

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on January 29, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Carol Green, Clerk of the Appellate Courts

Others attending: see attached list

Chairman Vratil called for bill introductions. Senator Schmidt requested the introduction of two bills. The first bill would create a presumption of minimum security classification for first time, non-violent drug offenders. The second bill would create presumption of incarceration in a minimum security facility for persons convicted of burglary three or more times. Senator Schmidt moved to introduce the bills, seconded by Senator Umbarger, and the motion carried.

The Chair announced that there would not be a hearing today on **SB 25** since the main sponsor of the bill could not be in attendance. He said the hearing would be rescheduled for Wednesday, February 5.

SB 21 - nomination and selection of justices and judge

Chairman Vratil opened the hearing on **SB 21**. Conferee Green testified in support of **SB 21** wherein the Kansas Supreme Court proposes several revisions to the statutes which govern the Supreme Court Nominating Commission and the seventeen District Judicial Nominating Commissions. She reviewed the substantive changes proposed by the Court, but did not address the clean-up provisions included at the direction of the Revisor of Statutes. (Attachment 1)

Following brief discussion, the Chair closed the hearing on **SB 21**.

Final action on:

SB 9 - bill by Joint Comm. on State-Tribal Relations Native American tribal law enforcement officers; jurisdiction

SB 17 - appointment of clerks and nonjudicial personnel by the chief judge of each judicial district

SB 19 - mandatory retirement age of 75 for judges and justices

Chairman Vratil offered a proposed amendment to **SB 9**, on page 1, section 3, line 36, insert the words "and coterminous with" after "immediately adjacent to". He explained that the amendment would clarify that it does not mean the entire length of the highway, but only that portion of the street or highway immediately adjacent to the boundary of the reservation. He stated that it was the intent of the Joint Committee on State Tribal Relations to clarify that the Tribal law enforcement officers have jurisdiction only on that portion of a street or highway that borders the reservation. (Attachment 2)

Senator Oleen moved to amend the bill as proposed and pass it out favorably, seconded by Senator Haley, and the motion carried.

Following the Chair's review of **SB 17**, he called for discussion and final action on the bill. Senator Goodwin expressed that this bill was very important to her district because of only having three judges, and she strongly supported it. Senator Goodwin moved to pass the bill out favorably, seconded by Senator Umbarger, motions carried.

Following the Chair's review of **SB 19**. Senator Goodwin inquired how the program worked in which retired judges were used to fill temporary vacancies. Ami Hyten, Office of Judicial Administration,

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on January 29, 2003 in Room 123-S of the Capitol.

explained that the common term was "Rocket Docket" in which the retired judges are called to work vacancies on a contract basis. She explained that they do use a senior judge program, and it is not just used on an appellate level but throughout the state. Chairman Vratil clarified that this bill does not require judges to continue serving until age 75, and they can still retire at age 70 if they want to.

Senator Donovan moved to pass the **SB 19** out favorably, and seconded by Senator Umbarger. Motion carried.

Chairman Vratil called the Committee's attention to the Attorney General's 2002 Annual Report on No-Call that was distributed at a previous meeting. He asked the Committee members to consider the changes recommended at page 3 of the Attorney General's report, and see if Senate Judiciary would want to draft a bill to include any of those changes. (Attachment 3) Senator Schmidt stated that the changes all appeared to be minor administrative changes. Senator Schmidt made a motion that this committee introduce a bill reflecting the recommended changes in the Attorney General's No-Call Report. The motion was seconded by Senator Umbarger, and the motion carried.

Senator Oleen commented that it might be a good idea to have a liaison between the Judiciary Committees, of which there are three now in the Legislature, and the Attorney General's Office to open communication lines both ways. The Chair stated he would create the opportunity to visit with the Attorney General Office on this subject.

Chairman Vratil directed the Committee's attention to a recently received fiscal note on **SB 16** that appears on today's General Orders. (Attachment 4) Senator Allen commented that what was not reflected in the fiscal note was that the Department of Revenue was going to use the revenue from the photo fee for the verification process, and that this should be clarified. The Chair suggested that she bring that to the Senate's attention when it appears on General Orders.

The minutes of the January 23 meeting were approved on a motion by Senator O'Connor, seconded by Senator Donovan, and the motion carried.

The meeting was adjourned at 10:25 a.m. The next scheduled meeting is January 30, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 29, 2003

NAME	REPRESENTING
Ken Corbet	KANSAS SPORT HUNTING ASSN
Alvin & LeAnn	Ks 2 nd Amendment Society
Chris Tymeson	KDWP
Trista Curzydlo	KS BEAR ASSN
Phil Jennings	KSRA/KSASpec/AGCinc
SCOTT SWEINER	KADOC
Michael White	KCDAA
Melissa Ness	Connections Unlimited, dno.
KETH R. LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Charley Lamay	Kickapoo Tribe
Whitney Dameron	Kickapoo Tribe
Joe Herold	KSC
Axi Hyten	JUDICIAL BRANCH
CAROL GREEN	APPELLATE COURT CLERK
Doug Smith	Pinger, Smith & Associates
Cathy Munton	KTLA
STEVEN JONES	SAC FOX TRIBAL POLICE
LAMAR STORMAKER	BRSD
Jeff Frederick	Iowa Tribal Police Dept.

Senate Bill No. 21

Testimony of
Carol Gilliam Green, Clerk of the Kansas Supreme Court
Before the Senate Judiciary Committee
Wednesday, January 29, 2003

The Kansas Supreme Court proposes a number of revisions to the statutes which govern the Supreme Court Nominating Commission (K.S.A. 20-119, *et seq.*, and K.S.A. 20-3003, *et seq.*) and the seventeen District Judicial Nominating Commissions (K.S.A. 20-2901, *et seq.*). Most of these provisions are my direct concern because I serve as Secretary to the Supreme Court Nominating Commission, run the elections for lawyer members of all nominating commissions, and handle the paperwork for appointment of non-lawyer members of the commissions.

I will review the substantive changes proposed by the Court but will not address clean-up provisions included at the direction of the Revisor of Statutes. Those clean-up provisions generally include gender neutral language, some minor word substitutions (*e.g.*, "such" instead of "said"), and removal and re-working of obsolete language, such as start-up provisions for the Supreme Court Nominating Commission which date to 1959.

Page 1, Section 1, line 37: This amendment clarifies that ballots must be received in the Clerk's Office on or before a certain date. Currently, we have some confusion on nomination and ballot deadlines because three phrases are used indiscriminately in the statutes, "on or before," "by" and "prior to." The most certain of those is "on or before," and we propose this change throughout the statutes.

Page 2, Section 3, line 42: The reference to Martindale-Hubbel is deleted. The information on our own computer data base is more current today than that publication. We process address changes daily and continuously add and delete

attorneys from the system.

Page 3, Section 4, line 29: This amendment gives flexibility in meeting place. The Commission has not met in the state house in years. There is no room for us.

Page 5, Section 9, line 27: This amendment eliminates the prohibition against calling potential nominees "applicants." This may have made sense in 1959 but not today. In reality, all seek the position, complete a nomination form, and participate in an interview process which is very similar to a job application. Everyone calls the potential nominees "applicants" except the Commission.

Page 5, Section 10, line 35: This would allow me to organize group meals during meetings or in the evenings, often at less expense than individual "actual and necessary" expenses. The Commission is usually in Topeka for two days.

Page 7, Section 11, line 11: The statute currently requires an individual to vote for as many nominees as there are positions to be filled. *E.g.*, In the current election in Johnson County, there are two positions to be filled, and each ballot must contain a vote for two people or the ballot is void. My recommendation is that the vote be cast for not more than the number of positions to be filled. The current requirement results in an inordinate number of void ballots. *E.g.*, In 2000, when we had 4 positions on the ballot in Johnson County, we had 90 void ballots out of 815 ballots cast. In the same year in Shawnee County with 2 positions on the ballot, 46 of the 426 ballots cast were void.

In 1974, it may have been more likely that attorneys would know everyone on the ballot. We had @3,600 registered attorneys then. Now we have over 12,000.

Page 10, Section 13, line 5. This amendment provides that interim appointees are completing the unexpired term. This is needed to preserve the rotation of terms.


Page 10, Section 14, line 13: This amendment replaces the requirement that the commission meet within five days after notice that a vacancy exists on the district court with a requirement that the schedule for accepting nominations and conducting interviews be set within five days. The work of the commission begins immediately upon notice that a vacancy exists, but a notice to attorneys and to the general public must occur before the commission has reason to meet. Phone, fax, or e-mail is sufficient to set those schedules.

Page 10, Section 14, line 39: This amendment increases slightly the time in which the nominating commission has to do its work and clarifies that the triggering event for calculation of the time is the Chief Justice's notification to the commission that a vacancy exists. The nomination process simply cannot be completed in 30 days. Notices have to be mailed, two to three weeks must be allotted for nomination forms to be filed, the Commission must have time to review the files, and interviews are conducted.

Page 11, Section 16, line 42: This amendment provides some flexibility with regard to the date a district magistrate judge's appointment becomes effective. Under the current statute, the appointment is effective when made if the position is open or is effective on the date the position becomes open. As you know, the district nominating commissions make the final selection of district magistrate judges. Unlike the lengthier process for selecting district judges, we have an effective appointment as soon as the Commission meets. For a number of reasons, including budget and distribution of the workload, the Supreme Court requests some flexibility in setting the effective date of

the appointment.

I respectfully request the committee's favorable consideration of these proposed amendments.


Carol Gilliam Green
Clerk of the Kansas Supreme Court

SENATE BILL No. 9

By Joint Committee on State-Tribal Relations

1-10

9 AN ACT concerning jurisdiction of certain law enforcement officers; re-
10 relating to Native American tribal law enforcement officers; amending
11 K.S.A. 2002 Supp. 22-2401a and repealing the existing section.
12

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

14 Section 1. K.S.A. 2002 Supp. 22-2401a is hereby amended to read
15 as follows: 22-2401a. (1) Law enforcement officers employed by consol-
16 idated county law enforcement agencies or departments and sheriffs and
17 their deputies may exercise their powers as law enforcement officers:

18 (a) Anywhere within their county; and

19 (b) in any other place when a request for assistance has been made
20 by law enforcement officers from that place or when in fresh pursuit of
21 a person.

22 (2) Law enforcement officers employed by any city may exercise their
23 powers as law enforcement officers:

24 (a) Anywhere within the city limits of the city employing them and
25 outside of such city when on property owned or under the control of such
26 city; and

27 (b) in any other place when a request for assistance has been made
28 by law enforcement officers from that place or when in fresh pursuit of
29 a person.

30 (3) *Law enforcement officers employed by a Native American Indian*
31 *Tribe may exercise powers of law enforcement officers:*

32 (a) *Anywhere within the exterior limits of the reservation of the tribe*
33 *employing such tribal law enforcement officer;*

34 (b) *in any place where a request for assistance has been made by law*
35 *enforcement officers from that place or when in fresh pursuit of a person;*

36 (c) *on the streets and highways that are immediately adjacent to the*
37 *boundaries of the reservation of the tribe employing such tribal law en-*
38 *forcement officer; and*

39 (d) *when transporting persons in custody to an appropriate facility,*
40 *wherever it may be located.*

41 ~~(3)~~ (4) University police officers employed by the chief executive of-
42 ficer of any state educational institution or municipal university may ex-
43 ercise their powers as university police officers anywhere:

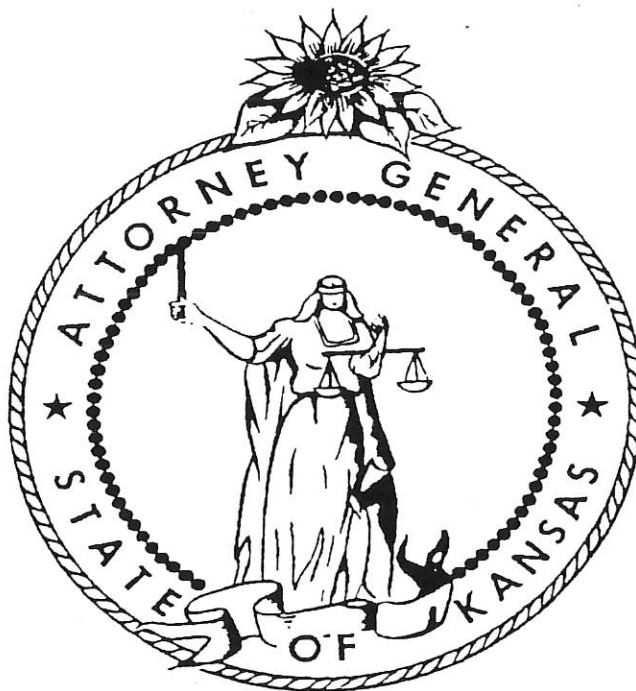
and coterminous with

Senate Judiciary
Jan. 29, 2003
Attachment 2-1

2002 ANNUAL REPORT ON NO-CALL

Read

Consumer Protection & Antitrust Division



Office of Attorney General Carla J. Stovall

(Submitted pursuant to the Kansas No-Call Act, 2002 Session Laws, ch. 179, §1-2)

Senate Judiciary

Jan 29, 2003
Attachment 3-1



State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

CARLA J. STOVALL
ATTORNEY GENERAL

January 13, 2003

CONSUMER HOTLINE
1-800-432-2310

TO: Chairman John Vratil, Senate Judiciary Committee
Chairman Carl Holmes, House Utilities Committee

I am pleased to provide to you the 2002 Annual Report on No-Call of the Consumer Protection/Antitrust Division of the Office of Attorney General pursuant to the Kansas No-Call Act (2002 Session Laws, ch. 179, § 1-2).

IMPLEMENTATION

Following the passage of the No-Call Act, the Office of Attorney General commenced negotiations with the Direct Marketing Association (DMA), seeking to conclude negotiations in time to implement the law on July 1, 2002. On July 5, 2002, negotiations with the DMA were terminated, due primarily to the DMA's refusal to meet the 30-day registration deadline required by the No-Call Act. Prior to terminating negotiations and taking bids from other vendors pursuant to the Act, my office conferred with each member of the Conference Committee for the No-Call legislation. I have attached a Chronology of Negotiations with DMA and supporting documentation for your review.

A contract was subsequently reached with GovConnect, Inc., to maintain the Kansas No-Call list on August 7, 2002. The one-year contract provides free consumer registration by phone and internet. For comparison, the DMA would only agree to provide free written registration, would have charged \$5.00 for internet registration, and would not have provided any phone registration. Consumer registration was implemented on August 12, 2002, with a deadline of September 23, 2002, to be included on the first list published on October 1, 2002.

The contract with GovConnect provides telephone solicitors access to the list via email or CD. The cost to access the list is as follows:

- complete list with electronic distribution (e-mail), \$359
- complete list with distribution on CD-Rom, \$399
- one area code with electronic distribution, \$149 (add \$149 for each additional area code)
- one area code with distribution on CD-Rom, \$189 (add \$189 for each additional area code)

For comparison, the DMA proposed to charge \$465 annually for access to the Kansas No-Call list. On October 23, 2002, an amendment to the contract with GovConnect was agreed upon, providing a discounted rate to telephone solicitors desiring to purchase multiple copies by electronic distribution on behalf of independent contractors/agents that sell the telephone solicitor's products or services.

CONSUMER REGISTRATION

The first quarterly No-Call list was published on October 1, 2002. The registration period for that first list commenced on August 12, 2002, and ended on September 23, 2002. In those six weeks, 397,697 Kansas residential telephone numbers were registered on the Kansas No-Call list. A total of 467,929 Kansas residential telephone numbers were registered by the December 23, 2002, deadline for the January 1, 2003, No-Call list.

REQUESTS FOR DATABASE

464 individual telephone solicitors have purchased copies of the Kansas No-Call list. In addition, one company bought 324 copies of the list for independent agents of the company under the multiple purchase discounted rate. As a result, 788 telephone solicitors have access to the database. GovConnect received a total of \$166,774 in revenue from sales of the list in 2002.

NUMBER OF COMPLAINTS RECEIVED

The October 1, 2002, No-Call list became enforceable on November 1, 2002. In November and December, 2002, the Consumer Protection/Antitrust Division received 2,295 No-Call complaints. Of those complaints, 203 were closed in 2002 as not in violation of the Kansas No-Call Act. Charitable, political and polling calls are not covered by the Act. Debt collection calls, calls made in response to the express request of the consumer, and calls made to a consumer with an established business relationship with the telephone solicitor are exempted under the Act.

As we predicted, the number of complaints reduced as companies were notified by my office and consumers that they were violating the law. In November, we averaged over 84 complaints each work day. In December, that number had reduced by over one-half to approximately 37 complaints per work day. It is anticipated the No-Call Unit can be reduced from it's current staff of one attorney, two investigators, and one temporary office assistant, to one attorney and one investigator within the next six months. Over time, even these two remaining positions will be able to start handling other consumer protection matters as the investigative and enforcement activity decreases.

ENFORCEMENT ACTION

As a matter of enforcement policy, the No-Call unit calls the telephone solicitor within a day of obtaining or ascertaining the telephone number of the telephone solicitor to advise the solicitor a complaint had been received. At that time, the telephone solicitor is advised orally to cease and desist making calls in violation of the Kansas No-Call Act. Written cease and desist letters are also sent shortly after obtaining address information for the telephone solicitor. These two notification methods are intended to give the telephone solicitor more than sufficient notice that it is in violation of the Act. This accomplishes an important goal of the unit, to encourage compliance and help telephone solicitors avoid additional violations and civil penalties. The decrease in complaints from November to December indicates our efforts have been successful.

My office has set a threshold of three complaints before a telephone solicitor is required to pay a civil penalty for violations of the No-Call Act. Once a supplier has four or more complaints, however, a recommendation is made to prosecute the violations.

STATE REVENUES RECEIVED

To date, no revenues have been received. Investigations have been completed on 21 companies with four or more complaints filed against them (319 violations in total) and authorization given to negotiate or sue. I anticipate at least \$185,000 will be received from these 21 companies. Verbal agreements to settle have been reached with three of the 21 telephone solicitors for a total of \$17,000 in penalties and fees. An additional 27 telephone solicitors with over 4 complaints filed against them individually (over 1,000 potential violations in total) are still being investigated, most of which should result in prosecution. Finally, 143 telephone solicitors have 3 or less complaints, which will not result in prosecution under my enforcement policy unless additional complaints are received. Sufficient revenues are anticipated from the above cases to pay the cost of the No-Call unit, provided the new administration maintains the enforcement policy implemented by this administration.

LEGISLATIVE CHANGES

Without fully discussing each issue, I have listed below several amendments to the No-Call Act that should be considered this session.

- Amend the Act to allow the transfer of registrations on the Kansas No-Call list to the FTC No-Call list. The FTC is planning to implement a national No-Call law, without preempting the protections currently provided in state No-Call laws such as the Kansas No-Call Act. Although current provisions in the Kansas No-Call Act allow the Attorney General to "designate the list established by the federal trade commission as the Kansas No-Call list", there is no provision authorizing the transfer of the information on the Kansas No-Call list

currently maintained by our vendor. Without such a provision, consumers would be required to re-register on the FTC No-Call list.

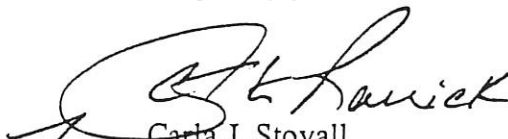
- Allow the registration of cell phone numbers to the list. Since consumers typically have to pay for incoming calls, they should be allowed to prevent telemarketing calls to their cell phones by registering on the No-Call list.
- Clarify that the consumer registration information (name, address, and phone number) on the Kansas No-Call list is not an open record. While I believe this is the intent of the current law, it should be made clear.
- Address the issue of access to the No-Call list by independent agents and contractors affiliated with a particular company. The law currently requires each telephone solicitor to access the list, pay the fee, and sign a subscription agreement. Since independent agents and contractors are separate legal entities, for which the company they are associated with denies liability, my office has interpreted the current law to require each independent agent or contractor to purchase the list. Alternatively, the company can buy multiple copies at a discounted rate if each independent agent will execute an individual subscription agreement. However, I would urge the legislature to confer with our vendor before potentially cutting off their revenue stream. Failing to confer with the vendor could result in the vendor refusing to renew the contract, which was for a one year period out of deference to an incoming administration.
- Access to the list by list scrubbers or list brokers should be addressed. The Act currently provides access to the list by telephone solicitors only. There is a legitimate industry willing to provide list scrubbing services for telephone solicitors, and accommodation should be made. However, until the FTC list is implemented, I would again urge the legislature to confer with our vendor before making changes that could cut off their revenue stream.

CONCLUSION

It has been a top priority of my office to protect Kansas consumers from deceptive and unconscionable business practices through a combination of firm, yet fair, enforcement of consumer laws and effective consumer education efforts. I supported the passage of the Kansas No-Call Act, and urge the Kansas legislature to resist any efforts to exempt specific industries from the requirements of the Act. As the registration numbers indicate, this privacy law is overwhelmingly supported by Kansans and the current protections should be preserved.

If Deputy Attorney General Steve Rarrick or I can answer any questions regarding the Kansas No-Call Act, please feel free to contact us.

Very truly yours,


for Carla J. Stovall
Attorney General

CJS:CSR

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 28, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 16 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 16 is respectfully submitted to your committee.

SB 16 would require the Department of Revenue to collect the social security number of all applicants for a driver's license, instruction permit or identification card. The bill also would authorize the Department to implement security measures for the issuance of driver's licenses. One such measure would be the purchase and implementation of a computer software program that could associate the applicant's photographic image with previous photographic images, to verify the identity of the applicant. SB 16 would increase the photo fee from the current amount of \$2 to \$4. Furthermore, persons with a valid driver's license would no longer be able to obtain an identification card.

Estimated State Fiscal Effect				
	FY 2003 SGF	FY 2003 All Funds	FY 2004 SGF	FY 2004 All Funds
Revenue	--	--	--	\$1,500,000
Expenditure	--	--	--	\$20,000
FTE Pos.	--	--	--	--

According to the Department of Social and Rehabilitation Services (SRS), it would be in danger of losing federal funding without the passage of SB 16. The Department reports that in

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 66612
Voice 785-296-2436 Fax 785-296-0231 <http://da.state.ks.gov>

Senate Judiciary

01-29-03

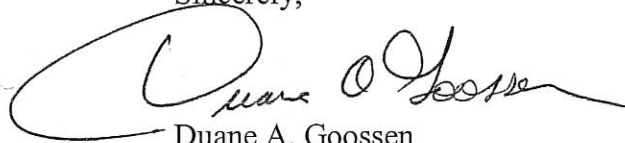
Attachment 4-1

The Honorable John Vratil, Chairperson
January 28, 2003
Page 2—16fn

order for the Child Support Enforcement Program (CSE) to remain in compliance with federal law, the State of Kansas must require all applicants for a driver's license to provide the applicant's social security number on their applications. Furthermore, passage of SB 16 would remove the risk that the Temporary Assistance to Families (TAF) state plan would be found out of compliance, which could result in the loss of the Temporary Aid for Needy Families (TANF) block grant for failure to provide an acceptable child support enforcement program. The loss of revenue to the Department for the administration of these programs would be approximately \$31,091,535 from the federal Title IV-D Program for CSE and \$101,931,061 from the TANF block grant for the TAF program.

The Department of Revenue reports that enactment of SB 16 would generate an additional \$1.5 million in revenue per year as a result of the increase in the photo fee from the current amount of \$2 to \$4 as set forth in the bill. For the purpose of observing the privacy of applicants, the Department states that it could provide the means for applicants to enter their own social security number in a secure manner on a keypad. If these keypads were to be installed, a one-time cost of approximately \$20,000 would be required to purchase this hardware in FY 2004. The Department estimates that approximately twenty days of computer programming time would be required to make the necessary changes to the Kansas Driver's License System to implement the provisions of the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane A. Goossen". The signature is written in a cursive style with a large, looping initial "D".

Duane A. Goossen
Director of the Budget

cc: Jerry Sloan/Ami Hyten, Judiciary
Steve Neske, Department of Revenue