

## 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 17, 2006 in Room 241-N of the Capitol.

All members were present.

## Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Norm Furse, Office of Revisor of Statutes  
Renaë Jefferies, Office of Revisor of Statutes  
June Evans, Committee Secretary

## Conferees appearing before the committee:

Bryan J. Brown, Office of Attorney General Phill Kline  
Harold Taylor, Taylor Oil Co.  
Ken Suter, SACO Petroleum Inc.  
Scott Zaremba, Zarreco Oil, Lawrence  
Cassie Stewart, P. B. Hoidale  
Major John Sidwell, Topeka Police Department

## Others attending:

See attached list.

The Chairman opened the meeting and said **HB 2837 - Providing for registration of debt collectors operating to collect debts in Kansas with the secretary of state** was scheduled to have a hearing. The Attorney General's Office requested this be postponed until next year.

Bryan J. Brown, Consumer Protection Division, Office of Attorney General Phill Kline, stated this is a bill that would create a Debt Collector Registry in the State of Kansas. This has fostered dialogue between the Attorney General's Office and the debt collection industry in the past week. A task force is working on these problems and will come back next year with a more narrowly focused and well crafted bill (Attachment 1).

The Chairman opened the hearing on **HB 2804 - Payment of motor fuels, required, exceptions.**

Harold Taylor, President, Taylor Oil, Inc., Wellsville, testified as a proponent to **HB 2804**. Gas thefts, also known as drive offs, have occurred for years and have cost Taylor Oil \$4,576 last year and \$3,450 the prior year. Taylor Oil has to sell 500 gallons of additional fuel to make up for a \$25.00 theft (Attachment 2).

Ken Suter, owner of SACO Petroleum, Inc., a distributor of gasoline and diesel fuels to its own retail and independent retailers in Kansas, testified as a proponent to **HB 2804**. Consumers that drive off without paying for gasoline is costing fuel retailers an enormous amount of money. SACO Petroleum lost over \$28,000 in drive offs during 2005. Gas thieves present a serious safety issue when they steal gas. License plates are sometimes temporally removed (Attachment 3).

Scott Zaremba, President, Zarco 66 Inc., testified as a proponent to **HB 2804**. This bill would help ensure the safety of the public. The thieves that drive off without paying are growing bolder and more reckless as the value of fuel increases. These criminals are driving a deadly weapon each time they commit this crime (Attachment 4).

Cassie Stewart, P. B. Hoidale, testified as a proponent to **HB 2804**. Motor fuel sales account for 66% of revenues in the convenience store industry. However, because of their extremely low profit margins, motor fuels only accounted for 27.5 percent of the gross profit dollars. Gasoline theft, or "drive offs," cost the convenience store industry 112 million dollars in 2003 and more than doubled to an astounding 237 million dollars in 2004. Convenience stores reported total fuel sales at \$262 billion in 2004 which means that one in every 100 fill ups fell victim to gasoline theft. While this is not a "Conga line" of theft, at a penny per gallon profit, a retailer needs to sell an extra 4000 gallons to offset each 40 dollars that is stolen. In densely populated metropolitan areas and areas near interstates, the average retailer reported losses of approximately \$1500.00 per month (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 17, 2006 in Room 241-N of the Capitol.

Major John Sidwell, Topeka Police Department, a proponent for **HB 2804** testified that gas theft is not a new problem. To make a level playing field for all retailers and to reduce the crime, a city ordinance was proposed requiring all retailers to have prepay or pay at the pump gasoline sales. It was narrowly defeated at city council (Attachment 6).

The Chairman closed the hearing on **HB 2804**.

The following written testimony was submitted by Major Thomas McGillin, proponent, Olathe Police Department (Attachment 7).

The meeting adjourned at 10:55 a.m. The next meeting will be February 20, 2006.

COMMERCE AND LABOR COMMITTEE

DATE February 17, 2006

NAME	REPRESENTING
Major John Tidwell	Topeka Police Dept.
Jesse Barton	SOS
Frank Foye	Santa Fe Market
Harold Taylor	Taylor a/c
BRIAN MALONE	
Paul Near	Crescent Oil Co.
Lee Horning	Crescent Oil Co.
Saeed Mansourri	Aria Enterprises LLC
Justin Palmer	Crescent Oil Co.
Andy Tooney	Crescent Oil Co.
Dave Fiedler	D+M Operations, LLC
Alex Kotovantz	P.I.A.
Julie Hein	Hein Law Firm



**STATE OF KANSAS**  
**OFFICE OF THE ATTORNEY GENERAL**  
CONSUMER PROTECTION AND ANTITRUST DIVISION

**PHILL KLINE**  
ATTORNEY GENERAL

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Testimony of  
Bryan J. Brown  
Office of Attorney General Phill Kline  
Consumer Protection Division  
Before the House Commerce and Labor Committee  
Re: House Bill 2837  
February 17, 2006

Members of the Committee:

I thank you for the opportunity to appear before this Committee on behalf of Attorney General Phill Kline. My name is Bryan J. Brown, and I serve as Deputy Attorney General of General Kline's Consumer Protection and Antitrust Division.

The Attorney General's Office had originally planned to appear before you this morning, in the person of the Consumer Protection Division's Special Agent Natalie Hogan, to offer testimony in support of HB 2837. House Bill 2837 is reasonable legislation that would create a Debt Collector Registry in the State of Kansas.

The introduction of HB 2837 has fostered earnest dialogue between the Attorney General's Office and the debt collection industry in the past week. Representatives of that industry have pledged to work on a task force with the Attorney General to review and address examples of unconscionable or deceptive debt collection practices in Kansas. I am pleased to report that the first meeting of this task force is scheduled for Monday morning, at which time the testimony of Special Agent Hogan will be reviewed.

This task force will either be successful in creating a nonlegislative model for curtailing debt collection practices in the State of Kansas, through the application of a best practices paradigm, or will, at the very least, be the sounding board the Consumer Protection Division will utilize to fashion current House Bill 2837 into a more narrowly focused and well crafted bill.

Given these recent developments it appears to be more efficient, and more respectful of the full deliberative calendar of this Honorable Body, for the Office of Attorney General to request that further work on House Bill 2837 be postponed at this time.

Thank you.

Comm Labor  
2-17-06  
Atch #1

# TAYLOR OIL, INC.

PO BOX 581, WELLSVILLE, KS 66092 800-883-2072 FAX 785-883-4194

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Mr. Chairman and Members of the House Commerce Committee. My name is Harold Taylor and I am the owner and president of Taylor Oil, Inc. in Wellsville, Kansas. Our company has been in business for over 35 years. We operate 4 convenience stores and 1 service station as well as providing fuel to several other stations in eastern Kansas. We sell a little over 19 million gallons of gasoline and diesel fuel each year.

I appreciate the opportunity to appear before you today in support of House Bill 2804.

Gas thefts, also known as drive offs have occurred for years and have cost my company \$4,576 last year and \$3,450 the year prior. It is unfortunate that I am here today testifying on a mandatory statewide prepay law, I say that because our state association, the Petroleum Marketers and Convenience Store Association of Kansas worked to help pass a law in the 2000 legislative session that we thought would deter gas theft, but to date we have received very little support from the local District Attorneys to prosecute gas theft.

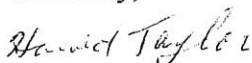
Gas thieves can be pretty creative in their method to steal gas. One way is to pull into a pump island with the license plate facing the street so that the clerk inside the store cannot see the license plate number. Another way is to remove the plate from the car and others cover the plate with mud or a rag to hide the plate number. Other more dangerous thefts occur when a thief speeds away from a fueling point putting honest customers in danger of being hit by the speeding car.

For a \$25 gas theft Taylor Oil has to try to sell 500 gallons of additional fuel to make up for the loss. Overall Taylor Oil has lost \$7976 to gas thefts the past 2 years. If you consider my numbers as an average, over \$3,000,000 of income has been lost by the 2000 service station operators in Kansas the past two years due to drive offs.

Mr. Chairman, not all petroleum retailers support this legislation. In some rural towns, retailers know everyone in town and usually when a drive off occurs it is probably a mistake rather than an actual theft. They simple may not have the traffic that some of my stores get. As such if we wanted to amend the bill to exempt out cities with a population less than 3000, I would support that. There also may be some small retailers that do not have the equipment to set up their pumps for prepay and I think maybe that needs to be addressed as well.

I thank you again for allowing me to speak today and I ask you to support House Bill 2804.

Sincerely,



Harold Taylor  
President

Comm Labor  
2-17-06  
Atch # 2



Mr. Chairman and Members of the Committee.

My name is Ken Suter. I am the owner of SACO Petroleum, Inc. which is a distributor of gasoline and diesel fuels to it's own retail and independent retailers in Kansas. I'm here to support H.B. 2804, which enforces prepay at the pump for motor fuels.

Consumers that drive off without paying for gasoline is costing fuel retailers an enormous amount of money. My retail organization lost over \$28,000.00 in drive offs during 2005. We must sell over 900,000 gallons of gasoline just to recover the losses from drive offs.

Gas thieves present a serious safety issue when they steal gas. We have had instances when a thief completed fueling their car; they laid the gas nozzle on the ground so the clerk would not know fueling was completed. This could cause a major environmental spill if the nozzle should malfunction causing fuel to spill on the ground. Also, when a gas thief speeds away, my customers are at risk of being injured by the speeding car and this could also cause a serious street accident.

Some cover their license plates or temporarily remove license plates. On a recent occasion, one of our store managers was really busy with customers; he looked at the pumps and saw, what appeared to be, an elderly lady with a cane pumping gas. There was a disabled sign inside the windshield. As she hung up the nozzle and began getting into her car the manager thought the lady was moving her car

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Atch # 3

to the storefront to shop and pay. Instead she left tire marks leaving the driveway and didn't have any license plates on her car.

This is one type of crime that can be stopped in Kansas by passing H.B. 2804. I would be happy to answer any questions.

Thank you,

Ken Suter

**TESTIMONY  
PRESENTATION TO THE HOUSE COMMITTEE**

February 17, 2006

By Scott Zaremba  
President., Zarco 66 Inc

Mr. Chairman and Members of the Committee:

My name is Scott Zaremba. I am the Owner of Zarco 66 Inc., We own and operate 7 convenience stores in Kansas.

I strongly encourage you to support House Bill 2804.

I believe this bill will help insure the safety of the public.

On a daily basis we are faced with individuals that will stop at nothing to steal fuel. The thieves that drive off without paying are growing bolder and more reckless as the value of fuel increases. These criminals are driving a deadly weapon each time they commit this crime. This is a recipe for a disaster. We have had several near misses in our parking lots and on the streets when the thieves speed away.

We, as store owners, can not stop this activity without help from our legislators.

The competitive nature of business does not encourage individual business owner to implement pre-pay. Requiring mandatory prepay would level the playing field and protect the business owners. Doing this on an individual basis would result in financial ruin.

Points about this Legislation:

- It will insure public and employee safety.
- It will free up law enforcement.
- It will keep the small business owner from being robbed on a daily basis.

Thank you allowing me to speak to you today.

Scott Zaremba

President

Zarco 66 Inc.

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2-17-06  
Atch # 4



First off I would like to thank you for this opportunity to present some very important facts concerning the issue of pre-paid gasoline as a state wide requirement.

The one word that keeps coming to mind regarding this issue is "mandate". We cannot succeed as retailers unless we have a level playing field. We are not here to ask for anything that isn't already being done concerning law abiding fuel consumers. We are simply asking for a change in the method in which it is performed to protect the respective retail facility.

*Here are some staggering facts concerning drive offs in this nation:*

- ✓ Motor fuel sales account for 66% of revenues in the convenience store industry. However, because of their extremely low profit margins, motor fuels only accounted for 27.5 percent of the gross profit dollars.
- ✓ Gross profit margins in 2004 dropped one cent from the previous year. After incorporating expenses, such as credit card fees, and taxes, profit margins ended up at a mere one to two cents per gallon. The lowest we have seen since 1984.
- ✓ Gasoline theft, or "drive offs," cost the c-store industry 112 million dollars in 2003 and more than doubled to an astounding 237 million in 2004.
- ✓ Convenience stores reported total fuel sales at 262 billion in 2004 which means that one in every 100 fill ups fell victim to gasoline theft. While this is not a "Conga line" of theft, at a penny per gallon profit, a retailer needs to sell an extra 4000 gallons to offset each 40 dollars that is stolen.
- ✓ In densely populated metropolitan areas and areas near interstates the average retailer reported losses of approximately 1500.00 per month.

**BOTTOM LINE;**

**Law abiding customers pay for the losses in the form of higher prices.**

The biggest concern we face when presenting this issue abroad is the idea that consumers will be offended and as a result take their business else where and while that is a valid concern, in my research I've concluded that most consumers understood the need for such change and further realized the reform was necessary in order to keep the strain off already elevated gas prices. To further emphasize the pro's versus the cons, most retailers realized that they were simply driving away the thieves and that off set any shift that they might have noticed.

Another major problem associated with this crime is the issue of safety. A thief has no regard for the retailer or the law so why would he have any regard for public safety. He is often in a state of panic as he drives away with the hose dangling from his tank or even leaves the hose behind leaking fuel. In the worst case scenario, he might even cause chase with the local law enforcement. Never mind all that anyway because as retailers we often refrain from even involving law enforcement for a number of reasons. First and foremost there is a feeling that the police are probably better suited chasing other crimes and spending their time and effort more productively, and then there is the inevitable feeling of helplessness. In many areas around the country today there is a new concept known as 'nuisance abatement laws'. These laws have been implemented in concerning gas stations and c-stores. Our neighboring city of Denver is a good example of how real these new laws are. It is written there that the owner of the property can now be held personally liable for what they consider a "nuisance". That's sounds extreme and I am sure it is defined in many ways, mostly associated with the large number of crimes in the area, but if we think we are immune to this reality we are mistaken. Our Midwest walls have not sheltered us from this problem. Right here in our back yard the Quik Trip Corporation had 1 million dollars in losses from drive offs alone in the Wichita Kansas market last year; this among a mere 40 locations. They predict that without change the trend would to increase to 1.5 million dollars in 06. Of their 11 market areas, Wichita is among the smallest.

Marketers have a real battle on their hands; it has become a fight between securing their assets and marketing to their customers. This legislation empowers us to do both. This mandate will help ensure our futures and further drive a prosperous economy within the state of Kansas.

Comm + Labor  
2-17-06  
Atch # 5

# Testimony on Prepay Gas Sales

## Major John Sidwell

### Topeka Police Department

I am Major John Sidwell from the Topeka Police Department. I have been with the Police Department for 29 years and I have had the honor to serve citizens of Topeka in many different capacities. This includes being a crime prevention officer for six years, a public information officer for five and now as Division Commander for uniform officers.

The problem of gas theft is not a new problem for the Topeka Police Department and it is not a new problem for retailers of gasoline. As a crime prevention officer I often talked with retailers that were victims of gasoline thefts. Some of the items covered were better visual observation of the pump area and not authorizing the pump until eye contact is made and better design of the pump placement to force patrons to park where the clerk could read the tag. We also promoted aggressive prosecution when the suspect is apprehended. Even at this time we discussed having patrons pay prior to pumping gas or the use of attendants. The one basic rule of crime prevention is to remove the opportunity.

Better education of the clerks and eye contact with drivers did reduce the number of gas thefts to some degree but did not make a substantial impact on the problem. Tearing out gas pumps and placing them in new positions was cost prohibitive especially since a tank of gas was about 15 to 20 dollars. Aggressive prosecution represented a problem.

Retailers became frustrated with the situation and blamed the police department for not apprehending and prosecuting more offenders. There was a general belief that if the clerk had a tag number there should be an arrest. Unfortunately a vehicle cannot steal gas. We must first identify the owner of the car and then determine who was driving the car. Then the clerk must identify the subject as the one that pumped the gas and then did not pay for it. Many times the clerk is unable to identify the subject. When we did catch the suspect. And brought them back for identification, the suspect often offered to pay for the gas and the clerk would rather have the money than prosecute. We cannot fault the clerk because most clerks are required to cover the loss from their pay. This places the officer in the position of being the collector for the retailer, which is not our function. If a case proceeds to trial the clerk must appear. Often they are no longer employed by the retailer and do not show up for court. Basically, the chances of getting caught were very slim and the chance of getting convicted was even less. Stealing gas was very profitable.

When I was the Public Information Officer the problem continued. A bill was passed by the legislature that suspended the license of the person that failed to pay for gas. This bill was useful to scare some of our younger violators but had little effect on the true criminals that were committing the crimes. We still had the same problems with identifying the person that actually stole the gas. During this time period we saw an increase in the number of stolen tags. Due to the cost of insurance and property taxes it was very profitable for the criminal element to steal tags. We saw an increase in the number of stolen tags used to steal gas. Many of the suspects that steal gas and have stolen tags also have suspended driver's licenses. Therefore the threat of getting their driver's license suspended had no deterring effect on the crime. We also started to see serious problems develop as retailers were becoming more aggressive to stop gas thefts. Clerks were chasing cars driving out of the lot to stop them. Clerks and citizens were in danger of being hit and one clerk was assaulted. Cars were driving

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off after removing the nozzle and laying it on the ground while it was still pumping gas to keep the clerk busy while they escaped.

In 2004 as the Major in the Uniform Division we saw a marked increase in gas thefts. In the first six months there were 427 reported gas thefts. In review of the 2003 reported crimes we found that 737 gas thefts were reported to the Topeka Police Department. That translated to 10 % of all thefts reported to the Topeka Police Department, a very large portion of theft since it is just one category of theft. What is also disturbing is these thefts represent 7% of all part one crimes reported to the FBI in 2003. In the first six months of 2004 gas thefts represented 13.84 % of all reported thefts and 9.98% of Part One Crime. Since gas theft is reported as a Part One crime it is mixed with the number for homicides, rapes, robberies and auto thefts. We all know the impact that high crime numbers have on the community in the area of perceived safety and to future economic development. Gas thefts have an impact on the community as well as the retailers.

In an effort to reduce the number of gas thefts occurring we attacked the problem on two fronts. We sent our Crime Prevention Officer to various stations that were experiencing gas theft problems. The suggestions were the same as they were many years ago with the addition of videotaping. It did not take long for the criminals to understand the problem. They would keep their faces turned from the cameras. One retailer had video from behind her store where the driver got out and took off his t-shirt and covered the tag. On top of all of this our criminals were becoming more violent and were carrying guns making it dangerous for clerks to approach gas thieves. We even see vehicle descriptions used in gas thefts also described in robbery cases.

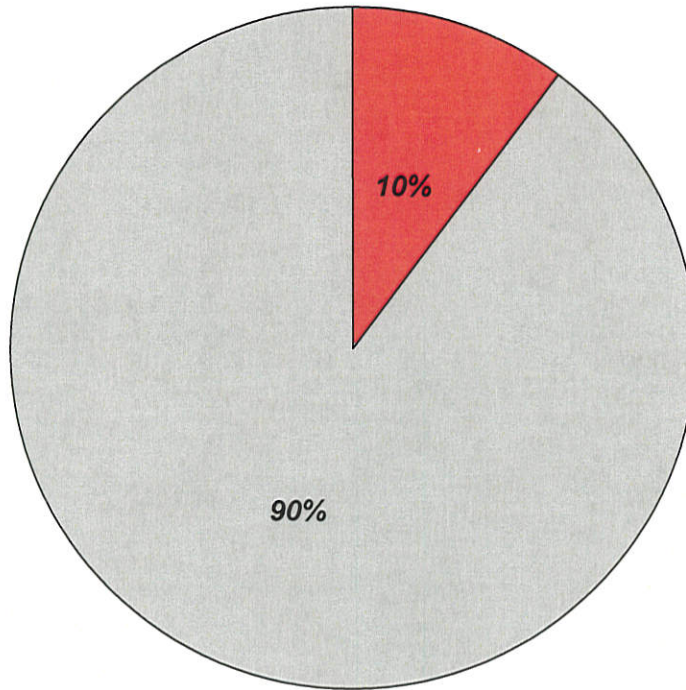
The Topeka Police Department proposed the pay at the pump or prepay as a solution to the problem. Many companies across the US are doing this. The prepay idea was received by retailers with mixed reaction. Some wanted to go to it but felt they would lose business unless everyone did it. The other side was strictly against it because they felt it would be inconvenient for customers and would reduce impulse buying when customers came into the store to pay.

To make a level playing field for all retailers and to reduce the crime we proposed a city ordinance requiring all retailers to have prepay or pay at the pump gasoline sales. It was narrowly defeated at city council. Since that time we have seen a small decrease in gas thefts reported. They slowed in the last half of 2004 and we had 681 reported in 2005. This is not a success story. When talking to some gas retailers they now understand that these reported thefts have a major impact on the community so they are not reporting all the gas thefts. I have been told that most businesses are only reporting 1 in 10 gas thefts. They only report those cases that they feel they can identify the suspect. But some other retailers are still reporting thefts even when they are not sure when it happened.

The Topeka Police Department recommends the passage of this bill. It is good for the community by reducing crime and the potential injury of citizens and employees. It is good for the business because it reduces the loss of profits. It also levels the playing field for all gas retailers by requiring prepay or pay at the pumps.

6-2

**Topeka Gas Drive-Offs as a Percentage of All Thefts 2003-2005**



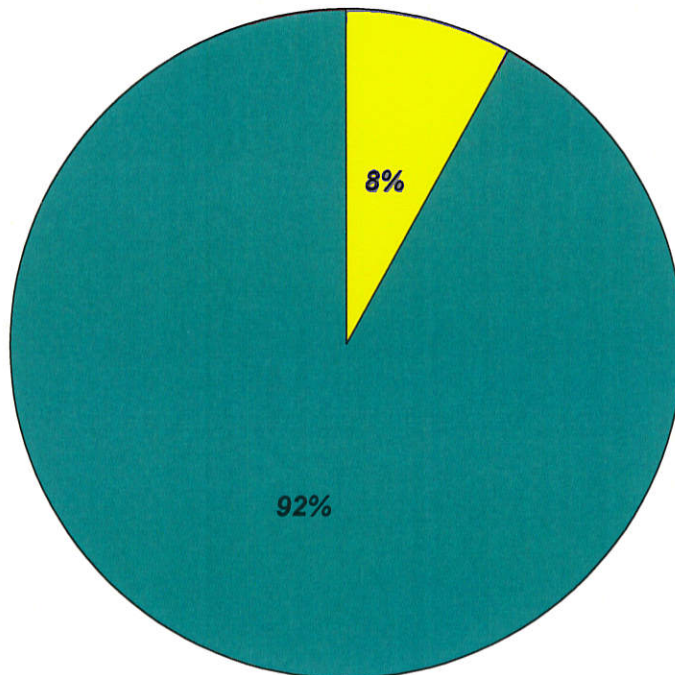
NUMBER OF GAS DRIVE-OFFS BY YEAR

2003: 737  
 2004: 776  
 2005: 681  
 TOTAL: 2194



■ Gas Drive-Offs    □ All other Thefts

**Topeka Gas Drive-Offs as a Percentage of All Property Crimes 2003-2005**



NUMBER OF GAS DRIVE-OFFS BY YEAR

2003: 737  
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 2005: 681  
 TOTAL: 2194

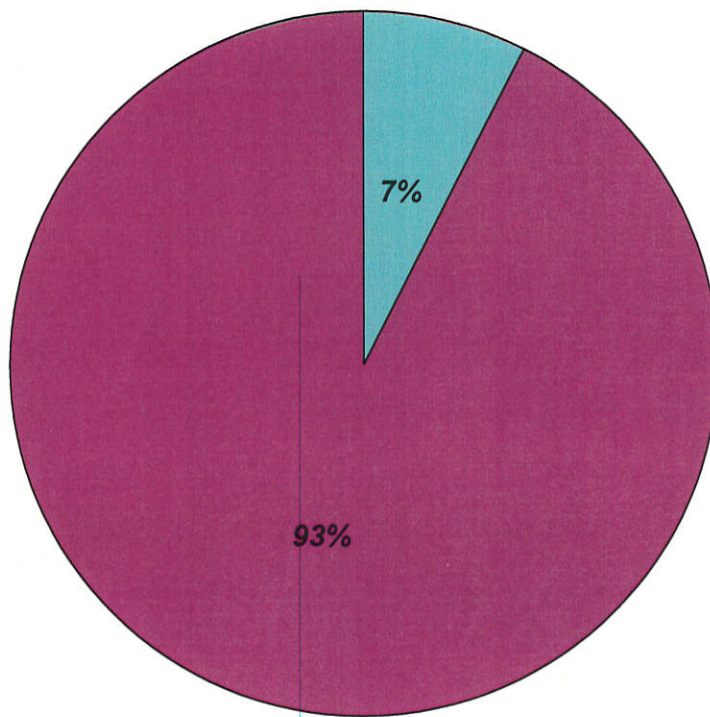


■ Gas Drive-Offs    ■ All Other Property Crimes

6-3



## Topeka Gas Drive-Offs as a Percentage of All Part 1 Crimes 2003-2005



NUMBER OF  
GAS DRIVE-OFFS  
BY YEAR

2003: 737  
2004: 776  
2005: 681  
**TOTAL: 2194**



**Topeka  
Police  
Department**

■ Gas Drive-Offs   ■ All Other Part 1 Crimes

YEAR	Number of Gas Drive-Offs	All other Thefts	Percentage of all Thefts	All Other Property Crimes	Percentage of all Property Crimes	All Other Part 1 Crimes	Percentage of all Part 1 Crimes
2003	737	7183	10.26%	9220	7.99%	9975	7.39%
2004	776	6985	11.11%	9055	8.57%	9691	8.01%
2005	681	7244	9.40%	9672	7.04%	10354	6.58%
<b>3 YEAR TOTALS</b>	<b>2194</b>	<b>21412</b>	<b>10.25%</b>	<b>27947</b>	<b>7.85%</b>	<b>30020</b>	<b>7.31%</b>

2004 Average time spent on Gas Drive-Off Calls  
40 minutes and 54 seconds

6-4

# OLATHE POLICE DEPARTMENT



February 16, 2006

RE: House Bill 2804: Payment in Advance for Motor Fuels  
Committee Meeting February 17, 2006

House Committee on Transportation  
Kansas State Legislature

Respected Committee Members:

Please accept this letter as support by the Olathe Police Department for House Bill 2804 requiring the prepayment for motor fuel at retail fueling establishments. Over the last few years the Olathe Police Department has examined the problem of fuel thefts by persons who drive off without paying. We have found that these offenses consume a significant amount of police service time, yet we have limited opportunity to identify and arrest these offenders. Of the few offenders that I have observed that have been apprehended during my 27 year police career, many had driven off by mistake, forgetting to pay for fuel. The vast majority of offenders have purposely evaded capture by avoiding cameras or the direct view of fuel operators or by fueling during peak times when operators are preoccupied with high volumes of customers.

This crime is vastly under reported by retail operations today. In 2003 and 2004 the Olathe Police Department examined these crimes and found the majority of stations do not report many of these offenses. Even with minimal reporting officers responded to 250 to 350 offenses per year. In 2004, the Olathe Police Department stopped responding to these calls for service when the offense was a previous occurrence because of increasing call loads and inadequate staffing levels. Retailers were directed to mail, fax or carry reports of drive offs to the police station. Reported offenses dropped to 109 in 2005, 71 of which were made at the station, the remaining 38 were investigated in the field as crimes in progress or of recent occurrence. This does not reflect a reduction in crimes, but merely a reduction in reported crime. In 2005 as an example, only one station reported all of their offenses, 24, while the vast majority only reported 1 to 10 offenses a year. This reduction can be conservatively estimated at 300 to 400 offenses that are not being reported today in Olathe.

Payment for motor fuel at the pump or prepayment, though an inconvenience to a few consumers, will significantly reduce the number of these criminal theft offenses each year. This will benefit all consumers and citizens in Kansas, as well as our retail partners in our community. As a result, the Olathe Police Department supports House Bill 2804.

Respectfully Submitted;

Major Thomas McGillin  
Police Operations Bureau Commander