

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 14, 2006 in Room 241-N of the Capitol.

All members were present except:

Patricia Kilpatrick- unexcused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Tom Martin, landlord and attorney, Kansas City

Ed Jaskinia, The Associated Landlords of Kansas

Others attending:

See attached list.

The Chairman stated that **HB 2658 - Gift certificates, restrictions** had a hearing on January 31 and requested to hear what the wishes of the Committee were on this bill.

Representative Huff, sponsor of the bill, distributed a balloon which he and the Kansas Restaurant and Hospitality Association had agreed on (Attachment 1).

Staff reviewed the balloon stating it looks like there are a lot of changes but there really aren't that many.

Representative Huff stated the peanut of the bill was still intact.

Ron Hein, representing the Kansas Restaurant and Hospitality Association agreed.

Representative Schwab shared a letter he had received from Store Financial Services stating this bill would severely and adversely impact their company to effectively operate in Kansas. Representative Schwab suggested waiting until next week on passing **HB 2658** out after talking to Store Financial Services (Attachment 2).

Representative Schwab moved and Representative Masterson seconded to Table **HB 2658**. A Division was called - 5 Yeas and 11 Nays. The motion failed.

Representative Ruff moved and Representative Johnson seconded to adopt the amendment to **HB 2658** as submitted. The motion carried.

Representative Burgess moved to strike on page 1, line 18, " a gift certificate or gift card shall not be redeemable for cash". The motion failed for lack of a second.

Representative Pauls moved and Representative Ruff seconded to amend lines 15 and 16 "if the gift certificate is lost, damaged or stolen, it can be replaced by the holder". The motion failed.

Representative Burgess moved and Representative Garcia seconded to replace on page 1, line 17, "A gift certificate or gift card shall not be redeemable for cash" with "merchant shall not be required to redeem a gift card for cash". The motion carried.

Representative Masterson said he thought the state was regulating where they don't need to be regulating.

Representative Schwab said he was concerned McDonalds would quit selling intrastate gift cards. Representative Schwab would just like to slow this process down until Store Financial Services could come and give testimony. Recommend to Table or have a sub-committee appointed to study this bill.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 14, 2006 in Room 241-N of the Capitol.

The Chairman appointed a sub-committee to study **HB 2658**: Chairman, Representative Schwab; Representative Garcia and Representative Huntington.

The Chairman opened the hearing on **HB 2839 - Residential landlord and tenant act; evictions, disposition of possession**.

Tom Martin, Attorney and landlord, testified as a proponent to **HB 2839**. The Chairman requested he provide written testimony in more detail (Attachment 3).

Ed Jaskinia, representing the Associated Landlords of Kansas testified in a neutral position. The Landlord Tenant Act is the best in America and this legislation is not needed.

No one appeared in opposition to **HB 2839**.

The Chairman closed the hearing on **HB 2839**.

The meeting adjourned at 10:35. The next meeting will be February 15, 2006.

COMMERCE AND LABOR COMMITTEE

DATE February 14, 2006

NAME	REPRESENTING
BRIAN MALONE	KTLA
EO JASKINIA	TALK
Tom MARTIN	NIA self
Mary Filcher Cook	Tom Martin
Tom Geches	KAFS
Martha Ann Smith	KMLA
Kathy Olsen	KS Bankers Assn.
Bill O Henry	KS Credit Union Assn.
Emilie Burdette Lush	KS Atty Gen
Emily Mueller	KCCI
Judie Hein	Hein Law Firm

Comptroller
2-14-06
Attach #1

HOUSE BILL No. 2658

By Representative Huff

1-19

9 AN ACT relating to gift certificates; concerning certain restrictions.

and gift cards

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

or gift card

11 Section 1. (a) On and after January 1, 2007, no person, firm, part-
12 nership, association or corporation shall sell a gift certificate to a pur-
13 chaser containing an expiration date. Any gift certificate sold after ~~that~~
14 ~~date shall be redeemable in cash for its cash value or~~ subject to replace-
15 ment with a new gift certificate at no cost to the purchaser or holder.

which is less than five years from the date of purchase

January 1, 2007, shall be

16 (b) A gift certificate sold without an expiration date is valid until re-
17 deemed or replaced.

or gift card

A gift certificate or gift card shall not be redeemable for cash.

(c) No dormancy fee shall be charged against a gift certificate or gift card.

18 ~~(c)~~ This section shall not apply to any of the following gift certificates
19 issued on and after January 1, 2007, provided the expiration date appears
20 in capital letters in at least 10 point font on the front of the gift certificate:

(d)

21 (1) Gift certificates that are distributed by the issuer to a consumer
22 pursuant to an awards, loyalty or promotional program without any money
23 or other thing of value being given in exchange for the gift certificate by
24 the consumer; or

or gift card

or gift cards

25 (2) gift certificates that are sold below face value at a volume discount
26 to employers or to nonprofit and charitable organizations for fund-raising
27 purposes if the expiration date on such gift certificates is not more than
28 30 days after the date of sale.

or gift cards

or gift card

29 ~~(d)~~ Violation of this section shall be deemed an unconscionable act
30 as defined by K.S.A. 50-627, and amendments thereto.

or gift cards

31 ~~(e)~~ This section shall be part of and supplemental to the Kansas con-
32 sumer protection act.

Insert subsections (e) and (f) (SEE ATTACHMENT)

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

And by relettering the remaining subsections accordingly

(e) All conditions and limitations shall be disclosed to the purchaser of a gift certificate or gift card at the time of purchase. If such conditions or limitations are not complied with by the purchaser, the issuer shall not be required to, but may, redeem such gift certificate or gift card.

(f) As used in this section:

(1) "Dormancy fee" means a charge imposed against the unused value of a gift certificate or gift card due to inactivity;

(2) "gift card" means a tangible device, whereon is embedded or encoded in an electronic or other format a value issued in exchange for payment, which promises to provide to the bearer merchandise of equal value to the remaining balance of the device. "Gift card" does not include a prepaid bank card;

(3) "gift certificate" means a written promise given in exchange for payment to provide merchandise in a specified amount or of equal value to the bearer of the certificate. "Gift certificate" does not include a prepaid bank card;

(4) "prepaid bank card" means a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution in a predenominated amount useable at multiple, unaffiliated merchants or at automated teller machines, or both, but shall not include a card issued by a retail merchant or a card issued by a shopping mall for use at multiple locations.

February 9, 2006

via E-Mail Transmission

Mr. Scott Schwab
Vice Chairperson
Commerce and Labor Committee
Kansas House of Representatives
Kansas State Capitol
300 SW 10th Street
Topeka, Kansas 66612

Dear Representative Schwab,

Thank you for the time you took earlier today to speak with Michelle Hamilton, regarding House Bill 2658. As she indicated, the amendments proposed to the bill - currently in the Commerce and Labor Committee - would severely and adversely impact the ability of my company, Store Financial Services, to effectively operate in the State of Kansas. As a result, we are respectfully requesting that more time be given for discussion of the bill before the committee gives it further consideration.

Overview of Store Financial Services (SFS):

SFS is a Kansas Company that was formed and commenced operations in 2003.

At least 90% of SFS's investors are Kansas residents and include several successful businessmen in the Kansas City area. The capital investments in SFS to date exceed \$5,000,000.00.

SFS currently employs 41 people at its office in Johnson County. 35 of these employees are Kansas residents.

SFS currently manages and processes gift card programs for over 197 shopping and business districts throughout North America.

SFS currently manages and processes gift card programs at the following shopping centers and business districts that are located within the state of Kansas:

Oak Park Mall – Overland Park, Kansas
Town Center Plaza – Leawood, Kansas

The City of Prairie Village - Prairie Village, Kansas
The Legends Shopping Center at Village West – Kansas City, Kansas (program to be launched in the 2nd Qtr. of 2006)

SFS is one of the fastest growing privately held companies in the Kansas City area and one of the fastest growing and most well respected payment processors in North America.

SFS has been nominated for the Kansas Governor's Exporter of The Year Award in 2006.

About our Services and Product:

The gift card programs that we process and administer utilize the payment networks of VISA USA and MasterCard International.

Under the rules outlined in the by-laws of these payment networks, these gift card programs require the sponsorship of a chartered financial institution, and transactions that occur on these cards are settled through these payment networks directly by our sponsor bank.

The gift cards are prepaid stored value cards, in that they are loaded with funds at the time of purchase. They are single load gift cards which cannot be reloaded with additional funds.

The funds loaded upon a gift card are not held by our clients, by SFS, or by any retailer accepting the card as a form of payment. The funds are immediately transferred to and held at and by our sponsor bank in a pooled account. Each gift card is tied to a gift card account which is tracked within the pooled account.

The gift card program is a selective authorization multiple retailer program, meaning that gift cards may be used at multiple retailers located in or around a shopping center or within a defined geographic region (ie. business districts, municipalities or chambers of commerce). The programs are not single retailer programs, where gift certificates/gift cards are confined to be used at a single retailer, for the economic benefit of that single retailer.

The retailers at the shopping center or business district did not create or design the program. They are "participating retailers" by virtue of the fact that they happen to be tenants of the shopping center or located with a defined geographic region, and accept VISA and/or MasterCard as a form of payment. They do not receive any compensation for accepting the gift card other than the profit earned on the sales of their goods or services when the gift card is used at their establishment.

When the gift card is redeemed with a participating retailer, the transactions are processed, settled and paid by the sponsor bank through the MasterCard or VISA payment networks, in the same manner as any transaction which occurs using a debit or

credit card. The retailer swipes the gift card, completes the transaction, and is reimbursed by the sponsor bank from the gift card account.

Our program incurs costs that are similar to the costs incurred by financial institutions that utilize the VISA and MasterCard payment networks to settle transactions that are initiated using debit or credit cards issued by these institutions. In addition to these bankcard network costs, SFS also bears the costs to provide additional levels of training and support to those retailers participating in the gift card programs that we administer.

**We Provide Many Services in Support of our Gift Card Programs.
These Services Include, but are Not Limited to the Following:**

SFS activates the gift card for use; creates and processes the gift card account; and processes and records all transactions on the gift card account. This transaction service is substantial. It consists of authorizing a purchase at the time of the transaction and the later processing of the settlement and payment to the retailer for the transaction. At a high redemption period in 2005, SFS was required to process more than ten gift card transactions per second from thousands of retailers throughout North America.

SFS maintains the network for the gift card, consisting of a sponsor bank and the VISA and MasterCard payment networks; provides, maintains, and upgrades the hardware and software used for the entire system; provides the proprietary software, known as CardPoint, used to operate and manage the system; and stores computer data for the gift card at multiple locations, including one or more hardened and secure facilities.

SFS reconciles the gift card accounts daily and provides reports when desired to clients and processors concerning the operations of the gift card program and individual gift card accounts.

SFS provides and maintains systems that allows the cardholder and shopping center to access gift card account information on a 24/7 basis through the internet, by automated phone inquiry, and through a toll free customer service line. The information accessible by the cardholder includes the terms and conditions of the gift card, the original funded amount and date of activation of the gift card account, the balance of the gift card account, and the place and amount of each transaction on the gift card account.

SFS provides and maintains systems allowing the cardholder to make gift card account balance inquiries. A cardholder may make balance inquiries at a retailer, by automated telephone inquiry on a 24/7 basis, through the internet on a 24/7 basis, by calling SFS customer care through our toll free client support line, and at kiosk machines maintained on-site at some SFS clients. When the gift card is used at retailers located throughout the network, SFS also transmits the remaining available balance to the transaction receipt which is provided by the redeeming retailers to the cardholder at the time of purchase.

SFS provides customer service via a toll free number to the cardholder, shopping centers and other SFS clients, and all participating retailers. The SFS service systems provide automated information and access to customer service representatives. When access to a representative is sought, SFS maintains a high level of responsiveness, with access to a client support representative occurring on average in less than fifteen seconds.

SFS maintains a program for replacement of the lost, stolen, or damaged gift cards; maintains a program to credit the balance of the gift card account upon merchandise returns; and maintains a program for cash reimbursement of a gift card in the event of program termination.

SFS supports the immediate activation feature of the gift cards. A consumer is permitted to use a gift card immediately upon activation. There is no waiting period to allow the funds supporting the gift card to be received by the sponsor bank. This permits a gift card purchased on a birthday to be used on a birthday, or a card purchased the night before a holiday to be used on that holiday. SFS bears the economic risk from this feature which arises from the ability of the cardholder to use the gift card before the funds are received. Depending on the date of purchase, the float period can be as long as four calendar days. SFS also maintains systems to preclude or minimize abuse of this feature.

SFS monitors the program for "suspicious activities" and maintains fraud and error protections for each gift card. Multiple retailer stored value gift cards are subject to the all of the fraud and error risks that accompany debit or credit cards. Because gift cards are high volume, low dollar, and anonymous products, they have are subject to additional risks of fraud and error. Schemes may be attempted to use a \$50.00 card to make a \$500.00 purchase, or to use a \$50.00 card to make ten \$25.00 purchases at different retailers. SFS provides services to monitor and minimize fraud and errors. SFS also bears economic risk arising from such activities for each gift card.

SFS maintains "below limit" insurance for the gift card accounts. This insurance provides coverage for misuse of a gift card arising from the failure of a retailer to seek proper authorization for transactions that occur on the gift card account.

SFS maintains programs for audits, including a program for the SAS 70 audit of the gift card computer systems. The SAS 70 audit will be completed periodically by independent certified public accountants pursuant to Statement on Auditing Standards No. 70 – Audits of Service Organizations ("SAS 70"). The SAS 70 audit is in addition to annual financial audits of SFS.

The services and features listed above are expected, if not demanded, by the consumers of electronic multiple retailer gift cards. The gift cards used in the SFS programs do not have expiration dates. Therefore, SFS is required to provide these post-purchase services in support of each gift card for many years after the funds are loaded on the gift card account.

I realize that this memo is quite lengthy, but I wanted to provide you with a thorough

overview of our product, our technology, and to offer you a brief overview of the organization that we are building in Overland Park to support our growing list of clients.

We, again, respectfully request that more time be allowed to pass before HB 2658 is given further consideration in Committee. Please contact me or Michelle directly (785-979-7029) if you would like to arrange a meeting where we could provide you and members of your Committee with further insight into the services that we provide to our clients throughout North America.

Sincerely,
Mike

Michael S. Miroslaw
CEO
StoreFinancial

StoreFinancial - 7171 W. 95th Street, 4th Floor - Overland Park, Kansas 66212
800-755-5001
www.storefinancial.com

TESTIMONY HIGHLIGHTS
OF
THOMAS MARTIN
on
HB 2839

FEBRUARY 14, 2006

History of the KSA 58-2565

The Present Requirements

- A. Store for 30 days
- B. Advertise 15 days prior to sale
- C. Notify Resident
- D. Two problems with the Statute
 - 1. Vague
 - 2. Economic Cost
- E. A personal example

The Proposed Bill & its Effects

- A. Limited only to those cases where judicial oversight exist

Questions