

MINUTES OF THE SENATE COMMERCE

The meeting was called to order by Chairperson Nick Jordan at 8:35 A.M. on February 10, 2005 in Room 123-S of the Capitol.

All Committee members were present:

Committee staff present:

Helen Pedigo, Revisor of Statutes
Katie Sparks, Legislative Research
Jackie Lunn, Committee Secretary

Conferees appearing before the committee: John Federico, Kansas Self-Storage Owners Association
Larry Triplet, Owner, Citywide Self-Storage, Salina
Pat Terick, Cerebral Palsy Research Foundation
Roberta Johnson, Via Christi Medical System
Kim Galley, League of Kansas Municipalities
Mallee Carpenter, Kansas Chamber of Commerce
Terry Forsyth, Kansas NEA

Chairperson Jordan opened the meeting by introducing Kathie Sparks, Legislative Research to explain **SB 69**, **SB 118**, and **SB 122**. Upon the conclusion of Ms. Sparks statements, Chairperson Jordan opened the hearing on **SB 69**. (Attachment 1)

Chairperson Jordan introduced John Federico representing Kansas Self Storage to give his testimony. Mr. Federico stated **SB 69** would allow but not mandate self-storage facility operators to charge a late fee to delinquent payers. If an operator chooses to charge a late fee, **SB 122** provides the terms of the late fee be part of a written contract. And it caps the late fee. Mr. Federico provided written testimony. (Attachment 2)

Upon completion of Mr. Federico's testimony there was discussion regarding what the recourse is for late payment or no payment tenants. The discussion continued with the committee and Mr. Stan Masters, attorney for the Kansas Self-Storage Association. Mr. Masters stated current statutes require the owner to meet several requirements before removing the tenant's property from the self-storage unit. This process takes about 45 days and if on the 44th day the tenant comes up with the money to pay the process is cancelled out. Also the Committee was concerned if the 20% was an excessive amount. It was determined that the 20% was reasonable.

Senator Brownlee stated there was an error on Page 2 Line 8. It should read "in an amount not to exceed \$20.00." The word "not" was left out in error.

Chairperson Jordan introduced Larry Triplet, owner, Citywide Self-Storage in Salina. Mr. Triplet did not have written testimony. He stated it was a mistake to regulate the late fee charge for self-storage. He also stated that he charges late fees in excess of what was outlined in **SB 69**. Trying to collect delinquent payments is very difficult. The process takes so long to empty the unit for non payment, and most of the time the contents, when sold brings less than the amount owed. If the fees are regulated by the state they won't be adequate; therefore, he would have to raise his rates. In closing he urged the Committee not to support **SB 69** and stood for questions.

Upon completion of Mr. Triplet's testimony there was discussion regarding the 20% not being high enough. Mr. Triplet stated in his personal opinion 20% is too low. He charges \$2.00 per day every day late which would exceed the 20% and in most cases the late fee exceeds the monthly payment. The discussion continued regarding options for forcing the non-pay or no pay tenants out. Mr. Triplet stated it takes about 45 days to go through the process and in his business they are auctioning off 6 units at a time and about six times a year.

Chairperson Jordan asked Mr. Triplet to please send written testimony to Senator Brownlee's office. Mr. Triplet agreed.

Chairperson Jordan closed the hearing on **SB 69** and opened the hearing on **SB 118** by introducing Patrick

CONTINUATION SHEET

MINUTES OF THE Senate Commerce at 8:30 A.M. on February 10, 2005 in Room 123-S of the Capitol.

A. Terick, Director of Governmental Activities of the Cerebral Palsy Research Foundation. Mr. Terick stated the Cerebral Palsy Research Foundation supports **SB 118**. He stated **SB 118** would allow Business Technology Career Opportunities (BTCO) participation into the Kansas State Use Law. The Kansas State Use Law was established a number of years ago to allow the state of Kansas to grant select product and service contracts to Not-for-profit organizations that had a mission of employing individuals who were blind or had disabilities. Mr. Terick offered his written testimony. (Attachment 3)

With no one else to testify on **SB 118**, Chairperson Jordan closed the hearing.

After some discussion Senator Emler made a motion to pass the bill out favorably. Senator Schodorf seconded. Motion carried.

Chairperson Jordan opened the hearing on **SB 122** by introducing Roberta Johnson, Associate General Via Christi Health Systems stated Via Christi asked for **SB 122** be introduced to address a payroll issue that adds several thousand of dollars of unnecessary costs to Via Christi's operations on an annual basis. Ms. Johnson stated the advantages of direct deposit to the employees. Via Christi is sensitive to the concerns of its employees in this matter yet they believe in order to improve efficiencies and to be able to move its payroll practices into the 21st Century they should have the right to designate the method by which they pay their respective employees. Upon conclusion of Ms. Johnson's testimony she urged the Committee to vote in favor of **SB 122**. (Attachment 4)

Chairperson Jordan introduced Kim Galley with the League of Kansas Municipalities to give her testimony. Ms. Galley stated authorizing the use of electronic transfers will save time and money at the local level. The League of Kansas Municipalities strongly supports the use of technology to provide government services in a more efficient manner. Further, they support the right of cities, as local employers, to determine the method by which their employees will be paid. Ms. Galley presented written testimony. (Attachment 5)

Chairperson Jordan announced to the Committee there was written testimony from Marlee Carpenter from the Kansas Chamber of Commerce and Industry. (Attachment 6)

Chairperson Jordan introduced Terry Forsyth from the Kansas National Education Association to testify as an opponent against **SB 122**. Mr. Forsyth stated that the KNEA was against SB 122. They feel this bill takes away the simple right of the employee to choose the method of payment of wages. They believe this would be an unwarranted intrusion on the part of the government into the lives of its citizens. Mr. Forsyth presented written testimony. (Attachment 7)

Chairperson Jordan introduced A.J. Kotich, Chief Counsel Director of Employment Standards for the Kansas Department of Labor. Chief Counsel Kotich feels that **SB 122**, as written, is in conflict with the interpretation of the Fair Labor Standards Act (FLSA) currently used by the United States Department of Labor. In closing he stated that the Kansas Department of Labor recognizes the convenience and cost savings to employers of direct deposit of wages. As the State's adjudicator of the majority of wage claims, we are cognizant of the importance of the USDOL's interpretation of the FLSA as to direct deposit and is silent as to whether the costs of direct deposit or debit cards may or may not be passed on to the employee. Chief Counsel Kotich offered written testimony. (Attachment 8)

Upon completion of Chief Counsel Kotich's testimony, the Committee discussed electronic deposit. The Committee recognized Ms. Johnson and she stated the laws had been modified in 1999 to add electronic deposit to the method of payment. The Committee did realize the bill allows the employee to select the financial institution with which to have their pay check electronically deposited. Senator Emler asked Ms. Johnson if the debit card was subject to garnishment. Ms. Johnson stated "yes". Senator Emler voiced his concerns about the debit card and there was further discussion with Ms. Johnson. Ms. Johnson stated new employees at Via Christi are required as an agreement of employment to use the electronic deposit.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for Friday, February 11, 2005 at 8:30 a.m. in room 123S.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 7, 2005

TO: Senate Committee on Commerce

FROM: Kathie Sparks, Principal Analyst

RE: SB 69

SB 69 amends the Self-Service Storage Act by allowing an operator to charge a late fee for an occupant's failure to pay rent when due. The late fee would not be considered interest nor is it a reasonable expense that the operator may incur in the course of collecting unpaid rent. The late fee charge must be stated in the rental agreement in order for the operator to collect the fee. The operator could recover all reasonable rent collection and lien enforcement expenses in addition to any late fees imposed.

The operator may impose a reasonable late fee, for each month an occupant does not pay rent when it is due, in an amount not to exceed \$20 per month or 20 percent of the monthly rental amount, whichever is greater. An operator could set a late fee other than the one stated; however, the operator has the burden of proving that a higher late fee is reasonable.

The Act would take effect upon publication in the statute book.

KS/kal

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Attachment 1-1



Memorandum

To: Members of the Senate Commerce Committee
From: John J. Federico; Federico Consulting
On Behalf of the KSSOA

Date: February 10, 2005
Re: SB 69 (Self-storage Late Fee Bill)

I. What SB 69 Does

- A. Simply seeks to codify what is a standard business practice of charging a late fee to delinquent payers.
- B. Also sets a "cap" on what the late fee can be.
- C. Mandates that if a late fee is charged to a delinquent payer, that it be part of the written contract between the operator and renter.

NOTE: The bill will allow (not mandate) self-storage facility operators to charge a late fee to delinquent payers.. If an operator chooses to charge a late fee, the bill provides that the terms of the late fee be part of a written contract. And finally, it caps the late fee (currently an operator can charge any fee they choose.)

NOTE: In the 2004 Session a similar bill was passed out of the House Judiciary Committee, twice, and was approved by the House 110-14.

II. Why is the Bill Necessary?

- A. To prevent very expensive class action lawsuits.
- B. To eliminate or minimize retaliatory lawsuits by delinquent payers.

NOTE It is not without much debate and consideration that the self-storage industry has come to the legislature and ASKED to be further regulated! In short, because the current Kansas Self-Service Storage Act is silent as to whether late fees are permissible, there is a realistic threat of a lawsuit by delinquent payers as to whether operators are allowed to charge a late fee. The KSSOA's request for protection from lawsuits (which will drive up the cost of doing business) is EXACTLY the same premise that prompted the cable industry to seek similar legislation and protection in 1999 (HB 2076. Passed the Kansas House 97-27). **SB69** protects small business owners from both the threat and expense of a class action lawsuit similar to the one filed against self-storage owners in Maryland, and, against retaliatory lawsuits by delinquent payers challenging an operators' right to charge a late fee.

III. Is There Precedence?

- A. The Kansas legislature has put in statute similar language to protect other businesses with similar concerns.
- B. Similar language has been passed in other states (Missouri, Ohio, Arizona, West Virginia, & California) To our knowledge, no state has rejected this effort by self-storage owners in other legislatures.

IV. Why is the “Cap” Set at \$20 or 20% ?

- A. There are currently a few self-storage owners currently charging \$20 so while they are seeking help from the legislature, they would not be required to change current business practice or bear the expense of drafting new contracts and paperwork.
- B. It allows some flexibility that will prevent the industry from returning to the legislature repeatedly to ask that is been raised.
- C. Other states have similar caps.
- D. There is justification for self-storage late fees to be higher than other late fee charges such as cable or cellular phones. A small self-storage owner has only a limited number of units they can rent and is denied use and income from that space that is being occupied by a delinquent payer.

NOTE: Currently, an operator can charge any amount they want to for a late fee. You are not being asked to “set” the late fee, only cap it. Competition will play more of a role as to what the fee is set at, more so than anything the legislature does.

V. Is There Something “Hidden” In The Bill?

- A. No. Currently, a self-storage owner is free to charge any amount for a late fee. So it is not without careful consideration that that they come to the legislature asking for further regulation and a “cap” on the amount they will be allowed to charge!
- B. *New Section 2 (c) merely makes clear that a late fee is in addition to the recovery of other expenses already provided for in another part of the statute; (K.S.A. 58-816)*
The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent, labor or other charges, and for expenses reasonably incurred in its sale, as provided in the self-service storage act.

NOTE: This does NOT allow for recovery of attorney fees.

VI. Does It Help To Just Authorize A Late Fee And Not Set A Cap?

No. There must be clear legislative intent for both to avoid a lawsuit. If both are not part of the bill, then a lawsuit can be filed either challenging whether a late fee is allowed, OR if the late fee is reasonable.

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Attachment 2-2

Testimony on Senate Bill 118

Before the Senate Commerce Committee

by

Patrick A. Terick

Director of Governmental Activities

Cerebral Palsy Research Foundation

Thursday, February 10, 2005

Co-Chairpersons Brownlee, Jordan, and members of the Senate Commerce Committee, my name is Patrick A. Terick, Director of Governmental Activities for the Cerebral Palsy Research Foundation located in Wichita, Kansas. I come before you today in support of Senate Bill 118. Senate Bill 118 would allow Business Technology Career Opportunities (BTCO) participation into the Kansas State Use Law. The Kansas State Use Law was established a number of years ago to allow the state of Kansas to grant select product and service contracts to Not-for-profit organizations that had a mission of employing individuals who were blind or had disabilities.

The current law limits participation only to those vendors who are designated as "sheltered workshops", meaning that they carry a sub-minimum wage certificate through the United States Department of Labor. This allows the employer to pay persons with disabilities less than minimum wage based on productivity time studies. There are certainly worthy organizations that fall under this category and for good reason need that flexibility. It is our opinion however that those not-for-profit companies that have identical missions, such as BTCO but work with a disabled population that does not require the need to pay sub-minimum wage, should also be eligible for participation under the Kansas State Use law.

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Business Technology Career Opportunities, was founded by the Cerebral Palsy Research Foundation in February of 2002, as a not-for-profit company with a mission to employ people with disabilities in the Information Technology and Document Conversion fields. A number of the disabled employees currently working at BTCO are graduates of CPRF's, School of Adaptive Computer Training, which provides customized Microsoft Office Specialist training to its students as well as granting Microsoft certifications to its graduates. Early success of BTCO can be seen through the completion of a very large and demanding project performed for the U.S. Bureau of Census which was concluded two and one-half years ahead of schedule with an outstanding performance record as noted in the memo in front of you headed: United States Department of Commerce. BTCO is also performing conversion services for the Kansas Corporation Commission and several municipalities around the Wichita area.

The average wage of a BTCO employee with a disability is \$11.48 per hour and in addition, health insurance and retirement benefits are also offered to all employees. Aside from the obvious quality of life benefits that are derived from competitive employment for someone who has a disability. There is also a substantial saving to the State and Federal Governments. A person who is eligible for Social Security due to their disability but chooses to work and is making \$10.00 per hour will have a reduction in subsidy of nearly \$8,000 annually and that is if the person retains Medicaid or Medicare health insurance. If that disabled worker chooses the companies health insurance that subsidy savings increases to approx.\$23,000 annually. 80% of BTCO's

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employees utilize the companies insurance. If 10 people who have a disability were competitively working under this scenario, there would be savings in reduced subsidy of over 1.1 million dollars over a 5-year timeframe. This does not take into account the taxes paid over this same period.

With the appropriate assistive technologies and work site accommodations, even those individuals with significant physical disabilities can be competitively employed. The fact remains however, that the majority of private sector businesses are not willing to give people with these limitations a chance. Nearly 75% of the disabled population seeking employment are unemployed. A not-for-profit company with a mission such as BTCO welcomes the opportunity to assist those with disabilities, who are seeking to become productive citizens in this society. The need for a company such as BTCO was obvious and in our opinion, the inclusion of BTCO into the Kansas State Use Law for reasons of equity and economic assistance to the state, is also evident.

We strongly urge that the Senate Commerce Committee support Bill 118. I would be happy to answer any questions that you might have at this time.

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Attachment 3-3



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001

January 14, 2005

Memorandum for: Michael L. Palensky
Chief, Acquisition Division

Through: Alan Berlinger ^{AB}
Assistant Chief for Data Capture (COTR)
Decennial Systems and Contracts Management Office

From: Mark Wolfram ^{CMW}
Decennial Specialist (ACOTR & Project Coordinator)
Decennial Systems and Contracts Management Office

SUBJECT: Fourth Period Performance Review
Contract No. 50-YABC-1-66044
(Census 2000 Image Achieving)

This memorandum updates the status of the performance of the subject contract, Microfilming of the Census 2000 Images, as the conversion of digital images to microfilm is complete. This conversion, completed in December was not originally projected to be complete until the summer of 2006. **The contractor exceeded expectations and performed in an excellent manner.** The project totals were 569,979,775 images written to 212,258 (106,129 sets) rolls of film. This has been particularly noteworthy given the complex security and quality assurance aspects of the project due to the legislatively protected data (Title 13 data) being converted.

Since the last review, the **Business and Technology Career Opportunity, Inc (BTCO)** team has completed the required shutdown of facilities and IT infrastructure in an orderly and effective manner. The contractor has completed the process to document and transfer to BOC film rejects containing Title 13 images.

Contract activity continues, conducting the required 2-year inspection for aging defects before the film is for transferred to NARA. This inspection is being done thoroughly and addresses all relevant requirements.

The level of effort put forth and the performance on this important task were exemplary. Given their performance to date, no problems with the inspection or final delivery are anticipated.

cc: Jim Marsden (DSCMO)
Lori Donovan (ACQ)
✓ Joey Jackson (BTCO)

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**TESTIMONY IN FAVOR OF SB 122
PRESENTED TO THE
SENATE COMMITTEE ON COMMERCE**

February 10, 2005

Good morning, my name is Roberta Johnson, Associate General Counsel of Via Christi Health System in Wichita, Kansas. As an employer of approximately 9,000 employees located in a number of communities throughout the State of Kansas, Via Christi has asked that SB 122 be introduced to address a payroll issue that adds several thousand dollars of unnecessary costs to Via Christi's operations on an annual basis. The payroll issue being the inability of a Kansas employer to designate or select direct deposit as a payment method by which all of its employees will be paid.

To address this issue and provide Via Christi and other Kansas employers the flexibility they need to more efficiently manage payroll processes and payment methods, Via Christi is asking the legislature to consider amending K.S.A. 44-314.

Currently, K.S.A. 44-314 requires that an employer obtain written consent from an employee before the employer can pay an employee by "direct deposit." While a large majority of Via Christi employees welcome the confidentiality, security and convenience that accompanies "direct deposit," a few employees remain entrenched in their ways electing to be paid by paper check, delivered to them by mail. When these employees are asked why they prefer paper checks to direct deposit, they provide a variety of reasons. Among those are that some employees simply struggle with any change in routine, preferring the familiar over something new; some employees simply don't like banks or are fearful of having a bank account, and, therefore, resist this method of payment; and some employees simply don't make the effort to sign the forms necessary to establish a direct deposit account.

Employees who have elected to receive their wages by direct deposit, however, realize a number of advantages. For instance, an employee doesn't need to be in town or even at the workplace for his or her money to be deposited, an employee needn't worry about having a check lost or stolen, there's no waiting period for a direct deposit to clear, and payments directly deposited are available to the account holder on the morning of payday, eliminating the need to stand in line at the bank.

In addition to employee advantages to mandatory direct deposit, there are clearly employer advantages as well, generally resulting from reduced labor costs and expenses associated with preparing, mailing and addressing problems inherent in a manually managed paper check payroll system. The most recent data gathered by Via Christi indicates that approximately 15 percent of Via Christi employees statewide currently receive a paper check by mail. This results in additional costs to Via Christi in a variety of ways:

1. Costs to purchase check forms;
2. labor costs for check printing and form sealing;
3. postage to mail paper checks,
4. bank stop payment fees on lost checks (generally 75-100 per year),
5. labor costs to reissue lost or stolen checks,
6. bank processing fees for paper checks, and
7. labor costs for the performance of monthly check reconciliation functions.

These manually performed functions add approximately \$30,000 of unnecessary costs to Via Christi's payroll budget, annually. In addition to actual cash losses, the employee/employer relationship can be damaged when an employee fails to receive his or her paper paycheck due to actual loss or theft. An employee in need of his or her

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pay check may be required to wait several days for Via Christi to verify the loss before a new check is reissued. Tension can and does develop between the employee and the payroll department under such circumstances.

While Via Christi is sensitive to the concerns of its employees in this matter and has accommodated these concerns for the last ten (10) years, it believes that in order to improve efficiencies and to be able to move its payroll practices into the 21st Century, the time has come for Via Christi and other Kansas employers to be given the right to designate **the method** by which they pay their respective employees.

To do so, Via Christi proposes that K.S.A. 44-314 be amended in two ways, first to give Kansas employers the right to **designate** the payment methodologies they believe make the most sense for their company, and, secondly, to add an additional payment method to those currently offered – that of allowing payment by payroll debit card.

While I believe my previous comments address the need for giving employers the right to designate payment methodologies, let me spend a few moments discussing the request for amending the statute to allow payment by payroll debit card.

For those of you who are not familiar with a payroll debit card, let me briefly explain what this is and how it operates. A payroll debit card is, essentially, a plastic card issued to an employee onto which the bank “loads” an employee’s payroll funds each pay period. Although payroll debit card programs may vary from bank to bank, each, essentially, allows an employee to use the payroll debit card to get cash at ATM machines, directly from a bank teller, or to make direct purchases for goods and services from numerous merchants at point of sale.

There are numerous advantages the payroll debit card offers employees. As with direct deposit, the funds are immediately available on payday morning, an employee can be out of town or ill on payday and the funds are available without the need for an employee to go to the bank, and the risk of loss or theft is virtually eliminated. There are additional employee advantages to the payroll debit card, however, that surpass even those of direct deposit. First of all, there’s no need for an employee to establish a separate bank account, so for employees who may have difficulty qualifying for a bank account as is required for direct deposit, this problem is eliminated. In addition, for employees who currently receive a paper check and cash it, in full, at a check cashing service for oftentimes very high fees, these check cashing fees are reduced or eliminated as the employee may withdraw all of his or her paycheck with one swipe of the card, if he or she so desires.

Paying employee wages by payroll debit card has advantages for employers, as well, generally in the nature of a reduction in costs and expenses similar to those associated with direct deposit.

Via Christi and other Kansas employers deserve the right to take advantage of the wide range of technology currently available to them and to employ that technology in payroll processes and payment methodologies each employer determines best fits the needs of his or her company. Via Christi asks for your support of SB 122.

Thank you for giving me this opportunity to present Via Christi’s position. I would be happy to answer questions.

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Attachment 4-2



League of Kansas Municipalities

To: Senate Commerce Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 10, 2005
Re: Support for SB 122

Thank you for the opportunity to appear today on behalf of the 565 member cities of the League of Kansas Municipalities. We appear in support of SB 122.

We have received numerous calls from cities, and in particular small cities, who have tried to streamline their payroll process and have encountered one or two employees who refuse to accept payment via a direct deposit transfer. These cities are trying in good faith to provide government services more efficiently and effectively, but one or two individuals have used the provisions of K.S.A. 44-314 to hamper the process by demanding a "paper" check. This is clearly a duplication of services which imposes an unnecessary burden for local taxpayers.

Authorizing the use of electronic transfers will save time and money at the local level. LKM strongly supports the use of technology to provide government services in a more efficient manner. Further, we support the right of cities, as local employers, to determine the method by which their employees will be paid.

For these reasons, we urge your favorable consideration of SB 122 and I would be happy to stand for questions at the appropriate time.

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**THE KANSAS
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The Force for Business

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SB 122

Thursday, February 10, 2005

Senate Committee on Commerce

Marlee Carpenter, Vice President of Government Affairs

Joint Chairs Brownlee and Jordan and members of the committee;

The Kansas Chamber and its over 10,000 members support the proposed changes set out in SB 122. As drafted, the bill will amend K.S.A. 44-314 so that Kansas employers would have the ability to designate the payment methodologies they believe are in the best interest of the company and would add a payroll debit card an acceptable means of payment.

In today's competitive environment, Kansas businesses are constantly searching for ways to streamline their business practices and cut expenses. One such way in which Kansas businesses are cutting costs is by reducing their use of paper and moving to paperless systems. Consider how businesses file the majority of their documents electronically or how everyone communicates through e-mail and text messaging. No where has there been more advancement in paperless systems than in the area of electronic commerce. Today, we pay bills electronically, buy our groceries with debit cards and even pay for the Kansas turnpike electronically. All because it reduces the amount of paper work and enhances the efficiency of business.

As drafted, SB 122 affords Kansas employers the ability to establish a more efficient payroll system as well as providing employees with a safer, more reliable compensation system. Though not all employers will designate to go with an electronic payment system, it will afford those who do the ability to implement paperless systems and save thousands of dollars a year. While the introduction of SB 122 was requested by the private sector, it would allow the public sector the same benefits of going to a complete paperless payroll system.

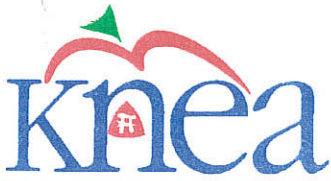
Imagine how much a paperless system would save the state of Kansas.

The Kansas Chamber respectfully request you pass SB 122 favorably.

Senate Commerce Committee

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Attachment 6-1



Terry Forsyth
Senate Commerce Committee
February 10, 2005
Senate Bill 122

Mr. Chairman, members of the committee, thank you for the opportunity to address the committee regarding **SB 122**. My name is Terry Forsyth and I represent KNEA.

We stand opposed to the bill. This bill takes away the simple right of an employee to chose the method of payment of wages. We believe that this would be an unwarranted intrusion on the part of the government into the lives of its citizens.

Under current statute an employer is given three possible methods of payment – cash, check or electronic deposit with the employee’s permission. **SB 122** adds payroll debit cards as a fourth choice. While we have no objection to adding another option, we do object to the removal of the right of the employee to choose the method. This is particularly important in the case of electronic transfer or debit card both of which sometimes raise concerns among citizens.

Employees must be allowed to choose the method of payment that best suits their personal financial situation. This bill strips away that right away and gives the choice to the employer.

We urge you to reject **SB 122**.

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Attachment 7-1



DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

**Testimony before the Senate Commerce Committee
Senate Bill 122**

**A.J. Kotich, Chief Counsel
Director of Employment Standards
Kansas Department of Labor
February 10, 2005**

Chairpersons Brownlee and Jordan and Members of the Committee:

Thank you for the opportunity to appear before you today concerning Senate Bill 122. I appreciate the opportunity to provide our analysis of this bill.

Senate Bill 122 would amend K.S.A. 44-314 to allow the employer to choose the method of paying wages to employees, and would allow use of direct deposit or payroll debt cards without the employees consent in an institution of the employer's choice. Presently, K.S.A. 44-314 allows direct deposit only if the employee gives his/her written consent.

Our research indicates that Senate Bill 122, as written, is in conflict with the interpretation of the Fair Labor Standards Act (FLSA) currently used by the United States Department of Labor (USDOL).

The U.S. Department of Labor's *Field Operations Handbook* states:

The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll direct deposit account, if it is at a place convenient to their employment and without charge to them. (Emphasis added).

While the *Field Operations Handbook* does not constitute binding law or regulation, it is the UDOL's internal operating procedure and does indicate the USDOL's position. Since the majority of Kansas employers are subject to the FLSA, this could have potentially far reaching economic effects.

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Attachment 8-1

For the Committee's consideration, our review of the 50 states and the District of Columbia indicate the following:

2 states (Alabama and Mississippi) have no laws limiting or allowing direct deposit;

35 states allow direct deposit if voluntary and/or the employee is allowed to opt out;

5 states and the District of Columbia allow mandatory participation if it is at no cost to the employee;

3 states allow mandatory participation; however, the employee must be allowed to designate the financial institution;

1 state (Louisiana) defers to the FLSA;

4 states allow mandatory participation, (North Carolina, however, provides that if the charges/fees take the wages below minimum wage, consent is necessary).

Summary:

KDOL recognizes the convenience and cost savings to employers of direct deposit of wages. As the State's adjudicator of the majority of wage claims, we are cognizant of the importance of the USDOL's interpretation of the FLSA as to direct deposit of wages. Senate Bill 122 appears to be in conflict with that interpretation because it allows mandatory direct deposit and is silent as to whether the costs of direct deposit or debit cards may or may not be passed on to the employee.

Again, thank you for the opportunity to submit my thoughts and observations. I will be glad to be available to your call concerning any questions you may have.

Respectfully,



A. J. Kotich
Chief Counsel
Kansas Department of Labor

Senate Commerce Committee

2-10-09
Attachment 8-2