

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 12, 2004, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Barbara Allen
Janet Schalansky, Secretary of Kansas Social and Rehabilitation Services
Melinda Lewis, El Centro, Inc.
Louis Wade, Kansas Credit Association
James Clark, Kansas Bar Association
Leola Foster, Columbian National Title Insurance Co.

Others attending: See attached list.

SB 460 - Taxpayer identification numbers not to be used in obtaining drivers' licenses and other identification cards

Chairman Vratil opened the hearing on **SB 460**, and explained the bill addressed tax payer identification numbers currently used to obtain a Kansas driver's license. Senator Barbara Allen testified in support of **SB 460**. An amendment added to SB 16 on the floor of the Senate last year is the subject of **SB 460**. The bill would strike the amendatory language that allows an applicant for a Kansas driver's license or identification card to provide an individual taxpayer identification number (ITIN) as proof of identification.

Senator Allen explained that she requested the statutory change as a result of a, August 8, 2003 letter from the Internal Revenue Service (IRS) to Sheila Walker, Director, Kansas Division of Motor Vehicles (DMV). A copy was attached to her written testimony. (Attachment 1) She went on to quote an excerpt from the IRS letter, "Several state government motor vehicle departments are accepting IRS-issued Individual Taxpayer Identification Numbers (ITINs) as proof of identification for state driver's licenses, prompting us to issue this reminder –**ITINs are not valid for identification outside the tax system.**" The letter went on to say, "Although we require ITIN applicants to provide proof of identity documents, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations. We do not require applicants to appear in person, and third parties may submit applications and provide documentation on behalf of others. Also, since we issue ITINs for tax filing purposes only, we do not verify applicants' legal presence in the U.S."

Senator Allen said the IRS letter states: "If your state is considering legislation to accept ITINs as proof of identify for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings." Senator Allen stated that the language in current law allowing an applicant to submit an ITIN if that person does not have an SSN, compromises the security and verifiability of state-issued identification, and asked the Committee to support **SB 460**.

Chairman Vratil clarified the bill deletes the option of using ITIN to obtain a driver's license or ID card. He added that the options that would remain in statute were for an applicant to present a social security number or have an affidavit indicating the applicant had a SSN. Senator Allen agreed with the Chairman's interpretation of the bill.

Senator Donovan asked if this would impact any people currently holding driver's licenses in Kansas that

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used ITINs to acquire them. Chairman Vratil responded that it would not impact those people until renewal time.

Janet Schalansky, Secretary of Social and Rehabilitation Services, submitted written testimony in support of **SB 460**. (Attachment 2)

Melinda Lewis, El Centro, Inc., submitted written testimony as a neutral conferee on **SB 420**. (Attachment 3)

The Chairman distributed copies of the Fiscal Note for **SB 460** which said the Department of Revenue had stated that changes would have to be made to drivers' license handbooks and staff would have to be retrained. These costs could be absorbed within the agency's current budget. (Attachment 4)

Chairman Vratil closed the hearing on **SB 460**.

SB 423 - Wage garnishment, assignment of account

The Chairman opened the hearing on **SB 423**, and explained that the bill would repeal a provision of the Code of Civil Procedure which prohibits wage garnishments for assigned accounts. He gave the background for a bill. In current law, if an account is sold, assigned or transferred to a third party, that third party cannot use garnishment to collect the account. The bill would eliminate that provision from current law.

Louis Wade, Kansas Credit Attorney's Association, testified in support of **SB 423**. He said Kansas law imposes an unreasonable restriction on commerce, and is the only state in the Union to impose a limitation on wage garnishment based on who is entitled to payment. He described the process used in collection cases. Mr. Wade commented that the current limitation against use of wage garnishment for assigned accounts is bad policy for the State of Kansas. He stated that the owner of an account, or debt by assignment, is free to use bank garnishment under the current law. Mr. Wade continued that such action poses a more drastic and harmful remedy to the judgment debtor because the entire account is frozen, and may be taken in payment of a judgment. He pointed out that with wage garnishment there is a 25% limitation, providing some protection to the judgment debtor, and at the same time allowing the creditor to receive some payment. He explained that the judgment debtor is protected by other laws, obviating the need for protection under KSA 60-2310(d), i.e. the Fair Debt Collection Practices Act and the Kansas Consumer Protection Act. (Attachment 5)

Senator Pugh asked Mr. O'Connor to furnish the Committee members with a copy of a garnishment form which was received with Mr. O'Connor's written testimony and included therein.

Senator Umbarger called attention to a technical error in the drafting of the bill on page 2, line 40, Sub Section (g) should be (f), and Revisor so noted.

Copies of the Fiscal Note for **SB 423** were distributed to Committee members. (Attachment 6)

Chairman Vratil closed the hearing on **SB 423**:

SB 424 - Transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause

Chairman Vratil opened the hearing on **SB 424**. James Clark, Kansas Bar Association (KBA), spoke in support of **SB 424**. He said the Kansas Bar Association requested the bill on behalf of the KBA Real Estate, Probate and Trust Section, have increasingly relied on the creation of revocable trusts as a significant part of an estate plan, often in lieu of a will. He explained that besides avoiding probate proceedings, revocable trusts are easily established, and generally require only the preparation of the trust document and transfer of the property to the trust. He said the ease of use was being threatened, and gave several examples of cases where problems ensued.

Mr. Clark stated that an estate planner can no longer assure a client that the use of a revocable trust will

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avoid the expense and delay of probate, because of the increased likelihood of litigation and uncertain results. He said the passage of **SB 424** would greatly reduce the uncertainty of the use of trusts to avoid probate, and urged the Committee to give favorable recommendation on the bill. (Attachment 7)

Leola Foster, Columbian National Title Insurance Co., testified in opposition to **SB 424**. She stated her Company had serious concerns that **SB 424** encroached upon their ability to contract with customers in a manner acceptable to all parties to the contract and in compliance with Kansas Statutes and the requirements of the Kansas Department of Insurance.

Ms. Foster testified that **SB 424** was in conflict with KSA 40-236 (b), and described the consequence of the conflict. Within Ms. Foster's written testimony she outlined some of the issues which could appear in the title to real estate after the title policy was issued to the original insured and which would affect the title conveyed to the Trust. (Attachment 8)

Ms. Foster affirmed that if the proposed bill is not defeated in Committee, Columbian National Title Insurance Co. recommended the underlined changes in the copy of the bill included with their written testimony. She said without those changes, the title insurance company is placed in the position of insuring acts suffered and assumed by other parties without knowledge and which in her opinion would constitute unsound underwriting practices, and a violation of KSA 40-236 (b). She added that the financial soundness of insurance companies would be affected to the detriment of all consumers. Ms. Foster asked that if the proposed bill passes out of the Judiciary Committee that it be amended in accordance with the changes underlined in the bill copy as noted above.

Following brief Committee questions and discussion, the Chair closed the hearing on **SB 424**.

Minutes of the February 26, 2004 meeting were presented for approval. Senator Donovan made a motion to approve the minutes, seconded by Senator Umbarger, and the motion carried.

The next scheduled meeting of Senate Judiciary is February 16, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thurs, Feb. 12, 2004

NAME	REPRESENTING
Donna Bates	1st District Women chairperson Kansas Farm Bureau
Melinda Lewis	El Centro, Inc.
Brett Skillman	KS Farm Bureau
Terry Mitchell	KDOR
Alan Anderson	KDOR. Vehicles
Jeff Costen	Kansas Farm Bureau
Juella Eisler	" " "
Karl Eisler	" " "
Bill Baker	Kansas Farm Bureau
Trace Goodwin	Labette County FFA
Trent Page	Labette County FFA
Christa Frazin	Labette County FFA
Junna Reed	" " "
Ramona Carpenter	KFB
Elizabeth Teimer	OSA
Rocky Nichols	KARS
David Hanson	KS Insur Assn

STATE OF KANSAS

BARBARA P. ALLEN
SENATOR, EIGHTH DISTRICT
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(785) 296-7353



TOPEKA
SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: ELECTIONS AND LOCAL GOVERNMENT
MEMBER: ASSESSMENT AND TAXATION
JUDICIARY

February 12, 2004

Mr. Chairman:

Thank you for the opportunity to testify today on SB 460. In my view, our top priority with regard to Kansas Driver's Licenses (DL), should be to ensure our DLs and ID cards are verifiable and secure, thus protecting Kansans' safety and security. SB 16, passed last year, was about strengthening the security and verifiability of State-issued identification.

An amendment added to SB 16 on the floor of the Senate last year, which eventually became law, is the subject of SB 460. SB 460 strikes the amendatory language that allows an applicant for a Kansas DL or ID card to provide an individual taxpayer identification number (ITIN) as proof of identification, if the applicant does not have a social security number (SSN.)

The need for this statutory change became clear to me upon review of a letter from the Internal Revenue Service (IRS), addressed to Sheila Walker, Director, Kansas Division of Motor Vehicles (DMV), dated August 8, 2003. That letter states:

"Several state government motor vehicle departments are accepting IRS-issued Individual Taxpayer Identification Numbers (ITINs) as proof of identification for state driver's licenses, prompting us to issue this reminder – ***ITINs are not valid for identification outside the tax system.***"

Highlighted in your copy of the IRS letter is critically important language regarding the use of ITINs as proof of identification for Kansas DLs and ID cards.

"Although we require ITIN applicants to provide proof of identity documents, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations. We do not require applicants to appear in person, and third parties may submit applications and provide documentation on behalf of others. Also, since we issue ITINs for tax filing purposes only, we do not verify applicants' legal presence in the U.S." (emphasis added.)

The IRS clearly states the proof of identity documents used to obtain an ITIN are not validated for authenticity, and in fact, the person for whom the number is issued does not even have to show up in person. A third party may obtain an ITIN on behalf of

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2-12-04
Attachment 1

someone else. Thus, an ITIN is not a reliable or verifiable form of identification for obtaining a Kansas DL or ID card, because the underlying documents used to obtain an ITIN are not validated for authenticity.

Furthermore, the IRS clearly states it does not verify applicants' legal presence in the U.S. when it issues an ITIN. Kansas law requires (K.S.A. 2003 Supp. 8-240; K.S.A. 2003 Supp. 8-1324) that an applicant for a Kansas DL or ID card submit proof that the applicant is lawfully present in the United States, and prohibits the division from issuing identification to any person who is not lawfully present in the United States. According to the IRS, an ITIN is not verifiable proof of legal presence in the U.S. Therefore, the ITIN should not be allowed as proof of identification for State-issued identification.

A letter from Melinda Lewis of El Centro, Inc., attempting to clarify the provisions of HB 2039, the "undocumented worker driver's license bill", also deserves our attention.

1. El Centro, Inc. states "ITINs are already allowed under Kansas statute with the passage of SB 16 in 2003, not as identification, which would be a misuse of the IRS-issued numbers..."

In fact, the very purpose for requiring an applicant to submit the applicant's SSN in SB 16 was for proof of identity. Under this new law, the Kansas DMV issues an applicant a temporary DL or ID card until the division verifies all facts relative to the applicant's right to receive a license, including the SSN of the applicant. Matching SSNs to a national database is intended to ensure the person applying for a DL or ID card really is that person, thus strengthening the security and verifiability of State-issued identification.

2. The El Centro sentence continues "...but as part of a federally required database of numbers for child support enforcement purposes." This statement is incorrect. A letter from Janet Schalansky, Secretary of SRS, dated February 6, 2004, clarifies the federal requirements concerning driver's license applications and SSNs. The SRS letter states:

"The state is required to have in effect laws which require any applicant for a driver's license to provide the applicant's social security number on the application. Federal law does not require any other identifying number to be furnished if the applicant has no social security number." (emphasis added.)

At the time the language that is the subject of SB 460 was offered as an amendment to SB 16, I cautiously supported the amendment, based on Director Walker's recommendation. The date of the final vote on SB 16 was January 30, 2003. However, the letter from the IRS to Director Walker, dated August 8, 2003, has caused me to withdraw my support of the amendatory language.

Specifically, the IRS letter states:

"If your state is considering legislation to accept ITINs as proof of identity for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings." (emphasis added.)

In summary, my sole purpose for bringing SB 460 before you today is that Kansas DLs and ID cards must be a secure form of identification. Last year, SB 16 went a long way in preventing Kansas from being one of the easiest states in the nation in which to obtain false identification. I believe the language in current law allowing an applicant to submit an ITIN if that person does not have an SSN, compromises the security and verifiability of state-issued identification. Therefore, I urge your support of SB 460.



Barbara P. Allen
Senator, District 8

Attachments:

1. IRS letter, August 8, 2003
2. K.S.A. 2003 Supp. 8-240; K.S.A. 2003 Supp. 8-1324
3. El Centro, Inc. letter, January 29, 2004
4. SRS letter, February 6, 2004
5. SB 16 vote, Senate Journal, January 30, 2003



COMMISSIONER
WAGE AND INVESTMENT DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

AUG 8 2003

RECEIVED

AUG 11 2003

DIRECTOR OF VEHICLES

Shiela Walker, Director
Kansas Division of Motor Vehicles
Docking State Office
915 SW Harrison Street #162
Topeka, Kansas 66626

Dear Director Walker:

Several state government motor vehicle departments are accepting IRS-issued Individual Taxpayer Identification Numbers (ITINs) as proof of identification for state driver's licenses, prompting us to issue this reminder -- *ITINs are not valid for identification outside the tax system.*

The Internal Revenue Service issues ITINs for the sole purpose of enabling individuals who do not qualify for Social Security numbers to meet their tax filing responsibilities. Therefore, we do not subject ITIN applicants to the same rigorous document verification standards as Social Security number or visa/passport applicants.

Although we require ITIN applicants to provide proof of identity documents, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations. We do not require applicants to appear in person, and third parties may submit applications and provide documentation on behalf of others. Also, since we issue ITINs for tax filing purposes only, we do not verify applicants' legal presence in the U.S. — the tax code classifies aliens based on their physical presence (resident or non-resident), not their legal status in this country.

Unlike Social Security numbers, ITINs do not:

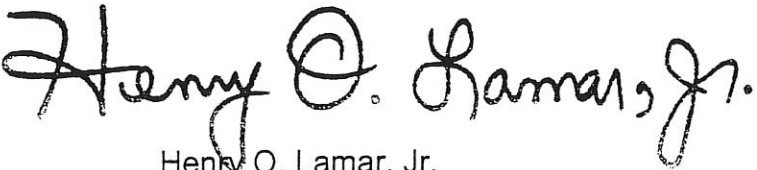
- Authorize an individual to work in the U.S.;
- Endorse an individual's legal status in this country; or
- Entitle an individual to Social Security benefits or the Earned Income Tax Credit.

If your state is considering legislation to accept ITINs as proof of identity for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings.

If your state currently accepts ITINs as proof of identity for driver's licenses, please alert your staffs that IRS issues ITINs for tax purposes only. Please do not direct driver's license applicants to us for ITINs; we do not issue the numbers for non-tax reasons.

Thank you for your help and support. For additional information about ITINs, visit our website at <http://www.irs.gov/individuals/article/0,,id=96287,00.html> or direct questions to Anita Hill at (904) 665-1158, Bonnie Harrison at (859) 669-5538, or e-mail to itinprojectoffice@irs.gov.

Sincerely,

A handwritten signature in black ink that reads "Henry O. Lamar, Jr." The signature is written in a cursive style with a large, stylized "H" and "L".

Henry O. Lamar, Jr.

cc: Governor Kathleen Sebelius

plates under the provisions of K.S.A. 8-161, 8-177a, 8-177c, 8-1,139, 8-1,140, 8-1,145 or 8-1,146, and amendments thereto, the surviving spouse or other family member, if there is no surviving spouse, shall be entitled to possession of any such distinctive license plates. Such license plates shall not be displayed on any vehicle unless otherwise authorized by statute.

History: L. 1998, ch. 140, § 4; L. 2002, ch. 4, § 1; July 1.

Article 2.—DRIVERS' LICENSES

8-222.

CASE ANNOTATIONS

15. Negligence of driver under 16 years of age is imputed to plaintiff parent permitting son to drive; summary judgment granted on wrongful death claim of parent. *Yetsko v. Panure*, 272 K. 741, 35 P.3d 904 (2001).

8-234.

Attorney General's Opinions:

"Adult" supervising driving of person with restricted license means licensed person at least 18 years of age. 2001-34.

8-235.

Attorney General's Opinions:

"Motor scooters" — required to be registered, operators to have driver's license. 2001-39.

8-235d.

Attorney General's Opinions:

"Adult" supervising driving of person with restricted license means licensed person at least 18 years of age. 2001-34.

8-235e. Application for driver's license, instructional permit or nondriver's identification card constitutes consent to selective service registration. (a) Any person, who is subject to registration under the provisions of section 3 of the military selective service act, 50 U.S.C. App. section 453, as amended, and who applies for any driver's license or instructional permit under the provisions of article 2 of chapter 8 of the Kansas Statutes Annotated, or any nondriver's identification card under the provisions of K.S.A. 8-1324 through 8-1334, and amendments thereto, or any renewal of such driver's license, instructional permit or nondriver's identification card and who is at least 16 years of age but less than 26 years of age shall consent to such applicant's registration in compliance with the requirements of section 3 of the military selective service act, 50 U.S.C. App. section 453, as amended.

(b) The division of vehicles shall forward, in an electronic format, the necessary personal in-

formation of the applicants identified in subsection (a), to the selective service system. The applicant's signature on the application shall serve as an indication that the applicant either has already registered with the selective service system or that the applicant is authorizing the division of vehicles to forward to the selective service system the necessary information for such registration. The division of vehicles shall notify the applicant that the applicant's submission of the application will serve as the applicant's consent to registration with the selective service system, if such registration is required by federal law.

History: L. 2003, ch. 41, § 1; July 1.

8-236.

Attorney General's Opinions:

"Motor scooters" — required to be registered, operators to have driver's license. 2001-39.

8-237.

Attorney General's Opinions:

"Adult" supervising driving of person with restricted license means licensed person at least 18 years of age. 2001-34.

"Motor scooters" — required to be registered, operators to have driver's license. 2001-39.

8-240. Drivers' licenses and instruction permits; application for; proof of age and identity; proof of lawful presence; examination tests; reexamination; drivers' records; fees; late application penalties. (a) Every application for an instruction permit shall be made upon a form furnished by the division of vehicles and accompanied by a fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every other application shall be made upon a form furnished by the division and accompanied by an examination fee of \$3, unless a different fee is required by K.S.A. 8-241, and amendments thereto, and by the proper fee for the license for which the application is made. If the applicant is not required to take an examination the examination fee shall not be required. The examination shall consist of three tests, as follows: (1) Vision; (2) written; and (3) driving. If the applicant fails the vision test, the applicant may have correction of vision made and take the vision test again without any additional fee. If an applicant fails the written test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails the driving test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails to pass all three of the tests within a

period of six months from the date of original application and desires to take additional tests, the applicant shall file an application for reexamination upon a form furnished by the division, which shall be accompanied by a reexamination fee of \$3, except that any applicant who fails to pass the written or driving portion of an examination four times within a six-month period, shall be required to wait a period of six months from the date of the last failed examination before additional examinations may be given. Upon the filing of such application and the payment of such reexamination fee, the applicant shall be entitled to reexamination in like manner and subject to the additional fees and time limitation as provided for examination on an original application. If the applicant passes the reexamination, the applicant shall be issued the classified driver's license for which the applicant originally applied, which license shall be issued to expire as if the applicant had passed the original examination.

(b) (1) For the purposes of obtaining any driver's license or instruction permit, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number or a taxpayer identification number if the applicant does not have a social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number or a taxpayer identification number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number or taxpayer identification number. The distinguishing number assigned to the license or permit may be the applicant's social security number or a taxpayer identification number if the applicant so requests in writing. If the applicant is applying for an instruction permit or driver's license and the applicant otherwise meets the requirements for such license, the applicant shall receive a temporary license or instruction permit until the division verifies all facts relative to such applicant's right to receive an instruction permit or driver's license, including the age, identity, social security number, taxpayer identification number and residency of the applicant.

(2) An applicant who submits proof of age or of identity issued by an entity other than a state or the United States shall also submit such proof

as the division may require that the applicant is lawfully present in the United States.

(3) The division shall not issue any driver's license to any person who is not lawfully present in the United States.

(4) The division shall not issue any driver's license to any person who is not a resident of the state of Kansas, except as provided in K.S.A. 8-2,148, and amendments thereto.

(5) The parent or guardian of an applicant under 16 years of age shall sign the application for any driver's license submitted by such applicant.

(c) Every application shall state the name, date of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has been licensed as a driver prior to such application, and, if so, when and by what state or country. Such application shall state whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal. In addition, applications for commercial drivers' licenses and instruction permits for commercial licenses must include the following: The applicant's social security number; the person's signature; the person's color photograph; certifications, including those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release driving record information; and, any other information required by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$18;

(2) for a class C driver's license issued to a person less than 21 years of age or 65 years of age or older, or a farm permit, \$12;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$12.50;

(4) for a class A driver's license issued to a person less than 21 years of age, \$9;

(5) for a class A driver's license issued to a person who is at least 21 years of age but less than 65 years of age, \$12;

(6) for a class A driver's license issued to a person less than 21 years of age or older, \$16;

(7) for any class A driver's license, \$18.

A fee of \$10 shall be charged for a commercial driver's license with a brake endorsement.

If one fails to renew an application for a driver's license or instruction permit, the time required for such application shall be less than 60 days. In Kansas, a penalty shall be charged for the driver's license.

(g) Any person applying for a driver's license or instruction card as provided in amendments thereto shall attach a valid Kansas driver's license and return of the license.

History: L. 1991, ch. 100, § 1; L. 1949, ch. 100, § 1; L. 1958, ch. 48, § 1; L. 1959, ch. 49, § 7; L. 1963, ch. 100, § 1; L. 1973, ch. 300, § 1; L. 1982, ch. 42, § 1; L. 1989, ch. 42, § 1; L. 1990, ch. 42, § 1; L. 1993, ch. 154, § 5; L. 1994, ch. 219, § 1; L. 1995, ch. 100, § 10; L. 2003, ch. 100, § 1.

Revisor's Note:
Section was also amended by L. 2001, ch. 100, § 1, which version was repealed by L. 2001, ch. 100, § 1.

8-241.

Law Review and Bar
"2001 Legislative Writings", 7, 14 (2001).

8-243. Issuance of driver's license; signature; photographic gift stamp; license for deaf and blind; payment of the fee; and application of the provisions of this act

(4) for a class M driver's license issued to a person less than 21 years of age or 65 years of age or older, \$9;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, \$24;

(6) for a class A or B driver's license issued to a person less than 21 years of age or 65 years of age or older, \$16; or

(7) for any class of commercial driver's license, \$18.

A fee of \$10 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of \$1 shall be added to the fee charged for the driver's license.

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

History: L. 1937, ch. 73, § 7; L. 1938, ch. 13, § 1; L. 1949, ch. 104, § 11; L. 1955, ch. 51, § 1; L. 1958, ch. 48, § 1 (Budget Session); L. 1959, ch. 49, § 7; L. 1963, ch. 402, § 3; L. 1969, ch. 52, § 1; L. 1973, ch. 30, § 1; L. 1975, ch. 36, § 13; L. 1982, ch. 42, § 1; L. 1986, ch. 38, § 1; L. 1990, ch. 42, § 1; L. 1990, ch. 42, § 2; L. 1990, ch. 43, § 1; L. 1990, ch. 43, § 2; L. 1991, ch. 36, § 9; L. 1993, ch. 154, § 5; L. 1996, ch. 14, § 1; L. 1996, ch. 219, § 1; L. 1997, ch. 36, § 1; L. 2000, ch. 179, § 10; L. 2003, ch. 5, § 1; L. 2003, ch. 158, § 1; July 1.

Revisor's Note:

Section was also amended by L. 2003, ch. 63, §2, but that version was repealed by L. 2003, ch. 158, §11.

8-241.

Law Review and Bar Journal References:

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

8-243. Issuance of licenses; contents; signature; photograph, exception; fee; anatomical gift statement; distinguishable license for deaf and hard of hearing. (a) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act the driver's license as applied

for by the applicant. Such license shall bear the class or classes of motor vehicles which the licensee is entitled to drive, a distinguishing number assigned to the licensee, which, if the licensee so requests in writing, may be the licensee's social security number, the name, date of birth, residence address, and a brief description of the licensee, a colored photograph of the licensee, a facsimile of the signature of the licensee or a space upon which the licensee shall write such licensee's usual signature with pen and ink immediately upon receipt of the license and the statement provided for in subsection (b). No driver's license shall be valid until it has been signed by the licensee. All drivers' licenses issued to persons under the age of 21 years shall be readily distinguishable from licenses issued to persons age 21 years or older. In addition, all drivers' licenses issued to persons under the age of 18 years shall also be readily distinguishable from licenses issued to persons age 18 years or older. On and after July 1, 2004, the secretary of revenue shall implement a vertical format to make drivers' licenses issued to persons under the age of 21 more readily distinguishable. Except as otherwise provided, on or after July 1, 2004, no driver's license issued by the division shall be valid until a colored photograph of such licensee has been taken and verified before being placed on the driver's license. The secretary of revenue shall prescribe a fee of not more than \$4 and upon payment of such fee the division shall cause a colored photograph of such applicant to be placed on the driver's license. Upon payment of such fee prescribed by the secretary of revenue, plus payment of the fee required by K.S.A. 8-246, and amendments thereto, for issuance of a new license, the division shall issue to such licensee a new license containing a colored photograph of such licensee. A driver's license which does not contain a colored photograph of the licensee as required may be issued to persons exempted from such requirement. Any such license shall be valid for the purposes of the motor vehicle drivers' license act and the division shall set forth upon such driver's license the words "valid without photo." Any person who is outside the state and for whom the division provides for renewal of the driver's license by mail is exempt from the requirement to have a colored photograph of such person placed on such person's driver's license. Any person belonging to a religious organization which has a basic objection to having their picture taken may sign a statement to

8-1002.**Attorney General's Opinions:**

Conditions wherein peace officer can obtain warrantless extraction of blood after subject has refused to submit to blood test. 2002-26.

CASE ANNOTATIONS

43. Failure of police officer to complete suspension notice form within 5-day requirement does not deprive department of jurisdiction to conduct suspension hearing. *Linenberger v. Kansas Dept. of Revenue*, 28 K.A.2d 794, 20 P.3d 1290 (2001).

8-1008.**Law Review and Bar Journal References:**

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

Attorney General's Opinions:

Administrative judge may certify more than one alcohol and drug safety action program but may not designate one as financial administrator of program. 2002-22.

8-1012.**CASE ANNOTATIONS**

2. Charge of refusal to submit to PBT hereunder was properly dismissed but court erred in dismissing DUI charge under 8-1567. *State v. Gray*, 270 K. 793, 18 P.3d 962 (2001).

3. Provision that arrest may be made solely or in part on results of preliminary breath test is not significant interference by legislature with judicial function. *State v. Chacon-Bringuez*, 28 K.A.2d 625, 18 P.3d 970 (2001).

8-1014.**Law Review and Bar Journal References:**

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

8-1015.**Law Review and Bar Journal References:**

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

8-1016.**Law Review and Bar Journal References:**

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

8-1021. Impoundment of motor vehicle for 8-1567 violation; failure to pay fees or take repossession; disposition of vehicle. If the owner of a motor vehicle which has been impounded pursuant to K.S.A. 8-1567 or K.S.A. 2003 Supp. 8-1022, and amendments thereto, refuses to pay any towing, impoundment, storage or other fees relating to the impoundment or immobilization of such vehicle or fails to take possession of such vehicle within 30 days following the date of the expiration of the impoundment period, such vehicle shall be deemed abandoned and the vehicle may be disposed of by the person having possession of such vehicle. If the person

having possession of such vehicle is a public agency, disposition of such vehicle shall be in compliance with the procedures for notice and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. If the person having possession of such vehicle is not a public agency, disposition of such vehicle shall be in compliance with K.S.A. 8-1103 through 8-1108, and amendments thereto.

History: L. 2003, ch. 100, § 2; July 1.

8-1022. Permitting driving in violation of 8-1014; penalties. (a) It shall be unlawful for the owner of a motor vehicle to allow a person to drive such vehicle when such owner knows or reasonably should have known such person was driving in violation of K.S.A. 8-1014, and amendments thereto.

(b) Violation of this section is an unclassified misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000. In addition to the fine imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs. Prior to ordering the impoundment or immobilization of any such motor vehicle, the court shall consider the factors established in subsection (k)(3) of K.S.A. 8-1567, and amendments thereto. Any personal property in a vehicle impounded or immobilized pursuant to this section may be retrieved prior to or during the period of such impoundment or immobilization.

History: L. 2003, ch. 100, § 3; July 1.

Article 13.—MISCELLANEOUS PROVISIONS

8-1324. Nondriver's identification card; application for; proof of age, identity and lawful presence; fees. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card, certified by the registrant and attested by the division as to true name, correct age, photograph and other identifying data as the division may require.

(b) An applicant who submits documentary evidence under subsection (a), issued by an entity other than a state or the United States shall also submit such proof as the division may require that

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(c) The divisio tion card to any pe in the United State a current valid Kan driver's license ha pursuant to the p K.S.A. 8-1002, and

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MISCELLANEOUS PROVISIONS

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the applicant is lawfully present in the United States. For the purposes of obtaining any identification card, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number or a taxpayer identification number if the applicant does not have a social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number or a taxpayer identification number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number or taxpayer identification number. The distinguishing number assigned to the identification card may be the applicant's social security number or a taxpayer identification number if the applicant so requests in writing. If the applicant is applying for an identification card and the applicant otherwise meets the requirements for such card, the applicant shall receive a temporary identification card until the division verifies all facts relative to such applicant's right to receive an identification card, including the age, identity, social security number, taxpayer identification number and residency of the applicant.

(c) The division shall not issue an identification card to any person who is not lawfully present in the United States nor to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

(d) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(e) The division shall require payment of a fee of \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10.

(f) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;

(4) the person enrolls the person's child in a school in this state; or

(5) the person registers the person's motor vehicle in this state.

History: L. 1973, ch. 31, § 1; L. 1983, ch. 39, § 1; L. 1986, ch. 36, § 12; L. 1990, ch. 42, § 4; L. 2000, ch. 179, § 15; L. 2003, ch. 5, § 3; L. 2003, ch. 158, § 2; July 1.

Revisor's Note:

Section was also amended by L. 2003, ch. 63, § 4, but that version was repealed by L. 2003, ch. 158, § 11.

8-1325. Same; expiration; renewal; fee; anatomical gift; organ and tissue registry. (a)

Every identification card shall expire, unless earlier canceled, on the sixth birthday of the applicant following the date of original issue, except as otherwise provided by K.S.A. 8-1329, and amendments thereto. Renewal of any identification card shall be made for a term of six years and shall expire in a like manner as the originally issued identification card, unless surrendered earlier. For any person who has only been issued an identification card, the division shall mail a notice of expiration or renewal at least 30 days prior to the expiration of such person's identification card at the address shown on such identification card. The division shall include with such notice, written information required under subsection (b). Any application for renewal received later than 90 days after expiration of the identification card shall be considered to be an application for an original identification card. The division, at the end of six years and six months after the issuance or renewal of an identification card, shall destroy any record of the card if it has expired and has not been renewed. The division shall require payment of a fee of \$14 for each identification card renewal, except that persons who are 65 or more years of age or who are persons with a disability, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10.

(b) The division shall provide the following information under subsection (a):

(1) Written information explaining the person's right to make an anatomical gift in accordance with K.S.A. 8-1328, and amendments thereto, and the uniform anatomical gift act;

(2) written information describing the organ donation registry program maintained by the Kansas federally designated organ procurement organization. The written information required under this paragraph shall include, in a type, size and

Senator Allen, 120-5

El Centro, Inc.

Administration and
Computer Learning Center
650 Minnesota Avenue
Kansas City, KS 66101
913-677-0100
www.ElCentroInc.com

January 29, 2004

The Center for Continuous Family Improvement

Re: Clarification of Provisions of Sub. HB2039

Following the hearing on Substitute for HB2039, the Kansans for Road Safety Coalition that has been supporting this legislation's intent for the past four years wanted to clarify a few important matters:

1. While the Federation for American Immigration Reform (FAIR), the nation's leading anti-immigrant organization, claimed that Sub. HB2039 ties driver's licenses to Individual Taxpayer Identification Numbers (ITINs), these numbers are not part of the bill. In fact, **ITINs are already allowed under Kansas statute with the passage of SB16 in 2003, not as identification, which would be a misuse of the IRS-issued numbers, but as part of a federally required database of numbers for child support enforcement purposes.** Kansas' use of ITINs, as legislated in SB16, is consistent with IRS instructions, and Sub. HB2039 would not change that. In fact, that the IRS only issues ITINs for tax purposes is completely congruent with Kansas' wish to issue, under Sub. HB2039, temporary driver's licenses only to those immigrants who are residents of Kansas, thus necessitating their filing of federal income taxes. Identity will be established under Sub. HB2039, as the Secretary of Revenue indicated, as it is for all Kansas DL applicants: through verifiable foundation documents, including passports, birth certificates, or other government-issued photo identification.
2. Peter Gadiel, director of 9-11 Families for a Secure America, a FAIR-funded organization, testified that issuing driver's licenses to undocumented immigrants would compromise homeland security. Kansans for Road Safety wishes to express our sorrow for Mr. Gadiel's loss of his son on the most tragic day in our country's history and to state our strong belief, shared by many local law enforcement officials in Kansas, that Sub. HB2039 is precisely the kind of tool that our police need in order to focus more precisely on potential terrorists and reduce the document fraud that can facilitate their survival. For example, Chief Janet Thiessen of Olathe writes, "There will be those who will see this bill as being diametrically opposed to homeland security issues. To the contrary, it should allow law enforcement an opportunity to better identify those who are already living and working in our communities. There are many pragmatic and compassionate reasons to support HB2039, but perhaps the most compelling is that by addressing this issue head on, we will make our roads and communities safer for all who live and travel in them." The criminals who attacked our country on September 11th attacked the immigrants who live and work here too. They were here legally and did not need driver's licenses to commit their crimes. However, had all immigrants in their communities been identifiable by police, perhaps the criminals could have been apprehended earlier.
3. Sub. HB2039 is about driver's licenses and Kansas' responsibility to ensure that all who drive on our roads are licensed, insured, and tested, in order to protect the safety and security of all of our citizens. In doing so, we must be careful to separate the immigrants whose work and presence touches all of our lives from the terrorists who did us harm. As Senator Sam Brownback eloquently reminded us recently, "for every brick torn down by terrorists in America, immigrants will put up one million" (September 16, 2003). This year, Kansas has an opportunity to ensure that, while they're helping to build this country, the immigrants who call Kansas home are driving legally to and from work, protecting themselves and others in the event of an accident, and identifiable to any law enforcement officer they encounter.

The Academy for Children
1330 S. 30th Street
Kansas City, KS 66106
913-677-1115
913-677-7090 fax

Academy for Children,
Choo Choo Child Care
219 S. Mill Street
Kansas City, KS 66101
913-371-1744
913-371-1866 fax

Academy for Children,
Donnelly College
608 North 18th Street
Kansas City, KS 66102
913-281-1700

Casa de Rosina Apartments
851 Barnett
Kansas City, KS 66101

ECI Development, Inc.
2100 Metropolitan Ave.
Kansas City, KS 66106
913-677-1120
913-677-0051 fax

El Centro, Inc. Argentine
1333 S. 27th Street
Kansas City, KS 66106
913-677-0177
913-362-8520 fax

El Centro, Inc. Family Center,
Johnson County
9525 Mercalf Avenue
Overland Park, KS 66212
913-381-2861
913-381-2914 fax

Macias-Flores Family Center
290 S. 10th Street
Kansas City, KS 66102
913-281-1186
913-281-1259 fax

Woodland Hills, Inc.
1012 Forest Court
Kansas City, KS 66103
913-362-8155
913-362-8203 fax

Our coalition would be happy to discuss any of these issues with you and thank you for your attention to Sub. HB2039 and its important implications for our state.

Most sincerely,
Melinda Lewis

Melinda Lewis, El Centro, Inc., on behalf of the Kansans for Road Safety Coalition, including Pittsburg Area Community Outreach and Pittsburg Police Department, Overland Park Police Department, Sunflower Community Action, Friends in Faith Serving Emporia, Olathe Police Department, Kansas Catholic Conference, Dominican Sisters Ministry of Presence, League of United Latin American Citizens, Kansas City Police Department

Mission Statement: The purpose of El Centro and its subsidiaries is to create and sustain educational, social, and economic opportunities for families





KANSAS

JANET SCHALANSKY, SECRETARY

SOCIAL AND REHABILITATION SERVICES

KATHLEEN SEBELIUS, GOVERNOR

February 6, 2004

The Honorable Barbara Allen
300 SW 10th Avenue, Room 120-S
Topeka, KS 66612-1504

Dear Senator Allen:


I am writing to follow up on your conversation of February 4 with Jamie Corkhill concerning the SRS Child Support Enforcement program. You asked for written clarification of federal requirements concerning driver's license applications and social security numbers, which were fully addressed by enactment of Senate Bill 16 in 2003.

The federal requirement is found in Title IV-D of the social security act, at 42 U.S.C. 666(a)(13). The State is required to have in effect laws which require any applicant for a driver's license to provide the applicant's social security number on the application. Federal law does not require any other identifying number to be furnished if the applicant has no social security number.

The federal statute does not address the matter of applicants who have no social security number, but there is no reason to believe that the Congress intended for states to refuse driver's licenses to all such applicants. Federal regulators have approved state plans which provide a reasonable alternative in those circumstances, such as accepting a sworn statement that the applicant has no social security number.

I hope this information is of assistance.

Sincerely,


Janet Schalansky
Secretary

JS:JLC

MESSAGE FROM THE HOUSE

Announcing passage of HCR 5001.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HCR 5001 was thereupon introduced and read by title.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 2, An act concerning certain boards; relating to the terms of members thereof; amending K.S.A. 2-3709 and K.S.A. 2002 Supp. 76-3304 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed, as amended.

SB 8, An act concerning the legislative post audit act; relating to certain audits of the pooled money investment board; amending K.S.A. 46-1106 and repealing the existing section also repealing K.S.A. 2002 Supp. 75-4264, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The bill passed.

SB 16, An act concerning drivers' licenses and other identification cards; relating to application requirements; photograph fees; amending K.S.A. 8-240, 8-243 and 8-1324 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jordan, Kerr, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Brownlee, Clark, Huelskamp, Jackson, Lyon, O'Connor, Pugh, Tyson.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT, SB 16 is about strengthening the security and verifiability of State-issued identification, making it more difficult to obtain fraudulent Driver's Licenses and ID cards in Kansas. Passage of this bill will help enhance public safety, protect Kansans' financial privacy, and reduce fraud losses to our retail businesses.

Today, under current law, Kansas is one of the easiest states in the nation in which to obtain false identification. There are no security measures in place to protect Kansans, to ensure the person applying for a Driver's License or ID card really is that person. A simple photograph yields an instant, permanent piece of government issued identification.

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 identify.

Kansas is far too lax about ensuring our Driver's License's and ID cards are verifiable and secure. This bill is a strong step toward preserving and protecting Kansans' safety and security. I vote YES.—BARBARA ALLEN



JANET SCHALANSKY, SECRETARY

K A N S A S

KATHLEEN SEBELIUS, GOVERNOR

SOCIAL AND REHABILITATION SERVICES

February 11, 2004

The Honorable John Vratil
Chairman, Senate Judiciary Committee
300 SW 10th Avenue, Room 522-S
Topeka, KS 66612-1504

RE: Senate Bill 460

Dear Senator Vratil:

I am writing in support of Senate Bill 460, Senator Allen's bill amending K.S.A. 8-240.

My purpose is to provide the Senate Judiciary Committee with information about the federal requirement that applies to the SRS Child Support Enforcement program (CSE) and relates to drivers' license applications and social security numbers. The federal law is found at 42 U.S.C. 666(a)(13), part of Title IV-D of the social security act. The State is required to have in effect laws which require any applicant for a driver's license to provide the applicant's social security number on the driver's license application.

This requirement was fully addressed in 2003 by amendments to K.S.A. 8-240(b). S.B. 460, as introduced, does not affect CSE's compliance with federal law.

The federal statute itself does not address the matter of applicants who have no social security number, but there is no reason to believe that the Congress intended for states to refuse drivers' licenses to all such applicants. If the applicant has no social security number, federal law does not require any identifying number to be furnished. Federal regulators have approved state plans that provide a reasonable alternative for those circumstances, such as accepting a sworn statement that the applicant has no social security number. K.S.A. 8-240 presently provides the alternative of a sworn statement, a measure which would remain in effect under Senator Allen's proposal.

I hope this information is of assistance as the Committee considers S.B. 460.

Sincerely,

Janet Schalansky
Secretary

JS:JLC

January 12, 2004

Chairman John Vratil
Senate Judiciary Committee

I provide the following information, obtained from materials provided by the Internal Revenue Service (IRS) and the Social Security Administration (SSA), to dispel some myths about the Individual Taxpayer Identification Number (ITIN), its proper use, its security features, and its limitations. I hope that this information is helpful in your discussion about the acceptance of ITINs within the current driver's licensing system in Kansas.

What is the ITIN? The Internal Revenue Service (IRS) created the Individual Taxpayer Identification Number (ITIN) on July 1, 1996, for foreign-born individuals who are required to file tax returns. The ITIN is a nine-digit number and is issued only to individuals who are not eligible for an SSN. Over a million taxpayers paid more than \$300 million dollars to the IRS in 2001 using the ITIN as their identifier.

What are the documents used to show eligibility for an ITIN? These are very similar to the requirements for issuance of a Social Security Number (SSN). In order to obtain a SSN, a person needs to show the Social Security Administration two forms of identification that show age, identity, and U.S. citizen, or lawful alien status. These include:

- To show age, a birth certificate or hospital record of birth or passport;
- To show identity, a photo identification including drivers' license, marriage or divorce records, military records, employer identification cards, adoption records, life insurance policies, school identification; and
- For citizenship, documents that show birth in the United States, plus various INS cards and certificates of citizenship.¹

In order to obtain an ITIN, a person must show the Internal Revenue Service:

- Documents that prove both identity and foreign status, including: a passport, drivers' license, INS document, foreign military identification card, foreign voter registration card, birth, marriage or baptismal certificate, or school records.²

Is the ITIN only for the undocumented? No, the ITIN is available to a range of foreign-born persons. Use of an ITIN does *not* therefore create an inference regarding a person's immigration status. Those eligible for the ITIN include

- Nonresident students, professors or researchers;
- Authors who earn royalties for their writings or who are paid an honorarium for speaking engagements at a university;
- Individuals who have interest-bearing accounts in a bank, or who receive dividends from money invested in stocks, but who are not eligible for an SSN; and
- Many immigrants whose immigration cases are in process, but who do not yet have employment authorization.

Immigrants and U.S. citizens may also apply for an ITIN for their spouse or dependents in order to claim them as dependents on their tax returns. Once an ITIN is issued, it can be used indefinitely until the person who receives it is eligible for and obtains an SSN, at which time the ITIN is no longer valid.

¹ Social Security Administration, *How to Apply for a Social Security Card*, available at http://www.ssa.gov/replace_sscard.html.

² Internal Revenue Service, *Application for an IRS Individual Taxpayer Identification Number*, available at <http://www.irs.gov/pub/irs-pdf/fw7.pdf>.

Senate Judiciary

2-12-04

Attachment 3

What are the limitations of the ITIN? The ITIN is only available to individuals who are not eligible for a Social Security Number. ITINs are issued only for federal income tax purposes. The issuance of an ITIN does not:

- Entitle the recipient to Social Security benefits or the Earned Income Tax Credit (EITC);
- Create an inference regarding the individual's immigration status;
- Give the individual the right to work in the U.S.

How does use of the ITIN as an "Identifier" differ from its use as "identification?" Just like the Social Security Number, the ITIN is issued so that a taxpayer has a unique identifier that is associated with his or her tax return. Since other forms of identifiers can either be frequently changed (address) or can be shared by many people (names and birth dates), the IRS assigns to each individual taxpayer a unique number that will not be assigned to any other taxpayer.

For driver's license purposes, states use the SSN and the ITIN in the same way – as a unique number that will keep license holders with the same name and birth date separately identified in a database. That is why most states require proof of identity separately from the SSN requirement. For example, the states of Kansas and Louisiana, states that now accept the ITIN as an identifier, there is a separate requirement for documents that prove identity. Therefore, states that allow use of an ITIN are not relaxing their proof of identity: they are using the ITIN in exactly the same way that they use an SSN. The ITIN is an appropriate alternative to the Social Security Number, and *use of it as an identifier for licensing does not conflict with IRS' recommendation that it not be used as identification.*

Is the ITIN a secure identifier? The ITIN is a unique identifier provided to individuals who can prove their identity and foreign-born status. An individual cannot get more than one ITIN assigned to him or her. All applications are submitted and approved at a single processing center in the United States located in Pennsylvania. The IRS ensures that the W-7 is properly filled out and that all of the requisite documents have been submitted. The IRS then authenticates the documents through a number of validation methods such as the use of inspection equipment (i.e., Black Lights, Jewelers' Loupe, etc.). All documents must be current and either original, copies certified by the issuing agency, copies certified by the U.S. Department of State, copies certified or notarized by a military Judge Advocate General (JAG) office, or copies notarized in the U.S. Documents notarized in a foreign country are not usually acceptable. Documents establishing identity must bear the applicant's name and photograph. The only document that is sufficient by itself to establish both identity and foreign-born status is an unexpired passport. All other documents, including the "matricula" (the identification issued by Mexican consulates) and voter registration card, must be accompanied by a second document in order for the applicant to corroborate his or her identity.

ITINs in the context of driver's licenses:

Currently, six states use ITINs as part of the licensing process, not as proof of identification, but as an identifier similar to the Social Security Number. If an exception to the SSN requirement is not allowed, either through acceptance of the ITIN or through allowing those without SSNs to apply for driver's licenses without them, many lawfully-present immigrants, including foreign students, refugees awaiting employment authorization, lawfully-present dependents of those on work visas, diplomats, and others with long-term interests in Kansas and lawful immigration status will not be able to apply for Kansas driver's licenses, thus exacerbating an already serious problem of public safety by adding to the number of unlicensed, uninsured drivers.

Melinda Lewis
El Centro, Inc.
650 Minnesota Avenue
Kansas City, KS 66101

February 12, 2004

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 460 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 460 is respectfully submitted to your committee.

Current law states that when obtaining a drivers' license or instruction permit or identification card, the applicant would submit his or her social security number or a taxpayer identification number if he or she does not have a social security number. SB 460 would eliminate the use of a taxpayer identification number on drivers' licenses or instruction permit or identification cards, requiring applicants to use a social security number unless the applicant certifies that he or she does not have a social security number.

The Department of Revenue states that changes would have to be made to drivers' license handbooks and staff would have to be retrained. These costs could be absorbed within the agency's current budget.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Steve Neske, Revenue

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Attachment 4

Summary of Testimony
Louis J. Wade
Kansas Credit Attorney's Association
Senate Bill 423
February 12, 2004

Chairman Vratil, and members of the Senate Judiciary Committee,

Thank you for the opportunity to speak with you in support of SB 423, which proposes to repeal KSA 60-2310(d).

I am an attorney, and have practiced for more than 20 years. My career has always focused on representation of creditors. I am currently a member of the creditor's rights section of my firm. The current law, KSA 60-2310(d) poses an unreasonable restriction on commerce. Today, virtually all paper, loans and accounts are assigned. For example, when a consumer purchases furniture at a store, an automobile, or even a mortgage, the right to receive payment is sold or assigned to a finance company, an automobile finance company or bank, or to another mortgage lender.

As far as I am aware, Kansas is the only state in the union to impose a limitation on wage garnishment based on who is entitled to payment.

Because I have handled many of these cases, and am familiar with collection cases and many other collection attorneys, I can describe the process. The creditor will attempt to collect the amounts due on its own. The creditor may then ask a collection agency to collect. Both of those parties will make numerous phone calls and letters to the debtor to obtain payment. If not paid, or no arrangements made, the claim may then be sent to an attorney. The attorney will also make a written demand by letter and a phone call. The debtor has the opportunity to resolve by way of voluntary payments at this stage also. Only after all those efforts have failed will a suit be filed. At that time the debtor is served with the suit, and again the attorney will attempt to resolve by way of amicable payments. If all that fails, then the suit will proceed, and only after judgment is entered, with due process safeguards, can any garnishment issue.

The current limitation against use of wage garnishment for assigned accounts is bad policy for the State of Kansas. Another portion of the statute, KSA 60-2310(c) applies when a judgment debtor has been sick and away from work. That provision is sensible, rational, and good policy to prevent extra harm to a judgment debtor when they are sick. On the other hand, limitation as provided in Subsection (d) does not make sense. The debt is valid, and the amount is owed. The amount is due regardless of who currently holds the right to payment. The debtor obtained goods and/or services in return for the promise of payment, and has failed to pay. The better policy for Kansas would be to require payment of just and lawful debts.

Interestingly, the owner of an account or debt by assignment is free to use bank garnishment under the current law. That can pose a much more drastic and harmful remedy to the judgment debtor because the entire account is frozen, and may be taken in payment of the judgment. Checks may bounce. On the other hand, with wage garnishment there is a 25% limitation,

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providing some protection to the judgment debtor, and at the same time allowing the creditor to receive some payment.

The repeal of KSA 60-2310(d) as proposed under SB 423 would also be compatible with the purposes of SB 298. By allowing wage garnishment for assigned accounts, additional funds may be generated for funding the courts.

The judgment debtor is protected by other laws, obviating the need for protection under KSA 60-2310(d). The Fair Debt Collection Practices Act and the Kansas Consumer Protection Act are examples of legislation providing that protection.

In conclusion, I respectfully urge the committee to pass SB 423. Thank you.

Additional Comments

As requested by Senator Pugh, I have attached a sample wage garnishment answer form.

Following my oral testimony some questions and comments were raised by Senator Pugh. I would like to offer some additional comment on those matters.

With respect to the Holder-in-due-course concept, typically that does not apply to retail or consumer paper and transactions. Under the FTC Holder Rule (15 U.S.C. 1666i), an owner of assigned consumer debt remains subject to all defenses which could have been asserted against the original creditor. In other words, that assignee does not benefit from Holder-in-due-course status.

With respect to the burden on employers, those same employers will benefit as well. Those employers own and run businesses, for which they must collect for their goods and/or services. Those same employers want to use wage garnishment to receive payment, either directly or indirectly. If an assignee cannot use wage garnishment to collect, that employer cannot sell those accounts for as much. Stated differently, and as pointed out by Senator Donovan, that raises the prices and cost of credit for all Kansans, and raises the cost of doing business for all small business.

In addition, employers are entitled to payment of \$10/month for answering each garnishment. The form provided by the Supreme Court is a fill-in-the-blank form that should only take a few minutes to complete. Assuming the form can be completed in 15 minutes (and it should really only take 5-10 minutes), the employer is receiving compensation at the rate of \$40/hour, for work that is typically performed by an employee earning far less than that rate of pay.

With respect to the concern for a market in credit card debt, I can assure the committee that Kansas law will neither create nor inhibit the existence of that reality. Indeed, the sale of debt occurs commonly, and in large quantities by credit card companies, and others. Because that debt is sold at a discount, that offers the debtor an enhanced opportunity to resolve the account by way of settlement for a discounted amount.

Thank you for considering these additional comments.

Prepared by:
Filer's Name: _____
Filer's Address: _____

Filer's phone number: _____
(Filer's fax phone number: _____)
(Filer's e-mail address: _____)
Attorney for Judgment Creditor/Pro se Judgment Creditor

In the District Court of _____, County, Kansas

_____, Judgment Creditor

vs.

Case No. _____

_____, Judgment Debtor

Address: _____

Social Security No./TIN _____

Garnishee's Name: _____

Garnishee's Address: _____

Garnishee's County: _____

Fax number (if known) _____

e-mail address (if known) _____

Pursuant to Chapter 61 of
Kansas Statutes Annotated

ANSWER OF GARNISHEE

(To Attach Earnings)

To the above-named Garnishee:

1. If the judgment debtor (employee) was never employed by you or terminated employment before the first day of the prior month for which this answer is made, complete the following section and sign and date the answer at the bottom and send to the judgment creditor(s) and judgment debtor as instructed below.

The Judgment debtor (employee):

___ terminated employment on _____ (date)

check one

___ was never employed.

2. If the above paragraph does not apply you must complete the rest of the Answer Form.

3. Read carefully the attached Instructions to Garnishee.

4. Only one answer needs to be completed each month for each judgment debtor and you may duplicate the completed answer in any manner you desire for distribution to the judgment creditor(s) and judgment debtor.

5. This answer covers all pay periods which end during the prior month which is as follows: month: _____, year: _____.

6. The normal pay period for employee is (designate one):
weekly _____ every two weeks _____ semi-monthly _____ monthly _____.

7. Total gross earnings due for the pay period or periods covered by this answer are:
.....\$ _____.

8. Amounts required by law to be withheld for the pay period or periods covered are:
(1) Federal social security tax\$ _____.
(2) Federal income tax\$ _____.
(3) State income tax\$ _____.
(4) Railroad Retirement Tax\$ _____.

TOTAL DEDUCTIONS\$ _____.
(Deduct only those items listed above)

9. Disposable earnings for the pay period or periods covered are: \$ _____.
(7 minus 8)

See the attached Instructions to Garnishee to determine amount of disposable earnings to be withheld.

10. I am subtracting from the disposable earnings in 9 pursuant to an income withholding order for support the amount of\$ _____.

11. I am subtracting from the disposable earnings in 9 pursuant to a lien which has priority over garnishments under the law the following amount:
type of lien _____\$ _____.

12. In accordance with the instructions accompanying this answer form, I have determined that the amount which may be paid to employee is\$ _____.

13. I am holding from the amount in 12 an administrative fee in the amount of\$ _____.

See attached Instructions to Garnishee for amount of the administrative fee that can be

retained.

14. After paying to the employee the amount stated in 12 less the administrative fee in 13, and deducting any amount shown in 10 and 11, I am holding the remainder of the employee's disposable earnings in the amount of\$_____.

15. If I do not receive an objection to this Answer within 10 days after I deliver it to all parties entitled to a copy, I will pay the amount held in 14 to the following judgment creditors:

Case No.	Name	Address	Amount
A. _____	_____	_____ _____ _____	\$ _____
B. _____	_____	_____ _____ _____	\$ _____
C. _____	_____	_____ _____ _____	\$ _____
D. _____	_____	_____ _____ _____	\$ _____

If more space is needed, attach separate sheet.

Judgment Debtor's Name & Address: _____

Pursuant to K.S.A. 53-601, as amended, I declare under the penalty of perjury that the foregoing is true and correct.

EXECUTED on _____, _____.

Garnishee

THIS COMPLETED ANSWER OF GARNISHEE MUST BE SENT TO ALL OF THE JUDGMENT CREDITORS LISTED ABOVE AND TO THE JUDGMENT DEBTOR. DO NOT SEND TO CLERK OF THE DISTRICT COURT.

February 12, 2004

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 423 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 423 is respectfully submitted to your committee.

SB 423 would remove the prohibition against owners of assigned accounts from using wage garnishment as a collection method. Currently, if an account is sold or assigned to any person or collection agency, wage garnishment is not an option for collection unless that debt is for support through the Department of Social and Rehabilitation Services, for support through Title IV-D of the Federal Social Security Act, for accounts and taxes receivable to the Director of Accounts and Reports, or for debts or restitution to district courts.

SB 423 would have no fiscal effect on any state fund. The Judiciary states that increased wage garnishments would result in additional workload for its staff, but does not know what that additional amount would be at this time.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Jackie Aubert, SRS
Brandy Wheeler, Judiciary
Pat Higgins, Department of Administration

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Attachment 6



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

Testimony in Support of
Senate Bill No. 424

Presented to the Senate Judiciary Committee on February 12, 2004
By James W. Clark, Legislative Counsel, Kansas Bar Association

The Kansas Bar Association requested **Senate Bill 424** on behalf of the KBA Real Estate, Probate and Trust Section. Members of this section, as well as others involved in estate planning, have increasingly relied on the creation of revocable trusts as a significant part of an estate plan, often in lieu of a will.

The advantages of placing property, such as a primary residence or farmstead, in a trust is that the property then transfers according to the terms of the trust, rather than through a probate proceeding. The delay, expense (including attorney fees of 2% of the value of the estate), duplicitous proceedings if there is property located in more than one state, and loss of privacy involved in probate are thus avoided.

Besides avoiding probate proceedings, revocable trusts are easily established, and generally require only the preparation of the trust document and transfer of the property to the trust. This ease of use, however, is being threatened.

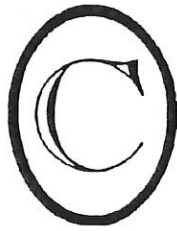
- In a Wyoming case, a title insurance company refused to defend the title of a ranch placed into a revocable trust by an elderly rancher. Unfortunately, the title dispute, and the company's decision, occurred after the rancher/settlor had died, and the ranch property suffered a significant loss.
- In Florida, a bankruptcy court has refused to recognize that state's homestead exemption on residential property placed in a revocable trust.
- In Kansas, we understand that at least one major insurer is questioning the status of property transferred to a trust, and if the a policy is issued on trust property it will not cover the grantor individually.

An estate planner can no longer assure the client that the use of a revocable trust will avoid the expense and delay of probate, because of the increased likelihood of litigation and uncertain results. Under this current climate of uncertainty, an estate planner can only advise the client that in addition to death and taxes, there is also the certainty of the expense and delay of probate. The passage of SB 424 will greatly reduce the uncertainty of the use of trusts to avoid probate. We urge your favorable recommendation of this bill.

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Attachment 7



COLUMBIAN NATIONAL TITLE INSURANCE COMPANY

2655 S.W. Wanamaker Rd.
Topeka, KS 66614
PH: (785) 232-4365 FX: (785) 232-3243

Opponent to Senate Bill 424

Hearing, Thursday, February 12, 2004
Statehouse Room 123 S at 9:30 A.M.

My name is Leola Foster. I am a Vice President for Columbian National Title Insurance Company. Our company is a national underwriter of Title Insurance. We have serious concerns that Senate Bill 424 encroaches upon our ability to contract with our customer in a manner acceptable to all parties to the contract and in compliance with Kansas Statutes and the requirements of the Kansas Department of Insurance.

Senate Bill 424 is in conflict with K.S.A. 40-236 (b) which provides that no title policy may be issued in the state of Kansas unless "...the insurance company or its agent has caused to be conducted a reasonable search and examination of the title to the property...and... made a determination of insurability of title and the risk in accordance with sound underwriting practices." This step is skipped by automatically making the TRUST a party to the title policy without the insurance company conducting the search and determining insurability.

Some of the issues which could appear in the title to real estate after the title policy was issued to the original insured and which would affect the title conveyed to the TRUST are as follows:

- A void transfer of title to the TRUST with intent to defraud creditors.
- A preferential transfer to the TRUST, which may be voided in Bankruptcy.
- Grantor forgot he conveyed title to a child and has no title to convey to the TRUST.
- Title when transferred to the TRUST has liens, i.e. child support, taxes, judgments.
- Attorney-in-fact for Grantor is without authority to convey to the TRUST.
- The TRUST doesn't exist.
- The legal description contains a significant error.
- The Grantor is a minor or incompetent without ability to convey to the Trust.
- The deed to the TRUST is not properly drawn or signed or acknowledged.

If the Senate Bill cannot be defeated in Committee, we recommend at the minimum the following underlined changes to avoid conflict with K.S.A. 40-236 (b) and the Kansas Insurance Department:

Leola Foster
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Senate Bill No. 424

By Committee on Judiciary

2-2

AN ACT concerning trusts: relating to the transfer of property into a trust.

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

Section 1. (a) The transfer by warranty deed of real or personal property to a trust shall not affect the coverage of any title, liability, comprehensive or other insurance, and the trustee shall also be deemed to be so insured and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original-named insured. Transfer to a trust shall not affect any homestead exemption or redemption rights and shall not cause a due on sale or similar clause to be effective under a mortgage or security interest, if the transferor is the primary income beneficiary of the trust at the time of the transfer.

(b) This section shall be a part of and supplemental to the Kansas uniform trust code.

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

Without the above changes, the title insurance company is placed in the position of insuring acts suffered and assumed by other parties without our knowledge and which in our opinion would constitute unsound underwriting practices, and a violation of K.S.A. 40-236 (b). Without the above changes the financial soundness of insurance companies would be affected to the detriment of all consumers.

Senate Bill 424 could be misleading to the Kansas consumer. The general consuming public will rely on Senate Bill 424 and draft and record their own deeds to the TRUST believing the TRUST has good title because the TRUST is an insured on a title policy. After the grantor has conveyed to the TRUST and the grantor has died, it is time consuming, expensive and sometimes impossible to correct defects and errors that could have been easily corrected while the grantor was alive.

For the above reasons, we ask the committee to not approve the Senate Bill and allow it out of committee. In the alternative, we request that at least the changes underlined in the above copy of the Senate Bill be used to amend the Senate Bill as presented