

Approved: _____

Date

2-13-01

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on February 8, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Bob Williams, Kansas Pharmacists Association
Terry Bradstreet, Director of Pharmacy Operations, Dillion Pharmacy
Linda DeCoursey, Kansas Insurance Department
William W. Sneed, Legislative Counsel, Health Insurance Association of America

Others attending: See attached list.

Hearing on: SB 182 - Enacting the Uniform Prescription Drug Information Card Act

Bob Williams, Kansas Pharmacists Association, testified before the Committee in support of **SB 182** which would require that certain mandatory information be disclosed on a prescription drug card. Mr. Williams pointed out that managed care has forced pharmacists to increase patient volume in exchange for lower rates as well as there being a shortage of pharmacists. He felt that passage of the bill would go a long way to eliminating some of the hassle factors in processing prescription drug claims and free up the pharmacist's time to practice pharmacy. (Attachment 1)

Terry Bradstreet, Director of Pharmacy Operations, Dillion Pharmacy, also provided testimony in support of the bill. He noted that 20% of a pharmacist's time is spent on insurance issues and each time a pharmacy transmits a claim, it costs the pharmacy a fee regardless if the claim adjudicates. (Attachment 2)

Linda DeCoursey, Kansas Insurance Department, stated that the department is neutral on the bill at this time, but pointed out that reference to "self-insured plans and state-administered plans" on page 1, lines 28 and 29 of the bill are not subject to their jurisdiction since they cannot regulate them. Therefore, she noted that the wording "third-party administrators for self-insured plans and state-administered plans" on lines 28 and 29 should be deleted, and if the bill passes without the amendment, they would be in opposition to the bill. (Attachment 3)

Written testimony in support of the bill was received from Marlee Carpenter, Kansas Chamber of Commerce and Industry, (Attachment 4) and Frank Whitchurch, Pharmacy Operations Specialists, Osco Drug, (Attachment 5).

William W. Sneed, Legislative Counsel, Health Insurance Association of America, testified before the Committee in opposition to **SB 182** and pointed out some of the concerns he has with the bill which include the use of mandated cards enumerated under Kansas law which could not be changed on an ongoing basis if provisions related to drug cards were mandatory under HIPAA, creation of an "un-uniform" act as it relates to what occurs in other states in regard to a bank identification number, and mandating such action under Kansas law without a cost feasibility study. Mr. Sneed noted that HIAA is currently working with the National Association of Chain Drug Stores on alternative legislation and voluntary requirements to be used by the National Counsel of Prescription Drug Programs, and when such information is available, he would provide that information to the Committee. (Attachment 6)

During Committee discussion it was pointed out that Kansas law provides that a mandate needs to be studied, submitted to the legislature and acted upon at the discretion of the legislature. The fiscal note on the bill would be approximately \$60,000 from the Cafeteria Benefits Fund in the Department of Administration for production, communication materials, and postage according to the state health plan's Prescription Manager if a new card had to be issued before the renewal date.

CONTINUATION SHEET

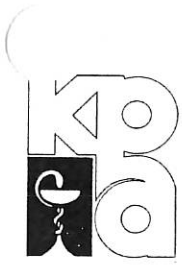
It was also suggested that putting the name of the Drug Benefits Manager on the prescription card would be beneficial. Mr. Sneed was asked to provide language that could be incorporated in the bill if an insurance company complied with HIPAA, they would automatically be in compliance with Kansas law. Brad Smoot, representing Blue Cross/Blue Shield, contributed to the discussion by noting that he does not have a problem with the bill, and would be glad to work with those involved.

Discussion on SB 58 - Consumer protection; prohibiting obtaining or submitting check without written consent

Senator Janis Lee told the Committee that a meeting had been held by the proponents and opponents of the bill, and an agreement was reached. Steve Rarrick, AG's office, submitted language to the Committee that was agreed to by those parties involved which was modeled after "slamming" legislation. He pointed out that public utilities would be exempt from the proposed legislation. (Attachment 7) The Chair stated that the bill would be considered later.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for February 13, 2001.



KANSAS PHARMACISTS ASSOCIATION

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Robert R. (Bob) Williams, M.S., C.A.E.
Executive Director

TESTIMONY

Senate Financial Institutions and Insurance
February 8, 2001

SB182

My name is Bob Williams, I am the Executive Director of the Kansas Pharmacists Association. Thank you for allowing me the opportunity to address the committee on SB 182.

Currently, more than 70% of prescriptions are paid for by one of many insurance programs, each of which issues its own unique drug benefits card. Frequently, these individual cards lack sufficient data for pharmacists to efficiently process claims for prescriptions, or to verify that the individual is a member of a particular health plan. According to a "Pharmacy Activity Cost and Productivity Study" by Arthur Anderson for the National Association of Chain Drug Stores, 68% of a pharmacist's time is spent dealing with issues unrelated to patient care. Twenty percent of a pharmacist's time is spent acting as an intermediary between the patient and their insurance company. Dealing with the administrative burdens created by inconsistent and confusing information on prescription cards creates unnecessary barriers to pharmacists providing care to their patients. The problem will only become more acute over the next five years with the continuing dramatic increase in prescription use.

In the contemporary pharmacy practice, prescription claims are processed via electronic transmission whereby the pharmacist enters the appropriate data regarding the patient/prescription and the claim is approved or denied. This is often referred to as "Point of Sale" (POS) or sometimes "Point of Service." This is very similar to the way transactions are processed when one purchases an item with his/her credit card. When the system works, the pharmacist is notified if the drug is covered, any co-payments and the amount of reimbursement. This usually takes only a few moments and is done while the patient waits. Unfortunately, Kansas pharmacists have reported that increasingly, information contained on prescription cards is inadequate for them to provide the very information the issuer of the card requires in order for them to process the claim. This results in the pharmacist having to call an 800 number (if there is an 800 number on the card) to get the required information (while patients are waiting). They refer to this as "1-800-HOLD" because they are frequently placed on hold for 20 to 45 minutes. Often times the pharmacist is forced to submit the claim several times guessing at the missing information until they get "lucky." It should be noted that every time the pharmacist transmits a claim or backs out a claim he/she is charged a fee. Attached to my testimony are a few examples. Imagine how frustrating it would be if the same situation existed with credit cards used for retail purchases. I have also attached to my testimony the states that have currently enacted similar legislation and those where similar legislation is proposed. As you can see, it is a priority issue for pharmacists in many states.

Lines 33--42 on the first page of the bill identifies the data elements we believe should be required on all prescription drug cards. Committee members will note that we are not asking for any information which is not necessary for processing the claim. It is our understanding that some insurance companies are moving in the direction of issuing just one card for medical and

prescription benefits. Section 5 of the bill clearly states that nothing in the “act shall be construed as requiring any person issuing a card for processing of claims under a health benefit plan to issue a separate card for prescription drug coverage...” Additionally we are not asking for new cards to be issued immediately but “...when the plan is amended, delivered, issued or renewed...”.

In closing I would like to say there are a number of issues facing the pharmacy profession which makes passage of SB 182 critical. Managed care has forced pharmacists to increase patient volume in exchange for lower rates. Prescription volume is also increasing (and will continue to do so) as more and more drugs are used to treat diseases. Additionally, the pharmacy profession is currently experiencing a shortage of pharmacists. These issues have all placed a heavy demand on the pharmacy profession limiting the pharmacist’s ability to counsel patients and provide them with the necessary information to manage their drug therapy. Passage of SB 182 will go a long way to eliminating some of the “hassle factor” in processing prescription drug claims and free up the pharmacist’s time to practice pharmacy. Once again, we are only asking the insurance and managed care industry to provide the information they require from the pharmacists in order for the pharmacist to process the prescription claim.

Thank you.

EXAMPLES OF PROBLEMS

Blue Cross Blue Shield of Kansas

Patient is minor child. Name on card is of minor child.

ID # is parents ID number.

Pharmacist could not process claim because minor child has different ID number.

Blue Cross Blue Shield of Kansas City

Prescription claim processor is Pharmalink.

Pharmalink is not identified anywhere on card.

How is pharmacist to know where to transmit claim?

Humana

Prescription claim processed through PCS.

PCS is not identified anywhere on card.

How is pharmacist to know where to transmit claim?

Family Health Partners (Health Wave)

Pharmacist must add an extra "0" in front of ID # in order to process claim.

Why isn't the card printed with the accurate ID #?

Diversified

Some claims processed through DPS, or Caremark, or NMH.

None of the claims processors are identified on card.

How is the pharmacist to know where to transmit claim?

First Health Network

(Boiler Makers National Health and Welfare Fund)

On back of card it states "For Rx drug info. call Express Scripts"

However, when Express Scripts called, they report they don't have data (or patient ineligible).

That is because claims processor is Value Rx

Humana

No group number listed.

Pharmacist must guess at number or spend hours tracking down group number.

Status of Uniform Prescription Card Legislation

The compilation below is based on information received as of December 26, 2000. It is based on e-mail responses from two different topics on the NCSPA list serve. States have indicated that the topic is a priority consideration or that legislation will be introduced.

State	Enacted	Proposed in 2001
Alabama	X	
Alaska		
Arizona		X
Arkansas		X
California		X
Colorado		
Connecticut		X
Delaware		
Florida		
Georgia	X	
Hawaii		
Idaho		X
Illinois	X	
Indiana		X
Iowa		X
Kansas		X
Kentucky		
Louisiana		
Maine		
Maryland		X
Massachusetts		X
Michigan		
Minnesota		
Mississippi		
Missouri		

State	Enacted	Proposed in 2001
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		X
New Mexico		X
New York		X

North Carolina	X	
North Dakota		X
Ohio		X
Oklahoma		
Oregon		X
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		X
Tennessee	X	
Texas	X	
Utah		
Vermont		
Virginia	X	
Washington		
West Virginia		
Wisconsin		X
Wyoming		X



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TERRY BRADSTREET, R. Ph.
Director of
Pharmacy Operations/HBC

My name is Terry Bradstreet and I am the Director of Pharmacy Operations for Dillon Pharmacy. I am also a licensed pharmacist in the State of Kansas. We operate 58 Community Retail Pharmacies within our supermarkets throughout the state and fill an excess of 100,000 prescriptions every week. Of these prescriptions, 84% are tied to some type of insurance, so you can see that the sheer volume has the potential to cause problems in the day-to-day operation of the pharmacies.

I'm here today to tell you that this potential is, in fact, real! The Anderson study that was conducted by NACDS (National Association of Chain Drug Stores) confirmed that a full 20% of a pharmacist's time is spent on insurance issues! These issues can be numerous:

- Insurance carrier vs. Insurance administrator.
Examples: Blue Cross Blue Shield KC transmits to Pharmedlink but no indication on card. Preferred Plus of Kansas transmits to National Medical Health but no indication on the card.
- BIN and/or Processor number to allow electronic transmission. If there is no indication on the card of administrator of the plan a BIN and Processor number would identify them.
- Group numbers. Some plans require group numbers to transmit. Some cards have groups indicated.
- Coverage eligibility. No indication of Pharmacy coverage on the card.

Items compounding these issues are:

- Pharmacist shortage-A drain on the pharmacist's time is unacceptable. By 2004 only 6% increase in number of pharmacists.
- Increased prescription volume-By 2004 increase of 47%

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- Total number of insurance carriers. We currently have over 250 insurance carriers in our computer system. The expectation of the patient is that the pharmacist knows all about their prescription coverage.
- Financial issues- each time a pharmacy transmits a claim it costs the pharmacy a fee, irregardless if the claim adjudicates.

Our profession as pharmacists is to ensure that the patient obtains the correct medication, understands completely how to administer the medication including the potential problems associated with their therapy, so that their therapeutic outcome is maximized. This is becoming more and more difficult and one of the contributing factors are the confusion created by the non-uniformity of prescription cards.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance
FROM: Linda De Coursey
RE: SB 182 – Uniform Prescription Drug Information Card Act
DATE: February 7, 2001

Madam Chairwoman and members of the committee:

Thank you for the opportunity to discuss SB 182 with you. We understand the purpose of this bill is to lessen the patient's waiting time, reduce the thousands of different benefit cards issued by insurers, minimize patients confusion, decrease administrative burdens for pharmacies and streamline dispensing of prescription products paid for by third-party payors.

The bill also sets out that health benefits plans (as described in K.S.A. 40-2209d) would be required to issue the prescription drug information card (or other technology which would contain all of the information required in the bill) if they provide coverage for prescription drugs or devices. The bill sets out mandatory information to be specifically identified on the cards.

The bill places the administration and enforcement of the act and any rules and regulations that are necessary to implement the act under the Commissioner of Insurance.

The Kansas Insurance Department regulates "health benefit plans" that are subject to our jurisdiction. On the first page of the bill, on lines 28 and 29, reference is made to "self-insured plans and state-administered plans". These plans are not subject to our jurisdiction, and we cannot regulate them. Self-insured plans are regulated by ERISA. Even if state-administered

plans, for instance, SRS, is captured under this bill and have to issue cards, we would still have no jurisdiction over that agency. Therefore, the wording “third-party administrators for self-insured plans and state-administered plans” on lines 28-29 should be deleted. I have attached a balloon showing our amendment. ✕

This bill would also require pharmacy benefit managers to be under the regulatory authority of the Kansas Insurance Department, and since they would be a new group to come under our jurisdiction, we feel the statute should define this group or at least refer to an existing statute that might define this group.

Madam Chairman, we are neutral on the passage of this particular bill. However, should the legislative body decide to pass this bill, it should contain our amendments. Otherwise, we would be in total opposition because we cannot regulate entities over which we can have no jurisdiction.

Thank you for allowing us to comment on SB 182.

SENATE BILL No. 182

By Committee on Financial Institutions and Insurance

1-31

AN ACT enacting the uniform prescription drug information card act.

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

Section 1. This act shall be known and may be cited as the uniform prescription drug information card act.

Sec. 2. It is the intent and purpose of the legislature to lessen patient's waiting times, decrease administrative burdens for pharmacies and improve care to patients by minimizing confusion, eliminating unnecessary paperwork and streamlining the dispensing of prescription products paid for by third-party payors. This act shall be broadly applied and construed to effectuate this purpose.

Sec. 3. As used in this act:

- (a) "Commissioner" means the Kansas commissioner of insurance;
- (b) "department" means the Kansas department of insurance; and
- (c) "health benefit plan" shall have the meaning ascribed to such term by subsection (1) of K.S.A. 40-2209d, and amendments thereto.

Sec. 4. (a) A health benefit plan that provides coverage for prescription drugs or devices and issues a card for claims processing and an administrator of any such plan, including, but not limited to, pharmacy benefits managers, ~~third party administrators for self-insured plans and state administered plans~~, shall issue to each insured a card containing uniform prescription drug information. The uniform prescription drug information card shall specifically identify and display the following mandatory data elements:

- (1) Bank identification number (BIN);
- (2) processor control number or group number or both, if required for claims adjudication;
- (3) card issuer identifier;
- (4) prescription claims processor, if different from card issuer;
- (5) cardholder identification number;
- (6) cardholder name;
- (7) claims submission names and addresses; and
- (8) help desk telephone numbers.

(b) A uniform prescription drug information card shall be issued by a health benefit plan to each participant in the plan upon enrollment and

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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SB 182

February 8, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Financial Institutions and Insurance Committee

by

Marlee Carpenter
Executive Director, Kansas Retail Council

Chairperson Praeger and members of the Committee:

My name is Marlee Carpenter and I am the Executive Director of the Kansas Retail Council (KRC) as well as the Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry (KCCI). The Kansas Federation of Chain Pharmacies (KFCP), an affiliate of KRC and KCCI, expresses its support for SB 182. The bill provides for a uniform prescription drug card that requires certain information be identified and listed on the drug benefit card.

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.

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As prescriptions and insurance programs increase, pharmacists spend more and more processing insurance claims. This problem becomes greater as an increase in the number of new prescriptions more than triple the increase of new pharmacists.

Requiring the display of certain information will benefit both the pharmacists and the patient by decreasing stress and frustration, increasing job satisfaction and enhancing opportunities for patient interaction, including disease state management, counseling and drug utilization review. Better use of medications, improved health outcomes, reduced health care costs, and convenience for the consumer will result.

The KFCP urges the enactment of the Uniform Prescription Drug Information Card Act and thanks you for taking the time to hear this bill and urge your support of SB 182. I will be happy to answer any questions.

February 6, 2001

Sandy Praeger, Chairman

Madam Chairman:

I am writing this letter to express my enthusiastic support of Senate Bill No 182. As you know, this bill would establish a uniform prescription drug information card in the state of Kansas. As of this date two other states, Texas and North Carolina, have passed a similar statute. Pharmacists practicing in these states as well as citizens of these states now possess an advantage that our citizens and pharmacists do not have. Among these advantages are decreased stress and frustration on both the part of pharmacists and patients as well as enhanced opportunities for better pharmacist patient interactions. These enhanced opportunities are made possible by the incremental increase in time that the pharmacists will have as a result of a more productive workplace.

The question that must be asked is why is this bill so important, why after all these years without it do pharmacists need it. We have spent many years without it, why do it at all? Our friends in the insurance industry would tell you that this bill would create an enormous burden for them, interfere with the management of their business, and incur increased costs among insureds. They would tell you that all the information that pharmacists need to process prescriptions is available to them at present so why do we need the uniform card. In answer to these statements let me stay this. Times have changed and we must change with them. Approximately 30 years ago when I entered the profession of pharmacy, scripts covered by a third party (insurance card) were a novelty. Patients paid for scripts out of their own pocket and either absorbed the cost or submitted a paper claim of their own. Fast forward to February 2001, now 75 to 80% of scripts are paid for using a third party insurance card. Projections indicate that within a few years virtually all scripts will be paid for using these cards.

Imagine that all businesses were run like a pharmacy processing an insurance card. Your customers pay for your services by giving you a credit card. You cannot just "swipe" the card and get paid. What you must do is enter certain information about them into the computer and submit this information on line to get payment. **YOUR FIRST STEP IS TO LOOK FOR INFORMATION ON THE CARD.** This is where we start having problems, sometimes what pharmacists need to know is not on the card, or it is printed in small type, or the card will list two or more places to submit for payment or it does not have a number to call for assistance and so forth. Imagine

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that you are this customer. Understandably, you become upset with the pharmacist, not to mention the other people waiting behind you as the pharmacist struggles to get the information needed. Often times a telephone call is needed, which takes more time. All of this taking place with an INCREASE of 40 % or more in prescription volume and an extreme shortage of pharmacists. In addition, with today's extremely potent medications, drug interactions frequently occur, patients need the pharmacist to counsel them about their meds and to catch and consult with doctors about these interactions. This all takes time. **When the pharmacist spends his critical patient interaction time searching for information to process a script the patient's health ultimately suffers. This is not what the profession of pharmacy wants nor is it what the legislature wants.**

Pharmacists are extremely sympathetic to the problems the insurance industry faces. We do not want to add to those problems. Yet, when we are facing dozens of different formats on prescription drug cards and when the health of our patients is at risk, we must take action.

On behalf of all Kansas Pharmacists and especially those working for Osco, Wal-Mart, K mart Albertson's, Walgreen's and other members of the Kansas Federation of Chain pharmacies, I urge you to support us on Senate Bill No 182

Sincerely,

Frank Whitchurch
Chairman, Kansas Federation Of Chain Pharmacies
Pharmacy Operations Specialist, Osco Drug

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: The Honorable Sandy Praeger, Chair
Senate Financial Institutions And Insurance Committee

FROM: William W. Sneed, Legislative Counsel
Health Insurance Association of America

RE: S.B. 182

DATE: February 8, 2001

Madam Chair, Members of the Committee: My name is Bill Sneed and I represent the Health Insurance Association of America ("HIAA"). HIAA is an association of commercial health insurers, and its 255+ member companies provide health insurance, long-term care and Medicare supplement coverage to more than 110 million Americans. HIAA appreciates the opportunity to present testimony on S.B. 182, and after reviewing the bill, we must oppose this bill in its present form.

This bill purports to establish a "uniform prescription drug card information act." Although the intentions of the proponents are noble, we would argue that this proposed legislation is anything but uniform, and that it is premature to act on this bill at this time.

The National Association of Chain Drug Stores ("NACDS") is attempting to garner support on a state-by-state basis for the enactment of laws that would make the use of voluntary standards for prescription drug cards developed by the National Council of Prescription Drug Programs ("NCPDP") mandatory. The NCPDP was organized by health insurers and health plans, pharmacists and pharmacies to set voluntary standards for pharmacy claims submission. This is being done in coordination with the HTPAA administrative
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simplification rules, which state that conformance with the voluntary standards will become mandatory for those claims that are submitted electronically.

Thus, we oppose this proposed legislation for the following reasons.

1. Utilizing the voluntary standards utilized by NCPDP, which will be mandatory under HIPAA, allows flexibility for the change of these requirements. Health insurers and health plans are supportive of conformance with the latest implementation guide produced by NCPDP on an ongoing basis. If this bill were enacted, the mandated cards enumerated under Kansas law could not be changed on an ongoing basis, but only after state law is amended at some future date.

2. Many of the required elements have already changed and are outdated by this proposal, and we would anticipate they will be in constant flux throughout the upcoming years. For example, on page 1, line 33, there is a requirement for a bank identification number ("BIN"). In the current proposal being reviewed by the NCPDP, that requirement has been eliminated and the American National Standard Institute Issuer Identification Number is now being included. This is but one example of what will happen if we etch these requirements in stone in our state. We would create an "un-uniform" act as it relates to what occurs in other states, thus increasing the cost to Kansas insureds.

3. S.B. 182 in essence is creating a new mandate for health insurers, and as such under Kansas law a cost feasibility study is required and should be presented before any action is taken on this proposal.

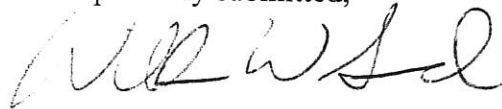
4. Finally, the proponents of this bill have argued in other states that it is for the benefit of the consumer to require insurance companies to have this type of card. We would argue that if the current practice of utilizing these cards is causing such a problem for the pharmacists that they simply stop taking the assignment of benefits for pharmaceutical

coverages, require the consumer to pay cash, and thus require the consumer to submit bills directly to the insurance company. Our guess is that the proponents of this bill will not like this idea, and in fact, even with some of the disadvantages, will prefer direct billing to the insurance company for direct payment.

My client is current working with the NACDS on alternative legislation and on voluntary requirements to be used by the NCPDP. As those matters come to fruition we will bring them to this Committees' attention; however, at the present time we would respectfully request that S.B. 182 not be acted upon.

I appreciate the opportunity to provide this information to you, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:kjb

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Section 1. (a) No supplier shall obtain or submit for payment, other than for the continuation of existing and recurrent services *or services provided by a public utility as defined by K.S.A 66-104*, a check, draft or other form of negotiable instrument or payment order drawn on a person's checking, savings, share or similar account without the consumer's express ~~written~~ authorization. *The supplier obtaining or submitting the check, draft or other form of negotiable instrument or payment order for payment shall have the burden of proving the express authorization by a preponderance of the evidence.*

(b) *As used in this section, "express authorization" means an express, affirmative act by a consumer clearly agreeing to the payment by check, draft or other form of negotiable instrument or payment order drawn on a person's checking, savings, share or similar account. Express written authorization by a consumer includes:*

~~—(1) The consumer's signature on a check, draft or other form of negotiable instrument or payment order; or~~

~~—(2) the consumer's signature on a separate written agreement authorizing single or periodic payments by check, draft or other form of negotiable instrument or payment order;~~

(c) Nothing in this section shall prohibit a consumer from personally directing the consumer's financial institution to make payment from the consumer's checking, savings, share or similar account via electronic or telephonic means in accordance with procedures set by the consumer's financial institution, nor shall this section affect the right of a consumer to transfer funds from one account to another.

Added → (d) *Financial institutions may decline to pay any check, draft or other form of negotiable instrument or payment order submitted without proof of the consumer's express authorization.*

~~(d)~~ (e) A violation of subsection (a) is an unconscionable act within the meaning of K.S.A. 50-627, and amendments thereto.

~~(e)~~ (f) This section shall be part of and supplemental to the Kansas consumer protection act.

Section 2. 50-636 is hereby amended to read as follows: 50-636. (a) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved consumer, or the state or a county as provided in subsection (c), for the payment of a civil penalty, recoverable in an individual action, including an action brought by the attorney general or county attorney or district attorney, in a sum set by the court of not more than ~~\$5,000~~ \$10,000 for each violation. An aggrieved consumer is not a required party in actions brought by the attorney general or a county or district attorney pursuant to this section.

(b) Any supplier who willfully violates the terms of any court order issued pursuant to this act shall forfeit and pay a civil penalty of not more than ~~\$10,000~~ \$20,000 per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an order shall retain jurisdiction, and in such cases, the attorney general, acting in the name of the state, or the appropriate county attorney or district attorney may petition for recovery of civil penalties.

(c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

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(d) Any act or practice declared to be a violation of this act not identified to be in connection with a specific identifiable consumer transaction but which is continuing in nature shall be deemed a separate violation each day such act or practice exists.

Section. 23. This act shall take effect and be in force from and after its publication in the statute book.