

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:45 A.M. on March 16, 2006 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Kansas Legislative Research  
Martha Dorsey, Kansas Legislative Research  
Gordon Self, Revisor of Statutes Office  
Judy Swanson, Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Hearing was opened on **HB 2573, income taxation, deduction for amounts contributed to qualified tuition programs.**

Lynn Jenkins, State Treasurer, testified this bill would help Kansans have access to a college education by preparing for the financial costs. (Attachment 1) In response to Senator Allen, she said Kansas would be the first state to implement this program, which would allow Kansas residents to choose the Kansas plan or another state's 529 plan.

A letter to Senator Allen from William Bates, American Century Investments, in support of **HB 2573** was distributed to the Committee. (Attachment 2) The hearing was closed.

Hearing was opened on **HB 2640, no sales taxation of manufacturer rebates to purchasers and lessees of new motor vehicles.**

Representative David Huff testified this bill, if passed, would treat citizens more fairly. (Attachment 3) He said the fiscal note was flawed, it should be much lower. He said the bill is in compliance with the State Streamline Sales Tax Law. Discussion was held on the fiscal note. Senator Donovan asked what method was used to come up with the fiscal note. Richard Cram, KDOR, said he would clarify the information he received from the automobile industry. Senator Donovan said there are dealer cash rebates, which are not taxed, and customer cash rebates, which are taxed. He thought the fiscal note was prepared using both dealer and customer cash rebate figures.

Don McNeely, Kansas Automobile Dealers Association, testified in favor of the bill. (Attachment 4) He provided a list of customer incentives from car companies with his testimony.

John Federico, on behalf of General Motors, testified in favor of the bill. (Attachment 5) Improving the tax climate will help spur more growth at the GM Fairfax facility in Kansas City.

Written testimony supporting **HB 2640** was received from Robert Peterson (Attachment 6) and C. S. Reiff (Attachment 7).

Senator Bruce questioned why this was figured as a sales tax instead of an income tax. Richard Cram said the tax is charged on the gross receipt the retailer receives. Hypothetically, compared to the Federal law, this would be an income tax. Cram will clarify the fiscal note. The hearing was closed.

Alan Conroy provided information the Committee requested yesterday. (Attachment 8) He said the information he provided is built into the Governor's budget, except for the school finance figures.

**SB 389, income taxation, credit for biofuels mixing facilities**, was discussed. The Committee clarified for Staff that Senator Taddiken intended a taxpayer could only claim the credit one time for ethanol; and one time for biodiesel, per facility.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:45 A.M. on March 16, 2006 in Room 519-S of the Capitol.

Hearing on **HB 2581, libraries; tax levies; based on preliminary of property values**, was opened.

Testimony was received from the following conferees in support of the bill:

- Representative Jene Vickery- Written only (Attachment 9)
- Barton Cohen, Leawood, KS (Attachment 10)
- Sherrie Riebel, Allen County Master Clerk (Attachment 11)
- Representative Becky Hutchins - Written only (Attachment 12)
- Kim Borchers, Topeka, KS (Attachment 13)
- Andrea Bandy, Topeka, KS (Attachment 14)

Testimony was received from the following conferees in opposition to the bill:

- Representative Ann Mah - Written only (Attachment 15)
- Ron Hein, Motion Picture Association of America (Attachment 16)
- Barbara Dew, Ottawa Library (Attachment 17)
- Carol Barta, North Central Kansas Libraries System (Attachment 18)
- Cheryl Canfield, Hutchinson Public Library (Attachment 19)
- John Opgaard, Topeka & Shawnee County Public Library (Attachment 20)

Hearing on **HB 2581** was closed.

Being no further business, the Committee meeting adjourned at 12:00 noon.

SENATE  
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 3-16-06

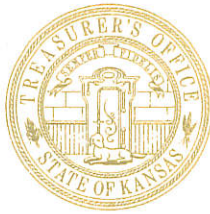
NAME	REPRESENTING
Steve Ho #5	KDOR
Ann Dukes	DOB
Andrea Bandy	Supporter HB2581
Thom D McQuinn	supporter of HB 2581
Kim Bruchez	supporter of HB 2581
Sherril L. Keebel, Allen Co. Clerk	Kansas County Clerks & Election Off.
Kathy Pickman, Mi Co Clerk	" " " " "
Jeff Bottenberg	State Farm Insurance
Estelle Montgomery	Hein Law Firm
Cynthia Berner Harris	Wichita Public Library Opponent of 2581
Rosanne Siemens	Kansas Library Association
John Opsgaard	Topeka & Shawnee County Public Library
Scott GATES	STATE TREASURER'S OFFICE
Hal Hudson	NFIB
Judy Smith	CWA OJKS
Shar Hoffman	"
Cheryl Ryan	CWA & KS
Phillis Satchell	Supporter of 2581

SENATE  
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 3-16-66

NAME	REPRESENTING
Cheryl Canfield	Hutchinson Public Library opponent of HB 2581
Barbara Dew	Ottawa Library opponent of HB 2581
June Windscheffel	Interested Citizen
Ann Mah	Rep - Dist 53
Whitney Damm	KS Automobile Dealers Assn.
Marie Gallant	State Library
Carol Barte	North Central Kansas Libraries System opponent of HB 2581



STATE OF KANSAS

**Lynn Jenkins, CPA**  
TREASURER

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TOPEKA, KANSAS 66612-1235

PHONE: 785-296-3171  
FAX: 785-296-7950

**Senate Committee on Taxation, March 16, 2006**  
**Testimony on H.B. 2573 by Lynn Jenkins, Kansas State Treasurer**

Thank you for the opportunity to address the Committee in support of House Bill 2573. This has been a great year for Learning Quest, our state's 529 education savings program. This past summer, we surpassed \$1 billion in assets, and we currently have over 84,000 accounts. Both Kansans and investors from across the country continue to choose our plan to save for their students' future. In April of 2005, we continued our trend of expanding investment options by adding four Vanguard indexed mutual funds after rolling out the Schwab 529 plan in 2003. April also brought the launch of our partnership with Babymint, a loyalty program enabling investors to save for a student when they make everyday purchases. In addition, we initiated our first scholarship program with Washburn University, to encourage students to attend Kansas institutions. In 2006, we will have our investment management contract with American Century out for bid. This process will help our plan respond to the many changes that have occurred in the 529 industry since our original contract was signed in 1999.

H. B. 2573 is a very simple and straight-forward bill. I believe that Kansas is better off when its sons and daughters have access to a college education and our public universities benefit when our residents are prepared for its financial costs. I would like to see Kansans receive our state's tax deduction regardless of whether they choose our plan or another state's 529 plan. I believe we offer a competitive program; however, Kansans should not be penalized if they choose another option that better meets their investment objectives. This tax deduction should be about encouraging Kansans to save for their children's future. It should not be about controlling their investment choices by giving them a tax deduction only if they choose our plan.

You may have seen some articles in the press lately about how choosing a 529 plan can be a difficult decision for investors because of the different state tax treatment and fee structure in each state's plan. Investors must sort through these issues and look at investment performance when choosing a plan. Federal regulators assume that investors can't understand these issues, so they require us to warn consumers about investing in a 529 plan outside the state in which they reside in every advertisement. Equal tax treatment would eliminate one step in the decision-making process for Kansas residents and let them focus on choosing the plan that best fits their investment objectives and risk tolerance.

I have attached a report from the Department of Revenue outlining the cost of the current deduction for tax year 2004. They were kind enough to capture this information at our request, so that we all might be better equipped to make decisions regarding this program.

I'd be glad to answer any questions that you may have.

**Assessment & Taxation**  
Date 3-16-06  
Attachment # 1

**Kansas Department of Revenue  
Learning Quest Modifications to FAGI  
Tax Year 2004**

<u>KAGI</u>	<u>Bracket</u>	<u>Returns</u>	<u>Learning Quest Amount</u>	<u>Percentage of Total Amount</u>	<u>Average Modification</u>
Up To	\$25,000	439	\$1,160,839	2.5%	\$2,644
\$25,000	\$50,000	842	\$2,305	5.0%	\$2,738
\$50,000	\$75,000	1,786	\$4,829,559	10.4%	\$2,704
\$75,000	\$100,000	2,201	\$6,398,219	13.8%	\$2,907
\$100,000	Over	<u>5,585</u>	<u>\$31,634,314</u>	68.3%	\$5,664
	Total	10,853	\$46,327,975	100.0%	\$4,269

HB 2573  
File



March 10, 2006

The Honorable Barbara Allen  
Chairperson  
Senate Committee on Assessment and Taxation  
Kansas State Capitol  
Room 122 E  
300 SW 10th Street  
Topeka, Kansas 66612

Dear Chairwoman Allen:

It feels strange to be addressing you formally. We have known each other personally for a long time, but today I write in my professional capacity on behalf of American Century Investments.

HB 2573 comes before your committee next week. This bill would allow Kansans who invest in federally-sanctioned, but state-run, education savings plans (known by their Internal Revenue Code section # as "529 plans") to get a Kansas income tax deduction for contributions to any 529 plan run by any state – not just an investment in the Kansas 529 plan, Learning Quest. We think this is good legislation.

For many people, 529 plans are the best way to save for post-secondary education. 529 plan investors have a wide range of investment alternatives to choose from, and their investments grow tax free. If that's not enough incentive, qualified 529 plan withdrawals are also income tax free to the student beneficiary. And many states further encourage education savings by allowing state income tax deductions for 529 contributions. Kansas offers a \$3,000 deduction to single tax filers and \$6,000 to joint filers who invest in Learning Quest.

American Century is honored to serve as investment manager for Learning Quest under the supervision of State Treasurer Lynn Jenkins. We are compensated on a percentage fee basis for the Learning Quest assets we manage. Accordingly, when our investment management efforts increase the size of an investor's education nest egg, our revenue grows proportionally. Our financial interest is perfectly aligned with those of Learning Quest investors. However, it is also true we are able to increase revenues by attracting new investors or gaining additional contributions from existing investors. For this reason, we pay attention to the tax incentives.

Today, Kansas income taxpayers have a financial incentive to invest in Learning Quest, as opposed to other state plans, by virtue of the \$3,000/6,000 deduction. Given that HB 2573 will end Learning Quest's competitive advantage in Kansas, you might assume we'd oppose the bill. To the contrary, our position is again aligned with Kansas investors. We support what is best for Kansans saving for post-secondary education. And we think that leveling the playing field in the 529 investment arena does this. Kansans will have more choice, Kansas tax policy will be better served and marketplace competition will enhance product offerings, customer service and pricing.

The Honorable Barbara Allen  
March 10, 2006  
page 2

We believe that investment decisions should ultimately be driven by the quality and suitability of the investment - not tax incentives. 529 investors should be more concerned with whether the investment meets their needs (and those of the current or future student beneficiary) than tax benefits. The "college fund" decision is an important one. We think having choice among competing alternatives - unencumbered by tax considerations - will lead to better decisions by more people. Removing the state tax impact for Kansans will make the consideration of 529 plans less complex. Kansans will be able to focus more on investment style, time horizon, risk and fees - the real drivers of investment decisions.

Second, we think in providing a tax deduction to Kansans, the Legislature intended to help all Kansans saving for post-secondary education. Broadening the deduction's reach will better serve this laudable goal. And it will establish Kansas as an enlightened policy leader. While today many states offer state tax incentives for 529 investing, none extend them to another state's plan. In legislating 529s, we don't think the U.S Congress intended for states to discriminate and compete based on state tax incentives. We think the quicker tax parity is established among all states; the better for education savings as a whole. But, some state has to go first. Why not Kansas? HB 2573 is a bold, enlightened step in the right policy direction.

Finally, as a participant in the competitive 529 marketplace, I can assure you that our reaction to removing the Learning Quest competitive tax advantage will be to redouble our efforts to provide the best product at the best price with the best customer service. This is where the competition should be and where it most benefits Kansans.

I hope our support of HB 2573 and our reasons for it help your Committee's deliberations. Thank you for considering our views and I hope you will call on us if we can serve as a further resource. Best wishes to you personally and professionally.

Very truly yours,



William B. Bates  
Vice President Government Affairs

cc: John Peterson



Thank you Madam Chairman, Vice Chairs Schmidt and Donovan, Ranking Minority Member Lee. HB 2640 passed the House 117-7 and there were no amendments.

Last year Madam Chairman we repealed the Klunker Bill. If the Klunker Bill was a tractor, HB-2640 is surely the trailer. HB-2640 deals with one of the most unfair sales taxes that is imposed on our citizens. We all believe that any individual should pay their full sales taxes on the actual cost of any products, but, like the Klunker Bill we should not force our citizens to pay taxes on an inflated price of a product. HB-2640 deals with the manufacturers rebate on the sales tax of new motor vehicles. Let's say you are buying a car for \$20,000 and you are closing the deal with your car dealer. There is a \$3,000 rebate which enticed you to buy the car to begin with. Your cost of the car after signing the rebate copy is now \$17,000. You will finance or write a check

for the \$17,000 net cost. But now of course you must add your sales tax on this purchase which you have anticipated to be on the \$17,000. But wait a minute the dealer tells you, you must pay sales tax on the \$20,000 not the \$17,000 you paid for the car. I have talked with car dealers and this is the most contentious part of the sale. You have an irate customer who keeps saying I paid \$17,000 for this car and the State of Kansas is saying I paid \$20,000 for this car. Committee Members this is wrong. We allow full trade in value on vehicles but not a rebate that the customers actually never see. HB-2640 eliminates the sales tax on manufacturers rebates on this blue sky tax. Nebraska, Oklahoma & Missouri do not tax manufacturers rebates on motor vehicles.

Rep. David Huff

## Bill Brief for HB - 2640

**Sponsored by:** Rep. Huff

**Final Action:** Be passed

**Reporting Committee:** House taxation

**Date:** 2-15-06

**A Bill Concerning:** Sales taxation; relating to sales of new motor vehicles; taxation of rebates.

**What Bill Does:** HB 2640 would exempt from sales taxation manufacturers' rebates on motor vehicles, if the rebates are paid directly to the retailer. This is one of the most unfair taxes we charge to our citizens. A \$3000 rebate on a \$20,000 car, you finance \$17,000. The State charges you taxes on the \$20,000 even though you paid \$17,000. This is Klunker Bill #2. Nebraska - Oklahoma - Missouri do not tax manufacturers rebates on motor vehicles.

**Political Reality/Implications:** This Bill treats our citizens more fairly. They would be charged sales taxes on what they actually paid for the motor vehicle. K.S.A. 8-126 Defines Motor Vehicles.

**Committee Amendments:** None

**Possible Floor Amendments:** None expected

**Proponents:**

Representative Huff  
Don McNeely, Executive Director of the Automobile Dealers Assoc.  
John Frederico, General Motors  
Bob Peterson, private citizen  
Jim Ibach, private citizen

**Opponents:** None

**Fiscal Note:**

I have never seen such a flawed fiscal note. The revenue department claims that 75,000 new cars will be purchased with a rebate of \$3000.00. Rebates range from \$500.00 on Ford, Dodge and Chevrolet products to about \$2000.00 on the higher price cars in their field. But, you can take 0% financing or take the rebate in cash. (Cash you pay the taxes) These options are not in the estimations and are very popular choices. The department claims a \$10,900.00 fiscal note in 2007. Right or wrong we are still charging sales taxes on blue sky to our citizens.

**Who will carry the Bill:** Rep. Huff

**Is this bill ready to run on the floor? Yes/No:** Yes

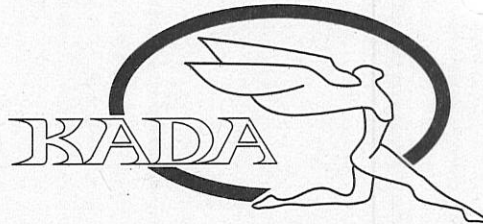
**mer Incentives**

These incentives in this table are a summary of retail programs offered. Programs may vary by region and model.

	Cash rebate	Finance rate		Cash rebate	Finance rate		Cash rebate	Finance rate
<b>CHRYSLER GROUP</b>			Expires Jan. 31. In lieu of rebates, financing rates are available.			Expires Jan. 31.		
<b>2005 models</b>						<b>2005 models</b>		
Chrysler Pacifica			Buick Terraza	\$3,500	0%	Cadillac Escalade		
Town & Country	\$3,000	4.9%	Escalade ESV	\$8,000	0%	Escalade EXT	\$7,000	0%
Sebring	\$1,500	4.9%	Chevrolet Suburban, Tahoe	\$8,000	0%	Avalanche, SSR	\$5,000	0-3.9%
PT Cruiser	\$1,000	4.9%	Uplander	\$3,500	0%	GMC Yukon, Yukon Denali		
Crossfire	-	4.9%	Yukon XL, Yukon XL Denali	\$8,000	0%	Hummer H2 SUT, SUV	-	6.8%
Dodge Caravan, Durango			Pontiac Montana SV6	\$3,500	0%	GTO	\$2,000	1.9-4.9%
Grand Caravan, Ram 1500			GTO	\$2,000	1.9-4.9%	Saturn Relay	\$3,500	0%
(excl. SRT-10/Mega Cab)	\$3,000	4.9%	<b>HYUNDAI</b>			Expires Jan. 31.		
Dakota, Ram 2500/3500			<b>2006 models</b>					
(excl. Mega Cab)	\$2,500	4.9%	Elantra, Sonata V-6	\$1,000	-			
Ram Mega Cab	\$2,000	4.9%	Santa Fe, Sonata 4 cyl., Tucson	\$500	-			
Stratus sedan	\$1,500	4.9%	<b>2005 models</b>					
Jeep Grand Cherokee			XG350	\$3,000	-			
Liberty (excl. diesel)	\$2,500	4.9%	Santa Fe	\$2,000	-			
Liberty diesel	\$1,500	4.9%	Elantra	\$1,500	-			
Commander	\$1,000	4.9%	Tiburon, Tucson	\$1,000	-			
Wrangler	\$500	4.9%	<b>JAGUAR</b>			Expires April 4.		
<b>2006 models</b>						<b>2006 models</b>		
Dodge Neon	\$2,000	-	S-Type, XJ series, X-Type	-	4.9%			
<b>FORD MOTOR CO.</b>			Ford Division expires Jan. 31. Lincoln and Mercury expire April 3. In lieu of rebates, cut-rate financing is available.			<b>2005 models</b>		
<b>2006 models</b>								
Ford Expedition	\$4,000	0-6.9%	S-Type, X-Type	-	3.9%			
Freestar	\$3,000	0-6.9%	XJ series	-	4.9%			
F-150 (excl. SuperCrew)	\$2,500	0-6.9%	<b>KIA</b>			Expires Feb. 28. In lieu of rebates, financing rates are available.		
Explorer, Crown Victoria, F-150 SuperCrew, Focus, Ranger	\$2,000	0-6.9%	<b>2005 models</b>					
Escape	\$1,500	0-6.9%	Optima	-	0-3.9%			
P-Series, Five Hundred, Freestyle	\$1,000	0-6.9%	Sorento	-	0-4.9%			
Fusion	\$500	3.9-7.9%	Amanti	-	1.9-5.9%			
Taurus	\$500	-	Spectra	-	2.9-6.9%			
Lincoln LS, Mark LT	\$3,000	0-6.9%	<b>2005 models</b>					
Navigator	\$2,500	0-2.9%	Amanti	\$2,000	0-4.9%			
Zephyr	\$500	6.9-7.9%	Rio	\$750	0-4.9%			
Mercury Grand Marquis, Monterey	\$3,000	0-6.9%	Sedona	-	0-0.9%			
Mariner (excl. hybrid)	\$1,500	0-6.9%	Optima	-	0-2.9%			
Milan	\$500	3.9-7.9%	Sorento	-	0-3.9%			
<b>2005 models</b>								
Ford Explorer, Expedition	\$5,000	0-4.9%	Spectra	-	0-5.9%			
F-150	\$4,000	0-4.9%	<b>LAND ROVER</b>			Expires April 4.		
Crown Victoria, E series	\$3,500	0-4.9%	<b>2006 models</b>					
Excursion, F-Super Duty 6.0L (excl. Harley Davidson), Ranger	\$3,000	0-4.9%	LR3	-	5.9%			
Five Hundred, Freestyle	\$2,000	0-4.9%	LR3	-	3.9%			
F-Super Duty Harley Davidson	-	0-4.9%	<b>MAZDA</b>			Expires Jan. 31.		
Lincoln Aviator, Navigator	\$5,000	0-4.9%	<b>2006 models</b>					
Town Car	\$4,500	0.9-4.9%	Mazda6, MPV	\$1,500	-			
Mercury Mountaineer	\$5,000	0-4.9%	MPV	\$3,000	-			
Grand Marquis	\$4,000	0-4.9%	Mazda6	\$2,500	-			
Montego	\$2,000	0-4.9%	<b>MERCEDES-BENZ</b>			Expires Jan. 31.		
<b>GENERAL MOTORS</b>			Expires Jan. 31. In lieu of rebates, cut-rate financing is available.			<b>2006 models</b>		
<b>2005 models</b>								
Buick Rainier, Rendezvous	\$1,000	4.9-7.9%	E350, CLK, S500	-	1.9-4.9%			
Terraza	\$1,000	3.9-6.9%	<b>MINI</b>			Expires Jan. 31.		
LaCrosse	\$500	1.9-5.9%	<b>2005 and 2006 models</b>					
Lucerne	-	2.9-6.9%	Cooper	-	6.2-6.75%			
Cadillac Escalade	\$6,000	0-1.9%	<b>MITSUBISHI</b>			Expires Feb. 28. In lieu of rebates, cut-rate financing is available.		
CTS, STS	-	2.9-4.9%	<b>2006 models</b>					
SRX	-	4.5-6.5%	Raider	\$1,500-\$3,000	3.9-5.9%			
DTs	-	6.3%	Montero	\$2,500	3.9-5.9%			
Chevrolet Suburban, Tahoe	\$5,500	0%	Endeavor	\$1,500	3.9-5.9%			
Avalanche	\$4,000	1.9-4.9%	Galant	\$1,000-\$1,500	3.9-5.9%			
Silverado 1500	\$2,500	2.9-5.9%	Lancer	\$1,000	3.9-5.9%			
Silverado 2500/3500 (excl. LBZ)	\$1,500	2.9-5.9%	Eclipse GT, Outlander	\$500	3.9-5.9%			
Colorado, TrailBlazer	\$1,000	4.9-7.9%	<b>2005 models</b>					
Uplander	\$1,000	3.9-6.9%	Endeavor, Montero	\$3,000	1.9-3.9%			
Aveo	\$500	1.9-5.9%	Galant	\$2,500	-			
Express	-	-	Outlander	\$2,000	-			
Silverado 2500/3500 (w/LBZ)	\$500	2.9-5.9%	Eclipse, Lancer, Lancer Evolution	\$1,500	-			
Malibu	\$500	2.9-6.9%	<b>NISSAN NORTH AMERICA</b>			Expires Jan. 31.		
HHR	-	1.9-5.9%	<b>2006 models</b>					
Impala, Monte Carlo	-	2.9-6.9%	Nissan Sentra	\$2,500	1.0-2.0%			
Equinox	-	3.9-6.9%	Armada, Titan	\$2,000-\$2,500	2.0-3.0%			
Cobalt	-	5.5-8.5%	Maxima, Quest	\$1,500	3.0-4.0%			
GMC Yukon, Yukon Denali			Allima	\$1,000-\$1,500	3.0-4.0%			
Yukon XL, Yukon XL Denali	\$5,500	0%	Frontier	\$1,000	3.0-4.0%			
Sierra 1500	\$2,500	2.9-5.9%	Pathfinder, Xterra	\$500	-			
Sierra 2500/3500 (excl. LBZ)	\$1,500	2.9-5.9%	<b>2005 models</b>					
Canyon, Envoy, Envoy XL			Infiniti FX35, FX45	-	1.99-3.99%			
Envoy Denali, Envoy XL Denali	\$1,000	4.9-7.9%	Nissan Sentra	\$2,500	1.0-2.0%			
Savana, Sierra 2500/3500 (w/LBZ)	\$500	2.9-5.9%	Armada	\$2,500	2.0-3.0%			
Hummer H3 SUT	-	5.9%	Titan	\$2,250-\$3,000	2.0-3.0%			
Pontiac Montana SV6	\$1,000	3.9-6.9%	Quest	\$2,000-\$2,500	1.0-2.0%			
G6	\$500	2.9-6.9%	Xterra	\$2,000	3.0-4.0%			
GTO	\$500	4.9-6.9%	Maxima	\$1,750	2.0-3.0%			
Vibe	-	1.9-5.9%	Allima	\$1,500	2.0-3.0%			
Grand Prix	-	2.9-6.9%	Frontier	\$1,500	3.0-4.0%			
Torrent	-	3.9-6.9%	Murano	\$1,000	3.0-4.0%			
Saab 9-2X	\$3,000	1.9-4.9%	350Z	\$1,000	-			
9-3, 9-5, 9-7X	-	1.9-4.9%	Pathfinder	\$500-\$1,000	3.0-4.0%			
Saturn Ion-2, Vue	-	0-5.9%	<b>SUBARU</b>			Expires Jan. 31.		
Ion	-	1.9-5.9%	<b>2006 models</b>					
Relay	-	2.9-6.9%	B9 Tribeca, Baja, Forester,					

Source: Automotive News, Edmunds.com and JATO Dynamics Ltd.

3-11



## KANSAS AUTOMOBILE DEALERS ASSOCIATION

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March 16, 2006

To: The Honorable Barbara Allen, Chair  
and Members of the Senate Committee on Assessment & Taxation

From: Don L. McNeely, President

Re: HB 2640 – Relating to Sales of New Motor Vehicles; Taxation of Rebates

Good morning, Madam Chair and Members of the Senate Committee on Assessment and Taxation. My name is Don McNeely and I am the President of the Kansas Automobile Dealers Association, which represents the retail new franchised motor vehicle industry in Kansas. On behalf of KADA, I am pleased to appear today in support of HB 2640, which would exempt manufacturer rebates from the taxable selling price or lease amount of a new motor vehicle.

It is no secret that manufacturers' rebates and incentives have become an integral part of the pricing of new vehicles. Especially, as manufacturers attempt to improve sales of certain model vehicles or move inventory of current model vehicles prior to the introduction of the new model year. Manufacturer rebates range any where from a low of \$500 on a Ford Fusion to a high of \$7,500 on a remaining 2005 Chevrolet Tahoe, as is exemplified by the attached list of current incentives. But, upon review you will also notice the option and/or shift away from rebates to special interest rate financing, which more and more consumers take advantage of.

In any case, the discussions with the consumers about the taxability of a manufacturer rebate has increased in frequency especially along the state-line since 1996, when the Missouri Legislature exempted manufacturers' rebates and incentives from Missouri Sales Tax. Missouri was then immediately followed by Nebraska and Oklahoma, who also exempt manufacturer rebates from the taxable selling price or lease amount of a new motor vehicle.

It is true if a Kansas consumer purchases a motor vehicle in Missouri, Nebraska and Oklahoma, the Kansas County Treasurer in which the vehicle is to be domiciled should collect the sales tax on any manufacturer coupon, rebate or incentive. But, as I had suggested in previous testimony over the years and as was proven correct by the 2003 Legislative Post Audit Study on Motor Vehicle Sales Tax, this is not always occurring, as the out-of-state dealer's bill of sale to a Kansas resident will have the manufacturer's coupon, rebate or incentive subtracted from the taxable selling price of the vehicle, causing the Kansas County Treasurer to re-calculate the taxable selling price.

On behalf of the Kansas Automobile Dealers Association, I thank the Members of the Committee for allowing me to appear before you this morning in support of HB 2640, and I would be happy to answer any questions you may have.

731 S. Kansas Ave. • Topeka, KS 66603-3807

Telephone (785) 233-6456 • Fax (785) 233-1462

Assessment & Taxation  
Date 3-16-06  
Attachment # 4

# Custom Incentives

Incentives in this table are a summary of retail programs offered. Programs may vary by region and

	Cash rebate	Finance rate		Cash rebate	Finance rate		Cash rebate	Finance rate
<b>CHRYSLER GROUP</b>						2006 models		
<i>Expires March 31. In lieu of rebates, financing rates are available.</i>								
Dodge Caliber	\$500	-	Impala, Monte Carlo	-	2.9%	CL class, CLK class,		
2007 models			Equinox, Malibu	-	3.9%	CLS class, E class, M class,		
2006 models			(w/L61 engine)	-	4.9%	R class, SLK class	-	1.9-4.9%
Chrysler Pacifica,			TrailBlazer SS	-	5.5%	<b>MITSUBISHI</b>		
Town & Country	\$3,000	0-2.9%	Cobalt	-		<i>Expires March 31. In lieu of rebates, cut-rate financing is available.</i>		
Sebring	\$2,500	4.9%	<b>GMC Yukon,</b>			2006 models		
PT Cruiser	\$2,000	4.9%	Yukon Denali,			Montero	\$2,500	1.9-3.9%
Crossfire	\$1,000	4.9%	Yukon XL,			Endeavor	\$1,500	0-2.9%
Dodge Caravan,			Yukon XL Denali	\$5,000	0.0%	Galant	\$1,000-\$1,500	0-2.9%
Durango,			Sierra 1500	\$2,500	2.9%	Lancer	\$1,000	1.9-3.9%
Grand Caravan,			Canyon Crew Cab	1,250-1,750	3.9%	Eclipse, Outlander	\$500	1.9-3.9%
Ram 1500 (excl. Mega Cab)	\$3,000	0-2.9%	Sierra 2500/3500			Eclipse (excl. GT), Raider	-	1.9-3.9%
Dakota, Ram 2500/3500			(excl. LBZ engine)	\$1,500	2.9%	2005 models		
(excl. Mega Cab)	\$2,500	0-2.9%	Canyon reg./ext. cab	\$1,250	3.9%	Endeavor	\$3,000	0-2.9%
Stratus	\$2,500	4.9%	Envoy, Envoy Denali,			Montero	\$3,000	-
Ram 1500 Mega Cab,			Envoy XL,			Galant	\$2,500	-
2500/3500 Mega Cab	\$2,000	0-2.9%	Envoy XL Denali	\$1,000	4.9%	Outlander	\$2,000	-
Jeep Grand Cherokee,			Savana, Sierra 2500/3500			Eclipse, Lancer,		
Liberty (excl. diesel)	\$2,500	0-2.9%	(w/LBZ engine)	\$500	2.9%	Lancer Evolution	\$1,500	-
Liberty diesel	\$1,500	0-2.9%	Hummer H3	-	5.9%	<b>NISSAN NORTH AMERICA</b>		
Commander	\$1,000	0-2.9%	Pontiac Montana SV6	\$1,000	3.9%	<i>Expires April 3. In lieu of rebates, cut-rate financing is available.</i>		
Wrangler	\$500	0-2.9%	G6 (excl. LE5 engine)	\$750	2.5%	2006 models		
2005 models			GTO, Vibe	\$500	4.9%	Nissan Titan	\$2,250-\$2,750	1.0-3.0%
Dodge Neon	\$3,000	-	Grand Prix	-	2.9%	Sentra	\$2,500	1.0%
<b>FORD MOTOR CO.</b>			G6 (w/LE5 engine),			Armada	\$2,500	1.0-2.0%
<i>Expires April 3. In lieu of rebates, cut-rate financing is available.</i>								
2006 models			Torrent	-	3.9%	Quest	\$2,000	1.0-2.0%
Ford Expedition	\$4,000	0-2.9%	Saab 9-2X	\$3,000	1.9%	Altima	\$1,500	1.0-2.0%
Freestar	\$3,000	0.9-7.9%	9-3, 9-5, 9-7X	-	1.9%	Frontier, Maxima	\$1,500	2.0-3.0%
F-150 (excl. SuperCrew)	\$2,500	0.9-7.9%	Saturn Ion, Relay, Vue	-	0-1.9%	Xterra	\$1,000	3.0-4.0%
F-Super Duty, Focus	\$2,500	0.9-7.9%	2005 models			Pathfinder	\$500	4.0-5.0%
Explorer, Crown Victoria,			Buick Terraza	\$3,500	0.0%	Murano	-	3.0-4.0%
Escape, F-150 SuperCrew,			Cadillac Escalade,			2005 models		
Ranger	\$2,000	0.9-7.9%	Escalade ESV	\$7,500	0.0%	Nissan Sentra	\$2,500	1.0-2.0%
E series	\$1,000	0.9-7.9%	Escalade EXT	\$6,500	0.0%	Armada	\$2,500	2.0-3.0%
Five Hundred, Freestyle	\$1,000	0.9-7.9%	Chevrolet Suburban,			Quest	\$2,500-\$3,000	1.0-2.0%
Fusion	\$500	3.9-7.9%	Tahoe	\$7,500	0.0%	Titan	\$2,250-\$3,000	2.0-3.0%
Taurus	\$500	-	SSR	\$6,000	0.0%	Xterra	\$2,000	3.0-4.0%
Lincoln LS, Mark LT	\$3,000	0-6.9%	Avalanche	\$5,000	0.0%	Maxima	\$1,750	2.0-3.0%
Navigator	\$2,500	0-2.9%	Uplander	\$3,500	0.0%	Altima	\$1,500	2.0-3.0%
Zephyr	\$500	3.9-7.9%	GMC Yukon,			Frontier	\$1,500	3.0-4.0%
Mercury Grand Marquis,			Yukon Denali,			Murano	\$1,000	3.0-4.0%
Monterey	\$3,000	0-6.9%	Yukon XL,			Pathfinder	\$500-\$1,000	3.0-4.0%
Mariner (excl. hybrid)	\$1,500	0-6.9%	Yukon XL Denali	\$7,500	0.0%	350Z	\$1,000	-
Milan	\$500	3.9-7.9%	Hummer H2 SUT/SUV	-	6.8%	<b>PORSCHE</b>		
2005 models			Pontiac Montana SV6	\$3,500	0.0%	<i>Expires April 30.</i>		
Ford Explorer	\$5,000	0-4.9%	GTO	\$2,500	0.9%	2006 models		
Expedition	\$5,000	0-2.9%	Saturn Relay	\$3,500	0.0%	911, Boxster, Cayenne, Cayman	-	6.0-7.0%
F-150	\$4,000	0-4.9%	<b>AMERICAN HONDA MOTOR CO.</b>			2005 models		
Crown Victoria, E series	\$3,500	0-4.9%	<i>Expires April 3.</i>					
Excursion, F-Super Duty			Honda Element	-	3.9-5.9%	2006 models		
(excl. Harley-Davidson),			<b>HYUNDAI</b>			911, Boxster, Carrera GT, Cayenne - 6.0-7.0%		
Ranger	\$3,000	0-4.9%	<i>Expires March 31.</i>					
Five Hundred, Freestyle	\$2,000	0-4.9%	2006 models			<b>SUBARU</b>		
F-Super Duty Harley-Davidson	-	0-4.9%	Santa Fe	\$1,500	-	<i>Expires March 31.</i>		
Mustang	-	0-3.9%	Accent, Elantra	\$1,000	-	2006 models		
Lincoln Aviator, Navigator	\$5,000	0-4.9%	Sonata	\$500-\$1,000	-	B9 Tribeca, Baja, Forester,		
Town Car	\$4,500	0.9-4.9%	Tucson	\$500	-	Impreza, Legacy, Outback	-	0-4.9%
Mercury Mountaineer	\$5,000	0-4.9%	2005 models			<b>SUZUKI</b>		
Grand Marquis	\$4,000	0-4.9%	XG350	\$3,000	-	<i>Expires May 1. In lieu of rebates, finance rates are available.</i>		
Montego	\$2,000	0-4.9%	Santa Fe	\$2,000	-	2006 models		
<b>GENERAL MOTORS</b>			Elantra	\$1,500	-	Reno	\$1,500	0-6.9%
<i>Expires March 31. In lieu of rebates, cut-rate financing is available.</i>								
2007 models			Tiburon, Tucson	\$1,000	-	Aerio, Forenza, XL-7	\$1,250	0-6.9%
Cadillac Escalade	-	3.9%	<b>JAGUAR</b>			Verona	\$1,000	0-6.9%
Chevrolet Tahoe	-	3.9%	<i>Expires April 4.</i>					
GMC Yukon, Yukon Denali	-	3.9%	2006 models			Grand Vitara	\$750	0-6.9%
2006 models			S-Type, XJ series, X-Type	-	4.9%	2005 models		
Buick Rainier, Rendezvous	\$1,000	4.9%	2005 models			XL-7	\$2,250	0-3.9%
Terraza	\$1,000	3.9%	S-Type, X-Type	-	3.9%	Forenza, Grand Vitara,		
LaCrosse	\$500	1.9%	XJ series	-	4.9%	Reno; Verona	\$1,500	0-3.9%
Cadillac Escalade,			<b>KIA</b>			Aerio	\$1,250	0-3.9%
Escalade ESV,			<i>Expires March 31. In lieu of rebates, financing rates are available.</i>					
Escalade EXT	\$5,500	0.0%	2006 models			2006 models		
CTS, STS	-	2.9%	Amanti	-	0-5.9%	Toyota Tundra	\$1,300-\$3,000	0-3.9%
SRX	-	4.5%	Optima, Sorento	-2.25-4.25%		Sequoia	\$1,500-\$2,000	0-3.9%
DTS	-	6.3%	Spectra	-	2.9-6.25%	4Runner	\$1,000-\$2,000	0-3.9%
Chevrolet Suburban,			2005 models			Camry	\$750-\$1,500	0-3.9%
Tahoe	\$5,000	0.0%	Spportage	\$1,000	4.75-6.5%	Sienna	\$750-\$1,000	3.9-4.9%
Avalanche	\$4,000	1.9%	Sedona	-	0-1.5%	Highlander	\$600-\$1,250	1.9-3.9%
Silverado 1500	\$2,500	2.9%	Optima	-2.25-4.25%		Camry Solara	\$500-\$750	-
Colorado Crew Cab	\$1,750	3.9%	Sorento	-	2.9-4.5%	Corolla	\$500	2.9-4.9%
Silverado 2500/3500			Amanti	-	3.75-5.5%	Matrix	\$500	3.9-4.9%
(excl. LBZ engine)	\$1,500	2.9%	Rio	-	4.9-6.25%	2005 models		
Colorado reg./ext. cab	\$1,250	3.9%	<b>LAND ROVER</b>			Toyota Tundra	\$1,500-\$2,500	-
Uplander	\$1,000	3.9%	<i>Expires April 4.</i>					
TrailBlazer (excl. SS),			2006 models			Sequoia	\$2,000	-
TrailBlazer EXT (excl. SS)	\$1,000	4.9%	LR3	-	5.9%	4Runner, Highlander	\$1,000	-
Malibu (excl. L61 engine)	\$750	2.5%	LR3	-	3.9%	Camry, Sienna	\$750	-
Aveo	\$500	1.9%	<b>MAZDA</b>			Camry Solara	\$500	-
Express, Silverado 2500/3500			<i>Expires April 3.</i>					
(with LBZ engine)	\$500	2.9%	2006 models			<b>VOLKSWAGEN OF AMERICA</b>		
HHR	-	1.9%	MX-5 Miata	-	0-1.9%	<i>Expires April 3.</i>		
			Mazda6, Tribute	-	1.9-3.9%	2007 models		
			2005 models			Audi Q7	-	2.73%
			RX-8	-	0-1.9%	Volkswagen Passat wagon	-	3.9-4.9%
			<b>MERCEDES-BENZ</b>			2006 models		
<i>Expires March 31.</i>								

4-2



815 SW Topeka Blvd.  
Second Floor  
Topeka, KS 66612

Office: 785.232.2557  
Fax: 785.232.1703  
Cellular: 785.554.6866

## Testimony In Support of HB 2640

**John J. Federico**  
**On Behalf of General Motors**

**Senate Assessment & Taxation Committee**

**March 16, 2006**

Madam Chair, thank you for the opportunity to appear before your Committee today in support of HB 2640, on behalf of my client-General Motors.

My testimony is short and to the point. We encourage you to give full consideration to any legislation that would incent the car-buying public to purchase more vehicles, and help in a small way,...improve the fortunes of one of Kansas' blue chip corporate partners.

As you are aware, 2005 was not a good year for General Motors. With loses totaling more than \$8 billion dollars, they were forced to make difficult decisions and have announced plans to shed 30,000 jobs and close 12 manufacturing facilities across the country.

The Kansas legislature, I will assume, was pleased that the General Motors manufacturing facility here in Kansas was not among those slated for closure. In fact, we are hoping that the good work you do in this committee, improving the tax climate as a whole, HB 2640 included, will help spur even more growth at the Fairfax facility and create more jobs. I urge your support of the bill and would be happy to stand for questions.

Assessment & Taxation  
Date 3-16-06  
Attachment # 5

TAXATION COMMITTEE  
TESTIMONY  
March 2006

Robert A. Peterson  
L. R. Cloverleaf, Inc.  
2338 Merriam Lane  
Kansas City, KS 66106  
913.432.4323  
[Bob@LRCloverleaf.com](mailto:Bob@LRCloverleaf.com)

Re: Taxation of automobile rebates

In October 2004, I purchased three BMC pickups that were subsequently leased to my wife's mechanical contracting company. The purchase price for the three was \$48,860 after rebates of \$16,500. MSRP for the three was \$70,750 and I felt pretty good about the deal I had struck...until I found out that I had to pay sales tax on the rebate money that I saved!

I did not realize that I would pay sales tax on savings! In all, I paid an extra \$1,241 and my effective sales tax rate was 10.1% of the purchase price.

My questioning of the people at the license bureau was not effective, so I called the State and was told that, sure enough, I was taxed on a "theoretical" sales price, not the actual sales price.

Please change this tax. I know it will not help me, but such an unfair tax needs to be repealed.

Sincerely,

Bob Peterson

Assessment & Taxation  
Date 3-16-06  
Attachment # 6



TAXATION COMMITTEE  
TESTIMONY  
March 2006

Robert A. Peterson  
L. R. Cloverleaf, Inc.  
2338 Merriam Lane  
Kansas City, KS 66106  
913.432.4323  
[Bob@LRCloverleaf.com](mailto:Bob@LRCloverleaf.com)

Re: Sales Tax charged on new vehicles with rebates

My wife, Linda E. Peterson, owns L. R. Cloverleaf, a Minority-owned Business Enterprise. I own National Business Brokers Company and she lets me use an office in return for certain tasks such as personally buying, licensing and repairing the service trucks that are then leased to her company.

In October 2004, I executed a transaction in which I purchased three GMC Sierra work trucks from Galen Boyer GMC, Independence, MO.

**Vehicle One:**

MSRP		\$23,515.00
Dealer Discount	(\$1,915.00)	
Total Price		\$21,600.00
Admin Fee	\$ 80.00	
Rebate	(\$3,500.00)	
Bonus Cash	(\$1,500.00)	
Instant Value Certificate	(\$ 500.00)	
Balance		\$16,180.00

From the MSRP, my total price paid was negotiated down by \$7,335.00.

I paid a total of \$16,180. The sales tax was calculated on something higher. The sales tax was \$1,632.21 or 10.1%. Other fees, registration, plate, title, property tax were in addition to that.

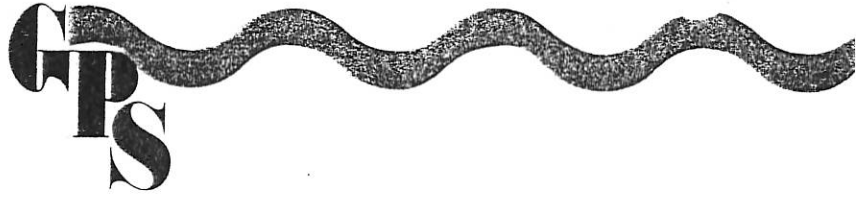
**Vehicle Two:**

MSRP	\$23,720.00
Purchase Price	\$16,500.00
Sales tax	\$ 1,662.31
On my purchase price	10.1%

**Vehicle Three:** Same as Vehicle One

I paid sales tax of \$4,926.73 for these three vehicles. I paid sales tax on approximately \$5,500 for each vehicle that I did not actually pay. The sales tax was calculated on a price 34% more (\$21,684 versus \$16,180) than I paid. This amounts to excess of \$1,250.

6-2



January 27, 2006

Representative David Huff  
Room 136 North  
State Capitol Building  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: Abusive Taxation Policy

Dear Representative Huff:

Due to a prior business commitment I am unable to attend your hearing the morning of February 2, 2006. It was suggested to me that I forward you the information in our file relating to improperly collected sales tax, regarding an automobile purchased in 2003.

I am sending the actual documents and then just the numbers as they appear after having been put into an Excel program. In this explanation the components of the \$4,404.25 "rebate" amount is broken down by the four General Motors programs that were being used to make automobiles cost less.

Please understand that the \$4,404.25 was taken off of the sale price and should be treated, for taxation purposes, the same as the \$7,000.00 that was allowed for the vehicle we traded in.

I believe that the taxing authority is trying to make this GM program equal to a coupon that one would mail to a manufacturer, along with a cash register tape, to receive a \$2.00 rebate on an item purchased at Wal-Mart. In this case, the consumer spends the money at Wal-Mart and then gets some of their money back. In the case above the \$4,404.25 was never paid to anyone, nor was it returned to anyone.

We were overcharged 7.4% of \$4,404.25, or \$325.91. That was 38% more tax than we should have paid. (\$11,583.80 @ 7.4%=\$857.20 vs. \$1,183.60)

Thank you for your interest in this matter.

Sincerely,



C. S. Reiff

Enc  
Roberts Auto Plaza invoice  
Receipt from Kansas Dept. of Revenue #0461TX200307210114  
Excel spreadsheet - exhibit

Assessment & Taxation  
Date 3-16-06  
Attachment # 7

WINDC



1600 E. Prairie View Rd. • P.O. Box 470 • Platte City, MO 64079  
(816) 858-3200

CUST # 3623664

SOLD TO MARY L REIFF CHARLES S REIFF  
2100 W 50TH ST WESTWOOD HILLS, KS 66205  
ADDRESS PHONE (913)362-3664 BUS PHONE

YEAR	MAKE	MODEL	NEW OR USED	VEHICLE IDENT. OR SERIAL NO.
2003	CHEVROLET	IMPALA	NEW	2G1WH52K739405452
SALESMAN YARNELL, RONDA			KEY NOS. 7	
MILEAGE 324				

**INSURANCE COVERAGE INCLUDES**

- FIRE & THEFT  
 COLLISION - AMT. DEDUCTIBLE  
 PUBLIC LIABILITY - AMT.  
 PROPERTY DAMAGE - AMT.

GROUP	DESCRIPTION	PRICE
<b>LIEN INFORMATION</b>		
	Amount Financed CASH	

USED VEHICLE/TRADED				
YEAR	MAKE	MODEL	VEHICLE IDENT. OR SERIAL NO.	
2000	MERCURY	MARQUIS	00	
BODY COLOR SILVER				TRADE 1 ALLOWANCE
MILEAGE 76519				7000.00

DATE 06/27/2003

INVOICE NO.		STOCK NO.		KEY
9637		5269		I
SOURCE	SALESMAN NUMBER			
	32			+
DESCRIPTION	COST	KEY	SALE	KEY
NEW CAR		C	22988.05	-
		C		-
		C		-
P		C		-
R		C		-
I		C		-
C		C		-
E		C		-
O		C		-
F		C		-
V	NEW CAR - OTHER	C		-
E	NEW CAR - FLEET	C		-
H	NEW TRUCK - LIGHT	C		-
I	DEALER TRANSFER	C		-
C	REMARKETED CAR <small>RTL WHLSE-</small>	C		-
L	USED CAR - RETAIL	C		-
E	- WHOLESALE	C		-
<b>VEHICLE DEAL NO. 6837</b>		I		
SALES TAX				-
LICENSE AND TITLE				-
<b>TOTAL CASH PRICE</b>			22988.05	
FINANCING				
INSURANCE				
<b>TOTAL TIME PRICE</b>				
S	CUSTOMER DEPOSITS	Rebate	4404.25	+
T	ACCOUNTS RECEIVABLE - VEHICLES			+
L	CASH SALES			+
E	USED VEHICLE ALLOWANCE		7000.00	
M	PAYMENTS			
N	MONTHS DOLLARS			
T	2 @ 11583.00 PER MONTH		11583.00	
<b>TOTAL</b>				
LIEN PAYOFF				-
FINANCE CONTRACTS <small>- NEW 2 - USED 3</small>				+
OVERALLOWANCE				+
				±
				±
RECONDITIONING - COST OF SALES				+
- USED INV.				-
VALUE OF TRADE				-
STOCK NO. 5269				+
		I		+

7-2

Handwritten initials

KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: JOHNSON  
County Treasurer: DENNIS M. WILSON

Vehicle Year: 2003 Make: CHEV I.D. No. 2G1WH52K739405452 Body Style: 4D

Purchased From: ROBERTS AUTO PLAZA INC  
Address: 1600 E PRAIRIE VIEW RD City: PLATTE CITY State: MO Zip: 64709-

Tax Type: COMPENSATING USE

Purchase Date: 06/27/2003  
Registration Date: 07/21/2003

Gross Purchase Price . . . . .	\$22,988.05
Less Trade-In . . . . .	\$7,000.00-
Cash Difference . . . . .	\$15,988.05
Add Transportation Cost . . . . .	\$ .00
Net Purchase Price . . . . .	\$15,988.05
State Sales Tax Amount . . . . .	\$847.36
State Tax Already Paid . . . . .	\$ .00
State Sales Tax Due . . . . .	\$847.36
County Sales Tax Amount . . . . .	\$175.86
County Tax Already Paid . . . . .	\$ .00
County Sales Tax Due . . . . .	\$175.86
City Sales Tax Amount . . . . .	\$159.88
City Tax Already Paid . . . . .	\$ .00
City Sales Tax Due . . . . .	\$159.88
Total Sales Tax Due . . . . .	\$1,183.10
County Collection Fee . . . . .	\$ .50
Total Amount Due . . . . .	\$1,183.60

Purchasers'  
Signature \_\_\_\_\_

Purchaser: REIFF MARY L  
Address: 2108 W 50 City: WESTWOOD HLS State: KS Zip: 66205-

Transaction No. 046100200307211256 Prepared By: GES  
Receipt No. 0461TX200307210114

2003 Chevrolet Impala LS

Dealer: Roberts Auto Plaza  
Platte City, MO

Total Price of Car \$ 22,988.05

Trade-In Allowance \$ 7,000.00  
sub-total \$ 15,988.05

GM Cash Back Program \$ 3,000.00

GM Loyalty Program \$ 500.00

GM Credit Card holder \$ 250.00

GM Credit Card Earnings \$ 654.25

Total of GM Program Discounts \$ 4,404.25

Total due to Roberts Auto Plaza \$ 11,583.80



KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: JOHNSON

County Treasurer: DENNIS M. WILSON

Vehicle Year: 2003 Make: CHEV I.D. No. 2G1WH52K739405452 Body Style: 4D

Purchased From: ROBERTS AUTO PLAZA INC

Address: 1600 E PRAIRIE VIEW RD City: PLATTE CITY State: MO Zip: 64709-

Tax Type: COMPENSATING USE

Purchase Date: 06/27/2003

Registration Date: 07/21/2003

Gross Purchase Price . . . . .	\$22,988.05
Less Trade-In . . . . .	\$7,000.00-
Cash Difference . . . . .	\$15,988.05
Add Transportation Cost . . . . .	\$ .00
Net Purchase Price . . . . .	\$15,988.05
State Sales Tax Amount . . . . .	\$847.36
State Tax Already Paid . . . . .	\$ .00
State Sales Tax Due . . . . .	\$847.36
County Sales Tax Amount . . . . .	\$175.86
County Tax Already Paid . . . . .	\$ .00
County Sales Tax Due . . . . .	\$175.86
City Sales Tax Amount . . . . .	\$159.88
City Tax Already Paid . . . . .	\$ .00
City Sales Tax Due . . . . .	\$159.88
Total Sales Tax Due . . . . .	\$1,183.10
County Collection Fee . . . . .	\$ .50
Total Amount Due . . . . .	\$1,183.60

Purchasers'

Signature \_\_\_\_\_

Purchaser: REIFF MARY L

Address: 2108 W 50

City: WESTWOOD HLS State: KS Zip: 66205-

Transaction No. 046100200307211256 Prepared By: GES

Receipt No. 0461TX200307210114

7-6

2003 Chevrolet Impala LS

Dealer: Roberts Auto Plaza  
Platte City, MO

Total Price of Car	\$ 22,988.05
Trade-In Allowance	\$ 7,000.00
sub-total	\$ 15,988.05
GM Cash Back Program	\$ 3,000.00
GM Loyalty Program	\$ 500.00
GM Credit Card holder	\$ 250.00
GM Credit Card Earnings	\$ 654.25
Total of GM Program Discounts	\$ 4,404.25
Total due to Roberts Auto Plaza	\$ 11,583.80





1600 E. Prairie View Rd. • P.O. Box 470 • Platte City, MO 64079  
(816) 858-3200

CUST # 3623664

SOLD TO MARY L REIFF CHARLES S REIFF  
2108 W 50TH ST WESTWOOD HILLS, KS 66205  
ADDRESS HOME PHONE (913)362-3664 BUS PHONE

YEAR	MAKE	MODEL	NEW OR USED	VEHICLE IDENT. OR SERIAL NO.
2003	CHEVROLET	IMPALA	NEW	2G1WH52K739405452
SALESMAN YARNELL, RONDA			KEY NOS 1	
MILEAGE 324				

**INSURANCE COVERAGE INCLUDES**

- FIRE & THEFT  
 COLLISION - AMT. DEDUCTIBLE  
 PUBLIC LIABILITY - AMT.  
 PROPERTY DAMAGE - AMT.

GROUP	DESCRIPTION	PRICE
<b>LIEN INFORMATION</b>		
	Amount Financed CASH	

YEAR	MAKE	MODEL	VEHICLE IDENT. OR SERIAL NO.
2000	MERCURY	MARQUIS	00
TRADE IN ALLOWANCE			
BODY COLOR	SILVER		7000.00
MILEAGE 75519			

DATE 06/27/2003

INVOICE NO		STOCK NO		KEY
9637		5269		I
SOURCE	SALESMAN NUMBER			
	12			
DESCRIPTION	COST	KEY	SALE	KEY
NEW CAR		C	22988.05	-
		C		-
		C		-
P		C		-
R		C		-
I		C		-
C		C		-
E		C		-
O		C		-
F		C		-
		C		-
V		C		-
E		C		-
H		C		-
I		C		-
C		C		-
L		C		-
E		C		-
		C		-
		C		-
VEHICLE DEAL NO.	6837	I		
SALES TAX				
LICENSE AND TITLE				
TOTAL CASH PRICE			22988.05	
FINANCING				
INSURANCE				
TOTAL TIME PRICE				
S	CUSTOMER DEPOSITS	Rebate	4404.25	+
E	ACCOUNTS RECEIVABLE - VEHICLES			+
T	CASH SALES			+
L	USED VEHICLE ALLOWANCE		7000.00	
E	PAYMENTS			
M	MONTHS			
N	DOLLARS			
T	\$ @ 11583.80 PER MONTH		11583.80	
TOTAL				
LIEN PAYOFF				
FINANCE CONTRACTS - NEW 2 - USED 3				
OVERALLOWANCE				
RECONDITIONING - COST OF SALES				
- USED INV.				
VALUE OF TRADE	STOCK NO.	5269		
		I		

OPTIONAL EQUIPMENT AND ACCESSORIES

8-7

KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: JOHNSON

County Treasurer: DENNIS M. WILSON

Vehicle Year: 2003 Make: CHEV I.D. No. 2G1WH52K739405452 Body Style: 4D

Purchased From: ROBERTS AUTO PLAZA INC

Address: 1600 E PRAIRIE VIEW RD City: PLATTE CITY State: MO Zip: 64709-

Tax Type: COMPENSATING USE

Purchase Date: 06/27/2003

Registration Date: 07/21/2003

Gross Purchase Price . . . . .	\$22,988.05
Less Trade-In . . . . .	\$7,000.00 -
Cash Difference . . . . .	\$15,988.05
Add Transportation Cost . . . . .	\$ .00
Net Purchase Price . . . . .	\$15,988.05
State Sales Tax Amount . . . . .	\$847.36
State Tax Already Paid . . . . .	\$ .00
State Sales Tax Due . . . . .	\$847.36
County Sales Tax Amount . . . . .	\$175.86
County Tax Already Paid . . . . .	\$ .00
County Sales Tax Due . . . . .	\$175.86
City Sales Tax Amount . . . . .	\$159.88
City Tax Already Paid . . . . .	\$ .00
City Sales Tax Due . . . . .	\$159.88
Total Sales Tax Due . . . . .	\$1,183.10
County Collection Fee . . . . .	\$ .50
Total Amount Due . . . . .	\$1,183.60

Purchasers'

Signature \_\_\_\_\_

Purchaser: REIFF MARY L

Address: 2108 W 50

City: WESTWOOD HLS State: KS Zip: 66205-

Transaction No. 046100200307211256 Prepared By: GES

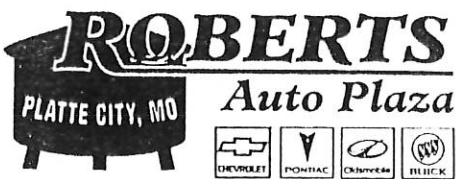
Receipt No. 0461TX200307210114

7-9

2003 Chevrolet Impala LS

Dealer: Roberts Auto Plaza  
Platte City, MO

Total Price of Car	\$ 22,988.05
Trade-In Allowance	\$ 7,000.00
sub-total	\$ 15,988.05
GM Cash Back Program	\$ 3,000.00
GM Loyalty Program	\$ 500.00
GM Credit Card holder	\$ 250.00
GM Credit Card Earnings	\$ 654.25
Total of GM Program Discounts	\$ 4,404.25
Total due to Roberts Auto Plaza	\$ 11,583.80



1600 E. Prairie View Rd. • P.O. Box 470 • Platte City, MO 64079  
(816) 858-3200

CUST # 3623664

SOLD TO MARY L REIFF CHARLES S REIFF  
2100 W 50TH ST WESTWOOD HILLS, KS 66205  
PHONE (913)362-3664 BUS PHONE

YEAR	MAKE	MODEL	NEW OR USED	VEHICLE IDENT. OR SERIAL NO.
2003	CHEVROLET	IMPALA	NEW	261WH52K739405452
SALESMAN YARNELL, RYONDA			KEY NOS 1	
MILEAGE 324				

**INSURANCE COVERAGE INCLUDES**

- FIRE & THEFT  
 COLLISION - AMT. DEDUCTIBLE  
 PUBLIC LIABILITY - AMT.  
 PROPERTY DAMAGE - AMT.

OPTIONAL EQUIPMENT AND ACCESSORIES

GROUP	DESCRIPTION	PRICE
LIEN INFORMATION		
	Amount Financed CASH	

USED VEHICLE TRADED

YEAR	MAKE	MODEL	VEHICLE IDENT. OR SERIAL NO.
2000	MERCURY	MARQUIS	00
TRADE 1 ALLOWANCE			7000.00
COLOR SILVER			
MILEAGE 76519			

DATE 06/27/2003		INVOICE NO 9637	STOCK NO 5269	KEY I	
SOURCE	SALESMAN NUMBER 12				
P R I C E  O F  V E H I C L E	DESCRIPTION	COST	KEY	SALE	KEY
	NEW CAR		C	22988.05	-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
			C		-
	NEW CAR - OTHER		C		-
	NEW CAR - FLEET		C		-
	NEW TRUCK - LIGHT		C		-
			C		-
	DEALER TRANSFER		C		-
	REMARKETED CAR	RTL WILSE-	C		-
	USED CAR - RETAIL		C		-
	- WHOLESALE		C		-
	VEHICLE DEAL NO. 5837		I		
	SALES TAX				-
	LICENSE AND TITLE				-
TOTAL CASH PRICE				22988.05	
FINANCING					
INSURANCE					
S E T T L E M E N T	TOTAL TIME PRICE				
	CUSTOMER DEPOSITS		Rebate	4404.25	+
	ACCOUNTS RECEIVABLE - VEHICLES				+
	CASH SALES				+
	USED VEHICLE ALLOWANCE PAYMENTS		MONTHS DOLLARS	7000.00	
	2 @	11503.80	PER MONTH	11503.80	
TOTAL					
LIEN PAYOFF					-
FINANCE CONTRACTS - NEW 2		- USED 3			+
OVERALLOWANCE					+
					±
					±
RECONDITIONING - COST OF SALES					+
- USED INV.					-
					-
VALUE OF TRADE	STOCK NO.	52691			+
			I		+

7-11

7-11

KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: JOHNSON

County Treasurer: DENNIS M. WILSON

Vehicle Year: 2003 Make: CHEV I.D. No. 2G1WH52K739405452 Body Style: 4D

Purchased From: ROBERTS AUTO PLAZA INC

Address: 1600 E PRAIRIE VIEW RD City: PLATTE CITY State: MO Zip: 64709-

Tax Type: COMPENSATING USE

Purchase Date: 06/27/2003

Registration Date: 07/21/2003

Gross Purchase Price . . . . .	\$22,988.05
Less Trade-In . . . . .	\$7,000.00-
Cash Difference . . . . .	\$15,988.05
Add Transportation Cost . . . . .	\$ .00
Net Purchase Price . . . . .	\$15,988.05
State Sales Tax Amount . . . . .	\$847.36
State Tax Already Paid . . . . .	\$ .00
State Sales Tax Due . . . . .	\$847.36
County Sales Tax Amount . . . . .	\$175.86
County Tax Already Paid . . . . .	\$ .00
County Sales Tax Due . . . . .	\$175.86
City Sales Tax Amount . . . . .	\$159.88
City Tax Already Paid . . . . .	\$ .00
City Sales Tax Due . . . . .	\$159.88
Total Sales Tax Due . . . . .	\$1,183.10
County Collection Fee . . . . .	\$ .50
Total Amount Due . . . . .	\$1,183.60

Purchasers'

Signature \_\_\_\_\_

Purchaser: REIFF MARY L

Address: 2108 W 50

City: WESTWOOD HLS State: KS Zip: 66205-

Transaction No. 046100200307211256 Prepared By: GES

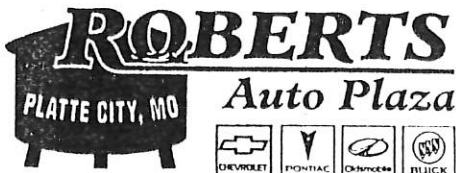
Receipt No. 0461TX200307210114

7-12

2003 Chevrolet Impala LS

Dealer: Roberts Auto Plaza  
Platte City, MO

Total Price of Car	\$ 22,988.05
Trade-In Allowance	\$ 7,000.00
sub-total	\$ 15,988.05
GM Cash Back Program	\$ 3,000.00
GM Loyalty Program	\$ 500.00
GM Credit Card holder	\$ 250.00
GM Credit Card Earnings	\$ 654.25
Total of GM Program Discounts	\$ 4,404.25
Total due to Roberts Auto Plaza	\$ 11,583.80



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(816) 858-3200

CUST # 3623664

SOLD TO MARY L REIFF CHARLES S REIFF  
2108 W 50TH ST WESTWOOD HILLS, KS 66205  
ADDRESS HOME PHONE (913)362-3664 BUS PHONE

YEAR	MAKE	MODEL	NEW OR USED	VEHICLE IDENT. OR SERIAL NO.
2003	CHEVROLET	IMPALA	NEW	261WH52K739405452

SALESMAN YARNELL, RONDA  
MILEAGE 324

**INSURANCE COVERAGE INCLUDES**

- FIRE & THEFT  
 COLLISION - AMT. DEDUCTIBLE  
 PUBLIC LIABILITY - AMT.  
 PROPERTY DAMAGE - AMT.

GROUP	DESCRIPTION	PRICE
LIEN INFORMATION		
	Amount Financed CASH	

YEAR	MAKE	MODEL	VEHICLE IDENT. OR SERIAL NO.
2000	MERCURY	MARQUIS	00

TRADE 1 ALLOWANCE 7000.00

BODY COLOR SILVER MILEAGE 76519

DATE		INVOICE NO		STOCK NO		KEY	
06/27/2003		9637		5269		I	
SOURCE		SALESMAN NUMBER				I	
		12					
P R I C E  O F  V E H I C L E	DESCRIPTION		COST	KEY	SALE		KEY
	NEW CAR			C	22988.05		-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
				C			-
	NEW CAR - OTHER			C			-
NEW CAR - FLEET			C			-	
NEW TRUCK - LIGHT			C			-	
			C			-	
DEALER TRANSFER			C			-	
REMARKETED CAR		RTL WHLSE.	C			-	
USED CAR - RETAIL			C			-	
- WHOLESALE			C			-	
VEHICLE DEAL NO.		5837	I			-	
SALES TAX						-	
LICENSE AND TITLE						-	
				TOTAL CASH PRICE		22988.05	
FINANCING							
INSURANCE							
S E T T L E  M E N T					TOTAL TIME PRICE		
	CUSTOMER DEPOSITS		Rebate		4404.25		+
	ACCOUNTS RECEIVABLE - VEHICLES						+
	CASH SALES						+
	USED VEHICLE ALLOWANCE PAYMENTS				7000.00		
MONTHS		DOLLARS					
		@ 11583.00	PER MONTH				
				TOTAL			
LIEN PAYOFF						-	
FINANCE CONTRACTS - NEW 2 - USED 3						+	
OVERALLOWANCE						+	
						+	
						+	
RECONDITIONING - COST OF SALES						+	
- USED INV.						-	
						-	
VALUE OF TRADE		STOCK NO.		5269		+	
						+	

7-14

4-1

KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

TOPEKA, KANSAS 66625

To: Director of Taxation

The undersigned certifies that on the date indicated below purchase was made of the following described motor vehicle and that the Kansas state and local retail sales tax has not been paid on said vehicle. Said tax is hereby reported.

County Name: JOHNSON

County Treasurer: DENNIS M. WILSON

Vehicle Year: 2003 Make: CHEV I.D. No. 2G1WH52K739405452 Body Style: 4D

Purchased From: ROBERTS AUTO PLAZA INC

Address: 1600 E PRAIRIE VIEW RD City: PLATTE CITY State: MO Zip: 64709-

Tax Type: COMPENSATING USE

Purchase Date: 06/27/2003

Registration Date: 07/21/2003

Gross Purchase Price . . . . .	\$22,988.05
Less Trade-In . . . . .	\$7,000.00-
Cash Difference . . . . .	\$15,988.05
Add Transportation Cost . . . . .	\$ .00
Net Purchase Price . . . . .	\$15,988.05
State Sales Tax Amount . . . . .	\$847.36
State Tax Already Paid . . . . .	\$ .00
State Sales Tax Due . . . . .	\$847.36
County Sales Tax Amount . . . . .	\$175.86
County Tax Already Paid . . . . .	\$ .00
County Sales Tax Due . . . . .	\$175.86
City Sales Tax Amount . . . . .	\$159.88
City Tax Already Paid . . . . .	\$ .00
City Sales Tax Due . . . . .	\$159.88
Total Sales Tax Due . . . . .	\$1,183.10
County Collection Fee . . . . .	\$ .50
Total Amount Due . . . . .	\$1,183.60

Purchasers'

Signature

Purchaser: REIFF MARY L

Address: 2108 W 50

City: WESTWOOD HLS State: KS Zip: 66205-

Transaction No. 046100200307211256 Prepared By: GES

Receipt No. 0461TX200307210114

7-15



2003 Chevrolet Impala LS

Dealer: Roberts Auto Plaza  
Platte City, MO

Total Price of Car	\$ 22,988.05
Trade-In Allowance	\$ 7,000.00
sub-total	\$ 15,988.05
GM Cash Back Program	\$ 3,000.00
GM Loyalty Program	\$ 500.00
GM Credit Card holder	\$ 250.00
GM Credit Card Earnings	\$ 654.25
Total of GM Program Discounts	\$ 4,404.25
Total due to Roberts Auto Plaza	\$ 11,583.80

7-16

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

March 16, 2006

## STATE GENERAL FUND OUTYEAR DEMANDS

### ● Out-Year Demands on State General Fund Resources:

- **KPERS pension obligation bonds** (\$0.5 billion in bonds issued in 2004)
  - FY 2008 - \$26.1 million, **an increase of \$11.1 million**
  - FY 2009 through FY 2034 - \$36.1 million, an increase of \$10.0 million in FY 2009)
- **KPERS increased employer contributions** (Statutory cap for state and school employer contribution increases from 0.5 percent in FY 2007 to 0.6 percent in FY 2008 and subsequent year, plus normal growth in the covered payroll):
  - FY 2008 - **an increase of \$29.0 million**
  - FY 2009 - **an increase of \$29.0 million**
- **KDOT Sales Tax Transfer** - Department of Transportation (Comprehensive Transportation Plan) State General Fund (Sales Tax) direct deposit to the State Highway Fund. The transfer amount is 0.25 percent in FY 2006; 0.38 percent in FY 2007; and 0.65 percent in FY 2008 thereafter:
  - FY 2008 - \$273.0 million, **an increase of \$118.0 million**
- **KDOT Bond Payment** - Additional bonding authority granted by the 2004 Legislature to ensure the funding stream for the Comprehensive Transportation Plan:
  - FY 2008 - \$11.0 million
- **KDOT Loan Repayment** - A repayment to the State Highway Fund for a diversion of State General Fund resources from the old demand transfer (\$94.6 million) and for operational support of the Kansas Highway Patrol (\$31.0 million); the loan is to be repaid over a four-year period:
  - FY 2007 - \$32.5 million
  - FY 2008 - \$30.9 million
  - FY 2009 - \$31.2 million
  - FY 2010 - \$30.9 million

Assessment & Taxation  
Date 3-16-06  
Attachment # 8

- **Department of Education** - Additional funding for School Finance – HB 2247 and House Sub. for SB 3. Special Education was raised from 89.3 percent in FY 2006 to 92 percent in FY 2007 and FY 2008. The Local Option Budget was raised from 27 percent in FY 2006 to 29 percent in FY 2007, and to 30 percent in FY 2008. An inflation factor also begins in FY 2008, which is the Consumer Price Index-Urban.

- FY 2008 - \$50.0 million
- FY 2009 - \$50.0 million

- **SRS and Aging** caseload estimated increases:

- FY 2008 - \$50.0 million
- FY 2009 - \$50.0 million

- **Summary of Identified Out-Year Demands (Expenditures):**

- **FY 2008 - \$141.5 million**
- **FY 2009 - \$139.3 million**

- **Other Selected Potential Demands on the State Budget:**

- Funding for K-12 education (base state aid per pupil, special education, and capital improvement aid)
- Higher education - Funding for the Higher Education Reform Act
- State employee health insurance
- State employee salary increases

8.2

8-3

**\$300 million in New K-12 Funding FY 2007- FY 2009 - \$600 Cumulative Three-Year Increase**  
**Base Increase in Revenue (February) of \$73.1 million Beginning in FY 2006 (5.9 Percent Composite Growth in FY 08 and FY 09)**  
**House Machinery and Equipment Tax Reductions as Modified**

**STATE GENERAL FUND RECEIPTS, EXPENDITURES AND BALANCES**  
**AS PROJECTED FY 2005-FY 2009**  
**In Millions**

	Actual FY 2005	Revised FY 2006	Recommended FY 2007	Projected FY 2008	Projected FY 2009
Beginning Balance	\$ 327.5	\$ 478.7	\$ 549.9	\$ 492.1	\$ 304.3
Base Increase in Receipts for Year-to-Date Collections - February	0.0	73.1	73.1	73.1	73.1
House Machinery and Equipment Tax Reductions as Modified	0.0	0.0	0.0	(22.3)	(40.4)
Receipts (November 2005 Consensus - Adjusted)	4,841.3	5,161.5	5,225.1	5,317.0	5,552.7
Adjusted Receipts	4,841.3	5,234.6	5,298.2	5,367.8	5,585.4
Total Available	\$ 5,168.8	\$ 5,713.3	\$ 5,848.1	\$ 5,859.9	\$ 5,889.7
<b>K-12 Additional Funding</b>	-	-	100.0	100.0	100.0
Less All Other Expenditures	4,690.1	5,163.4	5,256.0	5,455.6	5,744.2
Total Expenditures	4,690.1	5,163.4	5,356.0	5,555.6	5,844.2
Ending Balance	\$ 478.7	\$ 549.9	\$ 492.1	\$ 304.3	\$ 45.5
Ending Balance as a Percentage of Expenditures	10.2%	10.6%	9.2%	5.5%	0.8%
Receipts in Excess of Expenditures	\$ 151.2	\$ 71.2	\$ (57.8)	\$ (187.8)	\$ (258.8)

- 1) Actual FY 2005 and FY 2006 expenditures as approved by the 2005 Legislature, including \$31.6 million in expenditures shifted forward from FY 2005 to FY 2006. Plus, Governor's recommended net adjustments in FY 2006 expenditures (SRS/Aging caseloads, school finance adjustments, etc.).
- 2) FY 2006 revised receipts and FY 2007 projected receipts reflect the estimates of the Consensus Revenue Estimating Group as of November 3, 2005, as adjusted by the Governor, plus receipts year-to-date (\$73.1 million) above the estimate as a base increase.
- 3) FY 2008 and FY 2009 base receipts assume a 4.5 percent growth; and expenditures include out-year significant obligations (i.e., SRS and Aging caseloads - \$50 million; KPERS employer contribution rate increase - \$29.0 million; KDOT bonds payments \$16.5 million; and KPERS bond increase - \$11.1 million in FY 2008). State expenditures other those areas specifically mentioned are frozen at the FY 2007 level for FY 2008 and FY 2009.
- 4) Machinery and equipment tax reduction as passed by the House - HB 2525 and HB 2619 - modified.

Prepared at the Request and Direction of Senator Les Donovan

8-3

8-H

**\$300 million in New K-12 Funding FY 2007- FY 2009 - \$600 Cumulative Three-Year Increase**  
**Base Increase in Revenue (February) of \$73.1 million Beginning in FY 2006 (5.9 Percent Composite Growth in FY 08 and FY 09)**  
**Machinery and Equipment Tax Reductions as Passed by the House**

**STATE GENERAL FUND RECEIPTS, EXPENDITURES AND BALANCES**  
**AS PROJECTED FY 2005-FY 2009**  
**In Millions**

	Actual FY 2005	Revised FY 2006	Recommended FY 2007	Projected FY 2008	Projected FY 2009
Beginning Balance	\$ 327.5	\$ 478.7	\$ 549.9	\$ 492.1	\$ 279.1
Base Increase in Receipts for Year-to-Date Collections - February	0.0	73.1	73.1	73.1	73.1
House Machinery and Equipment Tax Reductions	0.0	0.0	0.0	(47.5)	(65.6)
Receipts (November 2005 Consensus - Adjusted)	4,841.3	5,161.5	5,225.1	5,317.0	5,552.7
Adjusted Receipts	4,841.3	5,234.6	5,298.2	5,342.6	5,560.2
Total Available	\$ 5,168.8	\$ 5,713.3	\$ 5,848.1	\$ 5,834.7	\$ 5,839.3
<b>K-12 Additional Funding</b>	-	-	100.0	100.0	100.0
Less All Other Expenditures	4,690.1	5,163.4	5,256.0	5,455.6	5,744.2
Total Expenditures	4,690.1	5,163.4	5,356.0	5,555.6	5,844.2
Ending Balance	\$ 478.7	\$ 549.9	\$ 492.1	\$ 279.1	\$ (4.9)
Ending Balance as a Percentage of Expenditures	10.2%	10.6%	9.2%	5.0%	-0.1%
Receipts in Excess of Expenditures	\$ 151.2	\$ 71.2	\$ (57.8)	\$ (213.0)	\$ (284.0)

- 1) Actual FY 2005 and FY 2006 expenditures as approved by the 2005 Legislature, including \$31.6 million in expenditures shifted forward from FY 2005 to FY 2006. Plus, Governor's recommended net adjustments in FY 2006 expenditures (SRS/Aging caseloads, school finance adjustments, etc.).
- 2) FY 2006 revised receipts and FY 2007 projected receipts reflect the estimates of the Consensus Revenue Estimating Group as of November 3, 2005, as adjusted by the Governor, plus receipts year-to-date (\$73.1 million) above the estimate as a base increase.
- 3) FY 2008 and FY 2009 base receipts assume a 4.5 percent growth; and expenditures include out-year significant obligations (i.e., SRS and Aging caseloads - \$50 million; KPERS employer contribution rate increase - \$29.0 million; KDOT bonds payments \$16.5 million; and KPERS bond increase - \$11.1 million in FY 2008). State expenditures other those areas specifically mentioned are frozen at the FY 2007 level for FY 2008 and FY 2009.
- 4) Machinery and equipment tax reduction as passed by the House - HB 2525 and HB 2619.

Prepared at the Request and Direction of Senator Janis Lee

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MIAMI COUNTY  
502 S. COUNTRYSIDE DR.  
LOUISBURG, KANSAS 66053  
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CHAIRMAN - HOUSE COMMITTEE ON  
GOVERNMENTAL ORGANIZATION  
AND ELECTIONS

COMMITTEE ASSIGNMENTS  
TRANSPORTATION  
FINANCIAL INSTITUTIONS

**JENE VICKREY**  
**6<sup>TH</sup> DISTRICT**

March 16, 2006

**Testimony for HB 2581**  
**Libraries; tax levies; based on preliminary of property values**

Senator Allen and Honorable Committee Members:

Thank you for thanking your time to hear **H.B. 2581**. Miami County Clerk Kathy Peckman brought this proposed change that you will hear today. It will greatly help the timely work of county offices to be able to better calculate the mill levy for regional libraries. It is my honor to introduce to you Kathy Peckman. She will explain in more detail the needed change that this bill will provide.

Thank you,

A handwritten signature in black ink, appearing to read "Jene Vickrey", written in a cursive style.

Jene Vickrey  
Representative, District 6

Assessment & Taxation  
Date 3-16-06  
Attachment # 9

**ORAL STATEMENT**

**PRESENTED TO SENATE ASSESSMENT AND TAXATION COMMITTEE  
ON MARCH 16, 2006  
BY**

**BARTON P. COHEN  
12617 BRIAR  
LEAWOOD, KANSAS**

Most librarians are very worthy people—dedicated to serving their community and the patrons of the library. They try hard to exercise good judgment in the performance of the duties and responsibilities of their job and usually in doing so create little, if any, angst among the people they serve.

Yet librarians are probably the only public employees paid with public money, who, if true to the dictates of their profession, refuse to permit the community, acting through the library governing boards or elected officials, to set any standards or establish any parameters for their decision-making when such standards, parameters or limitations relate to (i) what information and materials will be included in the library collection and (ii) who will have access to such information and materials.

Librarians want completely unfettered freedom to bring into the library through every means of transmission, including the Internet, all materials and information in order that all points of view can be presented in the library without restriction. This results from their commitment to the Library Bill of Rights

adopted by the American Library Association which states, "Materials should not be excluded because of the origin, background or views of those contributing to their creation" and "Libraries should provide materials and information presenting all points of view on current and historical issues." Thus, under the ALA interpretation of its Bill of Rights, all material and information, regardless of content, accessed on library computers through the Internet must be available to library patrons. Since the ALA Bill of Rights also states that "A person's right to use a library should not be denied or abridged because of origin, age," etc., librarians insist that minors should have the same rights as adults to such materials.

As a member of the governing board of the Johnson County Library, I took issue with these tenets of the American Library Association. I firmly believe that every person employed by a governmental entity should be required to perform their job according to standards, guidelines, parameters and restrictions established by the governing authority. I also believe that as a representative of the community, I had an obligation and duty to do as Justice Souter of the U.S. Supreme Court said, "Put a barrier between child patrons of public libraries and the raw offerings of the Internet." Therefore, once Congress passed and the President signed the Children's Internet Protection Act, I took the lead in urging our library to adopt a policy placing filters on library computers. I couldn't get a filtering policy adopted until the Supreme Court declared CIPA constitutional. Once the

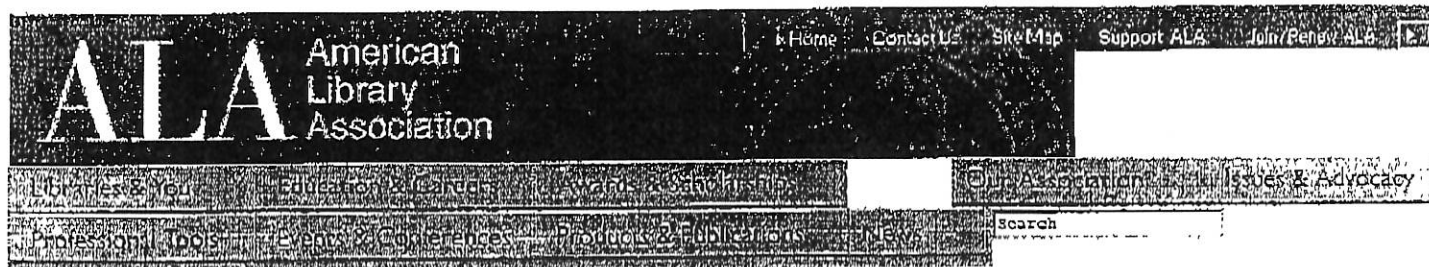


Supreme Court ruled, our library board attorney, Fred Logan, wrote the policy mandating the filters on library computers and I believe we were the first library in the Kansas City metropolitan area to have filters in place.

Librarians complying with ALA directives will make R-rated and X-rated movies, videos and DVDs available to minors. Librarians do not recognize the ratings of the movie industry because such ratings are declared to constitute labeling and prejudging. Article 4 of the Freedom to View Statement states that it is the responsibility of the librarian "to provide diversity of viewpoints without the constraint of labeling or prejudging." Unless a law is enacted forcing the librarian to recognize the ratings of the industry, librarians will continue to hand out R- and X-rated films, videos and audiovisual material to minors.

I am satisfied that once a law is enacted which has the effect of setting a standard for or a restriction on a library, the librarian will follow the law. If there is a way around the law, the librarian will take that route in order to comply with directives of the American Library Association. Apparently there were some libraries in this state that did not believe that federal money they received was of significant consequence to cause them to place filters on the computers in their libraries. Hopefully, this legislative House Bill 2581 will get their attention because the loss of state funds will be significant if they fail to place filters on their computers.

While I would have preferred legislation conforming to Missouri law which required filters on library computers, I support HB 2581 and ask this Committee to recommend its adoption by the full Senate.



Home → Intellectual Freedom → Statements and Policies → Library Bill of Rights

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- ▶ Awards, Institutes,

## Library Bill of Rights

**The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.**

I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

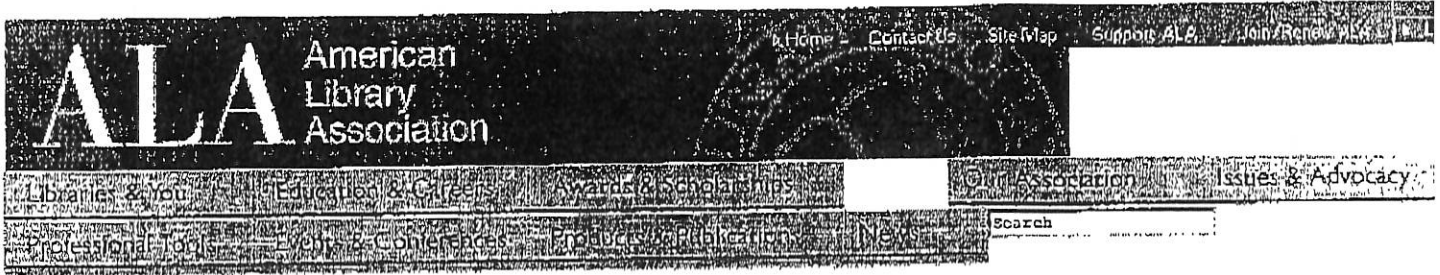
VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

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Adopted June 18, 1948, by the ALA Council; amended February 2, 1961; January 23, 1980; inclusion of "age" reaffirmed January 23, 1996.

### Related Files

**[ALA Library Bill of Rights \(PDF File\)](#)**



Home → Intellectual Freedom → Statements and Policies → Freedom to View Statement

## Intellectual Freedom

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- ▶ IF Groups and

## Freedom to View Statement

The **FREEDOM TO VIEW**, along with the freedom to speak, to hear, and to read, is protected by the **First Amendment to the Constitution of the United States**. In a free society, there is no place for censorship of any medium of expression. Therefore these principles are affirmed:

1. To provide the broadest access to film, video, and other audiovisual materials because they are a means for the communication of ideas. Liberty of circulation is essential to insure the constitutional guarantee of freedom of expression.
2. To protect the confidentiality of all individuals and institutions using film, video, and other audiovisual materials.
3. To provide film, video, and other audiovisual materials which represent a diversity of views and expression. Selection of a work does not constitute or imply agreement with or approval of the content.
4. To provide a diversity of viewpoints without the constraint of labeling or prejudging film, video, or other audiovisual materials on the basis of the moral, religious, or political beliefs of the producer or filmmaker or on the basis of controversial content.
5. To contest vigorously, by all lawful means, every encroachment upon the public's freedom to view.

This statement was originally drafted by the Freedom to View Committee of the American Film and Video Association (formerly the Educational Film Library Association) and was adopted by the AFVA Board of Directors in February 1979. This statement was updated and approved by the AFVA Board of Directors in 1989.

**Endorsed January 10, 1990, by the ALA Council**

### AMERICAN LIBRARY ASSOCIATION

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BARTON P. COHEN

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Before the Assessment and Taxation Committee  
Kansas Senate  
Chair: Honorable Barbara Allen  
March 16, 2006

**Written Testimony in Support of  
House Bill No. 2581  
An Act Relating to Public Libraries**

During the summer of 2001, I was appointed to the seven-member governing board of the Johnson County Library by Commissioner Surbaugh. I applied for this position after seeing a notice published in a local newspaper seeking applicants and then, as one of several, being interviewed. I applied for this position because of my great interest in books and because I thought that, with my long experience in serving on a variety of boards—for profit, nonprofit and governmental—I could perform a service to my community. Besides, as a lawyer practicing in Kansas for nearly 50 years, I recently had served as a member of the Kansas Bar Association committee that recommended revisions to the Kansas Corporation Code which since were enacted into law by this Legislature. Those revisions drafted while generally conforming to Delaware law contained one unique provision which I drafted pertaining to ascertaining a quorum for non-profit corporations. Also, I had lectured at meetings of Johnson County Bar, Business section, on the Responsibilities of Corporate Directors and Corporate Attorneys Post-

Enron emphasizing the importance of exercising independent judgment. So I thought I was well qualified to serve on the Library Board and looked forward to engaging in an exchange of ideas on public policy issues in an open and conducive forum.

Upon receiving the appointment, I was given an indoctrination by the County Librarian and handed a thick manual containing library policies. Reading through the policies, I was struck by the fact that most of the policies had not been reviewed for more than ten years even though one policy stated that all policies would be reviewed annually. I saw a number of policies that did not appear to have any current relevancy; other policies which appeared to directly conflict with current library practices; other policies that did not conform to accepted business and public entity practices; and others which made no sense to me.

Among the latter group was the Library Bill of Rights, a copy of which is attached hereto, and is the cornerstone for actions, positions, and opinions of librarians. Statements in the Library Bill of Rights which struck me as wrong were:

(1) "The Library should provide materials and other information presenting all points of view on current and historical issues."

(i) This did not appear appropriate for a community library. Ours is not a university or research library and could not afford to present all points of view. If someone wanted all points of view, they should go to a research library.

(ii) There were no standards, parameters or restrictions provided to the librarians in exercising unlimited discretion in spending taxpayer money. If material contains substantive factual errors, the points of view presented have little, if any, value. Some points of view may be harmful to the mission of our library and the people we serve—such as hate material, proterrorism material, and material advocating the overthrow of our country.

(2) "Materials should not be excluded because of the views of those contributing to their creation." I did not agree with that position because I do believe that how we conduct ourselves and what we say does make a difference in future judging of our conduct and our credibility. So if an author has written obscene or pornographic material in the past, we have a right to say we do not want to acquire any material written by that person.

(3) "A person's right to use a library should not be abridged because of ... age." I took exception to that American Library Association principle. I believe that, although it may be appropriate for certain adult material to be included in the library collection, such material is not appropriate for children and should not be accessible by children without their parents' permission.

Shortly after my term began, the Board was presented with a collection policy drafted by staff detailing the types of material the Library would be acquiring. No prohibitions, limitations or parameters were placed on staff discretion in the acquisition process. I proposed my belief that a governing board had the right and responsibility to establish some guidance to staff in their exercise of discretion. I opposed adding the ALA Bill of Rights and Related Documents as exhibits to the Collection Policy.

I did not have the votes to accomplish either of these approaches. But what I had not expected was the vicious and ferocious personal attacks made on me which continued throughout my term of office. The ALA Freedom to View statement urges each of its supporters "to contest vigorously, by all lawful means, every encroachment upon the public's freedom to view." A copy of that Freedom to View statement is attached to this statement.

My experience on the Library Board demonstrated to me that those persons committed to ALA principles are not interested in a rational discussion of the issues raised by their principles,

are unwilling to permit any limitations, restrictions, parameters or standards to be imposed on their unbridled exercise of discretion in deciding what the public and minors will be exposed to, were intolerant of views different from theirs and would conduct personal attacks even using fabrications and distortions against anyone challenging their authority.

The Children's Internet Protection Act (CIPA) had already passed both houses of Congress, been signed into law by the President of the United States and a challenge to its constitutionality filed by the American Library Association (ALA) with the Third Circuit Court of Appeals when I was appointed to the Board. The ALA filed its appeal because CIPA directly conflicted with ALA Bill of Rights by restricting access of minors to all library material and limiting the points of view presented to library patrons.

Since it was the law of the land, I asked that its provisions be adopted by the Johnson County Library with filters placed on all computers accessible by children. I experienced a huge amount of trash appearing on my computer at my law office requiring a great deal of time opening and deleting such items. I requested my law firm of over 300 lawyers to install computer software to filter out this trash and it was installed for the entire staff. Naively I thought that if filters were desirable in the law office, then everyone ought to be pleased to have them on library computers if for no other reason than to use computer time spent more efficiently. However, such suggestion was rejected because it conflicted with ALA policy and told to wait the adjudication of the court. Comparing materials and information received on computers to other information and material in the library did not appear reasonable. There is staff control over the information and material accessible to library patrons ordered by the staff, while no one has control over what information and material is accessed by the library patron through the Internet.



When the Third Circuit rendered its decision declaring CIPA to be unconstitutional because the federal government did not have authority to legislate on this matter, I read the opinion. It clearly indicated that the judges believed that filtering library computers was a good idea and encouraged state and local governmental entities to address this issue. As the United States Attorney General appealed this decision to the U.S. Supreme Court, I urged the Library Board to adopt the recommendation of the Circuit Court and install filters. Again my position was rejected saying the library should wait until the Supreme Court decides.

While the appeal was pending, the UMKC School of Law invited the attorney representing the ALA in this appeal to be a guest lecturer, and I was given the opportunity to question him during the public forum. I asked him about the validity of the ALA Bill of Rights principles of presenting all points of view and granting access by children to adult material. He replied that the law did not support the ALA positions and that reasonable limitations on these principles will be upheld by the Supreme Court.

When the Supreme Court ruled, I read the opinion. The Supreme Court upheld CIPA as constitutional. All Justices agreed that filtering was an appropriate remedy to a very real problem. Justice Kennedy said, "The interest in protecting young library users from material inappropriate for minors is legitimate and even compelling as all members of the Court appear to agree." Justice Souter in dissent, joined by Justice Ginsberg, stated, "Like the other members of the Court, I have no doubt about the legitimacy of governmental efforts to put a barrier between child patrons of public libraries and the raw offerings on the Internet." Justice Stewart, in his dissent stated, "I agree with the plurality that it is neither inappropriate nor unconstitutional for a local library to experiment with filtering software as a means for curtailing children's access to Internet websites displaying sexually explicit images."

Continuing to believe as I do that the rule of law trumps the principles of a trade or professional organization, I again urged the Johnson County Library Board to adopt a resolution complying with CIPA. Finally the issue was on the agenda. Staff said they had the software to do the filtering and, although it would take a few months for it to be operational and prepare the procedure for its implementation, filtering could be accomplished fairly quickly and inexpensively. Library Attorney, Fred Logan, said he could and would draft a policy resolution for our library to comply with CIPA, which he did. During the discussion about its adoption, two board members spoke against its adoption basically on the grounds that if children want to see this material, they were going to see it regardless of what the board does. I took the position that it should not be on taxpayer computers at tax-supported libraries that children access obscene and pornographic material. If a parent wants a child to access such material, then the parent can arrange for it themselves or give permission to the library for such access.

On final vote the filter resolution was unanimously adopted. Later the plan for implementation was presented. The software was installed and the computer filtering commenced without fanfare or complaint.

I have attached a copy of the ALA advice on how to deal with filtering at libraries. This advice provides guidance to libraries on issues related to filtering and how to comply with the law. Kansas libraries have an obligation to restrict minors from unfiltered computer access. While librarians must publicly oppose limitations, I believe it is the duty and responsibility of governing boards and legislators to place controls on the types of materials entering the library through the Internet.

While I have had no contact with the library board or staff since my term ended last April, I support this legislation including the prohibition against R-rated visual material being

accessible to minors. Administrative Regulation (ARM) 20-15-10 of the Johnson County Library encouraged minors to access and view books, videotapes, motion pictures and other print formats without regard to whether or not their content is harmful to minors. ARM 99-10-10 of the Johnson County Library states, "Library policies and procedures which effectively deny minors equal access to all library resources available to other users violate the Library Bill of Rights" and further states that "Policies which set minimum age limits for access to videotapes and/or other audiovisual materials and equipment, with or without parental permission, abridge library use for minors." Obviously minors will continue to have access to adult or R-rated visual material at Johnson County Library and other Kansas libraries with similar policies unless the Legislature puts a stop to such practices. In my opinion, it is not the role of tax-supported institutions to make this type of offensive material available to minors.

I urge you to support and vote for House Bill 2581.

Attachments

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**AMERICAN LIBRARY ASSOCIATION**

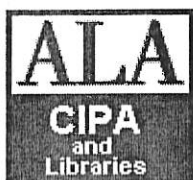
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    - OGR (Office of Government Relations)



## CIPA Legal FAQs

Post-Supreme Court Decision in United States v. ALA, No. 02-361, 539 U.S. \_\_\_ (U.S. June 23, 2003)

We will continue to update this page with your questions. If you have a question not covered yet, please send an e-mail to: [clowe@alawash.org](mailto:clowe@alawash.org)

We will post responses as soon as reliable information is available.

**Last update:** 8 July 2003

- What does the decision mean?
- When must a library disable or turn-off the filter?
- Does a library that does not receive e-rate discounts or LSTA grants have an obligation to disable filters?
- How does the statute define "adults" and "minors"?
- Must the library filter staff terminals?
- Does CIPA mandate the use of any particular blocking software or filtering settings?
- Can libraries receive federal assistance to purchase filtering software?
- Must libraries certify compliance with CIPA this year?
- How can libraries offer public Internet access consistent with CIPA's filtering requirements?
  - Inform the Public
  - Facilitate Disabling of the Filter
  - Amend Internet Use Policies

## News (ALAWON)

- › LBA (Library Business Alliance)
- › Contact WO

- **If a parent of a child under 17 requests that the library provide unfiltered access to the Internet for the child on a library computer, may the library comply?**
- **A Caveat**




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### *What does the decision mean?*

On June 23, 2003, the U.S. Supreme Court in *United States v. ALA* reversed the District Court's decision and rejected the plaintiffs' facial challenge to CIPA. Although six justices voted to uphold the law, there was no majority opinion for the Court. The plurality opinion, authored by Chief Justice Rehnquist, was joined by three other Justices (O'Connor, Scalia, and Thomas). Because it did not have the support of five Justices, the reasoning of the plurality opinion is not controlling. Justices Kennedy and Breyer each wrote concurring opinions upholding CIPA against plaintiffs' facial challenge, but on narrower grounds than those stated in the plurality opinion. In cases like this, where no single opinion has the support of a majority of the Justices, the narrower concurring opinions typically govern future interpretations (and the precedential effect) of the case.

**The Supreme Court's opinion has no effect on libraries that are not covered by CIPA (that is, libraries that do not receive e-rate discounts or LSTA funds for the provision of public Internet access). In addition, the Court's decision did not affect schools or alter CIPA's filtering requirements for schools.**

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### *Under the law and the Supreme Court's decision, when must a library disable or turn-off the filter?*

To varying degrees, the plurality and concurring opinions upheld CIPA based on an expansive reading of the statute's disabling provision, which allows a library to disable or turn-off the blocking software during adult use "for bona fide research or other lawful purposes." Under the federal government's interpretation of the disabling provision "a patron would not 'have to explain . . . why he was asking a site to be unblocked or the filtering to be disabled.'" *United States v. ALA*, slip op. at 12 (plurality opinion)

(quoting Solicitor General, Tr. of Oral Arg. at 4); see also *id.* 5 (Breyer, J., concurring) ("As the plurality points out, the Act allows libraries to permit any adult patron access to an 'overblocked' Web site; the adult patron need only ask a librarian to unblock the specific Web site or, alternatively, ask the librarian, 'Please disable the entire filter.'"). Thus, it appears that, under the Supreme Court's decision and the government's interpretation of the statute, libraries must turn off the filter upon request by an adult, without inquiring into the adult's "purpose" for disabling the software. In fact, both concurring opinions made clear that any library that burdens patrons' rights through an improper or restrictive application of CIPA's disabling provision could face a future lawsuit (what is known as an "as-applied challenge"). As Justice Kennedy explained, if a librarian does not "unblock filtered material or disable the Internet software filter without significant delay," or "if it is shown that an adult user's election to view constitutionally protected Internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge." *Id.* at 1 (Kennedy, concurring); see also *id.* at 5-6 (Breyer, J., concurring).

**For libraries that receive LSTA grants - but not e-rate discounts** - CIPA's disabling provision applies to **all** Internet access, including access by minors (the adults-only disabling provision, however, still applies to libraries receiving both LSTA grants and e-rate discounts). Although the "bona fide research or other lawful purposes" statutory standard is the same for both disabling provisions, it is unclear how the Supreme Court's decision affects disabling for minors in LSTA-only libraries. Minors undoubtedly have constitutional rights to receive information, but the Court did not address those rights at length in its decision. It is nonetheless clear that CIPA permits minors to request that a library unblock specific websites.

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*Does a library that does not receive e-rate discounts or LSTA grants have an obligation to disable filters?*

The Supreme Court's various decisions in the CIPA case certainly suggest that a library that imposes filtering requirements without disabling faces a risk of litigation if adult or minor patrons cannot



access constitutionally protected speech.

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*How does the statute define "adults" and "minors"?*

Under CIPA, a minor is anyone "who has not attained the age of 17." Adults, therefore, include everyone 17 years-old and older.

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*Must the library filter staff terminals?*

As before, CIPA requires filtering on all of a library's computers with Internet access, including staff terminals. CIPA's disabling provision, however, applies to adult staff as well as patrons (see #2 above).

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*Does CIPA mandate the use of any particular blocking software or filtering settings?*

There is no obligation to use any particular filter in the library. The statute and regulations require only that certifying libraries use a "technology protection measure" that "protects against access" to Internet materials that are obscene, child pornography, and, during use by minors under 17 years-old, "harmful to minors." Because the inherent flaws of blocking software make it impossible ensure that these materials are filtered, a library will be deemed CIPA-compliant as long as it makes a "good faith" effort to block these categories of online materials. Libraries, therefore, have some flexibility in selecting, crafting, and modifying the required filtering technology to meet CIPA's blocking and disabling requirements.

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*Can libraries receive federal assistance to purchase filtering*

*software?*

Libraries cannot use e-rate discounts to purchase blocking software. There is no prohibition on LSTA funds being used to buy filters. Libraries will therefore have to assess whether particular states permit the use of LSTA funds for filters and whether the money required to purchase CIPA-compliant filtering and disabling software outweighs the benefits gained from the federal funding programs covered by the statute.

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*Must libraries certify compliance with CIPA this year?*

The FCC has not provided guidance on this issue. As soon as ALA receives information about the timeline, it will be provided to members.

As to **LSTA funds**, the Institute of Museum and Library Services is now reviewing the Supreme Court's opinion and will provide updated guidance to the State Library Administrative Agencies by August, 2003.

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*How can libraries offer public Internet access consistent with CIPA's filtering requirements?*

After the Supreme Court's decision, the precise contours of CIPA's filtering mandate and disabling provision are not entirely clear. Nonetheless, there are steps public libraries can take to minimize the First Amendment harms of using blocking software, while still complying with the statute (of course, libraries still retain the option of declining federal funding altogether, thereby relieving them of any obligation to filter). We must caution, however, that the options described below are untested in the courts and in the FCC, and there is no guarantee that they necessarily would be deemed legally sufficient. Libraries considering these or other options, therefore, must consult their own legal counsel for an analysis of any specific policy. Nonetheless, the options listed below appear to be consistent with the statute, the Supreme Court's decision, and the federal government's interpretation of CIPA.

[top]

- **Inform the Public**

- CIPA-compliant libraries can and should post signs - either in hard copy (at the entrance to the library, near the Internet terminals, etc.) and/or electronically, on the computer screens - informing patrons that:
- Because this library receives federal funding for public Internet access, federal law requires the library to install blocking software on the library's Internet terminals;
- The blocking software, or filter, is inherently imprecise and flawed. It inevitably will block access to a vast array of constitutionally protected material on the Internet. Because of its technological limitations, the filter is also incapable of protecting against access to Internet material that is obscene, child pornography, or harmful to minors;
- Under the law, the library can unblock individual websites that have been blocked erroneously by the filter. In addition, the library will disable the entire filter for adult patrons 17 and over upon request. The requesting patron will not have to explain why he or she is asking that the site be unblocked or that the entire filter be turned-off. The library encourages patrons to request that the filter be disabled.

[top]

- **Facilitate Disabling of the Filter**

- Libraries should take steps to facilitate the disabling of Internet blocking software upon request by adult patrons (see #2 above). The following options can help ease administrative burdens on libraries and may mitigate any stigma associated with patron requests to disable the filters.
- A library can post signs containing the information described above. The signs should encourage adult patrons to request disabling of the library's filtering software, and should make clear that the library will not inquire into the patron's purpose in seeking unfiltered access.
- A library can segregate computers for unfiltered Internet access by adults. Adults wishing to use those computers

would sign a form, display identification, etc., indicating that (1) the patron is 17 and over, and (2) the patron seeks unfiltered Internet access "for lawful purposes." The library would be responsible for ensuring that only adults gain access to these Internet terminals.

- o The library can adopt a so-called "smart card" system, under which patrons use a plastic card (similar to a credit card or library card) to gain access to the Internet from library terminals. Each card automatically would indicate whether the patron is an adult. The Internet terminals could then offer adult patrons the option of Internet access with the filter enabled or disabled. The library's "welcome" screen could ask the adult patron whether he or she wanted filtered Internet access (presumably accompanied by a message explaining the inherent flaws of blocking software). If the patron selects unfiltered access, the next screen could include a message stating: "Click here if you wish the library to disable the entire filter during your Internet session. By clicking on this box, you declare that you will use the Internet for lawful purposes." Upon the patron's assent, the terminal could provide unfiltered Internet access.

- **Amend Internet Use Policies**

- o As always, libraries should update their Internet use policies as soon as possible to reflect any changes or responses to CIPA or the Supreme Court's decision.

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*If a parent of a child under 17 requests that the library provide unfiltered access to the Internet for the child on a library computer, may the library comply?*

CIPA does not contemplate parental control over library filters – that is, the statute provides that filters may only be disabled by a library employee for legitimate adult use. Specifically, the language of the statute authorizes “an administrator, supervisor, or other person authorized by the certifying authority...[to] disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.”

That does not mean that the library cannot allow a child to be present at the workstation after his or her parent requests disabling of the filter. However, should the parent allow his or her child to use the computer, the parent should be required to remain at the monitor during use of the (unfiltered) computer by his or her child. While allowing the child to "use" the unfiltered computer even in the presence of a parent does not literally comply with the statutory mandate, should a complaint arise, it is the parent, not the librarian, who should bear the responsibility.

Nonetheless, this is an area in which the library should exercise caution; it is not likely to be advisable for libraries to establish a formal policy of allowing parents to request disabling of filters for their children. This policy is too easily subject to abuse and may require both validation of the parent-child relationship and a more aggressive monitoring of library workstations.

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**Again, we must caution, however, that the options described above are untested in the courts and in the FCC, and there is no guarantee that they necessarily would be deemed legally sufficient. Libraries considering these or other options, therefore, must consult their own legal counsel for an analysis of any specific policy.**

[\[top\]](#)

**AMERICAN LIBRARY ASSOCIATION**

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Testimony to: Senate Assessment and Taxation

From: Kansas County Clerks' Association

Re: Proponent of House Bill 2581

Honorable Chairman and Committee Members:

I am Sherrie Riebel, Allen County Master Clerk, and I support House Bill 2581. I am the home county for the Southeast Kansas Library District.

Every year county clerks have a different schedule to complete their values, tax levies and tax statements. It never fails that the clerk of the home county is waiting on one or two counties for final value. Generally it is not the county clerk's fault; sometimes there are mistakes on state utility values, clerical errors and always programming problems. There could be any number of reasons why a clerk cannot certify value on time. Some county clerks aren't as pressured by the public as others at getting tax statements out so quickly. Several counties also schedule programmers to come to their counties to help with taxes, therefore the programmers have to schedule different times to help each county.

I support the use of the July abstract of values (certified preliminary abstract) for setting levies to produce tax statements, since these would have already been reported to me.

This portion of the bill has faced no opposition from regional librarians or the State Librarian. I ask for your support and passage of House Bill 2581.

Respectfully,

Sherrie Riebel

Assessment & Taxation  
Date 3-16-06  
Attachment # 11

# State of Kansas

**Becky Hutchins**  
Representative, Fiftieth District  
Jackson and Shawnee Counties  
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(785) 364-2612



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Topeka, KS 66612  
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hutchins@house.state.ks.us

## House of Representatives

March 16, 2006

Chairman Allen and Members of the Senate Assessment and Taxation Committee:

Thank you for the opportunity to come before you today in support of HB 2581.

I support the underlying bill as well as the amendment that was attached on the house floor and passed on final action by a vote of 115 yeas and 4 nays.

My amendment on HB 2581 would apply to:

- 1.) Only city, county, township or library districts that are supported in whole or in part by public moneys.
- 2.) Require those libraries to use internet filter technology on computers accessed by minors.
- 3.) It does NOT require all computer's to have filters or prohibit any adult from accessing an unfiltered computer.
- 4.) The parent or guardian of the minor can give written consent to the library allowing the minor to access the internet without the use of filtering technology.
- 5.) Would not allow public libraries to check out R rated videos, DVD's or films to any person who under the voluntary movie rating system of the Motion Picture Association of America would not be admitted to view a video, movie or DVD, unless the minor was accompanied by a parent or adult guardian.
- 6.) Libraries would have to be in compliance with these provisions prior to receiving any state grant-in-aid for calendar year 2008.
- 7.) If libraries are receiving federal dollars they would be in compliance with this legislation as a requirement to receive federal funding is that all computers have filtering devices.
- 8.) If a library has a current policy that allows minors to access non-filtered computers only with written consent of their parent or guardian, they are in compliance with this amendment.
- 9.) If you are a library that has both filtered and unfiltered computers, all you have to do to be in compliance is to make sure minors only access the computers that have filtering technology on them or have written consent by the minor's parent or guardian that they can access any computer.

During the 2006 State-of-the-State Address Governor Sebelius stated "we all recognize Mom's and Dad's are the first and best teachers for their children."

**Assessment & Taxation**  
Date 3-16-06  
Attachment # 1a

My amendment would leave the decision as to whether minor could access computers without filtering technology in the hands of their parents.

Governor Sebelius, in her State-of-the-State Address also said, "But parents today face new challenges that we didn't have when our children were younger. Video games and music lyrics promote violence, while ever-looser standards for movies and TV shows bring inappropriate material right into our living rooms. **The internet poses safety threats I never dreamed of when my boys were little.**"

We constantly hear the phrase that times have changed, and I would agree with that. But one thing has not changed - our responsibility to keep minors safe and the role of government to aid parents in that process.

Respectfully submitted,

*Becky Hutchins*

Becky Hutchins  
Representative, 50<sup>th</sup> District



# THE HUTCHINSON NEWS

Should libraries be required to install filters on computers used by minors and enact policies to keep children under 17 from checking out R-rated movies unless accompanied by a parent?

Yes	 80.6%	228
No	 18%	51
Don't know	1.4%	4

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Rep Bucky Hutchins  
 Rep Becky Hutchins  
 Dist # 50

12-3

HB2581  
Kim Borchers  
3/16/06

*For this reason society requires that the education of youth should be watched with the most scrupulous attention. Education is a great measurer, forms the moral character of men and morals are the basis of government. Noah Webster, 1758-1843*

Chairman Allen and members of the committee, my name is Kim Borchers. I am a Shawnee County taxpayer, a former corporate businesswoman and my most important role, a mother. I believe, and so do thousands of Kansans, that those who receive our hard earned tax dollars should be held to the highest standard with the services they provide to our children. For this reason, I support HB2521.

Libraries cannot control everything minors intentionally or unintentionally log onto, but they can control what type of services they provide minors. If parents desire their children to have unfiltered access, they may do so with written parental notification. The default for the library will be filters for minors. This is based on the premise that the state has "compelling" state interest to protect minors from sexually explicit material and they are utilizing the most technologically advanced means available.

With my remaining time, I would like to address the arguments given by the opposition. They are as follows: Censorship, Protected Speech Blocked, Issue not a Problem, Parental Responsibility, Local Control, Funding.

#### Censorship

##### ***Tinker v Des Moines School Dist., 393 U.S. 503, 515(1969)***

The First Amendment rights of a minor are not "co-extensive with those of adults. A child... is not possessed of that full capacity for individual choice which is presupposition the First Amendment guarantees.

##### ***Ginsberg v New York, 390 U.S. 629(1968)***

The court ruled that it was constitutionally permissible to accord to minors a more restricted right than that assured to adults to judge and determine for themselves what sexual material they may read or see, and that such restrictions do not invade the area of freedom of expression constitutionally secured to minors.

William W. Van Alstyne, Law professor at Duke University School of Law and the author of a leading textbook on the First Amendment, said "It's a nice question [whether children have a right to indecent material], and the general answer would appear to be no". Van Alstyne went on to add that a library policy of filtering for minors and not for adults would "be" almost certain to win judicial acceptance by the courts," (NY Times, 3/6/98)

Bruce Ennis, the attorney who successfully argued against the Communications Decency Act in the Supreme Court for the ALA and ACLU recently admitted that "almost any court in the world" would uphold library filtering for minors.

Assessment & Taxation  
Date 3-16-06  
Attachment # 13

The issue of censorship is an issue of semantics. If the library is making the policy or making the decisions, it's called selection, but if a patron questions their decision-making—we are censors.

Their current library policy of “tapping on the shoulder” is censorship. The moment that they might ask someone to get off of a site, they have censored that patron. The libraries should be proactive not reactive.

#### Protected Speech Blocked

Opponents of filtering sometimes argue that children using filtered Internet access will be at a competitive disadvantage because they will be denied crucial information. Children will become pregnant and catch venereal diseases because they were denied sexual education information. Gay teenagers will commit suicide because they will be unable to reach out to fellow gay teens on the Internet. Yet millions of children are required to use filters in public school settings, and there is not one confirmed instance that any of these things have happened. Of all the millions of children who rely on filtered Internet access in the home and in school, no child has committed suicide, become pregnant, contracted a disease, flunked a class, or even gotten a bad grade on a paper because they were required to use a filter. There is not one shred of evidence to suggest that any person has ever been meaningfully harmed in any way by being required to use filters.

All of these imaginary problems are in contrast to the many real, well-documented incidents of real harm being inflicted on children by unfiltered Internet access in public libraries. Children are being accosted with porn, propositioned by pedophiles, and having their innocence stripped away even further in an already too-grown up world. The failure of libraries to control these problems supports the appropriateness of laws requiring filtering software. *Dangerous Access 2000 Pg.38*

#### Issue not a Problem/We Have Policies in Place

How would the library define a “problem”? How many hits of pornography need to take place for this issue to be labeled as one. Would they contact the media so that parents could be informed of the issue? I think I am safe in saying no. The libraries' definition of a “problem” is not in sync with the average Kansan. The next question is how do libraries measure their policies effectiveness? They determine its effectiveness by stating how many individuals they catch violating it but that does not tell us how many attempted access and were not caught.

David Burt, public librarian in Oregon, performed a study to review this issue. Nearly all of the nation's public library systems were contacted with freedom-of-information requests, but 71 percent ignored the requests. Both the ALA and a number of state libraries (ours included) sent messages to public libraries suggesting ways that libraries could avoid compliance with the requests.

David Biek, Manager for the Tacoma Public Library, performed a yearlong study in his library system. He found the heaviest seekers of explicit material were with males between the ages of 12 and 15. Furthermore, his data found most of all such activities

took place in the after-school hours in branch libraries that were heavily used by young people during those hours. Mr. Biek also stated that public librarians should not believe that a lack of patron complaints, both formal and informal, about sexually explicit materials displayed on library computers or the scarcity of staff observations of the same mean that no such behavior is taking place in their libraries. His staff would not have guessed that Internet users accessed pornographic material nearly 28,000 times last year.

When I read such studies, I am convinced that Kansas's libraries are being utilized in the same manner. We do have a problem. To ignore it does not mean that it does not exist.

#### Parental Responsibility

In our society, many parents believe that certain kinds of material - such as those containing graphic sex or violence - are harmful to children. This belief is a reasonable one, and **parents therefore should have a right to shield their children from such material.**

**It might seem that such authority should rest solely with parents, and that the state should have no role. But the widespread availability of such material in the larger society makes it virtually impossible for parents to act effectively on their own.** Instead, if parents are to have meaningful rights in this area, the community must have the power to regulate the manner in which such material is distributed. Human nature has a social dimension, the society and its culture inevitably have a powerful impact on the character of its members. Although it is presumed that adults are sufficiently autonomous to resist harmful social and cultural influences, this assumption cannot be made with respect to children. For these reasons, the society should have a duty to restrain itself and its members from exposing minors to material that the community reasonably believes to be harmful. This duty applies with special force in areas where the society has undertaken a positive responsibility with regard to children, such as public libraries. But the duty also applies more generally. The community's authority to shield children from harmful material rests on two interrelated justifications: (1) **it is legitimate for the state to assist parents in the exercise of their own right to protect their children against material they reasonably consider to be harmful;** and (2) **the society has an independent duty to restrain itself and its members from exposing children to material it reasonably regards as harmful.** [1]

Our society does not allow minors to exercise personal discretion over matters that are extremely harmful. Purchase and consumption of alcohol and tobacco are illegal throughout the United States. We do not allow minors to purchase pornography or to enter establishments where pornography is on prominent display. Why should our public libraries be held to a different standard?

Most parents have no idea that their children are having sex, drinking or doing drugs. The libraries would like us to think that the topic of filtered v unfiltered Internet access has been discussed at the kitchen table. When it comes to the safety of children we cannot risk making such assumptions. This bill allows parents to get involved in the process.

Libraries would say that filters give a false sense of security. The majority of parents now have a false sense of security with the current library policies in place. They believe that the libraries are acting responsibly on their behalf. Many are, but are not. With proper education, parents can know that nothing is a 100% guarantee, but **good** filters can be effective in blocking the majority of sexually explicit material.

### Local Control

Unfortunately, "local control" of libraries is a fiction in many communities. Many library boards are governed by appointed officials, who are never held accountable to the taxpayers for their actions. Additionally, the ALA heavily influences the make-up of many library boards. Often board members are required to become ALA members, and attend ALA-sponsored conferences and workshops where they are schooled in the ALA philosophy.

Let me share with you what some of those philosophies are. According to the Library Bill of Rights, which the majority of Kansas's libraries have adopted, *libraries acting within their mission and objectives must support access to information on all subjects that serve the needs of interests of each user, regardless of the user's age or the content of the material.*

Judith Krug, director of the ALA's office of Intellectual Freedom stated, "Blocking material leads to censorship. That goes for pornography and bestiality, too. If you don't like it, don't look at it." Krug has stated that parents who would choose not to allow their children to view *Playboy* "don't really care about their kids growing up and learning to think and explore." *Dangerous Access 2000, pg.3*

I am gripped with fear when I read such things. These are the folks that our state libraries are taking counsel and direction from. I know that the majority of Kansans would be appalled as well.

### Funding

Currently, the majority of libraries in the state provide some type of filtering. They just don't require minors to use those computers. For libraries that do not have filters on their computers, they can abide by the bill by requiring written parental notification before access is given. Internet service is not a constitutional right. The state's obligation is to create laws that insure the protection of our most vulnerable youth. The library boards' obligation is to ensure such laws are funded by the library budget.

Everyone accepts, for the good of the community, mild limits on freedom in other areas we must have a license to drive; we stop at red lights; we do not even fish without a license. Reasonable limits to intellectual freedom for the good of the community should frighten no one, for these limits were once observed in this country with a correspondingly better quality of life, including the safety of children.

Our conflict to those who oppose this bill is over their belief in absolute freedom of the individual. This kind of freedom rejects responsibility and is blind to consequences. On the other hand, those who support this legislation believe in the "freedom to do as one ought." This classic definition of freedom involves responsibility and weighs consequences to the community, especially its children. Only this kind of freedom is appropriate in a truly civilized society. So for that reason, please support HB2581.

[1][Symposium: Law and Cultural Conflict: Ideological Conflict and the First Amendment](#)," by [Steven J. Heyman](#), 78 *Chi.-Kent. L. Rev.* 531 (2003).

HB2581

Re: Testimony

Distinguished members of the senate committee, my name is Andrea Bandy. I am a mother, wife, educator, child advocate, Registered Nurse, concerned citizen, tax payer, resident of Topeka and Shawnee County, and proud American.

When I was made aware of this bill, I was shocked that the publicly funded county library was in need of it. Much to my ignorance, I believed the computers at the library were filtered. Now, I know that all are not.

This seems to be such a common sense issue, it is hard to narrow down all the arguments against it. To my knowledge, and I have very little for I am just a layman, there are many laws in place to protect children. Ie:

Child labor laws are in place to protect children when they are too young to protect themselves. The law was put into place to prevent damage to their bodies while they are still growing and forming, and to allow adequate time for education.

Legal age for voting in America is eighteen. It would seem then that we (America) have deemed that children under that age are incapable of making informed reasonable decisions that have lasting impact.

Legal age for drinking is twenty-one. Once again, an age barrier put in place to protect themselves (the underage) and those around them (innocent citizens) from the consequences of poor decision making with a mind altering substance.

Legal age for rated R movies. Could it be possible that movie theaters and Hollywood are more conservative in their ideals of what the average child mind can handle than even our Topeka public library?

These are but a very small fraction of laws that are in place to protect our children and their decisions. I am at a loss as to why we believe they are capable of making the correct decision when it comes to internet pornography. From a psychological point of view, this is a time in their life when they are to be developing their "superego" (according to Freud) yet we would allow them to be inundated with that which stimulates the "id". What mental conflict then ensues all at the risk of permanent damage to ones psyche? Images cannot be erased once they are implanted into young minds and we have to ask ourselves what images we want the youth of America to carry with them. We have been given such a blessing of freedom in this country to the benefit of all mankind. It must be essential that we do not take that blessing and use it as a curse. There are forums for all accounts of free speech and expression; however it is not necessary that these all be placed in the same vicinity. Our beautiful public library should be a place of refuge to seek out higher knowledge on a variety of subjects. If the subject should be pornography, it seems reasonable that the forum should be in an adult book store where there would be only adults. We must remember our responsibility to our future generations, our children, and make just decisions when they cannot for the betterment of all.

Thank you,  
Andrea M. Bandy

Assessment & Taxation  
Date 3-16-06  
Attachment # 14

**ANN E. MAH**  
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 WILDLIFE, PARKS AND TOURISM

Testimony HB 2581  
 Assessment and Taxation Committee

Thank you for allowing me to testify today. My testimony is in regard to the portion of this bill dealing with the children's Internet protection act and not the original underlying bill dealing with tax levies on libraries.

While this Internet act was added with the best of intentions, it was done in haste and I believe does not reflect what the majority of Kansans want or need. This amendment was added on the floor, without a full understanding or debate of the issue. In a time when we all want to provide parents with the tools to protect their children, it sounds like a worthy idea. I guess we overlooked the fact that the sponsor of the amendment never mentioned any data showing we even had a problem in public libraries that needed a statewide fix. Now that I have had time to visit with my constituents and look at what is already provided in my local library, I find that this act is an unnecessary government intrusion on local standards and local control.

On my web site I regularly poll constituents on current issues. When asked the question "Should public libraries have internet filters installed to block pornographic sites on computers used by children," nearly 90% said yes. When I changed the question to read like this: "Many people are concerned about protecting children from pornography on the Internet in public libraries. Should oversight of this issue be left in the hands of local library boards or is more government regulation needed to ensure children's safety in public libraries," fewer than 30% said that we needed more government regulation. The majority wanted to retain local control.

It is clear we all want to protect children from accessing inappropriate materials in our public libraries. The question is, who gets to make the decision on how that is accomplished. Our obscenity laws defer to local standards. Local library boards are in the best position to implement the wishes of the community by setting rules for the use of materials and equipment. The Topeka Shawnee County Public Library, for example, has some of the most rigorous monitoring and controls in the nation. Computer terminals in the children's area are filtered. A real-time monitoring system ensures library policies are followed.

While the legislature may want to set out a policy that all public libraries will have a policy to protect children from inappropriate Internet sites, it is not necessary to set out a statewide policy to the extent found in this bill. Local governments and library professionals are quite capable of managing this issue without our intrusion.

Assessment & Taxation  
 Date 3-16-06  
 Attachment # 15



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**Testimony re: HB 2581**  
**Senate Assessment and Taxation Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**Motion Picture Association of America**  
**March 16, 2006**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Motion Picture Association of America (MPAA), the trade association representing the nation's leading producers and distributors of motion pictures on film, home video, the Internet, satellite, cable, subscription and over-the-air television broadcast. MPAA member companies include: the Walt Disney Company, M-G-M Studios, Paramount Pictures, Sony Pictures, Fox, Universal, and Warner Brothers.

MPAA is neutral on the original version of HB 2581, but the bill was amended by the House Committee of the Whole with an amendment that causes us to be an opponent of the bill. If the amendment is removed, we would remove our opposition to the bill.

My comments will consist of an overview of the Statement in Opposition attached hereto, and prepared by Todd Flournoy, General Counsel for the MPAA.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Assessment & Taxation  
Date 3-16-06  
Attachment # 16



MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
(202) 293-1966

## MEMORANDUM IN OPPOSITION TO KANSAS HOUSE BILL 2581

The Motion Picture Association of America, Inc. (MPAA) respectfully submits this memorandum in opposition to Kansas House Bill 2581, language which would mandate parental consent before children could have access to movies rated "restricted" under the rating system instituted by the MPAA.

While MPAA strongly agrees that parents should be the ones to determine what is appropriate motion picture viewing for their children, regulations which incorporate the voluntary ratings systems of the MPAA into state and local law have consistently been found to violate the Due Process of the U.S. Constitution because they unlawfully delegate legislative power to a private association.

MPAA is a trade association representing the leading producers and distributors of motion pictures in the United States\*. All MPAA member companies produce and distribute motion pictures for theatrical exhibition and for subsequent release on videocassette, DVD, the Internet, pay, satellite, cable and broadcast television. MPAA also administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures. CARA was established in 1968 to provide parents with information to help them determine which motion pictures their children should see.

### VOLUNTARY RATING SYSTEM

Based on MPAA's nearly 30 years of experience in administering the Motion Picture Rating System (G, PG, PG-13, R and NC-17) for movies, we believe a voluntary rating system provides the most reliable service for parents attempting to make decisions about their children's entertainment.

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\* MPAA members include: Buena Vista Pictures Distribution, Inc.; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLLP; Warner Bros. Entertainment Inc.

The MPAA Rating System has flourished and has been enormously successful because it was developed by the motion picture entertainment industry and accepted by its customers. The rating system is an often-referenced example of self-imposed social responsibility based on the needs and desires of the community who enjoy motion picture entertainment in movie theaters and on videocassette. With the involvement of government in the rating system, its effectiveness could come into question because producers, directors and others may simply choose not to have their films rated. If this occurs, parents will not have the valuable tool they now enjoy to assist them in guiding their children's viewing.

### **INCORPORATION OF MPAA RATING SYSTEMS INTO STATE LAW IS AN UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY**

House Bill 2581's incorporation of MPAA ratings into Kansas law is unconstitutional as a violation of the U.S. Constitution's Due Process clause. The delegation to a private association, including the Motion Picture Association of America, of local legislative authority to determine which motion pictures may be loaned is a violation of the Due Process clause. Due Process is violated when a statute delegates the regulations for the operation and enforcement of a statute to a private association that is not subject to narrowly and reasonably drawn definitive standards. Rosen v. Budco, Inc., et al., 10 Phila. at 112; Motion Picture Association v. Specter, 315 F.Supp. 824 (E.D. Pa 1970) (statute that penalized exhibitors who showed films and previews that were "not suitable" for children as determined by MPAA ratings found unconstitutional for vagueness).

Courts throughout the country have consistently invalidated the incorporation of MPAA ratings in a variety of statutory contexts. See Swope v. Lubbers, 560 F.Supp. 1328 (W.D. Mich, S.D. 1983)(use of MPAA ratings was improper as a criteria for determination of constitutional protection); State v. Watkins, 191 S.E. 2d 135 (1972) vacated and remanded on other grounds, sub nom. Watkins v. South Carolina, 413 U.S. 905 (1973) (exemption from state obscenity statute for films with the "MPAA code seal of Approval" [sic] violates Due Process); Potter v. State, 509 P.2d 933 (1973) (obscenity statute that exempted films approved by the MPAA was improper delegation of legislative authority); Drive-In Theater v. Huskey, 305 F. Supp. 1232 (W.C.N.C. 1969) aff'd 435 F.2d 228 (4th Cir. 1970) (sheriff enjoined from prosecuting exhibitors for obscenity based on "R" or "X" rating).

Thus, the MPAA ratings system and its guidelines cannot be incorporated into state law.

### **HOUSE BILL 2581 VIOLATES THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**

It should also be noted that MPAA's rating system is strictly an advisory and not a determination that a particular motion picture is obscene or harmful to minors. A motion picture may be given an "R" rating i.e. not suitable for minors as a result of depictions of language and/or violence – or other contextual elements – which are neither obscene nor harmful to minors based on U.S. Supreme Court decisions.

Motion pictures are a form of expression which are protected by the First Amendment to the U.S. Constitution, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Eronoznik v. City of Jacksonville, 422 U.S. 205 (1975); Jenkins v. Georgia, 417 U.S. 153 (1974). The dissemination of a motion picture to an adult may be proscribed only if the motion picture is obscene, which requires a finding that such films "if taken as whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which taken as a whole, do not have serious literary, artistic, political or scientific value...", Miller v. California, 413 U.S. 15,21 (1973). The more recent U.S. Supreme Court ruling in Pope v. Illinois, 481 U.S. 497 (1987), affirmed the Miller test, specifying that the proper inquiry in an obscenity prosecution is whether a "reasonable person", as opposed to the "community", would find that the material possesses serious value.

Regulations pertaining to restricting the dissemination of a motion picture to a minor face similar constitutional scrutiny: access may be prohibited only if the motion picture is "harmful to minors", which requires a finding that the motion picture depicts nudity, sexual contact, sexual excitement, or sadomasochistic abuse which "predominantly appeals to the prurient, morbid, or shameful interests of minors, which is patently offensive to prevailing standards in the adult community concerning what is suitable for minors and which is utterly without redeeming social importance for minors." Ginsberg v. New York, 390 U.S. 629 (1968).

House Bill 2581 is unconstitutional in that could deny minors access to material that is not obscene as enunciated by the Supreme Court in Miller v.

California, or harmful to minors under the standards established by the Supreme Court in Ginsberg v. New York, and is thus protected by the First Amendment. See also Swope v. Lubbers, 560 F. Supp. 1328 (W.D. Mich. S.D. 1983); Engdahl v. City of Kenosha, 317 F. Supp. 1133 (E.D. Pa 1970); Rosen v. Budco, Inc., et al. 10 Phila. at 112 (1983). This statutory prohibition constitutes an impermissible prior restraint of expression and bears a heavy presumption against its constitutional validity. Bantam Books v. Sullivan, 372 U.S. 58 (1963); Engdahl v. Kenosha, 317 F. Supp. at 1133, (ordinance prohibiting the admission of unaccompanied children to films rated "R" or "X" struck down as unconstitutional). Accordingly, while libraries may want to adopt their own policies in terms of movie rentals and loans, we do not believe such restrictions should be enshrined into law.

### CONCLUSION

The MPAA Rating System is voluntary and strictly an advisory with no force of local, state or federal law. Voluntary enforcement of the rating system is strongly encouraged. However, enforcement should only occur on a voluntary basis, and cannot legally be mandated or enforced by government or an agency of government, be it federal, state or local. The incorporation in the proposed statute of the Motion Picture Rating System as a standard to prohibit access to minors to motion pictures unlawfully delegates legislative authority to a private association in violation of the Due Process clause of the U.S. Constitution.

Therefore, owing to constitutional infirmities, the MPAA respectfully urges that the Kansas legislature defeat House Bill 2581.

*February 2006*

**Testimony before Kansas Senate Assessment & Taxation Committee**

**HB 2581**

by

**Barbara Dew, M.L.S.  
Library Director, Ottawa Library**

**Thursday, March 16, 2006**

**Chairman Allen and Members of the Committee:**

My name is Barbara Dew, and I am Director of Ottawa Library in Ottawa. I've been in this position almost 31 years. During that time, I've seen the library offerings grow from only books and magazines to include record albums, art prints and originals, VHS tapes, audiocassettes, CDs, and DVDs. I would like to speak to the filtering and Motion Picture Association of America ratings issues contained in this bill.

If memory serves, Ottawa was one of the first libraries in the state to begin offering VHS tapes when they came into general use. At that time there were few local video rental locations, and that is still the case. Videos were initially quite expensive and for that reason we restricted checkout to those 18 and over, as we did the valuable art prints and originals. In those early days we concentrated our purchases on Academy Award winners and a variety of classic and nonfiction titles. After several years however, we experienced an increasing number of cases in which this seemed unnecessary. The price of a VHS tape dropped dramatically until most tapes and DVDs now cost no more than a book. More and more award-winning movies were R-rated and not necessarily inappropriate for mature teenagers. High school students who came to the library during the school day and sought to check out a video as part of an assignment could not do so because of our restriction. I think a defining moment for me was a day when I was working the circulation desk and denied a video about childbirth to a teenager who was obviously very near her delivery date.

Following staff discussion of our policy, our board of trustees discussed it at their October 1993 meeting. They wanted some time for publicity and feedback, and both newspapers and the radio station covered it with headlines about the possible change. Neither staff nor trustees received any negative feedback, and the board changed the policy at their January 1994 meeting. We've had no problems since. The Motion Picture Association of America has gone on record that their voluntary rating is not intended to be the basis of legislation, and we see no reason to disagree. Parents vary widely on what they find appropriate for their children, and the decision should be theirs.

Regarding filtering of Internet use, we began filtering with KanGuard following the Supreme Court ruling about the Children's Internet Protection Act (CIPA) in 2003 in order to receive e-rate funds. We have eight general use public computers with Internet and two workstations with directed or dedicated access. KanGuard works fine for us; we've had no problems with it. I don't know that we've had any adult ask to have the filter disabled though our policy is posted near the workstations. Kids have occasionally inquired about why they cannot reach a game site. As far as we can tell, this is probably because of violent, not sexual, content. We don't remove the block in those situations. We require young children to have a parent with them when using the computer, whether for Internet or other use. Ottawa Library's trustees evaluate and modify our policies to meet our community's needs on an ongoing basis.

Thank you for this opportunity to share our situation and point of view with you.

Assessment & Taxation  
Date 3-16-06  
Attachment # 17

Testimony before the Senate Committee on Assessment and Taxation  
HB 2581

by

Carol R. Barta, M.L.S.  
Assistant Director, North Central Kansas Libraries System

Thursday, March 16, 2006

Chairman Allen and Members of the Committee:

My name is Carol Barta. I serve as the Assistant Director of the North Central Kansas Libraries System. NCKL provides services to libraries in a twelve county region and includes Manhattan, Junction City and Emporia, as well as small communities like Burns and Summerfield. Thank you for this opportunity to speak with you about the effects of HB 2581 on small rural libraries. I will only address the Internet filtering part of the bill, as others are better qualified to address the motion picture rating system.

Libraries work diligently to be places open to their entire communities. They all want to provide child-safe, family-friendly environments. They strive to meet the needs of all members of their communities.

The Internet has made it possible for the smallest of our libraries to offer a wide variety of online resources to their communities, along with the books, videos and other materials they purchase for their collections. Many of these libraries commit their entire state-aid grants and system service grants to fund these purchases. In many cases, it is the only funding they have to purchase materials. The stated goal of state grants-in-aid is to enhance library services in local libraries. Passage of HB 2581 could have the unintended effect of reducing the service provided in these communities.

Most of the libraries in the North Central Kansas Libraries System already have Internet filters on their public access computers. In fact, only twelve of the thirty-eight tax supported libraries in our region are not currently filtering. Two of those have plans to install filters this spring. The others have policies in place requiring parental permission and responsibility to allow children to access the internet. In other words, most libraries are already providing the safeguards this bill mentions.

Libraries that have not installed filters have chosen this route for a variety of reasons. For most it is an economic decision. Even though the KanGuard filtering is available, some of the service providers charge extra monthly fees to make the library access compatible with the filter. Some ISPs, those that use satellite, cannot configure the libraries Internet service to work with KanGuard at all. Installing local filters takes technological expertise in addition to software costs. Many of our librarians in small, rural communities just don't have that kind of funding. NCKL has one technology consultant who visits the libraries to keep their equipment working—one consultant for

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forty-three libraries. Hiring extra technical help could be quite costly, if not impossible, for small libraries.

Other libraries use Internet policies to partner with parents. These librarians feel that parents have the right and responsibility to monitor their children's Internet use. One even requires that children under ten are accompanied by a parent when using an Internet computer. Those libraries have chosen solutions that work for their communities.

Talking to the librarian from Americus about filtering gave me an interesting insight. When I asked about their use of Internet filters, she replied, "Why would I need a filter? I can see all of our computers from my desk." It was clear from our conversation that she had no trouble keeping all Internet users out of any inappropriate sites. In fact, a librarian who knows your mother is probably a more potent deterrent than an Internet filter for many small-town kids.

As you decide how to proceed with this bill, please keep in mind that local library boards are charged by statute with establishing policies for their libraries. Local boards know their communities best, and are, therefore, better equipped to find solutions that work for them. They live in their communities and represent their neighbors on the library board.

Clearly the issue of Internet filtering is not a taxation issue, though it does have financial implications for libraries. Issues contained in this bill should be considered separately on their own merits.

For example: the federal Children's Internet Protection Act (CIPA) has already been tested at the Supreme Court. It would seem appropriate to bring the language on HB 2581 into alignment with the federal legislation, by not allowing the use of state dollars to pay for unfiltered Internet access rather than totally removing state aid. CIPA also has a provision for conducting public hearings before a library board implements an Internet filtering policy. This would go a long way toward maintaining local control of decision-making. Because of the complexity of CIPA, forming a study committee to ensure that Kansas legislation would reflect the principles of the federal legislation would be an appropriate approach.

Again, I would like to thank this committee for the opportunity to testify here today. When HB 2581 was passed by the House in such a hurried fashion, it worried me that there would be unintended problems. I questioned several representatives about this 'fast track' method and was assured that this was not the usual way legislation is passed. In fact I was told that it was just "bad government" to pass legislation in haste. So I thank you for taking the time and for making the effort to weigh the needs, the outcomes and possible consequences of HB 2185.



Testimony before the Senate Committee on Assessment and Taxation  
HB 2581

by

Cheryl L. Canfield, M.L.S.  
Head of Reference, Hutchinson Public Library

Thursday, March 16, 2006

Chairman Allen and Members of the Committee:

Thank you for this opportunity to testify before the committee in opposition to HB 2581.

For many years, librarians have been dealing with the provision of information in appropriate formats for a variety of persons. The Internet has been a challenge, but we have learned to harness its potential and recognize its pitfalls. We have developed effective methods for protecting children on the Internet through selective filtering, board-approved policies, and staff monitoring. As a result of our approach to this issue, there have been few problems with minors accessing pornography on the Internet in libraries. I respectfully request that committee members recognize local library boards and the staff they hire as responsible citizens who can balance the needs of their patrons for information while providing reasonable protection for children from harmful materials.

At our library, we have chosen to install filtering technology on Internet computers in the Children's Department and use staff to monitor other terminals for appropriate use by minors. We also require that parents and children be instructed in proper use of Internet computers when applying for a child's library card. This allows us to provide reasonable access to Internet resources for children. We already restrict unaccompanied children from using computers in our lab, and Reference staff monitors computers used for research. If we are required to correctly identify each person under the age of eighteen or spend time deactivating software before we can help that person with Internet resources, our research services to young patrons will be limited. What we do has worked, and continues to work, for our community. We have received no formal complaints about children and Internet access in our library, nor have we received any complaints about children viewing inappropriate materials in other visual media.

Therefore, the sections of House Bill 2581 implementing the Children's Internet Protection Act and the MPAA-rated materials should be eliminated.

Thank you for your consideration of this matter.

Assessment & Taxation  
Date 3-16-06  
Attachment # 19

# Librarians Online Tip Sheet

## Contents

- 1 Introduction
- 1 Key Messages
- 1 Fast Facts
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## Introduction

The Internet. No other technology in history has provided us with so much information so easily.

Where else can you get the latest news, "visit" a virtual museum, chat with friends in other countries or browse your favorite department store?

The Internet is a rich and educational resource for information, ideas and entertainment. But the Internet has also raised concerns about issues such as privacy, fair use and particularly about children's access. Libraries, especially public libraries, are facing these concerns every day. As the number one point of entry to the Internet outside of work, school or home, libraries are being challenged to provide online access to this extraordinary resource while facing scrutiny about protecting children from inappropriate material.

The American Library Association encourages all libraries to implement policies that protect both children and public access to information and to take an active role in educating their communities about this important new technology. To support this effort, ALA has produced this "toolkit" with tips and guidance to assist librarians in managing the Internet and educating the public about how to use it effectively.

ALA also has published a brochure for parents called *The Librarian's Guide to Cyberspace for Parents & Kids* with an introduction to the Internet, online safety tips and more than 50 of the best Web sites for kids. ALA's 700+ Great Sites for Kids and the People Who Care About Them ([www.ala.org/parentspage/greatsites/](http://www.ala.org/parentspage/greatsites/)) is an even more comprehensive resource of links to all sorts of information, organized by topic and category by children's librarians.

## Key Messages

The Internet is an important and exciting information resource. Our goal as librarians is to help people of all ages make the most of it. We encourage everyone to go to the library and see how people are using this incredible and valuable technology!

Librarians care deeply about children. Most of us are parents. We know filters aren't the only or best way to protect children online.

The best protection for children is to teach them to use technology properly and to make good choices. Librarians answer questions and guide children to quality Web sites the same way they recommend books and other resources.

For additional facts and messages, see the *Libraries and Filtering* message sheet available from the ALA Public Information Office.

## Fast Facts

- 73 percent of all public library outlets offer public access to the Internet.
- Almost all public libraries offering Internet access have or are developing Internet use policies.
- For people without computers at home, libraries are the number one point of access.
- Less than 2 percent of all Web sites contain sexually explicit material.
- In a test of 200 Web sites, filters blocked one of five sites containing legal, useful information. They failed to block an average of 15 percent of material defined as undesirable.

For additional facts and sources, see the *Libraries and the Internet* fact sheet available from the ALA Public Information Office.

ALAAmericanLibraryAssociation

**Testimony Before  
Senate Committee on Assessment and Taxation  
House Bill 2581  
March 16, 2006  
By John Opgaard**

My name is John Opgaard. I am the I.T. Manager at the Topeka & Shawnee County Public Library. My responsibilities include providing Internet services on all 170 public computers in the Library. I have been working in library automation for almost 15 years including the past six years at the Topeka & Shawnee County Public Library. As I did three years ago when similar legislation was before the legislature, I will speak in opposition to House Bill 2581.

I wanted to take this opportunity today to update the information that I provided the House Committee three years ago. I have attached my testimony from that time with my remarks from today.

Since the last time I testified, the Topeka and Shawnee County Public Library has made some changes in the technology we use to filter certain computers in the Library. In 2004 we implemented network based filtering software to replace Cybersitter. This was done to enable my staff to better manage and maintain the software.

The Topeka and Shawnee County Public Library has a Public Computer Use Policy that is regularly reviewed and updated by staff and our Board of Trustees. We completed one such review at our

February 16, 2006 Board meeting. At that time, our board reaffirmed our policy to not allow individuals to view materials that are defined in KSA 21-4301c as "harmful to minors."

No policy is effective without effective enforcement. We have effective enforcement. We use multiple means to ensure compliance with this policy including visual monitoring of all computers, using the filtering software to monitor computer use in real time, using electronic means to visually monitor computers and dedicating substantial staff time to ensure that all computer users comply with the Library's policy. We have found that no one monitoring methods is adequate to ensure compliance.

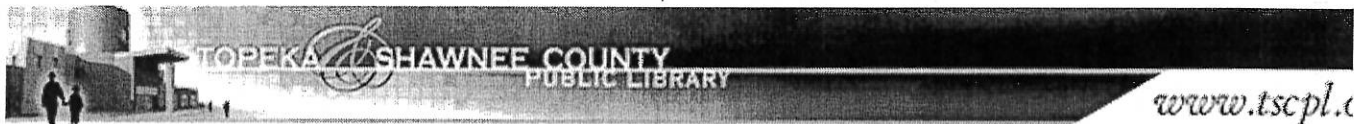
Filtering companies claim to have incredibly high "effectiveness ratings." Filtering companies will not make their filtering algorithms public. This makes it difficult to do any kind of objective comparison or analysis. I have yet to see an independent study of large numbers of filters that provide an "effectiveness rating." In my experience no matter how "effective", a filter is it can and will be circumvented. No matter how "effective", a filter is it will block materials that are constitutionally protected.

In conclusion, the Board of Trustees of the Topeka and Shawnee County Public Library and the taxpayers of Shawnee County have provided the Library with the tools to ensure that the Internet is

available free of charge to this community. They have provided for the continual upgrading and improving of these tools. They have also given Library staff the ability to enforce a policy that prohibits people from looking at material that is "harmful to minors" so that all citizens of Shawnee County can access information that would otherwise not be available to them. The Board of Trustees of the Topeka and Shawnee County Public Library represents the interests of all of our citizens when making policy. It recognizes that the Internet is a valuable resource to everyone in our service area. It also enables the Library to protect children through the use of filtering but still allows unfiltered access when necessary. It is imperative that the decision making on an issue as important as this remain with the governing body that is closest to the people they represent.

I urge you to oppose House Bill 2581.

I would be happy to answer any questions that you may have.



[Home](#) ▶ [Information](#) ▶ [Policies and Procedures](#) ▶ [Public Computer Use Policy](#)

## Public Computer Access Policy

Board Approved 12/21/2000 – Amended 6/20/2002  
Board Approved 2/16/06

[Other Library Policies](#)

[Customer Conduct Policy](#)

[Unattended Children Policy](#)

### 1. Background

- a. The Library is committed to the principles of intellectual freedom and the freedom to access information from a variety of sources.
- b. The Internet is an information resource that enables public library customers to access a diverse variety of information beyond that contained in the library's own collection.
- c. Some content may offend or may be illegal under the laws of the State of Kansas

### 2. Library Responsibilities

- a. The Topeka and Shawnee County Public Library uses Internet filtering software and/or other means to block content on some of its Internet access computers.
- b. The Topeka and Shawnee County Public Library provides access to recommended, age-appropriate sites through its web site.

### 3. Customer Responsibilities

- a. As stated in the Unattended Child Policy, "The Library does not act in loco parentis (in place of parents) and Library staff does not have the authority to take responsibility for your child."
- b. Customer may:
  1. Download files from a Web site directly to any supported portable storage media.
- c. Customer shall:
  1. Respect the legal protection provided by copyright license to software, books, articles and other electronic files.
  2. Respect the privacy of others.
- d. Customer shall not:
  1. Access illegal Internet sites as defined by law.
  2. Access web pages or sites that contain materials that are defined in Kansas statutes as "harmful to minors" (KSA 21-4301c) or "obscene" (KSA 21-4301.) It will be considered a violation of policy if a user clearly demonstrates intent to violate policy even if no violation occurs.
  3. Gain or try to gain unauthorized access to restricted resources or entities.

4. "Hack into or interfere" with other users, system operations, integrity or security of the library computer network or any computer system
5. Attempt to gain access to another person's files or passwords
6. Intentionally obtain copies or modify files, passwords, or data that belong to the Library or its users.
7. Harass others with messages, prints, images or software programs.
8. Load or run any software other than that which resides on the Public Access computers.
9. Tamper with, mishandle, damage or attempt to damage computer hardware.
10. Remove the privacy screen attached to the monitor. Privacy screens may be removed by staff upon request from some computers.
11. Interfere with, deliberately attempt to circumvent, or tamper with the filtering software.

4. **Printing**

- a. The Library makes available at a nominal charge printing from public access computers.

5. **Limitation of Liability**

- a. The Library assumes no liability for loss or damage to the user's data, the user's portable storage media or for any damage or injury arising from invasion of the user's privacy or from viruses that may infect the user's portable storage media or files.
- b. The Topeka and Shawnee County Public Library cannot guarantee that Internet filters will block offensive and /or illegal materials.

6. **Enforcement and consequences for violating policy**

- a. The Library electronically monitors public computers for violations of this policy.
- b. Staff is authorized to take immediate action to protect the security of computers and the network or to enforce any part of this policy. This includes confiscating disks, requiring a user to leave the computer or the premises, and contacting law enforcement authorities.
- c. The Library considers violations of this policy as a violation of the Customer Code of Conduct. Penalties imposed under the Customer Code of Conduct may be imposed for any violation of this policy.

7. **Use of the Library's computers constitutes agreement with this policy.**

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