the
21 law.

(e): In the case of a non-electronic consumer contract or agreement, the contract or agreement may not contain a provision authorizing the conducting of the transaction or any part thereof by electronic means unless the consumer agrees to such a provision by a separate and express acknowledgment. Such an agreement shall specifically indicate the parts of the transaction to be conducted by electronic means, and shall indicate the manner in which the electronic transaction or a part thereof shall be conducted. An agreement to conduct a consumer transaction or part thereof electronically may not be inferred solely from the fact that the consumer has used electronic means to pay an account or register a purchase or warranty. This subsection may not be varied by agreement.

(f): Provisions of this section do not apply to any notice where failure to respond could result in loss of service or property.

Ron Thornburgh
Secretary of State



2nd Floor, State Capitol
300 S.W. 10th Ave.
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

TESTIMONY – SECRETARY OF STATE

February 14, 2000
House Judiciary Committee
HB 2879

Presented by Janet Chubb, Assistant Secretary of State and member of the *Kansas Electronic Commerce Work Group*.

Chairman O'Neal and committee members, the secretary of state appreciates the opportunity to speak with you today about this important legislation. We are honored to have worked with the members of the work group this past eight months and to stand here today not only with them but also with the impressive group who endorsed this bill before its introduction.

HB 2879 would implement the Kansas electronic signatures act. Its purpose is to enable electronic government and commerce for the benefit of our citizens. It would authorize, but not require, the use of electronic signatures, including digital signatures.

Registered certification authorities, those independent third party entities that identify and authenticate individuals and issue digital signatures, would be required to register with the secretary of state before performing duties within the state. The secretary of state would adopt regulations to govern their qualifications and compliance standards. An annual filing fee of \$1000 and \$100,000 bond would accompany the registration. For any failure to comply with the act or regulations, a registered certification authority would be subject to a civil penalty not to exceed \$10,000.

Our group paid careful attention to Kansas law and our governmental and commercial environment while researching the legal and technological issues related to electronic signatures. We hired the legal and technical experts who drafted and helped implement electronic signature laws in Utah and Washington, Japan and Germany, among others, to ensure that the Kansas law would avoid the pitfalls experienced by others and that it would enjoy the reciprocity our governmental and business leaders seek.

Administration (785) 296-4564
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Corporations (785) 296-4564
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Web Site:
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kssos@ssmail.wpo.state.ks.us

Elections (785) 296-4561
FAX (785) 291-3051
UCC (785) 296-4564
FAX (785) 296-3659

HOUSE JUDICIARY
2-14-00
ATTACHMENT 3

HB 2879 would allow those engaging in electronic transactions to determine whether the electronic signatures they use should be simple, such as those that currently are used by the department of revenue and the secretary of state, or more rigorous, such as the digital signatures applied through the use of public-key infrastructure (PKI) technology. This electronic signature act will provide public confidence by setting a minimum standard for electronic signatures and by registering the certification authorities for digital signatures.

Many of us have worked aggressively for eight months to craft a minimalist bill with a solid legal foundation. It would provide an electronic environment in which our citizens may confidently transact e-government and e-commerce. We urge your support of HB 2879. Thank you.

TESTIMONY – SECRETARY OF STATE

February 14, 2000
House Judiciary Committee
HB 2879

Presented by: Debra Luling, Representative of the *Kansas Electronic Commerce Work Group*

Representative O'Neal and committee members, Thank you for the opportunity to present to you today regarding House Bill 2879.

I am here today as a representative of the *Kansas Electronic Commerce Work Group*. The Electronic Commerce Work Group was organized by a directive of The Information Network of Kansas, Board of Directors. The Work Group was charged with researching issues arising from current law, defining and proposing solutions that will allow electronic commerce to continue to grow in our state, and preparing recommendations for Legislative consideration relating to electronic and digital signatures.

Our Work Group, formed in June of 1999, includes key representation from:

- Kansas Department of Revenue
- Kansas Office of Secretary of State
- Kansas Department of Transportation
- Kansas Treasurer's Office
- Kansas Department of Commerce and Housing
- Kansas Department of Administration
- Information Network of Kansas
- Office of the Revisor of Statutes
- Kansas State University
- Imerge Consulting
- Ken Allen, USERTrust Inc.
- Legislative Branch Representation
- Judicial Branch Representation

We have not taken our directive lightly. Our workgroup has retained legal and technical consultants to review our proposed legislation and insure the legislation drafted serves State of Kansas constituents and its governmental entities, while simultaneously assuring a level of consistency with other state legislation so as to promote reciprocity.

HOUSE JUDICIARY
2-14-00
ATTACHMENT 4

To date, the work group has sought education on public key infrastructure and security issues associated with electronic and digital signatures, conducted a thorough examination of existing legislation in Kansas and other states across the country, and on a federal level.

The net result of our 8 month study was introduced as House bill 2879 on February 7, 2000. Prior to introduction; however, we presented and received endorsements from the following:

- a. Information Network of Kansas Board of Directors
- b. Kansas Chamber of Commerce and Industry (KCCI)
- c. ITAB (Information Technology Advisory Board)
- d. All three Kansas State Chief Information Technology Officers CITOS
- e. Internet Technology Executive Committee (ITEC)
- f. the Joint Committee on Information Technology (JCIT)
- g. the Insurance Department

The electronic Commerce work group has worked conscientiously to ensure a secure viable electronic signature solution for the state of Kansas but our commitment has not stopped with this legislation. Our group will continue to meet to ensure solid, rules and regulations will accompany this legislation.

In closing I urge you to support 2879 in its entirety.

Thank you

##

Electronic signature	Every way of authenticating data by means of information technology		
Example of electronic signature	Digital signature	Protocols based on asymmetric encryption, which can ensure the authenticity and integrity of electronic data.	
	Examples of digital signatures	Blind signature	Digital signature protocol, which allows a person to sign a document without knowledge of the contents of the document.
		Fail-stop digital signature	Digital signature protocol, which allows a signature-holder to prove that a digital signature forged after a brute force attack is a fake.
		Proxy signature	Digital signature protocol, which allows the signer to give authority to sign a message to someone else, without disclosing his/her private key.
		Undeniable digital signature	Digital signature protocol, which cannot be verified without the signer's consent (to prevent e.g. exact copying of digital signatures). Designated confirmer signatures allow others than the signer to verify the signer's signature.

Digital Signatures

By Ron White

Illustration by Timothy Edward Downs

You probably can't remember how you ran your business before the Internet. You trust your company's most critical data to it, after all. But how do you know it's safe? Setting up a secure network and encrypting files is only the first step. You also have to protect against identity theft: Is that competitive information really from your business partner? Enter the digital signature, which makes it possible to verify the authenticity of a message or document.

Promissory note

I, Mary Smith, promise to pay to the order of First Western Bank five thousand dollars and no cents (\$5,000) on or before June 10, 2000, with interest at the rate of fifteen percent per annum.

Mary Smith

<Signed SigID=1>

Promissory note
I, Mary Smith, promise to pay to the order of First Western Bank five thousand dollars and no cents (\$5,000) on or before June 10, 2000, with interest at the rate of fifteen percent (15%) per annum.
Mary Smith

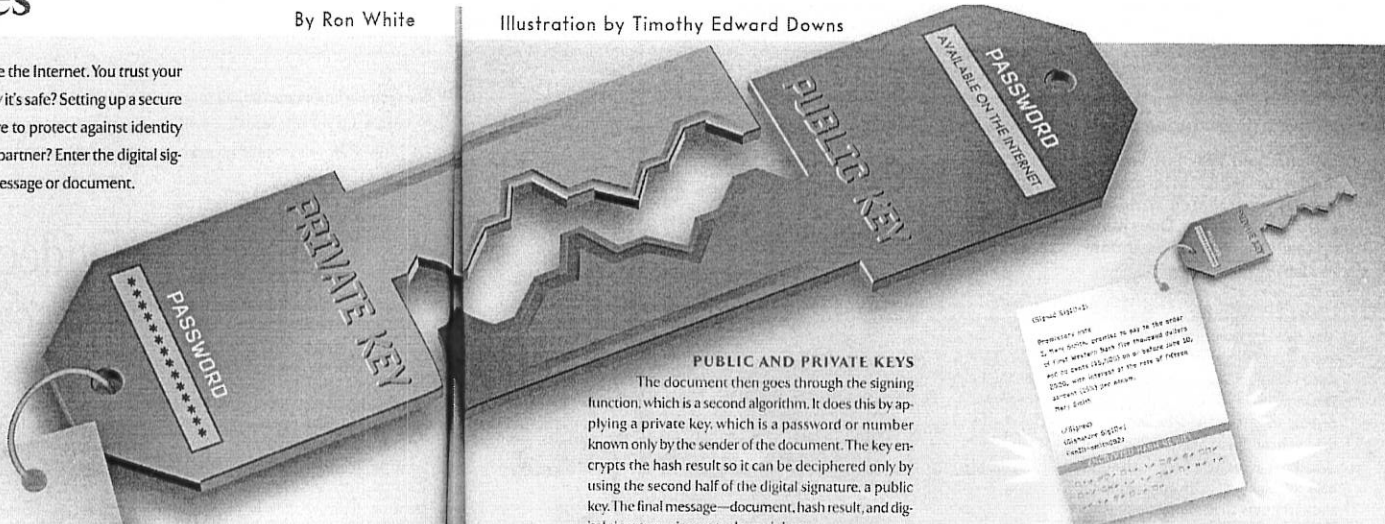
</Signed>
<Signature SigID=1
PsnID=smith082>

HASH RESULT

14, 21, 13, 4, 12, 2, 11, 26, 20, 3, 4, 19,
1, 8, 4, 8, 0, 3, 2, 10, 18

For example, the algorithm might create a series of numbers that count the characters between each letter e in the document. The result, called the hash result, is attached as a series of numbers.

DIGITAL FINGERPRINT
Once you create a document—such as a word processing file, artwork, or any other kind of digital information—you send it to the digital signature software for processing. The document goes through a hash function, or an algorithm that converts the data into a unique digital representation.

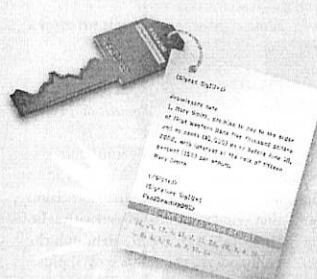


PUBLIC AND PRIVATE KEYS

The document then goes through the signing function, which is a second algorithm. It does this by applying a private key, which is a password or number known only by the sender of the document. The key encrypts the hash result so it can be deciphered only by using the second half of the digital signature, a public key. The final message—document, hash result, and digital signature—is sent to the recipient.

ENCRYPTION

A digital signature doesn't encrypt the document—that is, encode the contents so they can't be read. But public and private keys can use the same techniques for encryption.



VERIFICATION

When the recipient gets the message, he or she types in a public key, which might be published on the Internet or in a company directory. The public key performs its own algorithm on the signature and the hash result. The software checks to see whether the digital signature was created with the private key that corresponds to the public key, verifying that the message is from whom it claims to be.

VERIFICATION FAILURE

The program also compares the new hash result with the original to determine whether the message has been changed, tampered with, or accidentally garbled during transmission.

<Signed SigID=1>
Promissory note
I, Mary Smith, promise to pay to the order of First Western Bank five thousand dollars and no cents (\$5,000) on or before June 10, 2000, with interest at the rate of fifteen percent (15%) per annum.
Mary Smith

VERIFICATION FAILURE

</Signed>
<Signature SigID=1
PsnID=smith082>

DE-ENCRYPTED HASH RESULT
14, 21, 13, 4, 12, 2, 11, 26, 20, 3, 4, 19,
1, 8, 4, 8, 0, 3, 2, 10, 18

4-4



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(785) 232-8215

To: House Judiciary Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 14, 2000

Re: HB 2879

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to request adoption of the attached amendment to House Bill 2879.

As financial institutions and other businesses become active players in the world of electronic commerce, it is important that laws promote and safeguard e-commerce, not stifle it. The legal acceptance of electronic signatures is crucial in making digital transactions more common.

We are concerned, however, that HB 2879 is ambiguous in Section 4 when the bill recognizes electronic signatures the same as written signatures. The attached amendment would add language to Section 4 that clarifies it is not mandatory that a person or entity use or accept a digital signature in lieu of a manual signature.

Many businesses, including some of our membership, are not yet equipped to accept electronic or digital signatures. In addition, business relationships may exist with entities outside of Kansas that do not recognize them as legally binding. This amendment will clarify what we understand to be the intent of the bill.

We would respectfully request that the House Committee on Judiciary adopt the attached amendment to HB 2879.

Thank you.

HOUSE JUDICIARY
2-14-00
ATTACHMENT 5

5-2

1 record.

2 (d) "Message" means a digital representation of information.

3 (e) "Person" means a human being or any organization capable of
4 signing documents and being legally bound by those documents. A person
5 may be an individual, body politic or legal entity.

6 (f) "Registered certification authority" means a person providing cer-
7 tification of a digital signature who is, or is certified by, a member of the
8 group of certification authorities approved by and registered with the
9 secretary.

10 (g) "Secretary" means the Kansas secretary of state.

11 (h) "Transaction" means an action or set of actions occurring between
12 two or more persons relating to the conduct of business, commercial or
13 governmental affairs.

14 Sec. 4. (a) A record or signature may not be denied legal effect or
15 enforceability solely because it is in electronic form.

16 (b) A contract may not be denied legal effect or enforceability solely
17 because an electronic record was used in its formation.

18 (c) If a law requires a record to be in writing, an electronic record
19 satisfies the law.

20 (d) If a law requires a signature, an electronic signature satisfies the
21 law.

22 Sec. 5. Any transaction subject to this act is also subject to other
23 applicable substantive law.

24 Sec. 6. (a) This act does not require any state agency to use or permit
25 the use of electronic or digital signatures.

26 (b) Any state agency may adopt rules and regulations governing the
27 agency's use of electronic or digital signatures as long as the rules and
28 regulations meet or exceed those adopted by the secretary.

29 Sec. 7. (a) Any person, before entering upon the duties of a regis-
30 tered certification authority, shall:

31 (1) Register with the secretary on forms approved and provided by
32 the secretary;

33 (2) pay to the secretary an annual filing fee of \$1,000;

34 (3) file with the secretary a good and sufficient surety bond, certifi-
35 cate of insurance or other evidence of financial security in the amount of
36 \$100,000; and

37 (4) be approved by the secretary as meeting the requirements of any
38 rules and regulations adopted by the secretary, as the secretary deter-
39 mines appropriate, to ensure the person's financial responsibility and con-
40 dition, character, qualifications and fitness to be a registered certification
41 authority.

42 (b) A registered certification authority shall create, maintain and pre-
43 serve all records that are necessary to demonstrate compliance with rules

(e) The use or acceptance of a digital signature shall be at the option of the parties to the communication. Nothing in this act shall require a person or entity to use or permit the use of a digital signature.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Judiciary
FROM: Linda J. De Coursey, Director of Government Affairs
RE: HB 2879 – Kansas Electronic Signature Act
DATE: February 14, 2000

Mr. Chairman and members of the committee:

Although the Kansas Insurance Department came late to the table, we have been attending meetings of the Electronic Commerce Work Group and allowed input regarding the formulation of H.B. 2879.

It is our understanding that the Electronic Commerce Work Group used the Uniform Electronic Transfer Act (UETA) as a standard in developing HB 2879. The Kansas Insurance Department endorses UETA because it strongly supports enactment of e-commerce legislation that establishes workable standards for the use of electronic records and signatures, while ensuring that consumer enjoy the same legal protections whether transactions occur by electronic or more traditional means.

The National Association of Insurance Commissioners (NAIC) believes the UETA approach is the proper vehicle for addressing electronic commerce issues and maintaining accurate record keeping by insurance providers. I have attached the resolution that the NAIC made in support of UETA. The NAIC also strongly urged Congress to adopt legislation that fully preserves all insurance laws in States that have adopted the UETA model, thereby avoiding Federal preemption that could undermine State efforts to maintain solvency and protect consumers.

HOUSE JUDICIARY
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ATTACHMENT 6

House Bill 2879 also allows state agencies the flexibility to enact their own specific rules and regulations to “taylor-fit” the electronic commerce requirements.

We appreciate your consideration of our views on the importance of UETA to the insurance industry, and HB 2879.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
Resolution in Support of the Uniform Electronic Transactions Act
As Recommended by the National Conference of Commissioners on Uniform State Laws

Whereas, the insurance industry provides valuable services and products that help the citizens, businesses and communities of the United States of America recover from property and other financial loss, afford health care and efficiently save and invest for the future.

Whereas, such products and services are provided under laws and regulations promulgated and administered by state legislative and regulatory bodies of the several states, which are designed to provide necessary protections to policyholders, insureds, third party claimants, other beneficiaries and the general public through consumer and anti-fraud protections that are tailored to the specific needs of the citizenry of each state.

Whereas, many insurers provide such products and services in more than one state or jurisdiction of the United States and thus must comply with the several states laws and regulations of the states they serve.

Whereas, the insurance industry increasingly competes with other financial services providers, which are organized and regulated under a single regulatory and legal regime.

Whereas, the use of electronic technologies in the insurance process can result in greater efficiencies, improved service, and lower cost for administration of insurance products and services, all of which benefits insurance consumers.

Whereas, many laws and regulations regarding insurance were adopted at a time that electronic technologies were not in use.

Whereas, such laws and regulations often require compliance through the use of physical forms (such as the use of paper records and requiring physical signatures) and in so doing may create unreasonable barriers to the use of electronic media.

Whereas, the essential purposes of laws and regulations providing important consumer and anti-fraud protections can in most cases be satisfied through electronic means.

Whereas, it is appropriate and necessary that state laws and regulations be updated and harmonized to allow the beneficial use of electronic technologies for signatures and records in the insurance process while maintaining necessary consumer and anti-fraud protections.

Whereas, the National Conference of Commissioners on Uniform State Laws has developed and is recommending the adoption of the Uniform Electronic Transactions Act (UETA), which ensures that records and signatures will not be denied legal effect solely on the basis that they are accomplished through electronic means.

Whereas, UETA preserves necessary consumer protections and requires security procedures to be agreed upon among affected parties, without favoring a given technology or physical means of achieving these protections.

Whereas, UETA allows electronic compliance with current laws and regulations with appropriate exceptions as determined by state legislatures.

Now Therefore Be It Resolved, that the National Association of Insurance Commissioners hereby resolves to urge the legislatures of the states, territories and possessions of the United States to adopt UETA at the earliest possible time.

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LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2879

February 14, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Written Testimony Before the
House Judiciary Committee

by

Marlee Bertholf
Director of Taxation & Small Business

Mr. Chair and members of the Committee:

My name is Marlee Bertholf and I am the Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry (KCCI). Thank you for the opportunity to provide written testimony in support of HB 2879. KCCI supports HB 2879 because the proposed Kansas Electronic Signature Act promotes the public confidence in privacy, integrity and reliability of electronic records and electronic commerce by setting a higher authentication standard by the use of digital signatures. KCCI is in favor of a reliable and private means by which electronic business can be conducted and believe that HB 2879 will do just that.

Thank you for the opportunity to express KCCI's support of HB 2879.

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

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

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

HOUSE JUDICIARY
2-14-00 ATTACH 7



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
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Telephone (785) 234-5696
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Email: ksbar@ink.org

**TESTIMONY BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS BAR ASSOCIATION
IN SUPPORT OF HB 2905**

Kansas House Judiciary Committee
February 14, 2000

Statutes in the civil procedure code and in the procedure code for limited actions presently authorize the use of certified mail for service of process. House Bill 2905 evolved out of concerns expressed by practicing Kansas attorneys about inherent limitations in using certified mail for this purpose, and a desire to make the procedure more flexible while retaining the present safeguards for the person being served.

Using certified mail rather than personal service of process by the sheriff or a private process server is often desirable for reasons of economy and efficiency. However, the person to whom the envelope is addressed may not be at home when the postal service attempts delivery. In that case the postal service usually leaves a notice for the addressee to pick up the certified mail at the post office. If the individual fails or refuses to pick up the mail, then it is returned to the sender and any utility of certified mail is lost, along with a loss of several weeks of time.

HB 2905 retains the concept of restricting the delivery process to channels which will provide evidence of who was served, and when and where, just as with use of certified mail. But the bill expands the authorized means of delivery to include not only certified mail, but priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service. This would allow service of process by means such as Federal Express or a reputable urban delivery company or other services that fit within the definitions of return receipt delivery.

The bill also clarifies the fall-back use of first class mail when other methods have failed. This is currently authorized in the statutes, but HB 2905 adds safeguards to the present system. The serving party would be required to file a certificate of service with the clerk of the district court, as at present. But if the first class mail is returned to the serving party--and thus never received by the addressee--the amendments would require an amended certificate of service to document that no service was obtained. The amendments also clearly conform this procedure with the three-day rule now used in determining other service under the civil procedure code: Service by first class mail would be considered obtained three days *after* mailing.

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The bill ²²would make the statutes pertaining to in-state service, out-of-state service and service of limited action process identical regarding return receipt delivery to try to eliminate ambiguity and increase certainty of use across the board.

We have worked with the Kansas Sheriff's Association and incorporated the provisions of House Bill 2806 into this legislation. In addition, there are several technical amendments that we wish to add to the bill. These amendments are listed as an attachment to my testimony.

On behalf of the Kansas Bar Association, we urge your favorable consideration of House Bill 2905. Thank you.

TECHNICAL AMENDMENTS TO HOUSE BILL 2905

- 1) On page 4 in Section 2 at line 20, the words “or requests personal or residence service pursuant to subsection (d)” should be added after “the clerk”.
- 2) On page 5 in Section 2 at line 9, the words “of delivery” should be added after “the date”.
- 3) On page 5 in Section 2 at line 16, the sentence “The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery.” should be added after “....entity effecting delivery.”.
- 4) On page 8 in Section 3 at line 28, a “(1)” should be added before the words “Service of any...”
- 5) On page 8 in Section 3 at line 29, the words “may be” should be deleted and the words “by return receipt delivery shall include service effected” should be inserted.
- 6) On page 8 in Section 3 at lines 30-31 the words “~~The attorney for the party seeking service or the party, if the party is not represented by an attorney~~” should be deleted.
- 7) On page 8 in Section 3 at line 36, a “(2)” should be added before “The”. The words “~~attorney for the party seeking service or the party, if the party is not represented by an attorney~~” should be added after “The”. The words “party or party’s attorney” should then be added after “~~The attorney for the party seeking service or the party, if the party is not represented by an attorney~~” and before the word “shall”.
- 8) On page 9 in Section 3 at line 2, a (3) should be added before “*Service of process....*”.
- 9) On page 9 in Section 3 at line 4, a (4) should be added before “*After service and return....*”
- 10) On page 9 in Section 3 at line 15, a (5) should be added before “If the.....”
- 11) On page 9 in Section 3 at line 26, the word “sheriff” should be deleted.
- 12) On page 9 in Section 4 at line 41, the words “Service by certified mail” in both subhead and text should be replaced with “Service by return receipt delivery”
- 13) On page 10 in Section 5 at line 33, the words “or requests personal or residence service pursuant to subsection (d)” should be added after the words “the clerk”.
- 14) On page 13 in Section 6 at line 11, the words “Service by mail” and “Service by certified mail” should both be replaced with “Service by return receipt delivery”

Captain Grey Schauer,
Sedgwick County Sheriff's Dept.

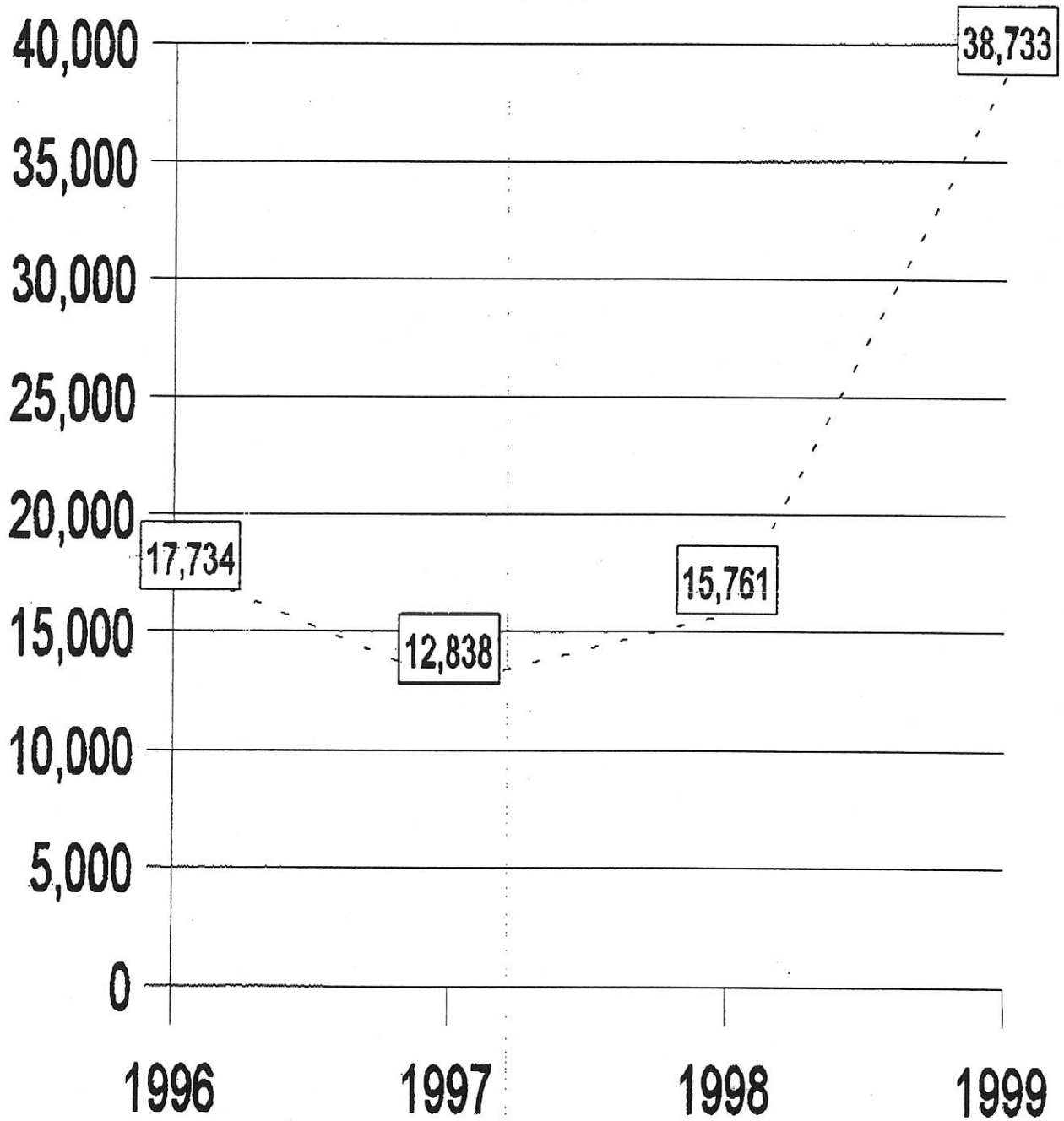
Civil Process in Kansas

Improving Service and Reducing Costs
by Changing K. S. A. 60-303 and 61-1803

- Certified Mail Service is the "default" for service of process in Kansas by wording of K. S. A. 60-303 and 61-1803.
- These statutes require Certified Mail Service whenever no other form of service is specified at the time of filing. Local sheriffs are therefore required to expend funds to mail civil process--even to recipients housed in the same building as their offices.
- Compliance with the "default" required by both statutes will cost the taxpayers of Sedgwick County an estimated \$40,000 to \$55,000 dollars in FY 2000 for certified mailing of process which could be served more cost effectively by either personal or residential service methods.
- The *actual* cost of serving twenty documents by Certified Mail Service to an address in downtown Wichita is over \$160.00. The *actual* cost of serving the same papers by personal service is under \$30.00.
- The change proposed by the Kansas Sheriff's Association will allow sheriffs to avoid this added expense, while continuing to provide service of process as specified by law.

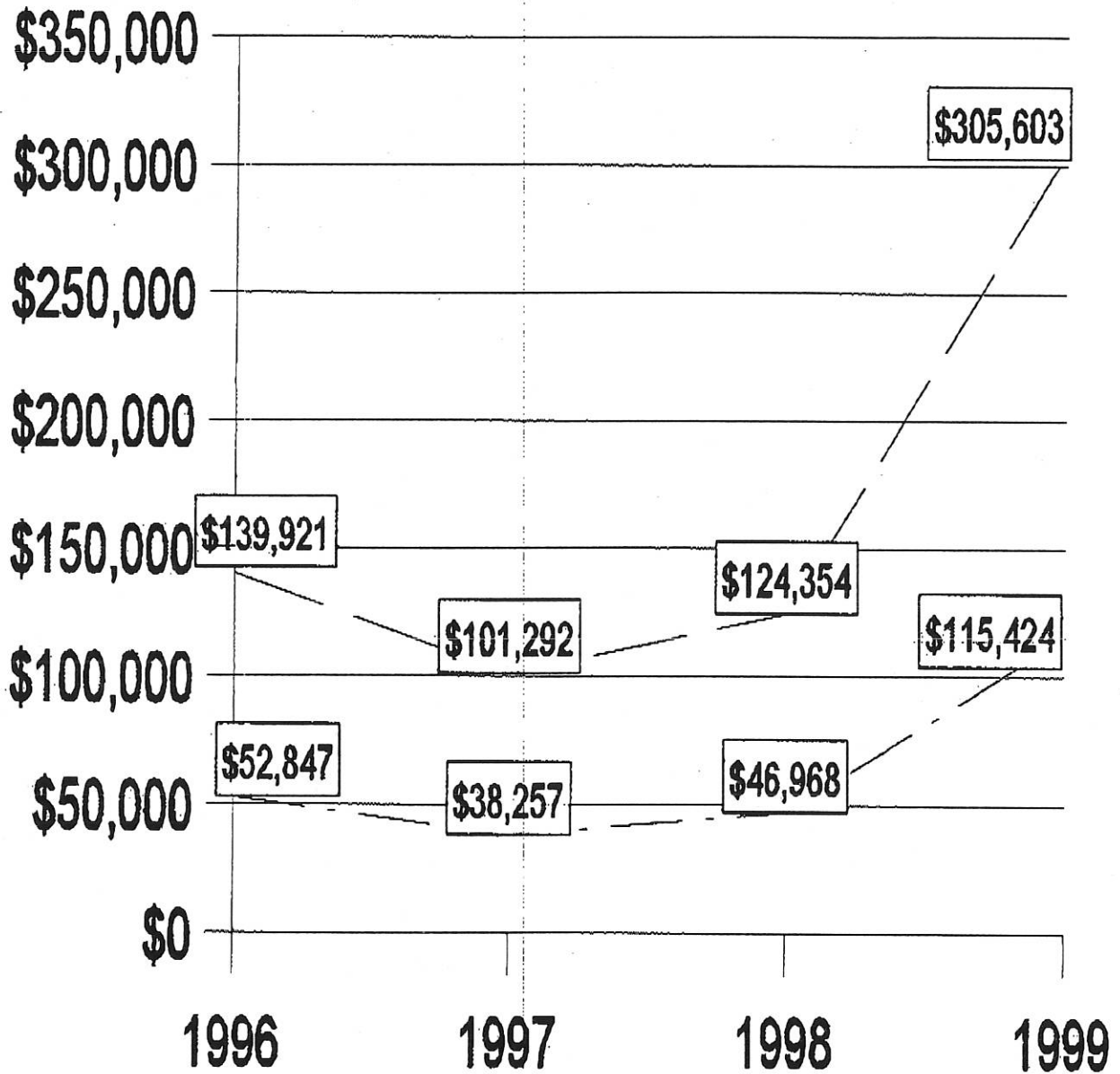
HOUSE JUDICIARY
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ATTACHMENT 9
~~9~~

Certified Mail Service in Sedgwick County



----- Papers Served by Certified Mail

Postage Costs for Sedgwick County



- — Postage @ \$7.89 each (maximum)
- - - Postage @ \$2.98 each (minimum)