

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson John Edmonds at 9:00 a.m. on February 7, 2003 in Room 519-S of the Capitol.

All members were present except:

Representative Paul Davis  
Representative Gilbert

Committee staff present:

Chris Courtwright, Legislative Research Dept.  
Gordon Self, Office of the Revisor  
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Marlee Carpenter, Kansas Chamber of Kansas  
Ann Spiess, Kansas Telecommunications Inc. Assn.  
Robert Fasl, Southwestern Bell Communications  
Mark Beshears, Sprint  
Kenneth Daniel, NFIB

Others attending:

See attached list

Chairman Edmonds opened the meeting for introduction of bills.

Representative Larkin asked for the introduction of a bill that would cut off the three year statute of limitations with the respect to the number of income and sales tax refunds as well as some credits that may apply that would impact economic development.

Hearing no objection, Chairman Edmonds will allow that introduction.

Representative Larkin had been asked by Acting Secretary of Revenue, Joan Wagnon if he would introduce a proposal for the tax amnesty.

Without objection this bill will be accepted for introduction also.

Representative Powers was recognized and addressed the committee asking for the withdrawal of his proposed round-up tax bill.

The next order of business was approval the minutes from January 14<sup>th</sup>, 16<sup>th</sup>, 22<sup>nd</sup>, 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup>.

Representative Schwab made a motion to approve all sets of minutes as read. Motion was seconded by Representative Owens. Motion carried.

With no further business, Chairman Edmonds opened the meeting for hearing on **HB 2077**. With no proponents, the Chairman called on the opponents to appear before the committee.

Marlee Carpenter, Kansas Chamber Commerce, testified as an opponent to **HB 2077**. Her testimony stated that they believe in order to keep Kansas competitive, the cost of doing business in the state cannot be increased and that repealing the sales tax exemption would increase the cost of goods and services to consumers. (Attachment 1)

Next to appear before the committee as an opponent to **HB 2077**, was Anne Spiess, President of the Kansas Telecommunications Industry, KTIA. In her testimony, Ms. Spiess pointed out that it was their opinion that the passage of **HB 2077** would result in a tax policy that would put Kansas at a competitive disadvantage with surrounding states. (Attachment 2)

Robert Fasl, Regional Tax Director for Southwestern Bell Communications Inc. (SBC), gave testimony in opposition to **HB 2077**. His testimony related that to repeal the affiliated group, resale, and access fee exemptions directly targets the telecommunications industry, creates double taxation, and unfairly increases SBC's cost of doing business in Kansas. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on February 7, 2003 in Room 519-S of the Capitol.

Appearing in opposition to **HB 2077**, was Mark Beshears, Assistant Vice President, State and Local Tax for Sprint in Overland Park, Kansas. It is the opinion of Sprint that repealing the sales tax exemption in this bill would increase the company's costs as well as the customers' cost of doing business in Kansas. (Attachment 4)

Representing Midway Sales and Distributing, was Kenneth Daniel, Chairman and C.E.O. of the company. He also testified in opposition to **HB 2077**. In his testimony, Mr. Daniel, relates that telephone and telecommunication services are basic and vital to his business and that he feels that Kansas already has a much heavier tax load than some of the neighboring states. (Attachment 5)

Submitting written testimony only in opposition to **HB 2077** was Verizon Wireless (Attachment 6), and Mr. Hal Hudson, State Director, National Federation of Independent Business (Attachment 7)

Chairman Edmonds asked if there were any other opponents to **HB 2077**, and hearing none closed the public hearing on **HB 2077**.

With no further business before the committee, Chairman Edmonds adjourned the meeting at 10:20 a.m.

GUEST LIST

DATE 2-7-03

| NAME             | REPRESENTING                           |
|------------------|--|
| Nelson Krueger   | Western Wireless                       |
| Dina Fisk        | VERIZON WIRELESS                       |
| Anne Spiess      | <del>ATA</del> - Ks. Telecom Ind. Assn |
| KEN DANIEL       | NFIB / MIDWAY WHOLESALE                |
| Doug Smith       | SITA                                   |
| Koop Ketter      | KTN                                    |
| Mike Reed        | AT&T                                   |
| Mallee Carpenter | KCTI                                   |
| T. O. Anderson   | KSCPA                                  |
| Kevin Baker      | Men Law Firm                           |
| Steve Johnson    | Kansas Gas Service                     |
| Hans Larson      | KAB                                    |
| STUB KENDRY      | AICTEL                                 |
| Steve Meradi     | AICTEL                                 |
| SCOTT SCHMEIDER  | GIBBA                                  |
| Sandy Braden     | Cingular                               |
| Janet McPherson  | Ks Farm Bureau                         |
| David Sprinze    | CURB                                   |
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# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

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HB 2077

February 4, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Taxation Committee

By Marlee Carpenter, Director of Taxation and Small Business

Chairman Edmonds and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry testifying in opposition to HB 2077. We believe that in order to keep Kansas competitive, the cost of doing business in the state cannot be increased. KCCI opposes the blanket repeal of sales tax exemptions. Each exemption was justified at the time of enactment and voted on by legislators in your same position. Sales tax exemptions should be looked at as a whole, within the context of the entire tax structure. Sales tax exemptions make Kansas competitive with other states and/or avoid the double taxation of goods and services.

HB 2077 would increase the cost of doing business in the state and increase the cost of goods and services to consumers. The sales tax exclusions repealed in HB 2077 are pass-through taxes, meaning the consumer would ultimately pay the tax when paying the price on the end product. This sales tax exclusion can be viewed as an input exclusion. A business uses the goods and services, now currently not taxed, to produce a product. If these goods and services being used to produce a product are taxed, double taxation occurs. These end products are then sold at retail, and sales taxes are collected at that time. The sales tax exclusion repeal would amount to double taxation of certain products. This would increase the cost of doing business and ultimately the cost of the final product that is sold to consumers.

For example, a telemarketing firm uses the watts line exclusion in KSA 79-3603(b)(2)(A). This allows the telemarketing firm to obtain use of lines without sales tax added. The telemarketing firm then sells its product. The product is taxed at the point of sale. If the company is not able to use the exclusion, then the cost of its product and the cost of doing business would be increased by the amount of the sales tax charged. This would be double taxation.

House Taxation

Attachment   1  

Date 2-7-03

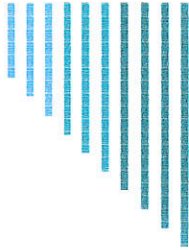
KCCI opposes the repeal of the sales tax exclusions in HB 2077. KCCI believes that in order to keep Kansas competitive, the cost of doing business in the state cannot be increased. Thank you for your time and I will be happy to answer any questions.

**About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. 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.



Kansas Telecommunications Industry Association  
700 SW Jackson Street Suite 704  
Topeka Kansas 66603-3758  
VOICE/TDD 785-234-0307  
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Testimony of  
Anne Spiess, President  
Kansas Telecommunications Industry Association

Before the House Taxation Committee  
Regarding HB 2077  
February 4, 2003

Chairman Edmonds and Members of the Committee:

Good morning, my name is Anne Spiess and I am President of the Kansas Telecommunications Industry Association or KTIA. Thank you for allowing me to appear before you this morning. KTIA's membership is made up of local telephone companies, wireless, long distance companies, and firms and individuals that provide service to and support for the telecommunications industry in Kansas.

KTIA is opposed to HB 2077. It would remove needed sales tax exemptions for the telecommunications industry which would result in a tax policy that would put Kansas at a competitive disadvantage with surrounding states. To speak in specific terms concerning the tax implications of this bill are two of KTIA's members, SBC and Sprint, who will follow me in addressing you.

Thank you for your consideration of our views regarding HB 2077 and for the opportunity to introduce myself to you. I look forward to working with all of you on this bill and other telecommunications issues.

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Attachment 2  
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**Testimony on behalf of SBC Communications Inc.  
Before the House Taxation Committee  
Presented by Robert J. Fasl  
February 4, 2003**

Chairman Edmonds, members of the Committee, good morning.

My name is Robert Fasl. I am a Regional Tax Director for SBC Communications Inc. (SBC) and I appreciate this opportunity to testify today. SBC and its affiliates have been doing business in Kansas for over a century. Kansas is important to SBC. We have shown our commitment to Kansas by investing over \$3 billion in the Kansas communications infrastructure and expending over \$150 million annually in payroll. As the result of SBC's investment in Kansas, it is among largest corporate citizens and one of the state's largest taxpayers. House Bill 2077, as drafted, increases the cost of doing business in Kansas for SBC (as well as other telecommunication providers) and also increases the cost of SBC's services to our Kansas customers. Therefore, I appear before you today to voice SBC's opposition to House Bill 2077.

Repealing the affiliated group, resale and access fee exemptions directly targets the telecommunications industry, creates double taxation, and increases SBC's cost of doing business in Kansas.

**Affiliated Group Exemption** -- Repealing the affiliated group exemption would require SBC to pay sales tax on services provided to ourselves. SBC has numerous subsidiaries – some were set up for business purposes, but many were formed for regulatory purposes. Repealing the affiliated group exemption requires SBC to pay sales tax on services provided among the SBC affiliated group of companies. Many of these transactions would not exist if governmental regulators would permit business to be conducted in a single entity. Therefore, SBC believes it would be unfair to tax services we provide to ourselves. Additionally, transactions between affiliated group members are often “wholesale” transactions which are subsequently resold and taxed at the retail level. Therefore, repealing the affiliated group exemption would cause some transactions to be taxed twice – once at the wholesale level and then again when sold at retail. This, in effect, results in double taxation. Accordingly, repealing the affiliated group exemption would significantly increase SBC's cost of doing business in Kansas.

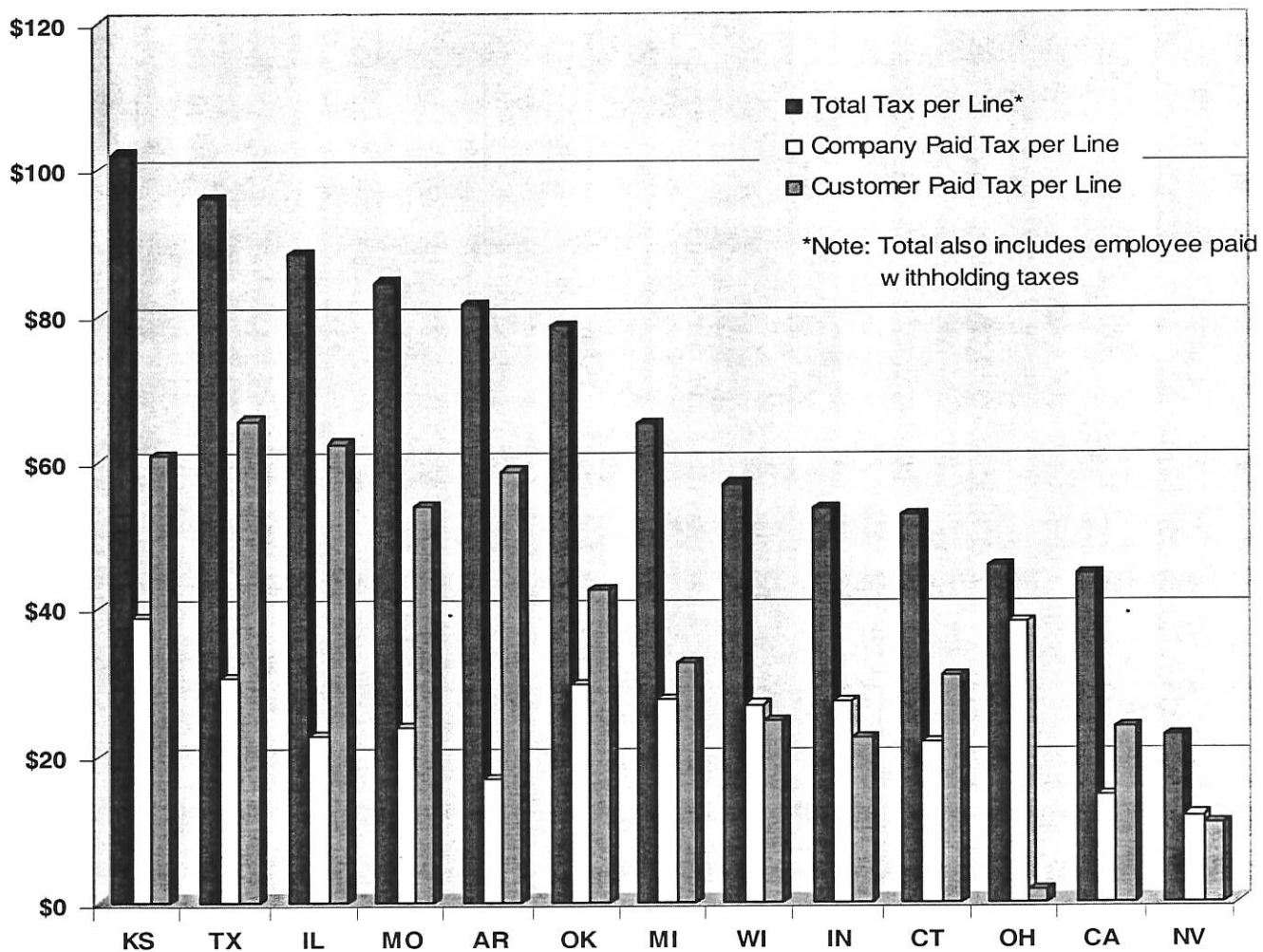
**Resale/Access Fee Exemption** -- Repealing the resale and access fee exemptions would have a similar effect. The national telecommunications infrastructure has been formed by connecting numerous networks. What appears to be a simple call carried by the customer's phone company, may in reality, travel over lines owned by several different carriers. For example, a telephone call from Topeka to New York travels over numerous networks through many states. The customer's telephone provider pays to access each company's network along the way of the telephone call. The charge for connecting a call across another company's network is known as an "access fee" and is a wholesale transaction. By taxing this wholesale transaction and then again taxing the retail transaction (the completed telephone call), House Bill 2077 would create a tax on tax situation. SBC is a party to both sides of access fee transactions. SBC pays an access fee to connect a call through another company's network and SBC receives an access fee for the use of the SBC network by another company. Similar to the proposed repeal of the affiliated group exemption, this exemption repeal would significantly increase SBC's cost of doing business in Kansas. Therefore, SBC opposes the repeal of the resale and access fee exemptions.

**Customer Exemptions** -- Repealing the exemption for interstate WATS and interstate private line would increase the sales tax on predominantly Kansas job providers since these services are generally used by businesses. On the other hand, the exemption for "nonvoice" value added services are used by both job providers and homeowners alike. In the event House Bill 2077 is enacted, this sales tax will be borne by Kansas residential and business customers who utilize these services.

In summary, I thank you, Mr. Chairman and members of the Committee, for this opportunity to advocate SBC's concerns regarding House Bill 2077. We understand the State's fiscal situation and the requirement to balance the budget. Repealing the affiliated group, resale, and access fee exemptions directly targets the telecommunications industry, creates double taxation, and unfairly increases SBC's cost of doing business in Kansas. As the Taxation Committee reviews potential revenue enhancements, SBC is committed to working with the Committee and other Kansas businesses to find fair and equitable solutions to balancing the State's budget.



### Kansas #1 2001 SBC Telcos Comparison of Company vs Customer Taxes Paid per Access Line





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**TO: Representative John Edmonds  
Chairman, House Taxation Committee**

**DATE:** February 4, 2003  
**SUBJECT:** House Bill No. 2077

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I am Mark Beshears, Assistant Vice President, State and Local Tax for Sprint in Overland Park, Kansas. Thank you for allowing me to appear on behalf of Sprint and AT&T to express our opposition to House Bill No. 2077.

K.S.A. 79-3603(b)(2) was added by the 1992 legislature to tax interstate telephone service for the first time. In addition to imposing the sales tax to interstate telephone service, exemptions were also added at the same time. Subsection (A) exempted WATTS and 800 Services; Subsection (B) exempted private line services; Subsection (C) exempted enhanced data transmission services; Subsection (D) exempted carrier access charges and finally Subsection (E) provided an inter-company exemption for interstate telephone services. These exemptions were commonly added when a state decided to begin to tax interstate telephone services. These exemptions are primarily for high-end business customers and were thought necessary from a policy perspective to avoid taxing inputs, which would create a pyramiding of tax and price.

There are only two states that tax carrier access charges. Colorado, which, was based on a poorly decided court case and Kentucky, who did it through legislation and now based on the Governor's budget recommendation, is looking to restore the exemption.

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If these exemptions are removed we would request that the sourcing of private lines for taxation purposes follow the Streamline Sales tax model, and to give enough lead time, a minimum of 60 days, for the industry to re-configure it's billing systems.

This industry took a serious hit to the bottom line last year when the exemption for the altering or maintaining of custom computer software was eliminated. It is no secret that the telecommunications industry is going through some tough times; the passage of House Bill 2077 would not make things any better. Increasing our cost and our customers' cost of doing business in Kansas is the wrong approach and sends a bad message to Kansas based businesses and businesses looking to locate or expand into our state. On behalf of Sprint and AT&T we would urge this committee to report House Bill No. 2077 unfavorable for passage.

MVB/jds

Presentation to the House Taxation Committee  
February 7, 2003

By Kenneth L. Daniel  
Chairman and C.E.O., Midway Sales & Distributing, Inc. d/b/a Midway Wholesale

Mr. Chairman and Members of the Committee:

My name is Kenneth Daniel. I am the C.E.O. of Midway Wholesale, a building materials distributor headquartered in Topeka with five branches in other Kansas cities, plus one in Missouri and one in Arkansas.

I would like to speak in opposition of HB2077. Telephone and telecommunications services are basic and vital to my business, as they are for most small businesses. We are competing for business in several states, and we have to compete with businesses from surrounding states for business in Kansas.

Kansas already has a much heavier tax load on us than does Missouri or Arkansas. Before we sold our Oklahoma warehouse, the same was true—Oklahoma business taxes were much lighter than Kansas'.

In 2001, the federal and state taxes levied on telephones and telecommunications for our Kansas locations amounted to \$91 per employee per year. New state and local sales taxes imposed in 2002 added another \$5 per employee per year. We have not yet calculated the costs of the new Kan-Ed charges that went on in January.

Rather than continuing to raise these taxes, I would hope you would give serious consideration to lowering them when state finances allow it. I encourage you to vote against House Bill 2077.

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Attachment 5  
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**OPPOSITION TO HB 2077**  
**Kansas House Taxation Committee**  
**February 7, 2003**

Verizon Wireless greatly appreciates the opportunity to provide its views on, and register its vehement opposition to, HB 2077. We thank the House Taxation Committee, in advance, for considering the following concerns regarding the proposed repeal of various sales tax exemptions for telecommunications services:

- **HB 2077 Codifies Double Taxation of Telecomm Services, Which Hurts Kansans:** Consumption Taxes, like Kansas' sales and use tax, should only be imposed at final sale, and should not also be imposed upon intermediate wholesale transactions of the exact same telecomm services. HB 2077 codifies double taxation, plain and simple. Since most telecomm service providers will ultimately pass along the multiple layers of sales taxation to their end user customers, the citizens of Kansas will unfortunately bear the entire economic onus of HB 2077.
- **HB 2077 Reduces Consumer Demand for Wireless Services; Distorts Capital Investment Decisions:** The hard economic reality is that telecommunications service providers can no longer tap a virtually limitless supply of investment capital to upgrade our networks within each venue. Investors are nervous. The rapid slowdown in our economy and the deterioration in capital markets have forced companies such as Verizon Wireless to carefully scrutinize each capital investment decision to generate maximum return. And although it would be disingenuous to suggest that all capital investment decisions are driven exclusively by state and local tax policy, it is absolutely accurate to state that unnecessary additional layers of KS sales tax increase the final price of wireless services that Verizon Wireless provides in Kansas, which reduces the consumer demand for the services we offer to Kansans. Such reduced consumer demand factors into the "rate of return" computations that companies like Verizon Wireless use to determine where to make new capital investment. Your opposition to HB 2077 will send a signal to senior management of Verizon Wireless and its telecommunications competitors that Kansas not only opposes multiple taxation of the same service, but that it also maintains a competitive tax climate which fosters the continued deployment of 21<sup>st</sup> century, high-speed telecommunications infrastructure. Without your opposition to HB 2077, Kansas will be one state that falls behind its economic competitors.
- **Kansas Telecom Service Taxes Already Overburden the Telecomm Consumer:** With a state sales tax reaching 4.9%, a city sales tax reaching 1.75%, a county sales tax reaching 2%, a 75 cent monthly 911 landline tax that translates into 4.3%, a KUSF fee that ranks as one of the highest assessment rates among state universal service programs nationally, a public utility assessment, and various local franchise fees, the current tax burden on telecomm services is already too onerous for Kansas consumers. HB 2077's proposed additional sales tax on wholesale telecomm service transactions will only exacerbate this consumer burden.

Thank you for this opportunity to provide our views. Please feel free to contact me if I may be of additional assistance: (925) 279-6789.

Respectfully submitted,

John Cmelak  
Director – Tax Policy  
Verizon Wireless

House Taxation  
Attachment 6  
Date 2-7-03

KANSAS

Statement by Hal Hudson, State Director  
National Federation of Independent Business  
Before the House Taxation Committee  
On House Bill 2075 and 2077  
February 4, 2003

Mr. Chairman and Members of the Committee:

Thank you for allowing me this opportunity to speak to you.

My name is Hal Hudson, and I am the State Director for the National Federation of Independent Business. I appear before you today to oppose enactment of HB 2075 and 2077.

NFIB membership includes over 6,000 small and independent businesses across the state. The majority of our members have 15 or fewer employees, while collectively they employ over 57,000 Kansans, and have aggregate annual sales of over \$6 billion.

Small business owners already are overburdened with taxes, and these two bills – HB 2075 and HB 2077 – are nothing less than another tax to be imposed and paid by small business owners.

I offer to you a quote from a well-known advocate of small business, as follows:

***“With unemployment rising, our nation needs more small businesses to open, more companies to invest and expand, more employers to put up that sign that says, ‘Help Wanted.’”***

President George W. Bush, January 28, 2003.

And, our nation needs for those small businesses already open to stay in business without suffering the burden of another tax increase.

Removal of the sales tax exemption for broadcasters and advertising agencies, and on telecommunications services not already taxed just places another tax burden on all the businesses that buy their services. Small businesses need to advertise to promote the sale of their products and services.

If they are fortunate enough to be able to hire additional employees, small businesses need the ability to advertise their services, and for that help. They need telephone services for applicants to get information about jobs, and they need to use their phones in the promotion of sales – without another tax imposed by removing these exemptions from current law.

Those from whom HB 2075 and HB 2077 would take away take away existing exemptions surely will pass these costs of doing business on to their customers – many of whom are the small businesses represented by NFIB.

I urge you to reject both of these bills, to help small business help the Kansas economy.