

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 18, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Excused

Committee staff present:

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

Conferees appearing before the committee:

Senator Barbara Allen  
John Cowles, Assistant District Attorney, Johnson County  
Jon Stewart, President & CEO, Metcalf Bank  
Sheila Walker, Director Vehicles, Department of Revenue  
Marlee Carpenter, Kansas Chamber of Commerce and Industry  
Chuck Stones, Kansas Bankers Association  
Senator Derek Schmidt  
Steve Rarrick, Deputy Attorney General, Division of Consumer Protection  
Jeff Bottenberg, State Farm Insurance

Hearing on **SB 559 - application requirements for instructions permit, driver's license and identification cards**, was opened.

Senator Barbara Allen appeared before the committee as the sponsor of the proposed bill. The bill would help stop peoples identities being stolen by requiring that all applicants submit their social security number and a biometric identifier. No social security number would be placed on the licenses. ([Attachment 1](#))

John Cowles, Assistant District Attorney, Johnson County, prosecutes financial crimes of identity theft for Johnson County. He believes the proposed bill would deter these type of criminals. ([Attachment 2](#))

Jon Stewart, President & CEO, Metcalf Bank, stated that the use of fraudulent identification cards costs bankers thousands of dollars. ([Attachment 3](#))

Sheila Walker, Director Vehicles, Department of Revenue, supported the proposed bill and stated that one identifier by itself is not foolproof, two must be used. She prefers not to use the retinal eye scan. She informed the members that there is a Problem Driver Pointer System, which is a nationwide database that keeps track of individuals so multiple licenses can not be given. She also supported having a central place where the undocumented licenses are printed and then mailed to the person.

Marlee Carpenter, Kansas Chamber of Commerce and Industry, believes that identity theft is a growing problem in Kansas and nationwide. She supported the proposed bill because it makes it harder to obtain identification or false identification cards. ([Attachment 4](#))

Chuck Stones, Kansas Bankers Association, stated that many banks have gone to thumb print servicing which has decreased bank fraud by 60% in the first year. A biometric is the only thing that can't be duplicated. ([Attachment 5](#))

Written testimony in support of the proposed bill was provided by Dennis Jones ([Attachment 6](#)) & Paul Morrison ([Attachment 7](#)). Written testimony in opposition of the bill was provided by Representative Jim Garner ([Attachment 8](#)).

Hearing on **SB 559** was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 18, 200 in Room 313-S of the Capitol.

Hearing on **SB 382 - profiteering from disaster**, was opened.

Senator Derek Schmidt requested the proposed bill with the intent to overhaul the Kansas Protection Act to prohibit price gouging during instances of disaster. Current law is unfair to consumers because it permits a significant amount of profiteering at the expenses of consumers during times of disasters. (Attachment 9)

Steve Rarrick, Deputy Attorney General, Division of Consumer Protection, gave an example of price gouging during the September 11, 2001 incident. They received 1,500 calls from consumers regarding increase in gas prices. The Attorney General's Office announced they would prosecute those stations band had one month to settle. 39 companies settled and 1 did not. (Attachment 10)

Jeff Bottenberg, State Farm Insurance, appeared as a proponent of the bill. He stated that they too suffer losses when businesses quote larger repair costs to home owners due to natural disasters. (Attachment 11)

Written testimony in support of **SB 382** was provided by AARP. (Attachment 12)

The committee meeting adjourned at 6:00 p.m. The next meeting is scheduled for March 19, 2002.

Hearing on **SB 382** was closed.

BARBARA P. ALLEN  
SENATOR, EIGHTH DISTRICT  
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OVERLAND PARK, KANSAS 66204  
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TOPEKA

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MEMBER: ASSESSMENT AND TAXATION  
EARLY CHILDHOOD DEVELOPMENT SERVICES  
FINANCIAL INSTITUTIONS AND INSURANCE  
REAPPORTIONMENT

March 18, 2002

**Mr. Chairman, Members of the Committee:**

**Reports of Identity theft have increased exponentially in the United States, and in Kansas, over the last several years. American citizens, banks, retailers, and credit card companies are the victims of this crime.**

**I have attached to my testimony a chart that shows what each state requires for driver's license and i.d. card issuance. Today, under current law, Kansas is one of the easiest states in the nation in which to obtain false identification, and to steal someone's identity. There are no security measures in place to protect Kansans, to ensure the person applying for a driver's license or nondriver's i.d. card really is that person. A simple photograph yields an instant, permanent piece of government issued identification.**

**It's time for Kansas to take steps to stop those responsible for identity theft. S.B. 559 would strengthen the security requirements for obtaining a driver's license or nondriver's i.d. card in Kansas by requiring that all applicants for a driver's license or nondriver's i.d. card submit their social security #, and a biometric identifier, such as a thumbprint, to obtain identification. Applicants would then receive a temporary license or i.d. card until the Department of Revenue verifies the identity of the applicant, at which time permanent i.d. would be issued. These measures are ways to determine the truth about someone's identity - only those who have something to hide should object.**

**Under NO circumstances would S.B. 559 require that social security #'s be placed on driver's licenses or i.d. cards. In fact, the DMV discourages this practice today, and will continue to do so. And, unless a person requests in writing that a s.s. # be placed on a driver's license, the applicant's s.s.# would not be maintained once identity verification has taken place.**

**In Johnson County alone, 13 new cases of identity theft have been filed in 2002. While that may not sound like a lot, that's a little more than one new case of identity theft a week filed in Johnson County this year. And compare it to the year 2000, in which the Johnson County District Attorney's office filed 13 cases on identity theft in an entire YEAR. No other crimes are growing at such an alarming rate.**

**Our District Attorney's office reports cases of identity theft more than doubling every year. Identity theft cases in Overland Park have increased 100% in each of the last two years. Identity theft causes over \$1million annually in losses to retailers, credit card companies, and banks in my county. These losses are passed on to the consumer in the form of higher prices. Similar statistics can be replicated in any urban area in Kansas.**

**An article I have attached to my testimony notes that Governor Tom Ridge, Director of the Office of Homeland Security, is encouraging governors and other state officials to take steps to improve the security and authenticity of driver's licenses. Ridge recently urged governors attending a National Governors Association meeting to draft model legislation setting standards for more secure licensing procedures. By coming up with their own procedures, Ridge said, the governors would avoid having standards forced on them by Congress.**

**Driver's licenses are much more than a license to drive – they allow us to open bank accounts, cash checks, write merchants checks, and step onto airplanes. They are the most widely used domestic document to verify a person's identity.**

**We have two choices. We can leave the current identification system as is, risking the personal and financial security of private citizens, the finances of the business community, and the lives of fellow Americans, or we can improve the system. Which do you choose?**

**Some argue a secure personal identification system is an invasion of privacy or a limitation of personal freedom. But only those who have something to hide will lose from providing proof positive they are who they say they are. Identity cards – and that is what driver's licenses are today – should be as close to fool-proof as technology can make them to protect individuals and the business community.**

**Today, Kansas is far too lax about ensuring that driver's licenses and nondriver's i.d. cards are authentic. S.B. 559 targets those who use driver's licenses and i.d. cards to steal the identity of others, by implementing security measures to ensure Kansas driver's licenses and i.d. cards are authentic. S.B. 559 is not about invading Kansans' privacy, it's about preserving Kansans' privacy, and protecting Kansans' security. It passed the Senate on a vote of 25-15 on March 12, 2002. I ask for your favorable consideration.**

**Thank you, Mr. Chairman. I will stand for questions.**

# Identity theft is on the rise in area

KCS  
3-18-02

By TONY RIZZO  
The Kansas City Star

## Groups now are sophisticated, organized

A gang of California-based thieves flocked to Johnson County last spring.

Armed with phony and stolen identification and guided by lists of merchandise to steal, they ran up huge credit purchases at area stores.

Last week in Johnson County District Court, the alleged leader of the identity theft group, Edward B. Martin of Chula Vista, Calif., was

found guilty of five felony charges.

The case is part of a trend that concerns some area law enforcement officials: In an increasing number of identity theft cases, groups are coming from other parts of the country to rip off area merchants.

"They are becoming very sophisticated and organized," said Overland Park Police Detective Byron Pierce.

What's even more troubling to police is the degree of violence associated with some of these crimes.

In December, an Overland Park police sergeant was shot in the face while trying to arrest a fraud suspect. An associate of the suspect — wanted for murder in his home state of Washington — allegedly shot the officer, who fired back and wounded the man.

Both men, who prosecutors say

are gang members from the Seattle area, allegedly were making counterfeit credit cards using numbers stolen from area businesses by other associates.

Across the country, identity theft continues to grow, according to federal officials.

■ Last year, there were more than 86,000 victims of identity theft reported nationwide, according to the Federal Trade Commission.

■ The General Accounting Office

See THEFT, B-6

# THEFT: Police report more cases of people using stolen identity

Continued from B-1

## Protect yourself

recently reported to Congress that credit card fraud resulting from identity theft now tops more than \$1 billion yearly.

■ The Social Security Administration reports that it has seen a five-fold increase in allegations of fraud involving Social Security numbers since 1998. Social Security officials told Congress last year that identity theft has become a national crisis.

Last year, the Johnson County district attorney's office filed identity theft-related charges against 32 defendants in 13 cases the year before. So far this year, the office is averaging more than one case a week.

In Kansas, part of the problem is attributed to the ease of obtaining state-issued identification.

"It's not a big coincidence," Assistant Johnson County District Attorney John Cowles said of the increase of identity theft cases and the state's lax standards for issuing identification.

One of the largest out-of-town rings involve eastern European immigrants, many from the Chicago area, who allegedly used phony names to obtain Kansas identification cards.

■ **Don't give out personal information on the phone, through the mail or over the Internet** unless you have initiated the contact or know who you're dealing with. Identity thieves may pose as representatives of banks, Internet service providers and even government agencies.

■ **Before you reveal any personal information, find out how it will be used.** If it might be shared with others, ask whether you can choose to have it kept confidential.

■ **Give your Social Security number only when absolutely necessary.** Ask to use other types of identifiers when possible.

■ **Pay attention to billing cycles.** If bills don't arrive on time, someone may have hijacked your account.

■ **Guard your mail.** Drop mail in post office collection boxes or at the post office. Promptly remove delivered mail from your mailbox. If you're planning to be away from home, call the U.S. Postal Service at (800) 275-8777 to request a vacation hold.

■ **Use passwords on your credit card, bank and phone accounts.** Avoid using easily available information as passwords: your mother's maiden name,

With the cards, they opened bank accounts and made deposits with worthless checks. They withdrew money from ATMs before the banks learned the checks were bad.

Ten persons associated with that group are charged with or have pleaded guilty to identity-theft crimes in Johnson County. Three of them are suspects in armed rob-

beries or violent assaults, including one attack in which men forced their way into an Overland Park house and beat a man.

■ **Don't carry your Social Security card, or ID or credit cards you seldom use.**

■ **Tear or shred** charge receipts, copies of credit applications, insurance forms, physician statements, bank checks and statements, expired charge cards and credit offers.

■ **Be cautious about where you leave personal information** in your home, especially if you have roommates, employ outside help or are having work done in your home.

■ **Order a copy of your credit report** from each of the three major credit reporting agencies every year. Make sure it is accurate. The law allows credit bureaus to charge up to \$9 for a credit report.

**To request a report:**  
Equifax, [www.equifax.com](http://www.equifax.com), (800) 685-1111.  
Experian, [www.experian.com](http://www.experian.com), 1-(888) 397-3742.  
TransUnion, [www.transunion.com](http://www.transunion.com), (800) 888-4213.  
Source: Federal Trade Commission, [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft)

The Legislature is considering ac-

tion to make it harder for people to illegally obtain identification. The measure would require a thumbprint and verifiable Social Security number to receive an ID card or driver's license.

But some criminals have offered other reasons for focusing on this area.

"They feel people here are not smart enough to figure it out," Pierce said.

Other criminals have said that friendly merchants dedicated to customer service make it easier for them to get away with their crimes, Pierce said.

The resulting havoc on area merchants and the people whose identities are stolen is difficult to stop, and the crimes are difficult to prosecute.

A well-organized ring can rack up more than \$100,000 in the area and disappear to another state before police are aware of their crimes, Cowles recently told members of the Legislature.

"Kansas banks and retailers frequently bear the financial losses from the identity theft schemes," Cowles said.

The harm to victims can be extensive, if not always expensive.

"It is not uncommon for victims

of identity theft to work repairing their credit ratings and other financial identity for more than a year after falling victim to an identity thief," Cowles told lawmakers.

Until their credit rating can be repaired, victims must contend with merchants declining their checks and credit cards.

Kansas City resident Linda Whitehead was shocked last year when she needed to begin chemotherapy and discovered that someone using her name had run up a bill.

Whitehead was able to get the care she needed, but the situation caused her a lot of anxiety during a difficult time.

She also learned that her name was on an arrest warrant because of the activities of the woman using her identity.

The woman has been in jail since October, yet Whitehead is still dealing with the fallout of the crimes.

"It amazes me. New things turn up every day," she said. "Five new problems have popped up on my credit report in the last six months."

To reach Tony Rizzo, Johnson County court reporter for *The Star*, call (816) 234-7713 or send e-mail to [trizzo@kstar.com](mailto:trizzo@kstar.com).

DRIVER LICENSE AND ID CARD ISSUANCE - JANUARY 2001

STATE	Issuance Type	Digital Technology	Original Digital System Installation	Finger or Thumbprint Capture	Biometric Verification	SSN Required	Electronic SSN Verification	Electronic Legal Presence Verification	Annual DL/IDs Issued	Total DL/ID Records
Alabama	Central	Photo & signature	Jun-97	No	No	Yes	on-line	No	1,587,000	4,125,000
Alaska	Instant	N/A	N/A	No	No	Yes	No	No	180,000	450,000
Arizona	Instant	Photo & signature	Jun-95	No	No	Yes	on-line	No	1,187,000	5,255,000
Arkansas	Instant	Photo, fingerprint & signature	Oct-94	voluntary, right index, electronic	voluntary, right index fingerprint	Yes	No	No	600,000	1,900,000
California	Central	Photo, thumbprint & signature	Mar-91	mandatory, right thumb, electronic	facial/thumbprint being considered	Yes	batch	on-line	8,500,000	24,000,000
Colorado	Instant	Photo, fingerprint & signature	1994	mandatory, right index, electronic	right index fingerprint	Yes	Being considered	Being considered	1,336,000	4,092,000
Connecticut	Instant	Photo & signature	Jun-92	No	facial recognition being considered	Yes	No	No	840,000	2,300,000
Delaware	Instant	Photo & signature	Apr-95	No	No	Yes	No	No	200,000	750,000
Florida	Both	Photo & signature	Nov-95	No	No	Yes	No	No	4,500,000	13,500,000
Georgia	Both	Photo, fingerprint & signature	Sep-96	mandatory, left & right index, electronic	left & right index fingerprints	Being considered	No	No	2,400,000	5,600,000
Hawaii	ID-Instant DL-Both	Photo, thumbprint(DL), fingerprint (ID) & signature	DL - 1990 ID - 1998	mandatory, right thumb (DL), left & right index (ID), electronic	No	Yes	No	No	ID-60,000 DL-300,000	ID-370,000 DL-769,000
Idaho	Instant	N/A	N/A	No	No	Yes	on-line	No	418,000	986,000
Illinois	Instant	Photo & signature	Jan-99	No	facial recognition	Yes	Being considered	No	3,100,000	11,000,000
Indiana	Instant	Photo & signature	1999	No	No	No	No	No	1,700,000	6,362,000
Iowa	Both	Photo & signature	Dec-95	No	No	Yes	Being considered	No	1,025,000	2,913,000
Kansas	Instant	Photo & signature	Jul-94	No	No	CDL only	No	No	800,000	1,900,000
Kentucky	Instant	N/A	N/A	No	No	Yes	Being considered	No	1,259,000	2,900,000
Louisiana	Instant	Photo & signature	Jun-95	thumb, electronic being considered	facial recognition being considered	Yes	No	No	1,100,000	2,807,000
Maine	Central	Photo & signature	Oct-99	No	No	Yes	on-line	No	240,000	900,000
Maryland	Both	Photo & signature	Nov-90	No	facial recognition being considered	CDL only	on-line	No	1,300,000	3,700,000
Massachusetts	Central	Photo & signature	1993	No	No	Yes	on-line	Being considered	1,200,000	4,600,000
Michigan	Central	Photo & signature	Apr-98	No	No	No	No	No	2,500,000	7,500,000
Minnesota	Central	Photo & signature	Jun-94	No	No	CDL only	No	No	1,500,000	3,750,000
Mississippi	Instant	Photo & signature	Jul-96	No	facial recognition being considered	Yes	No	No	600,000	2,100,000
Missouri	Both	Photo & signature	Sep-96	No	No	Yes	on-line	No	1,656,000	4,381,000
Montana	Central	Photo & signature	1993	No	No	Yes	No	No	170,000	692,000
Nebraska	Instant	N/A	N/A	Being considered	Being considered, unknown which type	Yes	Being considered	No	437,000	1,218,000
Nevada	Instant	N/A	N/A	No	Possibly being considered	Yes	on-line	No	860,000	1,731,000

1-6



DRIVER LICENSE AND ID CARD ISSUANCE - JANUARY 2001

STATE	Issuance Type	Digital Technology	Original Digital System Installation	Finger or Thumb-print Capture	Biometric Verification	SSN Required	Electronic SSN Verification	Electronic Legal Presence Verification	Annual DL/IDs Issued	Total DL/ID Records
New Hampshire	Instant	Photo & signature	1993	No	No	Yes	No	No	265,000	955,000
New Jersey	Both	N/A	N/A	No	No	No	No	No	2,128,000	6,080,000
New Mexico	Instant	Photo & signature	1998	Being considered, unknown which digit	Being considered, unknown which type	Yes	Being considered	No	468,000	1,459,000
New York	Central	Photo & signature	Nov-92	No	Facial/fingerprint being considered	Yes	Being considered	No	4,234,000	11,850,000
North Carolina	Instant	Photo & signature	Sep-96	No	facial being considered	Yes	Being considered	No	1,248,000	7,085,000
North Dakota	Both	Photo & signature	Jan-96	No	No	Yes	No	No	180,000	480,000
Ohio	Instant	Photo	Jul-97	No	No	Yes	Being considered	No	3,079,000	8,500,000
Oklahoma	Instant	N/A	N/A	left index, electronic, being considered	facial & left index being considered	Yes	No	No	950,000	2,620,000
Oregon	Instant	Photo	Jun-97	No	No	CDL only	No	No	900,000	2,500,000
Pennsylvania	Both	Photo & signature	1994	No	No	Yes	Being considered	No	2,639,000	8,200,000
Rhode Island	Instant	N/A	N/A	Being considered, unknown which digit	Being considered, unknown which type	No	Being considered	No	240,000	830,000
South Carolina	Instant	Photo & signature	Nov-93	Being considered, unknown which digit	No	Yes	Being considered	No	783,000	2,920,000
South Dakota	Both	Photo & signature	May-90	No	No	Yes	on-line	No	200,000	555,000
Tennessee	Both	Photo & signature	Aug-96	No	No	Yes	on-line	No	1,300,000	5,100,000
Texas	Central	Photo, signature & thumbs	Mar-95	Mandatory, both thumbs, electronic	No	DL only	No	No	6,094,000	17,275,000
Utah	Instant	N/A	N/A	No	No	Yes	No	No	500,000	1,300,000
Vermont	Instant	Photo & signature	1993	No	No	Yes	No	No	80,000	465,000
Virginia	Both	Photo & signature	1991	No	No	Yes	Being considered	No	1,000,000	5,500,000
Washington	Instant	N/A	N/A	No	No	DL only	No	No	1,700,000	2,000,000
West Virginia	Instant	Photo, fingerprint & signature	Jan-98	right index voluntary, electronic	right index voluntary & facial mandatory	Yes	No	No	461,000	1,352,000
Wisconsin	Instant	Photo & signature	Oct-97	No	No	Yes	Being considered	No	1,237,000	4,110,000
Wyoming	Central	Photo & signature	Apr-93	No	No	Yes	on-line	on-line	135,000	365,000

**Additional Information:**

- Idaho will be digitized by end of 2001
- Indiana will collect Social Security Number beginning July, 2001
- Nevada expects to be digitized by mid 2002
- New Jersey expects to be digitized by January, 2003
- Oklahoma authorized for voluntary finger image capture & comparison due to June, 2001 legislation.
- Rhode Island is working on proposal to digitize
- Utah will be digitized in summer 2001

**Abbreviations:** CDL - Commercial Driver License; DL - Driver License; ID - Identification Card; N/A - Not Applicable; SSN - Social Security Number

DRIVER LICENSE AND ID CARD ISSUANCE - JANUARY 2001

STATE	Issuance Type	Digital Technology	Original Digital System Installation	Finger or Thumb-print Capture	Biometric Verification	SSN Required	Electronic SSN Verification	Electronic Legal Presence Verification	Annual DL/IDs Issued	Total DL/ID Records
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**Source of information:** Survey by California Department of Motor Vehicles in mid January, 2001 with follow-ups from March through June, 2001.

**For questions:** Contact Steve Fong (916) 657-8715 or sfong@dmv.ca.gov, California Department of Motor Vehicles, Licensing Operations Division.

**Note:** This document was created for internal use by California Department of Motor Vehicles to compare DL/ID issuance information for all 50 states.



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# Ridge: Link driver's license, visa

BY William Matthews  
March 15, 2002

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The Office of Homeland Security is urging states to establish tighter control over foreign visitors by issuing driver's licenses that expire when visas expire.

The office is drafting model legislation to require that driver's licenses issued to non-citizens be tied to visas, homeland security spokesman Gordon Johndroe said March 14. The model is to be sent to the states for consideration by legislatures.

In recent weeks, Tom Ridge, director of the Office of Homeland Security, has been encouraging governors and other state officials to take steps to improve the security and authenticity of driver's licenses.

In a conference call with state officials March 7, Ridge told state emergency management officials that he hopes motor vehicle departments can be electronically linked to databases maintained by the federal Immigration and Naturalization Service. That would enable state workers to check the immigration status of foreign nationals who apply for driver's licenses and issue licenses that would expire when visas expire.

Such capability also could enable the states to help keep better track of visiting foreigners.

INS has asked Congress for \$380 million to build an entry and exit data system to keep track of foreign visitors. The system may include biometric identification information such as fingerprints or eye scans of visa holders. Such information also could be included on driver's licenses.

Ridge's telephone remarks came about 10 days after he urged governors attending a National Governors Association meeting to draft model legislation setting standards for more secure licensing procedures. By coming up with their own standards, Ridge said, the governors would avoid having standards forced on them by Congress.

Driver's licenses became a source of concern after the Sept. 11 terrorist attacks because most of the terrorists used such licenses — obtained

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The American Association of Motor Vehicle Administrators is pressing Congress to pass a law requiring states to adopt more uniform standards for driver's licenses and stricter procedures for issuing them.

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AAMVA officials said they want licenses to include security features that make counterfeiting more difficult, and they want some form of "unique identifier," possibly a biometric identifier such as a fingerprint or eye scan.

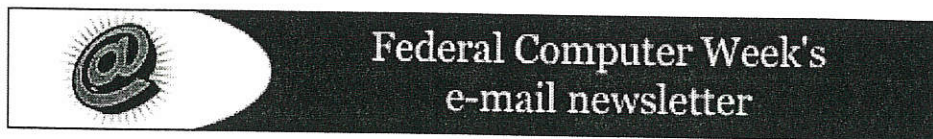
The AAMVA also wants much more thorough verification of a license applicant's identity before a license is issued. To accomplish that, the association wants Congress to earmark as much as \$100 million for a computerized Driver Record Information Verification System that would enable federal and state agencies to more readily share information they have collected on drivers.

Thus, identification verification might involve cross-checking data submitted by license applicants with government databases that contain names, addresses, passport numbers and Social Security numbers, law enforcement records and INS data, AAMVA officials said.

The association also wants state driver's license databases to be interconnected so that licensing officials can check to see whether applicants already have licenses from other states.

Privacy advocates oppose high-tech licenses backed by interconnected databases, fearing driver's licenses will come to be used as national identification cards.

Johndroe said the model legislation the Office of Homeland Security is drafting "isn't intended to lead to a national ID card; it is intended to strengthen homeland security."



Federal Computer Week's  
 e-mail newsletter

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TCS  
3-5-02

# A good name stolen

By Rebeca Piedra  
Special to The Capital-Journal  
Photographs by Earl Richardson  
The Capital-Journal

When Rita Zellers saw a news story in January about identity theft, she didn't pay much attention to it.

The long-time Topekan thought, "that's something that happens in the big cities, it could never happen to me here."

Until her phone rang later that day. It was a collection agency in Denver, calling on behalf of Voice Stream Wireless. The man on the other end of the phone wanted to know why Zellers had not paid the \$500 bill for her cellular phone. What phone? she asked. The one you purchased in September, he told her. She did not buy that phone; he must have the wrong Zellers, she said. He then proceeded to rattle off all of her personal information including her Social Security number.

That was when Zellers realized it could happen here.

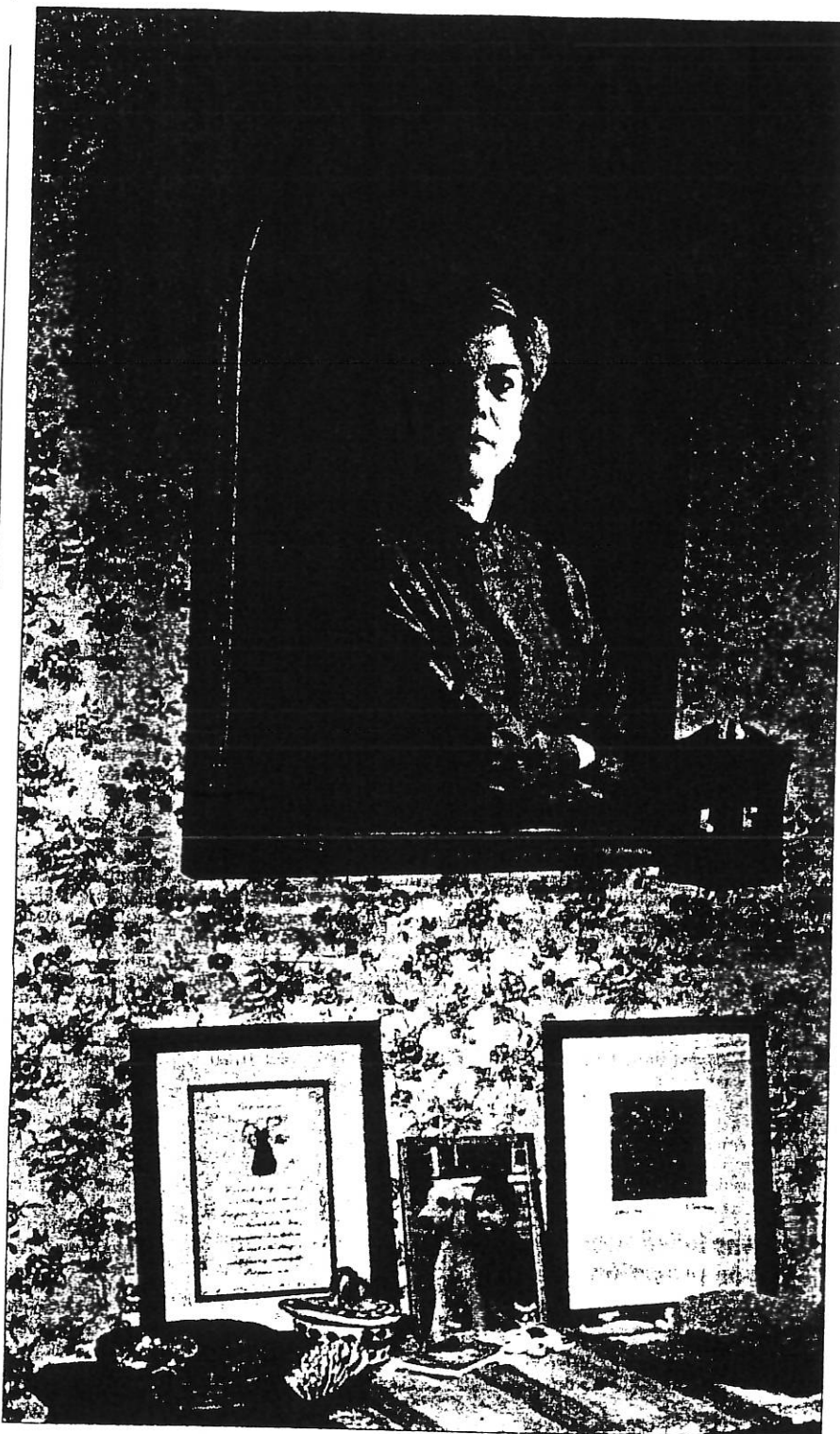
Identity theft is a growing problem, said Mark Ohlemeier, public information officer for Kansas Attorney General Stovall's office. Stovall used Consumer Protection Week in early February to warn Topeka consumers about the dangers of identity theft.

"We want to make sure that consumers are aware of the problem and know how to protect themselves," Ohlemeier said. "Any consumer can become a victim."

In identity theft, the thief takes personal information such as Social Security number, date of birth and mother's maiden name and uses it to "establish credit, run up debt," according to an investigative report done by the General Accounting Office.

The rough estimate of the number of

See NAME, page 3A



Valerie Renault, Lawrence, is the victim of identity theft. A person unknown to her used her personal information to obtain credit cards and rack up unpaid bills in Renault's name. Renault has seen her credit rating affected by bills rung up by an impostor.

## Protect yourself

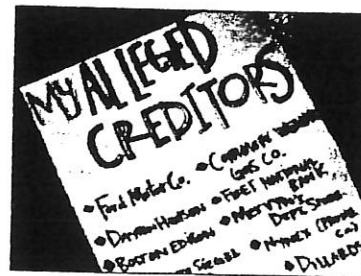
To prevent becoming an ID theft victim:

- Be careful when releasing your personal information — find out why it is needed and how it will be used before you share it.
- Never put your social security number on your checks
- Limit the identifying information you carry with you
- Pay attention to your bills and credit card statements
- Order your credit report at least once a year from all three credit reporting agencies (Equifax, Experian and TransUnion)
- Be careful what you discard. Shred old bills, credit card receipts, insurance or medical information or other information you no longer need.

Source: Kansas Attorney General's Consumer Protection Division; [www.ink.org/public/ksag/](http://www.ink.org/public/ksag/)

Immediate steps to take if you are an ID theft victim:

- Contact the fraud departments at all three credit bureaus and ask them to flag your file with a "fraud alert" warning. Also ask that the creditors call you before opening any new accounts or changing your old ones.
- Contact the security departments at the institutions where the fraud occurred and close the accounts. When opening a new account, assign a password that is not your mother's maiden name.
- File a police report locally or where the identity theft took place. Request a copy of the report to be used later to prove fraud when dealing with credit card companies.
- Contact Attorney General Stovall's Consumer Protection Division and the FTC's Identity Theft Clearinghouse at (877) ID-THEFT.



Renault's daughter made a sign to remind her mother of all her alleged creditors.



### Online

Listen to an area woman discuss her experiences after someone stole her identity.  
[www.cjonline.com](http://www.cjonline.com)

# Name: Thousands of identities stolen each year

*Continued from page 1A*

identity thefts a year range from 200,000 to 400,000 on the low end and 750,000 on the high end. Richard Stana of the GAO told the Senate Judiciary Subcommittee at a technology hearing in early February.

The most reliable indicator of the growth of identity theft is the number of fraud alerts placed on the credit files of consumers, Stana told the committee. There are three major credit reporting agencies: Equifax, Experian and Trans Union. One of the three agencies reported that its fraud alerts involving identity theft increased 36 percent, from 65,600 in 1999 to 89,000 in 2000, according to the GAO report.

In fact, the Topeka Police Department received 83 reports of identity theft in 2001, Sgt. Steve Taylor. It is difficult to determine how many cases of identity theft occurred in Kansas in 2001 because identity theft fell into different categories such as credit card fraud or Social Security fraud, Ohlmeier said. The crime has gained enough awareness that it now has its own category, he said.

A Kansas statute regarding identity theft was passed in 2000 and makes the crime a personal felony. There are only five states in the United States today that do not have identity theft legislation.

Valerie Renault, 51, an editor and writer at The University of Kansas, discovered in 1994 that a woman had been using her maiden name and her Social Security number for a year. The criminal used Renault's information for health insurance, electricity bills, veterinary care and employment.

"I received a letter from the IRS in reference to her work in 1993 saying there was a discrepancy in the income," Renault said. "It was pretty scary to get a letter from the IRS."

While many financial institutions don't hold victims liable for fraudulent debts, most of the victims estimate paying \$100 in out-of-pocket costs for copies and letters, according to GAO's report.

Monetary harm to victims may be low, but the potential credit damage is

high. Victims have reported problems such as "bounced checks, loan denials, credit card application rejections and debt collection harassment," the report stated.

"I didn't know the consequences of what had happened to me until I was denied a credit card," Renault said. "I realized that I would have to tell them about the identity theft up front."

The report also estimated that the average victim spends at least 175 hours trying to clear his name. Renault said she considered it to be a part-time job.

"It took me six years to track everything down," Renault said.

In terms of emotional harm, people compare it to the emotional impact of rape, said Jay Foley, director of consumer and victims' services for the Identity Theft Information Resource Center. It may be the most devastating effect of the crime, he said.

"Most people who go through the crime of identity theft suffer from extreme invasion into their own privacy and their own lives," Foley said. "Everything they know as stable is subject to question."

The lack of resolution in identity theft cases can eat away at the victims, too, said Ron Salo, analyst in charge of the GAO report. Many victims are left wondering how the criminal obtained their personal information, he said.

"I want to know who it is," Zellers said. "Is it someone in Topeka, someone I know, or did they get the number off of the Internet, and it's someone in New York?"

Proposed legislation may not aid Renault or Zellers, but it could aid in decreasing the occurrence of identity thefts. Sen. Dianne Feinstein D-Calif., has proposed the Privacy Act of 2001 that Congress will consider this spring.

One provision of the act would prohibit the use of Social Security numbers on driver's licenses or Division of Motor Vehicle documents. The GAO report confirmed that driver's licenses and Social Security numbers are the two pieces of identification that are most commonly misused.

# **Testimony to the House Judiciary Committee**

## **Regarding Senate Bill 559**

John E. Cowles,  
Assistant District Attorney, Johnson County, Kansas

### **THE ACCELERATING PROBLEM OF IDENTITY THEFT**

In 2001, there were 476 victims of Identity Theft in Kansas who reported their cases to the Federal Trade Commission. The Johnson County District Attorney's Office filed cases against 32 defendants alleging Identity Theft in 2001, up from 13 cases the year before, and the pace so far in 2002 is more than one new case of Identity Theft filed every week in Johnson County.

### **THE CONSEQUENCES TO VICTIMS OF IDENTITY THEFT**

The Kansas Legislature recognized the severe consequences to victims of Identity Theft when the criminal statute (K.S.A. 21-4018) was amended in 2000 to increase the severity level of the crime to a level 7 person felony. It is not uncommon for victims of Identity Theft to work at repairing their credit ratings and other financial identity for more than a year after falling victim to an identity thief. In the meantime, they suffer the frustrations of having their checks and credit cards declined by merchants. Sometimes the consequences are much more severe, such as subjecting the innocent victim to arrest by law enforcement for crimes committed by the identity thief using the victim's identification, and denial of medical treatment because the identity thief has abused narcotic prescriptions in the name of the victim. The Kansas Identity Theft statute was an effective first step in combating Identity Theft. However, much more can and should be done to deter the perpetrators and improve detection of their crimes.

## **WHY IDENTITY THIEVES COME TO KANSAS**

In addition to experiencing the rapid increase of cases involving Identity Theft, law enforcement has recognized a trend in which Identity Theft is being perpetrated in Kansas by persons from other States using stolen victim information from other States. Through interviews of perpetrators, a common explanation for traveling to Kansas is the ease of immediately obtaining fraudulent State-issued identification. Obtaining fraudulent State-issued identification is essential to the identity thief because the identification is necessary in opening bank accounts, applying for credit cards and obtaining instant credit. Investigating and prosecuting Identity Theft rings from distant States is extremely burdensome for both law enforcement and prosecutors, as the perpetrators often flee to their home states before the crimes are detected, and the individual victims are located in a distant State. However, Kansas banks and retailers frequently bear the financial losses from the Identity Theft schemes, which often reach \$100,000 or more after a well-organized ring has left the area. This results in much higher investigation costs, extradition costs, and expenses associated with bringing witnesses to Kansas to convict the perpetrators.

## **SECURE DRIVER'S LICENSES AND ID CARDS WILL DETER CRIME**

Kansas is one of only a few remaining States that will provide any applicant an immediately issued driver's license or identification card, with no requirement of a social security number, no fingerprint, and no other biometric information. The absence of these safeguards is an open invitation to identity thieves to come to Kansas, cause enormous economic damage, and create difficult and expensive police investigations and prosecutions.



## Kansas State House Committee on Judiciary

*Testimony of Jon L. Stewart, President & CEO  
Metcalf Bank, Overland Park  
March 18, 2002*

### *Senate Bill No. 559*

Good afternoon. Thank you for the opportunity to address you today on the topic of fraudulent IDs.

As noted, I represent Metcalf Bank, which has six locations in Johnson County and one in Miami County. Throughout the 40-year history of our institution, we have prided ourselves in providing customer-friendly service.

But please consider this. When an individual approaches one of our associates, makes a request to open a new account and then hands us an *official* Kansas Identification Card, one of the first thoughts that crosses our minds is, "Criminal activity."

And you know what? Most of the time we're right.

Certainly this is not the frame of mind we want to be in when dealing with a potential new customer . . . with any customer. Metcalf Bank strives to serve every customer in the friendly, unbiased manner of a community bank. That is our niche and sets us apart from our competitors.

But we know from experience that a high percentage of Kansas Identification Cards presented to our employees are illegitimate. These IDs are used fraudulently by criminals to procure funds from counterfeit checks, to raid the account of an unsuspecting victim or to obtain cash and checks.

We respect the original intent of the Kansas ID card program, which is to provide genuine identification to those who cannot obtain a driver's license, namely elderly or disabled persons. But the truth is, rarely do users of Kansas IDs fit this mold. It's not uncommon for users of these identification cards to drive to the front door of the bank and then present an ID card showing they have no driving privileges.

Such blatant criminal behavior is made possible by what we believe is a lenient issuance process. The State of Kansas is among the most permissive when it comes to distributing identification cards.

The application process for a Kansas identification card requires no Social Security number, no electronic Social Security number verification, no finger- or thumb-print capture, no biometric verification and no digital technology of any kind. Applicants need only present a photo and signature to obtain an official identification card.

The system is literally inviting criminals to take advantage of it. And they are.

This situation puts a great deal of pressure on the banking community. We have become part of the front lines of defense in identifying and, to some extent, capturing these criminals. Late last year, for example, our bank was involved in the arrest of two eastern European men attempting to open a bank account with a Kansas ID Card and a counterfeit passport. An arrest was made in the lobby of one of our banks.

Uncommon? Hardly. Our bank reports instances each week where a Kansas ID is presented for fraudulent purposes. There have been times when these people have been arrested in our lobbies and escorted out in handcuffs.

And don't overlook the financial impact. I can tell you that Metcalf Bank's losses from fraud involving ID cards in 2001 greatly exceeded theft from outright robberies. But we consider fraudulent use of ID cards to be robbery in its own right. And we expend time, energy and funds to guard against it.

We know from experience that criminals are reluctant to provide any information that may tie them to a crime. In July 1999, Metcalf Bank joined other Kansas banks in a thumb-print program for non-customer check cashing. Prior to this program we experienced frequent and significant losses due to criminals presenting and cashing checks stolen or counterfeited from our customers. Since implementing the program this form of criminal activity is non-existent at our bank. Our experience indicates that law-abiding citizens do not have a problem placing their thumb-print on a legitimately obtained check that they want to cash. Today criminals complete the same type of crime by simply obtaining a state issued identification card and using that card to open a checking account.

While bank fraud losses number in the thousands of dollars because of fraudulent IDs, we acknowledge it is Kansas retailers who suffer the most damage from these ID abuses. When a retailer submits a check for payment to our bank and there are no funds in the account to cover the amount, we simply return the check to the retailer. When those checks are accepted based on a fraudulent ID, the retailer has no recourse other than to pass these costs on to their customers in the form of higher prices.

In closing, let me say that Kansas bankers are being forced to scrutinize and deal cautiously with the legitimate users of Kansas Identification Cards. It's not fair to these law-abiding citizens. It's not fair to us. It's not fair to Kansas.

Please help us protect our communities, our customers and our employees. We encourage you to change the process currently used in issuing Kansas identification cards and Kansas drivers licenses.

Thank you. I will be happy to answer any questions you may have.

# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

SB 559

March 18, 2002

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by

Marlee Carpenter  
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am here on behalf of the Kansas Chamber of Commerce and Industry and the Kansas Retail Council. We are here today to support SB 559.

KCCI and the Kansas Retail Council believe that identity theft is a growing problem in Kansas and across the nation. I have attached information from the Federal Trade Commission that details identity theft complaints from Kansas and the nation as a whole.

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.

Identity theft costs consumers, retailers and banks millions of dollars each year. We support SB 559 because it will make it harder to obtain duplicative identification or false identification in the State of Kansas.

We urge you to pass SB 559. Thank you for your time and I will be happy to answer any questions.

# Consumer Sentinel Complaint Statistics and Trends for Kansas

January 1 - December 31, 2001

4-3

Total Number of Fraud and Identity Theft Complaints from Kansas Consumers = 1474



Fraud Complaints from Kansas Consumers = 998

### Top Fraud Complaint Categories for Kansas Consumers

Rank	Top Categories	Complaints	Percentage*
1	Internet Auctions	190	19%
2	Internet Services and Computer Complaints	122	12%
3	Shop-at-Home/Catalog Sales	119	12%
4	Advance-Fee Loans and Credit Protection/Repair	92	9%
5	Business Opps and Work-at-Home Plans	67	7%

### Top Fraud Complaint Categories Against Kansas Companies

Rank	Top Categories	Complaints	Percentage*
1	Internet Auctions	101	27%
2	Shop-at-Home/Catalog Sales	55	15%
3	Prizes/Sweepstakes and Lotteries	41	11%
4	Internet Services and Computer Complaints	30	8%
5	Magazines and Buyers Clubs	26	7%

### Amount Paid Reported by Kansas Consumers

Total No. of Complaints	Total Amount Paid Reported	Total Complaints Reporting Amt Pd	Percentage of Complaints Reporting Amount Paid	Average Amount Paid Reported**
998	\$1,278,717	728	73%	\$1,756

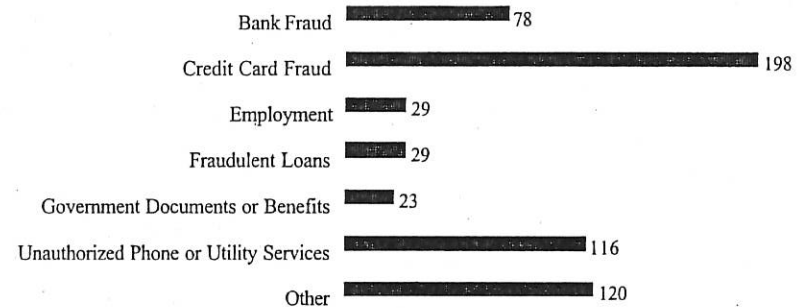
\*Percentage is based upon the total number of fraud complaints from Kansas consumers and the total number of fraud complaints against Kansas companies, respectively.

\*\*Average amount paid is based upon the total number of fraud complaints where amount paid was reported by Kansas consumers.



Identity Theft Victims in Kansas = 476

### Complaints by Identity Theft Type<sup>1</sup>



<sup>1</sup> Note: Many identity theft victims experience more than one type of identity theft. These figures represent the number of identity theft complaints by type, NOT the number of identity theft victims.

### Top Identity Theft Victim Locations

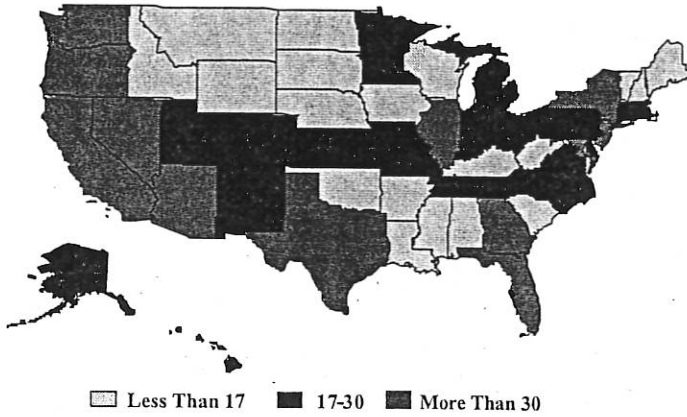
Victim City	No. of Complaints
Wichita	66
Kansas City	48
Overland Park	45
Olathe	24
Topeka	20

# Victim Information

January 1 – December 31, 2001

86,168 Identity Theft Victims Reporting

Identity Theft Victims by State (Per 100,000)  
January 1 – December 31, 2001



## IDENTITY THEFT

Data Clearinghouse



Identity Theft Victims Top 10 Locations  
(Per 100,000)

January 1 – December 31, 2001

Location	Rate
1. District of Columbia	76.7
2. California	44.6
3. Nevada	40.5
4. Maryland	37.3
5. New York	37.3
6. Arizona	36.9
7. Oregon	36.7
8. Florida	35.6
9. Washington	35.0
10. Georgia	31.7

How Victims' Information Is Used<sup>1</sup>  
January 1 – December 31, 2001

Fraudulent Conduct	Percent of All Victims
Credit Card Fraud	42%
Phone or Utilities Fraud	20
Bank Fraud	13
Employment-Related Fraud	9
Loan Fraud	7
Gov't Documents/Benefits Fraud	6
Other Identity Theft Fraud	19

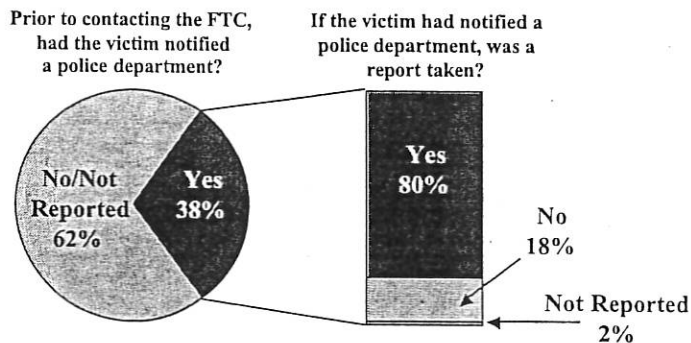
Victims' Out-of-Pocket Expenses<sup>2</sup>  
January 1 – December 31, 2001

Victims Reporting Out-of-Pocket Expenses	11,012 (13%)
Total Amount Spent	\$12,914,105
Average Out-of-Pocket Expenses Per Victim	\$1,173

<sup>1</sup> Approximately 20% of all victims experienced more than one type of identity theft

<sup>2</sup> Victims' out of pocket expenses include notary fees, copying costs, attorney fees, and other costs. They do not include indirect expenses, such as wages lost, credit denied, or harm to reputation. Victims may continue to incur out-of-pocket expenses after they report to the FTC.

Law Enforcement Contact<sup>3</sup>  
January 1 - December 31, 2001



<sup>3</sup> Victims can attempt to file reports with multiple police departments. If a victim reported that they had contacted at least one police department, they were counted in "Yes" in the chart on the left. We present the results of all contacts a victim had with police departments in the chart on the right.



# IDENTITY THEFT

Data Clearinghouse



## How Victims' Information Is Used By Percentage of All Victims<sup>1</sup>

January 1 – December 31, 2001

Total Number of Identity Theft Victims = 86,168

### Credit Card Fraud: 42%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
New Accounts	26.0%
Existing Accounts	10.2
Unspecified	5.6

### Phone or Utilities Fraud: 20%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
Wireless - New	9.7%
Telephone - New	5.3
Utilities - New	2.4
Unspecified Phone / Utilities	2.3
Unauthorized Charges to Existing Accounts	0.5

### Bank Fraud: 13%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
New Accounts	2.7%
Existing Accounts	6.2
Electronic Fund Transfer	1.9
Unspecified	2.3

### Employment-Related Fraud: 9%

### Government

### Documents/Benefits Fraud: 6%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
Driver's License Issued / Forged	2.7%
Fraudulent Tax Return	1.9
SS Card Issued / Forged	0.7
Gov't Benefits Applied / Rec'd	0.4
Other Gov't Docs Issued / Forged	0.3
Unspecified	0.2

### Loan Fraud: 7%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
Auto Loan / Lease	1.8%
Personal / Business Loan	3.4
Real Estate Loan	0.7
Unspecified Loan	0.6

### Other Identity Theft Fraud: 19%

<i>Theft Sub-Types</i>	<i>Percent of All Victims</i>
Other	12.9%
Illegal / Criminal	1.7
Medical	1.6
Apartment / House Rented	0.9
Internet / E-Mail	1.0
Bankruptcy	0.4
Securities / Other Investments	0.2

<sup>1</sup>Approximately 20% of all victims experienced more than one type of identity theft.

# Suspect Information

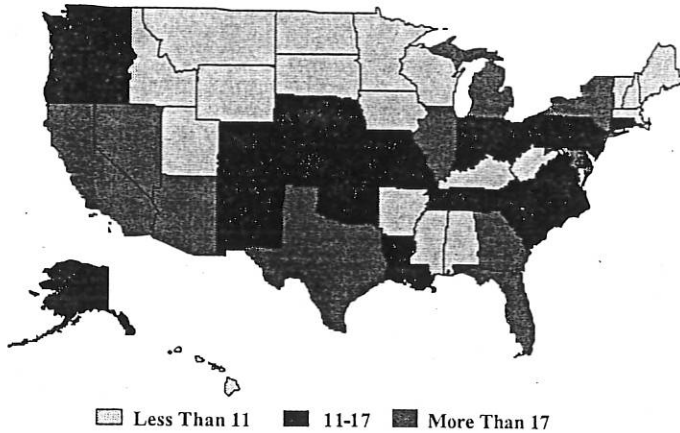
January 1 – December 31, 2001



**IDENTITY THEFT**  
Data Clearinghouse



**Identity Theft Suspects by State (Per 100,000)**  
January 1 – December 31, 2001



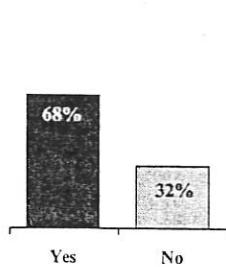
**Identity Theft Suspects Top 10 Locations (Per 100,000)**

January 1 – December 31, 2001

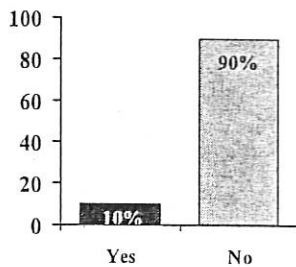
Location	Rate
1. District of Columbia	72.9
2. Nevada	30.5
3. Florida	28.7
4. California	27.3
5. New York	26.7
6. Georgia	23.3
7. Arizona	22.5
8. Maryland	21.7
9. Illinois	19.3
10. Michigan	17.5

**Suspect Information Provided by Victims**  
January 1 – December 31, 2001

Does the victim have any information about the suspect?



Does the victim have a relationship with the suspect?



**Amount Suspect Obtained from Financial Institutions<sup>1</sup>**  
January 1 – December 31, 2001

<b>Victims Reporting Amount Suspect Obtained from Financial Institutions</b>	14,520 (17%)
<b>Total Amount Suspect Obtained from Financial Institutions</b>	\$98,253,576
<b>Average Amount Per Victim that Suspect Obtained from Financial Institutions</b>	\$6,767

<sup>1</sup>"Amount Suspect Obtained from Financial Institutions" is how much the suspect obtained in the victim's name, as reported by the victim. Victims are generally not liable for these amounts. Victims may not know the dollar amount the suspect obtained in their name.





The Kansas Bankers Association

TO: House Judiciary Committee  
FROM: Chuck Stones, Senior Vice President

RE: SB 559

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before you in strong support of SB 559. SB 559 would help assure that the person represented by a State issued drivers license or ID card is the actual person.

**ID THEFT IS A CRIME OF MAJOR PROPORTIONS AND IS BECOMING A NATIONAL SECURITY ISSUE -**

Identity theft has been called the fastest growing and largest monetary crime in the US today. The complementary crime of check fraud is a huge problem. Even beyond ID theft is the whole issue of positive identification verification. People try to conceal or change their ID for a wide variety of reasons. There should be a more stringent process to get an official state issued identification card. Individuals and businesses in Kansas and other states rely on these cards as correct identification. Kansas has a duty to do everything within its power to ensure that people to whom it issues any identification card is, in fact, the person they say they are.

The article from Time Magazine attached to my testimony points out that some consumer advocates estimate that as many as 750,000 identities are stolen every year. Most are stolen for personal financial gain, but some are stolen for other larger crimes. The Time article points out that people steal identities to mask their participation in a crime. The article from the ABA newspaper points out that ID theft is growing national security issue and that Congress has recognized that financial fraud and ID theft "continue to play a large role in funding the terrorist cells in this country."

**THE MYTH OF CONSUMER PROTECTION -**

The Legislature is NOT protecting the consumer by ignoring this problem. According to a recent AP story, ID theft is the fastest growing consumer crime and accounts for more than 40% of consumer-fraud complaints. Passing provisions such as this is protecting the consumer.

As you will remember the discussion of last years HB 2296, the bill that increased the penalties for check forgery and fraud, the crime of check forgery and fraud is a huge problem for every citizen, either directly or indirectly.

- According to the Wichita Business Journal, there were **\$8 million worth of check forgeries** written in Wichita in 1999; and detectives in the Topeka Police Department's Financial Fraud Unit tell us they are aware of \$2 million worth of check forgeries written in Topeka in 2000.
- Forgeries involve **multiple victims**: the person whose checks were stolen, the business that cashed the check and the bank where the account is drawn on. All parties potentially face huge losses when checks are forged. In addition, losses occurred by banks and other businesses get passed on to the innocent consumer as the cost of doing business increases.

### **BIOMETRIC WORKS –**

Biometric identifiers are the **ONLY** true identifier of a person. The KBA is among a large number of states where some banks require a thumbprint to cash a non-customers check. In the first year of the program fraud was decreased by approx 60%.

At the national level the Homeland Defense Dept. and the Attorney General office is actively investigating the use of biometric identifiers to help assure the security of the United States.

Biometric identifiers may sound a little out on the edge, but are being used increasingly to stop fraud and as the only true way to ensure identity.

We believe that SB 559 would go a long way in helping reduce this crime and we urge your support.

# Identity Theft

## Evolving Into a National Security Issue

By John Ginovsky

**R**aise your hand if you, or anyone you know, have had a credit card or other bank account abused by a complete stranger — in other words, have become a victim of identity theft.

The odds are, your hand is raised.

That's the experience of Robert Douglas, an identity theft expert who's talked with thousands of people around the country, and who has advised numerous banks and federal agencies about the subject.

"When I talk to groups and ask if anybody has been a victim or knows a victim, it's always more than 50 percent of the [attendees], and sometimes substantially more," Douglas said.

(Douglas, who is CEO of American Privacy Consultants Inc., Alexandria, Va., will speak on this subject during the ABA Regulatory Compliance

Conference, June 2-5, in New Orleans. For more information, call 1-800-BANKERS.)

Since Sept. 11, identity theft has taken on a much more sinister, much more serious aspect than before.

"Congress is aware that financial fraud and identity theft ... continue to play a large role in funding the terrorist cells in this country," Douglas said during

ABA's recent teleconference, "Identity Theft: Protect Your Customers and Your Bank."

"And it's no mistake that one of the first [private

sector entities] on Sept. 12 that President Bush called upon to act in this regard was the financial services industry," he added.

To that end, Douglas stressed, "This issue needs to become just

that this is going to become a priority in the banking industry."

Douglas generally advises banks to concentrate on four "T's" when putting into place an effective anti-identity theft program.

■ Teach awareness — "Employees need to know

why this is important, why this is a priority, from financial losses to the institution and also to the damage it's doing to American

## ID THEFT

as important as sales and marketing in banks. Compliance departments and security departments need more resources. Mostly they need more direction from the board of directors on down,

See Identity Theft/Page 2



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### TipOff

#### Identity Theft Help

The Federal Trade Commission has unveiled a new form to help victims of identity theft. ....2

#### Credit Union Monitor

ABA's Keith Leggett explains why federal credit unions should directly compensate their boards. ....3

#### Grassroots Lobbying

ABA's Sharon Raymond discusses the importance of bankers' involvement in political advocacy. ....5

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Welcome!








★ Academy Awards






# TIME.com

nation 

Wednesday, Jan. 23, 2002

## Identity Theft: Could it Happen to You?

New statistics suggest it may be only a matter of time. A security expert offers tips on protecting yourself

BY JESSICA REAVES

Imagine this: Someone out there knows your name, your credit card information, your bank account numbers and your social security number. They are pretending to be you — running up outrageous bills, even committing crimes — and as far as your banks, creditors and various authorities are concerned, they *are* you.

It may sound like the plotline of a hackneyed Hollywood thriller, but hundreds of thousands of Americans may have already been victims of identity theft. Last year alone, the Federal Trade Commission logged more than 85,000 complaints from people whose identities had been pirated. That may only be the tip of the iceberg; some consumer advocates suggest as many as 750,000 identities are stolen each year.

See pgs 2

What, exactly, is identity theft? How does it happen? And how can you protect yourself against this growing trend? TIME.com spoke with Ted Claypoole, a technology lawyer concentrating in financial services and security at the firm of Womble Carlyle Sandridge and Rice in Charlotte, North Carolina.

**TIME.com:** You don't seem particularly shocked by these figures.

**Ted Claypoole:** No, I'm not. It's actually frighteningly easy to steal someone's identity in this day and age. And the key is in the numbers that have come to identify all of us.

Your online identity consists of numbers and other information that describes you — it's not really you, of course, but to anyone online it is

5-4

you. In other words, if someone can use your social security number, which is really the key to identity theft, and find your financial information, like a bank account number or credit card number, they can begin to build an identity of someone online who has a lot of your characteristics.

### **So what pieces of information are particularly key to identity?**

There are three basic ways to authenticate oneself: One is something you know. Two is something you have. Three is something you are.

Something you know is easy: it's a password, a personal identification number that no one else should have. Something you have is an ATM card or an ID card at work. Something you are can be your handwriting, your fingerprint or your DNA sample, depending on how detailed you want to get. Some very advanced systems use GPS to pinpoint where you are, but that's a different level of technology. \*

Anyone who understands identity theft knows these things — so if they can get hold of this information, they can fake your identity.

### **Many people are particularly concerned about using credit cards to make online purchases. Is it safer to use credit cards in person than online?**

I don't see a bigger problem with using a credit card online than using it offline. It's just as big a risk to make a credit card transaction at a restaurant as it is to make a transaction on a trusted web site.

### **What's the motive behind identity theft? I can imagine people wanting to steal money, but beyond that I'm at a loss.**

You're right, the purpose is generally to steal money, or account information, or credit, or someone's good name.

Another reason people steal identities is to mask their participation in a crime. The more convincingly a criminal can establish he is someone else, the more likely it is the authorities won't come after that criminal. \*

### **Okay. Now for the important information. What can any of us do to shield ourselves from identity theft?**

There are things that are standard, generally accepted methods of keeping information secure that lots of people don't follow.

- Using credit cards is generally safer than allowing access into other accounts. The credit card system has safeguards built in to protect users from fraud. If someone steals your credit card number, you're out 50 bucks and

some hassle. With a debit card, you could be cleaned out completely. Using cash is also not a bad thing.

- Never give out your social security number. Except for government or big-ticket items, no one should be asking for that number. Credit card numbers and social security numbers should never be used to make charitable contributions.
- Never give out any information about yourself over the phone, particularly to anyone who's called you.
- Try to avoid writing your bank account numbers on anything.
- Rip up pre-approved credit card notices, because that's one of the ways this can happen — they'll take the notice, change the address, and build credit using your name and identity.
- Read your bank statements. You'd be amazed by how many people just toss those statements without checking for strange transactions.

**Some people are going to read this and start worrying about shredding every piece of personal information that comes across their desk. How nervous should this threat make us?**

There's no reason to be paranoid; there's just reason to be careful. If someone wants desperately to target you, they can probably get a lot of information about you — so you just need to minimize the criminal's opportunities to get that information. You can make yourself a harder target, and that's probably your best defense.



[Click here to return to the original story](#)

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## Thieves pilfering personal identities

**1:05 a.m.**  
**1/24/2002**

**By David Ho**  
**The Associated Press**

WASHINGTON -- Identity bandits victimized thousands of people last year, stealing their financial information and branding some with criminal records. This fast-growing crime accounts for more than 40 percent of consumer-fraud complaints.

The Federal Trade Commission said Wednesday that identity theft complaints far exceeded other areas of fraud, such as deceptive Internet auctions and lotteries. The figures come from a government database of more than 200,000 complaints collected in 2001 from more than 50 law enforcement and consumer groups.

Privacy advocates say the number of people victimized by identity theft may be as high as 750,000 a year.

"We've seen an explosion in this crime and it's not going away," said Beth Givens, director of the Privacy Rights Clearinghouse, a San Diego-based consumer group.

Givens said consumers should look at their credit reports twice a year, shred personal documents before throwing them away, and cleanse wallets of old receipts and printed Social Security numbers.

However, she cautioned, "You could take all the preventative steps and still become a victim."

One identity thief's actions made the world believe that Chicago lawyer Ted Wern wasn't only a deadbeat, but a criminal.

"He took my name and information and started running amok with it," Wern said.

He thinks the thief went through his mail or garbage for the information in 1998.

Using Wern's name and Social Security number, the ID thief applied for

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and got at least four credit cards and ran up nearly \$50,000 in bills. The thief also opened a checking account with a Georgia bank and wrote thousands of dollars in bad checks.

Then, whenever the thief was pulled over for a traffic violation without a license, he started giving out Wern's information, building a litany of charges, including a drunken driving arrest in Ohio.

He was released, but that encounter led authorities last year to arrest Terre A. Stevens for the identity fraud crimes. This month he was sentenced to six months in prison and four years of probation, according to court officials in Mansfield, Ohio.

"I am angry, but in many cases theft of your identity is something you can't control," Wern said. "You have to just do your best to clear it up."

It cost the average victim more than \$1,000 to clean up the mess left by identity thieves, the FTC said.

The high number of identity theft complaints last year may partly reflect the FTC's increasing emphasis on investigating this kind of fraud and its use of toll-free numbers to receive those complaints, said Howard Beales, the agency's director of consumer protection. Consumers can call toll free (877) FTC-HELP or (877) ID-THEFT.

After identity theft, the top consumer fraud complaints of 2001 were problems with Internet auctions and deceptive trial offers and charges from Internet and computer services.

Credit card fraud accounted for 42 percent of identity theft complaints, followed by scams where telephone or utility accounts were created in a person's name without his or her knowledge.

In some cases, hackers have been able to penetrate big corporations' databases and download credit card numbers and other data.

The District of Columbia had the highest rate of identity theft in 2001 with 77 victims for every 100,000 people. California and Nevada followed with 45 and 41 victims per 100,000 people, respectively.

Sue Ann Mills, 52, had her identity stolen from her home in Columbus, Ohio, when two burglars broke in and stole her purse, which contained her driver's license and Social Security card.

She called to cancel her credit cards, but not before the young thieves attempted and failed to use her cards to buy PlayStation video game consoles. They were never caught.

"It's a very scary situation," she said. "They don't want your furniture or your crystal, they want your identity."





For Immediate Release  
Office of Homeland Security  
January 7, 2002

## Specifics of Secure and Smart Border Action Plan

### ACTION PLAN FOR CREATING A SECURE AND SMART BORDER THE SECURE FLOW OF PEOPLE

#### 1) Biometric identifiers

Jointly develop on an urgent basis common biometric identifiers in documentation such as permanent resident cards, NEXUS, and other travel documents to ensure greater security.

#### 2) Permanent Resident Cards

Develop and deploy a secure card for permanent residents which includes a biometric identifier.

#### 3) Single Alternative Inspection System

Resume NEXUS pilot project, with appropriate security measures, for two-way movement of pre-approved travelers at Sarnia-Port Huron, complete pilot project evaluation and expand a single program to other areas along the land border. Discuss expansion to air travel.

#### 4) Refugee/Asylum Processing

Review refugee/asylum practices and procedures to ensure that applicants are thoroughly screened for security risks and take necessary steps to share information on refugee and asylum claimants.

#### 5) Handling of Refugee/Asylum Claims

Negotiate a safe third-country agreement to enhance the handling of refugee claims.

#### 6) Visa Policy Coordination

Initiate joint review of respective visa waiver lists and share look-out lists at visa issuing offices.

#### 7) Air Preclearance

Finalize plans/authority necessary to implement the Preclearance Agreement signed in January 2001. Resume intransit preclearance at Vancouver and expand to other airports per Annex I of the Agreement.

#### 8) Advance Passenger Information / Passenger Name Record

Share Advance Passenger Information and agreed-to Passenger Name Records on flights between Canada and the United States, including in-transit flights. Explore means to identify risks posed by passengers on international flights arriving in each other's territory.

#### 9) Joint Passenger Analysis Units

Establish joint units at key international airports in Canada and the United States.

#### 10) Ferry Terminals

Review customs and immigration presence and practices at international ferry terminals.

#### 11) Compatible Immigration Databases

Develop jointly an automated database, such as Canada's Support System for Intelligence, as a platform for information exchange, and enhance sharing of intelligence and trend analysis.

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## COORDINATION AND INFORMATION SHARING IN THE ENFORCEMENT OF THESE OBJECTIVES

### 23) Integrated Border and Marine Enforcement Teams

Expand IBET/IMET to other areas of the border and enhance communication and coordination.

### 24) Joint Enforcement Coordination

Works toward ensuring comprehensive and permanent coordination of law enforcement, anti-terrorism efforts and information sharing, such as by strengthening the Cross-Border Crime Forum and reinvigorating Project Northstar.

### 25) Integrated Intelligence

Establish joint teams to analyze and disseminate information and intelligence, and produce threat and intelligence assessments. Initiate discussions regarding a Canadian presence on the U.S. Foreign Terrorist Tracking Task Force.

### 26) Fingerprints

Implement the Memorandum of Understanding to supply equipment and training that will enable the RCMP to access FBI fingerprint data directly via real-time electronic link.

### 27) Removal of deportees

Address legal and operational challenges to joint removals, and coordinate initiatives to encourage uncooperative countries to accept their nationals.

### 28) Counter-Terrorism Legislation

Bring into force legislation on terrorism, including measures for the designation of terrorist organizations.

### 29) Freezing of terrorist assets

Exchange advance information on designated individuals and organizations in a timely manner.

### 30) Joint Training and Exercises

Increase dialogue and commitment for the training and exercise programs needed to implement the joint response to terrorism guidelines. Joint counter-terrorism training and exercises are essential to building and sustaining effective efforts to combat terrorism and to build public confidence.

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### **Return to this article at:**

<http://www.whitehouse.gov/news/releases/2002/01/20020107.html>

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Testimony to the House Judiciary Committee  
Regarding Senate Bill 559

Dennis C. Jones, Kearny County Attorney-Twenty Fifth Judicial District  
March 18, 2002

I have been a prosecutor in Kearny County since 1988. During those fourteen years I have been involved in prosecuting most all types of crimes that are committed in Kansas. A new trend is developing that makes apprehension and prosecution of criminals difficult, and, makes it easier for criminals to victimize innocent Kansas citizens. That crime is identity theft.

Kansans are trusting people. When someone presents a Kansas merchant with a driver's license issued by the State of Kansas, that merchant assumes that the license is valid. Unfortunately, the last few years have seen an increasing trend in driver's licenses being obtained by illegal immigrants for fraudulent purposes.

Living as I do in the southwest corner of Kansas, I deal with many illegal immigrants from Oklahoma and Colorado, who have come to Kansas to obtain a drivers license simply because it is so easy to do so. In fact, I have prosecuted, on two different occasions, criminals who were convicted under two different Kansas issued drivers license numbers for multiple DUI offenses.

It is time that the State of Kansas recognizes and realizes that honest, hardworking Kansas citizens are being defrauded by the abuses taking place in the issuance of Kansas drivers licenses. It is time for the State of Kansas to require proper identification, such as a social security number and a biometric identifier, to obtain a valid license. In addition, a three day or five day waiting period would allow Department of Motor Vehicle employees the opportunity to check the social security number provided to make sure that it is in fact a valid social security number.

The cost of implementing the reforms called for in Senate Bill 559 is minimal. The protection that it will provide for Kansas businesses and Kansas citizens is significant. I encourage each of you to endorse the provisions contained in Senate Bill 559. Thank you.

## Testimony to the House Judiciary Committee

### Regarding Senate Bill 559

Paul J. Morrison, District Attorney - Tenth Judicial District

March 18, 2002

I have been a prosecutor for 22 years. I've been the District Attorney in Johnson County for 13 years. During my career I've prosecuted just about all types of crimes and studied and watched various crime trends. One of the most disturbing trends I've noticed in the past few years is the emergence of well thought out, deliberate "white collar" type crimes that are highly destructive to individuals, businesses and our society. Most notable of these is identity theft. We have seen a literal explosion of this type of crime, both in Johnson County and across the state.

I've heard much said over the last few years about problems with fraudulently produced and altered drivers' licenses. In most state this is a big issue as driver's licenses are the most commonly used form of identification to open bank accounts, fill out credit applications, etc. In Kansas, however, our problems are a bit different. Fraudulent and altered drivers' licenses don't seem to be such a big problem here because one can easily get authentic Kansas drivers' license using phony identification. As such, I suspect many crooks think, "why should I alter a driver's license when I can get a real one so easy?" It's for this reason that we are so supportive of Senate Bill 559. This bill addresses a simple change that will make it much more difficult for criminals to obtain a Kansas driver's license or ID card using phony identification, the requirement of a social security number by the applicant. Most of you probably don't know that among states Kansas is one of the most lax in identification requirements for the issuance of a driver's license or state ID card. By simply requiring a social security number and allowing some time for the Department of Motor Vehicles to verify that number before issuance of a permanent driver's license will be one of the most effective steps we can take in fraud prevention.

As you will hear today, the cost of implementing this bill is minimal. Nonetheless, we have included an increase in application and renewal fees to help cover these costs and perhaps generate some more money for our state. This committee should also give strong consideration to the use of a biometric system to help verify identification as well.

This bill in its most basic form is extraordinarily simple and cost effective. It will go a long way in preventing future crime and victimization.

## **Senate Bill 559**

### **Written Testimony**

My name is Detective Kevin Duncan and I am a Financial Crimes detective with the Overland Park, Kansas, Police Department with 12 years law enforcement experience. In the past three years the Overland Park Police department has recorded a dramatic increase in the number of Identity theft offenses reported. In 1999, 38 reports of identity theft were filed in Overland Park. In only one year, that number increased over 75% to 67 offenses reported. In 2001 the increase in the number of reports was over 100% and the estimated increase for 2002 is again over 100%. These statistics do not even consider the number of reports filed for Criminal use of Credit Cards and Forgery.

While investigating these offenses, I have found that most of these crimes involve the illegal use of Kansas Identification Cards. The current procedure in place allows immediate receipt of state issued photo identification without any type of verification procedure. Criminals take advantage of this system because it allows them to cash checks, apply for credit accounts, and open bank accounts under someone else's identity. This makes it very difficult for banks, retail stores and law enforcement to determine the validity of identification cards. It also puts innocent people, such as the sick or elderly, that need identification cards under unnecessary suspicion when they use their identification card for legitimate purposes. Some people have even been turned away at banks or retail stores when they are simply attempting to cash their paychecks or open a checking account. This directly effects the financial stability of the businesses in our state.

In the most severe instances, fugitives use state issued identification cards to conceal their identities and stay on the run from law enforcement. For example, in December of 2001, an Overland Park Police Sergeant was shot and critically wounded by a suspect on the run from authorities for homicide. This suspect, from Seattle, Washington, had used numerous state issued identification cards to conceal his identity as well as commit profitable financial crimes. This allowed the suspect to rent apartments, hotel rooms, purchase expensive clothing and cars, all while he was on the run and unemployed. This suspect targeted states in which he could easily obtain identification. The suspect avoided states with stricter procedures on issuing identification, making these crimes, like most, crimes of opportunity.

The FBI's investigation into the September 11<sup>th</sup> tragedies has revealed that numerous terrorists live within our borders and even in the state of Kansas under hidden identities for the sole purpose of engaging or assisting in terrorist activities. I ask that you pass Senate Bill 559 and make Kansas a safer place to live and work for all of us.

Detective Kevin Duncan  
Overland Park Police Department

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES



**JIM GARNER**  
HOUSE DEMOCRATIC LEADER

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TESTIMONY IN OPPOSITION  
TO SENATE BILL 559

*The right to be left alone [is] the most comprehensive of rights,  
and the right most valued by a free people.*

*Justice Louis Brandeis  
United States Supreme Court  
(Olmstead v. United States 1928)*

Chairman O'Neal and Members of the Committee:

Thank you for the opportunity to appear and present my views in opposition of Senate Bill 559. I can not ever recall appearing before a committee as a conferee in opposition to any legislation. I have appeared as a proponent on many occasions, but I have never felt compelled to present testimony as an opponent. However, I am compelled to speak out against the bill before you today. It is simply amazing that something like this even made it out of our state senate.

Senate Bill 559 would require all law-abiding citizens of Kansas who wish to drive to submit a thumbprint or other biometric identifier, such as a retina scan, to the state in order to receive a license. This is a significant intrusion into the privacy of our constituents. Personal identifiers, like fingerprints or retina scans, are considered by many Kansans to be very personal and private information – the type of information that one should not be forced to provide simply to drive on our roads.

Since this bill has been reported on in the media, I have heard from a number of constituents who express a serious level of concern over this bill. Believe me, the comments have ranged from “what’s going on up there” to “You guys must be nuts.”

As Justice Brandeis observed, the right to privacy is the most valued of rights by a free people. My observation is that the people of Kansas value their right to privacy. When given the opportunity to protect their personal information, they take the effort to do so.

It is impressive that a clear majority of Kansans have chosen not to use their Social Security Numbers on their driver's licences. The default is to use one's Social Security number as the Kansas driver's license. However, Kansans may affirmatively take action to request a different number (a so-called "K" number) instead of the Social Security number. Last week my office contacted the Division of Motor Vehicles and was informed by Gail Martin with the DMV that there are 1.98 million licensed drivers in Kansas. Of those drivers, 1.076 million have opted to use a "k" number instead of their Social Security number. That is 55% of Kansas drivers electing not to use their Social Security numbers.

That fact tells me that a majority of Kansans wish to protect personal information and not use it for the purpose of obtaining a driver's licence. I can only imagine what these individuals will think when they are asked to provide a thumbprint or retina scan when they walk in to renew their driver's license. I am sure we will be hearing from them if this bad idea were ever to become law.

This bill violates the very core of the right of privacy. A fingerprint, or some other biometric identifier, is a part of who we are as an individual – what makes us unique as a human being.

I am not comfortable asking everyone to give up this information and to share it with the state. What happens with this information. Is it to be stored by the state? Will it be in the future? It definitely brings up Orwellian images of big brother.

A driver's license should be about certifying that one has passed the required vision test, knows the rules fo the road and is able to properly operate a vehicle on the public roadways. Lets be very careful about the kind of personal information we require our citizens to share and provide to state government.

I strongly urge you to oppose this bill and to not let it move any further along.

Again, thank you for the opportunity to express my views. I would be glad to stand for questions.

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**Senator Derek Schmidt**  
**15th District**

Committee Assignments

Agriculture (Chairman)  
Judiciary  
Reapportionment  
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Elections and Local Government  
Legislative Post Audit

Message Only (800) 432-3924  
During Session

Testimony of Senator Derek Schmidt  
In Support of Senate Bill 382  
Before the House Judiciary Committee  
March 18, 2002

Mr. Chairman and members of the committee, thank you for your consideration today of Senate Bill 382, which I introduced to clarify and strengthen provisions of the Kansas Consumer Protection Act that prohibit price gouging and other forms of profiteering during a disaster.

I encourage the committee to recall the dark days after September 11. There was fear and uncertainty in the country. Our people were at considerable unease. It was in that environment that several gasoline retailers – some well-meaning, others self-serving – chose to sharply raise the price of gasoline. Those price spikes fueled fear. There were long lines of motorists at gasoline stations. In some cases, fistcuffs erupted as people scrambled to purchase fuel that they believed would fall into short supply.

Unfortunately, there was nothing unusual about this pattern of disaster-profiteering-panic. We saw it again, on a lesser scale, after the recent ice storm that struck the Kansas City area and eastern Kansas. We see it time and again after tornados, floods, and other major acts of God.

I recall these stories to make this point: Our state and nation are most vulnerable in the immediate wake of any disaster. It is then, while our leaders struggle to restore or maintain order, that we most need to avoid private actions that tend to exacerbate fear – including some of the extremes of the marketplace. Profiteering is not only bad for consumers; it is bad for crisis management. That is why public policy should prohibit it.

Under current law, the authority of the attorney general and of any county or district attorney to bring an action for price gouging rests solely on the general authority in K.S.A. 50-627(b)(2), which requires a court to consider, when determining whether a supplier's action was unconscionable in violation of law, whether "when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers."

That's it. That's the entire foundation for the state's ability to respond to profiteering. And, unfortunately, there is very little case law in Kansas to give us further guidance.



I say this bill would “clarify” and “strengthen” the law because both need to be done. In my view, the current law is sufficiently vague as to be unfair to businesses, consumers and prosecutors.

It is unfair for businesses because they cannot know from the statute precisely what conduct is prohibited. For example, it was only after the Attorney General brought suit and offered a standard settlement to gasoline stations that raised prices after September 11 that the stations knew the bright line to trigger enforcement would be raising prices above \$2.49 per gallon. Let me emphasize that: Those businesses did not know precisely what conduct was prohibited until after their conduct was concluded. That uncertainty meant even well-intended businesses who engaged in proper due diligence were vulnerable to being caught in a law enforcement web.

The current law is unfair to consumers because it permits a significant amount of profiteering at the expense of consumers during times of disaster. We see that time and again after tornadoes, floods, and of course national disasters such as the attacks on September 11. It has been the public policy of Kansas since 1973 that consumers should be protected from price gouging. The purpose of Senate Bill 382 is to finally give some clarity to exactly what that public policy means in practical terms.

This legislation would clarify the law so businesses can understand what the law is, and it would strengthen the law so consumers are adequately protected.

And all of that, of course, is good for prosecutors -- local and state -- who have the duty of applying the law. We owe it to them to give some certainty so they are not obligated to guess what conduct we intended to prohibit and to, in effect, reinvent the law anew after every disaster.

The bill would do the following:

- It would prohibit “profiteering from a disaster,” which is defined as “unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers.”

- It would make price increases in excess of 50 percent a key factor courts would consider in determining whether a price increase is unjustified. By contrast, current law gives no numerical guidelines and Kansas case law has not established any.

- It would apply only during a “time of disaster” declared by the governor or by the president and would last for the longer of the duration of the disaster declaration or for 30 days. By contrast, current law could be applied at any time, not only during consumers' vulnerability caused by disasters.

It would apply only to the sale to consumers of property or services that are “necessary.” The court would retain discretion to determine what is necessary but would be guided by examples of necessary items (food, medicine, cleanup supplies, etc.) set forth in the statute. By contrast, current law could be applied to any good or service.

It would put in place a mechanism to place the liability for any unlawful price increase on the actor who caused it by holding retailers harmless for merely passing through to consumers actual increase costs imposed on them by their suppliers. No such mechanism exists in current law.

Mr. Chairman, this bill would give businesses, consumers, emergency managers and law enforcement personnel much more certain guidance during our most uncertain times. I believe it is necessary public policy, and I look forward to working with all of our colleagues to move it through the legislative process.

I appreciate the opportunity to appear today. I encourage this committee to recommend Senate Bill 382 favorably, and I would be glad to stand for questions.



CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

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Testimony of  
Steve Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the House Judiciary Committee  
Re: Senate Bill 382  
March 18, 2002

Chairperson O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of Attorney General Carla J. Stovall to testify in support of Senate Bill 382. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

As you are aware, numerous gas stations in Kansas substantially increased the price of gasoline and diesel fuel shortly after the terrorist attacks on our country on September 11th. Public outrage over these price increases far exceeded any consumer issue we have addressed in the past seven years. Our office received more than 1,500 calls from Kansans about gas prices in the week following September 11. The Attorney General quickly announced a settlement program for companies who increased their prices above \$2.49 per gallon, and within one month we had settled with 39 companies, representing 63 gasoline and diesel fuel stations across Kansas. We are currently in litigation with the one company that refused the settlement program.

One aspect of addressing this issue was deciding what price constituted unconscionable pricing under K.S.A. 50-627 (b)(2):

(b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to, the following that:

...

(2) when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily available in similar transactions by similar consumers;

The Kansas Court of Appeals has held there is no fixed ratio limit for determining price unconscionability under subsection (2). Rather, the issue is to be determined by the court based on the peculiar circumstances of each case. *Remco Enterprises, Inc. v. Houston*, 9 Kan.App.2d 296, 677 P.2d 567 (1984). The *Remco* court noted, however, that case law from other jurisdictions indicates

House Judiciary  
Attachment 10  
3-18-02

that a price over 2 ½ times the fair retail value of the goods greatly increases the possibility that the contract will be declared to be unconscionable. While the \$2.49 threshold set by our office is below 2 ½ times the prevailing prices, our office believes Kansas courts would consider the particular circumstances of these price increases and find them unconscionable. We have, however, heard from Kansans and legislators who believed we should have set the threshold much lower and, as you can imagine, the retailer we are prosecuting believes it should be much higher.

Our office has also received numerous calls from consumers and representatives of insurance companies concerned about price gouging in the wake of the ice storm in January 2002. Some merchants have taken advantage of those damaged by this recent storm. Rather than being satisfied with the increased sales and profits resulting from this disaster, some businesses have chosen to profiteer from the storm by substantially increasing prices on motel rooms, generator rentals, tree removal, and home repair. Without the 50% threshold contained in this bill, our ability to assist these consumers is extremely limited. Containing the cost of repairs and damages in the wake of a disaster is in the best interest of all Kansans, whether paid for directly by the consumer or indirectly by the consumer's insurance company.

Senate Bill 382 will provide a bright line rule in post-disaster price gouging situations. It should be recognized that the bill provides a defense for justified price increases caused by additional costs actually incurred by the supplier in section (b)(1)(C). The bill sets a threshold of fifty percent above prices charged immediately prior to the disaster as *prima facie* evidence of price gouging. The fifty percent threshold is more than twice the threshold allowed by any other state price-gouging statutes that have set a fixed percentage. States with fixed percentage thresholds include Alabama (25%), Arkansas (10%), California (10%), Hawaii (0%), Mississippi (0%), and Oklahoma (10%). Percentage thresholds in these states range from zero to twenty-five percent, with most set at ten percent. While most Kansas businesses do not react to the misfortune of others by price-gouging or profiteering, this legislation will give our office the ability to deal with the few who choose to profiteer from disasters.

We supported the twenty five percent threshold contained in the original bill, as any increase not caused by actual cost increases to the retailer are difficult for consumers to understand and afford in the wake of a disaster. With the amendment increasing the threshold from twenty five percent to fifty percent, home repair bills going from \$1,000 to \$1,499, gasoline prices going from \$1.00 a gallon to \$1.49 a gallon, and hotel rooms going from \$80 to \$119 in the wake of a disaster will not constitute *prima facie* evidence of price gouging under this law. The amount of the threshold is of course a policy decision for you to decide.

We appreciate the amendments made by the Senate at our suggestion to include declaration of local disaster emergencies by local officials as authorized by K.S.A. 48-932. State law currently provides for these declarations, and local authorities may often be able to assess local damage and react quicker than the Governor or President.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 382. I would be happy to answer any questions of the chair or the members.

## Memorandum

**TO:** THE HONORABLE MICHAEL O'NEAL, CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

**FROM:** JEFF BOTTENBERG

**RE:** SB 382

**DATE:** MARCH 18, 2002

Mr. Chairman, members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of State Farm Insurance Companies ("State Farm"). We appreciate the opportunity to appear in support of SB 382, which amends the Kansas Consumer Protection Act to prohibit suppliers of goods and services from unjustly increasing prices during a time of disaster. State Farm is the largest insurer of personal residences in the United States, and insures almost one out of every four homes in Kansas.

When a policyholder suffers a loss on his or her home due to damage from a natural disaster, whether it is a tornado, hurricane or earthquake, State Farm will either give the insured a cash settlement or pay for the damage to be repaired. In order to accomplish such repairs, we directly pay local suppliers of goods and services, and the unjust increasing of prices causes undue delay, as materials and labor in a seller's market are often difficult to obtain. Furthermore, such increased prices could cause insurance rates for Kansas policyholders to increase.

Although not an exact comparison as to what might constitute a "disaster" under SB 382, State Farm classifies claims that result from widespread loss in a certain geographic area as "catastrophic" claims. In calendar year 2001 we had 20,364 catastrophic claims reported under the homeowner's coverage in Kansas, which corresponded to approximately \$54 million in indemnity payments for those claims. Concerning the freeze/snow storm that occurred during the beginning of 2002, State Farm has received approximately 7,536 claims, and 7,080 of such claims have been closed. Furthermore, State Farm has made almost \$9 million in indemnity payments on such claims. As should become readily apparent based upon the above numbers, unjustified increased prices would negatively impact thousands of Kansans each year.

Profiteering not only negatively impacts our policyholders by delaying repairs and increasing rates, but further adds to the anguish suffered by persons that have experienced a loss, as such actions taken against our policyholders at an emotionally trying time increase the devastating effects of such catastrophe.

Therefore, for the above reasons, State Farm strongly supports SB 382. I would be happy to answer any questions that you may have.



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**Testimony before House Judiciary Committee  
March 18, 2002  
Ernest Kutzley  
Associate State Director/Advocacy**

Good afternoon Chairman O'Neal and Members of the House Judiciary Committee. AARP represents the views of our more than 350,000 members in the state of Kansas. AARP is the nation's leading organization for people age 50 and older. It serves their needs and interests through information and education, advocacy and community services provided by a network of local chapters and experienced volunteers throughout the state and country. Thank you for this opportunity to express our views in *support* of Senate Bill 382.

Fraudulent home repair practices continue to be a national and state priority for AARP. AARP Kansas has worked with the District Attorney in Johnson County to promote "Storm Chaser" registration to prevent home repair fraud and the grossly escalated pricing of home repair materials that often occurs after a natural disaster. We have been successful working with the Johnson County Commissioners and eight municipalities in obtaining approval of regulations that require contractor licensing, education and registration.

Home repair, especially following a disaster, is necessary for preserving both the safety and value of a homeowner's property. While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually experience inadequate, unprofessional or fraudulent home repair work. The financial and psychological impacts of home repair fraud can be severe. Older persons may lose all or a significant part of their life savings and be left with shoddy or incomplete repairs and no legal resources or remedies.

Kansas is one of only six states, as of 1998, that have no applicable laws or regulations at the state level, governing home improvement contractors. Including Kansas, six states (Colorado, Kentucky, Missouri, South Dakota, and Vermont) have either no laws regarding fraudulent practices by a contractor or specifically allow only counties and cities to individually regulate contractors.

AARP believes that state legislation should be developed to impose criminal and civil penalties for home repair fraud including escalated pricing on services and materials. While state legislation is being considered, counties and municipalities should strive for uniformity in providing basic consumer protection provisions including: 1) licensure, insurance and bonding requirement of home improvement contractors 2) a written contract of services including specific prohibited and required contract provisions, and 3) establishment of criminal penalties and civil remedies to allow consumers to sue contractor in order to recover out of pocket damages, punitive damages, court cost and attorney fees.

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Esther "Tess" Canja, President William D. "Bill" Novelli, Executive Director

House Judiciary  
Attachment 12  
3-18-02

We believe that an increase of 50 % in goods and services may be high for many Kansas during times following a disaster, however in order to provide greater protection during these times, AARP Kansas does support efforts to cap increases and prevent unconscionable acts of profiteering on necessary supplies and services during times of disaster. Therefore, AARP *supports* Senate Bill 382.

Thank you again for this opportunity to provide comments and support of SB 382.