

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

All members were present except:

Jim Barone- excused  
Roger Reitz- excused  
Susan Wagle- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairperson Brownlee called the Committee's attention to Senate Commerce Calendar which lists the bills for the rest of the month. (Attachment 1)

**The Chair then called the Committee's attention to the committee minutes for approval. Senator Jordan made a motion to approve the minutes for January 31<sup>st</sup>; with the one correction of Senator Kelley's name being misspelled, February 8th, February 9th, and February 21st, February 22nd, Senator Emler seconded. Motion carried.**

**Next, Chairperson Brownlee called the Committee's attention to the next set of committee minutes for approval. Senator Schodorf made a motion to approve the minutes for January 24<sup>th</sup>, February 1<sup>st</sup>, and February 2<sup>nd</sup>. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to the balloon on **HB 2856--Extension of IMPACT program.** (Attachment 2) Chairperson Brownlee explained the balloon on **HB 2856** stating the balloon is adding language to section 2, K.S.A. 46-1601 a new number (6) stating to promote and evaluate workforce development to meet the needs of the economy. **Senator Wysong made a motion to accept the balloon to HB 2856. Senator Emler seconded. Motion carried.**

**Senator Schodorf made a motion to pass the bill out favorably as amended. Senator Wysong seconded. Motion carried.**

Chairperson Brownlee called the attention of the Committee to **SB 516--Fairness in public construction contract act.** The Chair introduced Corey Peterson representing the Association of General Contractors of Kansas, to explain the proposed compromise balloon. (Attachment 3) Mr. Peterson stated there was a new section (h) added to Page 2 which reads: "Substantial completion" means the stage of a construction project where the project or a designated portion thereof, is sufficiently complete in accordance with the contract, so that the owner can occupy or utilize the constructed project for its intended use. He also stated in section 3, line 11, the language "binding arbitration as a substitute for litigation or require" is being deleted. A new section (e) is being added which reads "The architect/engineer of record shall review, approve and forward undisputed requests for payment to the owner within seven business days." On page 3, line 9, the following language is added: "unless the owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed 10% of the value of the contract." Line 10, delete sentence: "Retainage shall....specification section." Adding: "An owner must release the retainage on any undisputed payment due on a construction project within 30 days after substantial completion of the of the project: provided, however, if any subcontractor is still performing work on the project under its subcontract, an owner may withhold that portion of the retainage attributable to such subcontract until 30 days after such work is completed".

Upon completion of Mr. Peterson's review of the proposed compromise balloon there was discussion with the Committee and Mr. Peterson with their concerns on the balloon. Bill Miller, representing the

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

Subcontractors of Kansas entered the discussion at the Committee's request. The balloon was discussed in detail. It was stated that the balloon does not address the heavy contractors issues. The higher rate of retainage was also discussed and the determination was made to withhold more than the 5% would only be done under special circumstances. Mr. Miller stated this balloon does not solve all the issues but it does eliminate the biggest problem with retainage.

Chairperson Brownlee recognized Senator Wysong who stated he would like to hear from the representative from Overland Park. Chairperson Brownlee called on Erik Sartorius representing the City of Overland Park. Mr. Sartorius stated they were comfortable with the AGC Compromise balloon and feels it make progress for every side. He stated with the AGC Compromise balloon heavy equipment contractors are not being addressed. There was discussion regarding heavy equipment contractors.

Chairperson Brownlee called the Committee's attention to the Brownlee balloon. (Attachment 4) There was discussion on this amendment which adds on line 33, "except that payment shall be made within 45 days after the owner receives such payment request if an owner requires approval prior to payment and meets no more than once per month". All the Committee members entered into the discussion of extending the time from 30 days to 45 days and whether it was needed or not. Mr. Sartorius stated he would be in favor of the 45 days. Mr. Peterson also stated he did not know how much change the 45 days would make. He would like to see the 30 days left in but would not like for this bill not go through because of the 45 days. Mr. Miller states he would not have a problem with it either way.

**Chairperson Brownlee stated she would entertain a motion on the AGC balloon. Senator Emler made a motion to accept the AGC balloon. Senator Jordan seconded the motion.**

Chairperson Brownlee opened the floor for discussion. Senator Wysong stated he has concerns because this makes the process better but still does not address the issues of the first and second contractor on a job and also, it does not address the heavy equipment contractor on roads and highways at all. .

**Chairperson Brownlee called for a vote on the motion to accept the AGC balloon. Motion carried.**

Chairperson Brownlee stated the Committee would hold the bill until Tuesday to give more time to work on amendments to the bill and to address some of Senator Wysong's concerns.

Chairperson Brownlee recognized Senator Kelly regarding the Brownlee balloon changing the days from 30 to 45. She stated to keep the 30 days in and have language stating except under extenuating circumstances. Chairperson Brownlee called on Helen Pedigo, Revisors office. **Senator Kelly moved to accept a conceptual amendment with the wording to be completed by the revisor. Senator Wysong seconded. Motion carried.**

Senator Wysong asked the Chair to give some time on Tuesday morning to finish this bill. Senator Jordan offered language regarding roads and bridges to address Senator Wysong's concerns. Senator Wysong stated he would like to consider the language and do some research before the meeting on Tuesday. The Committee discussed that there could also be a problem with payment to the heavy equipment contractors. Bob Totten representing the Kansas Contractors Association, entered the discussion regarding heavy equipment contractors. Senator Brownlee stated that she feels timely payment is still an issue with the heavy equipment contractors. Senator Jordan entered the discussion and stated he would like to hear the other side from contractors not involved with KDOT or Federal funding, Mr. Totten stated he was hoping the heavy equipment contractors would be excluded from this bill.

Chairperson Brownlee called the Committee's attention to **HB 2658--Gift certificates, restrictions**, and the amendments to this bill. They would be starting with Amendment #1 (Attachment 5) This amendment is to clean up some language. **Senator Emler made a motion to accept the amendment to strike language on lines 19 and 20 on page 2. Seconded by Senator Jordan. Motion carried**

Chairperson Brownlee called the Committee's attention to amendment # 2. (Attachment 6) She stated this amendment adds language on page 2 , (3) which clarifies the issue on gift cards given as a promotion or at

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 10, 2006 in Room 123-S of the Capitol.

a benefit or the like. **Senator Emler made a motion to accept the amendment addressing the issue of gift cards given out at a charity or event where no one paid for the card. Senator Wysong seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to amendment #3 (Attachment 7). She stated section (g) on page 2 was changed to : "A violation of this act shall be an unclassified misdemeanor punishable by a fine not to exceed \$100.00. Senator Emler stated he was not in favor of making the violation of this act a misdemeanor. The Committee discussed this amendment and decided they would finalize it on Tuesday. Giving the Committee members time to work on the amendment to not make it a misdemeanor.

Chairperson Brownlee called the Committee's attention to amendment #4. (Attachment 8) She stated the amendment is just clean-up renumbering the sections and the inconsistency dormancy fees to be charged. **Senator Elmer made a motion to accept the amendment renumbering the sections. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee stated the Committee would finalize this bill on Tuesday. She also stated some of the Committee members would like to add a rebate clause to this bill but they are not sure how it would fit.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for Tuesday, March 14, 2006 at 8:30 a.m. in room 123 S.



# Commerce Committee

March 2006

Senate Commerce Committee  
March 10, 2006

Attachment | - |

Monday	Tuesday	Wednesday	Thursday	Friday
		1	2	3
6	7	8	9	10
13	14	15	16	17
<u>No Meeting</u>	<u>Action on:</u> HB 2772 SB 531	<u>Hearings:</u> HB 2696 HB 2568	<u>Hearings:</u> HB 2671 HB 2753	Action on bills Previously heard
20	21	22	23	24
Meeting AS Needed	Action on bills Previously heard	Meeting as needed		
27	28	29	30	31

\* Possible Action on bills previously heard each day!

# HOUSE BILL No. 2856

By Committee on Economic Development

2-8

PROPOSED AMENDMENT  
SENATE COMMERCE COMMITTEE  
March 9, 2006

Senate Commerce Committee  
March 10, 2006  
Attachment 2-1

9 AN ACT concerning ~~the department of commerce~~; relating to the IM-  
10 PACT program repayment fund; amending K.S.A. 2005 Supp. 74-  
11 50,107 and repealing the existing ~~section~~.

46-1601 and K. S. A.

economic development

legislative economic development  
committees

sections

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 74-50,107 is hereby amended to read  
15 as follows: 74-50,107. (a) The secretary shall determine and from time to  
16 time shall redetermine the rate at which moneys shall be credited to the  
17 IMPACT program repayment fund in order to satisfy all bond repayment  
18 obligations which have been incurred to finance program costs for IM-  
19 PACT programs (which shall be referred to as the debt service rate) and  
20 the rate at which moneys shall be credited to the IMPACT program  
21 services fund in order to finance program costs that are not financed by  
22 bonds (which shall be referred to as the direct funding rate). The total of  
23 the debt service rate and the direct funding rate shall be the combined  
24 rate. Each rate so determined shall be certified to the secretary of reve-  
25 nue. The combined rate determined under this subsection shall not ex-  
26 ceed 2%.

27 (b) Upon receipt of the rates determined and certified under sub-  
28 section (a), the secretary of revenue shall apply daily the combined rate  
29 to that portion of the moneys withheld from the wages of individuals and  
30 collected under the Kansas withholding and declaration of estimated tax  
31 act K.S.A. 79-3294 et seq., and amendments thereto. The amount so  
32 determined shall be credited as follows: (1) The portion attributable to  
33 the debt service rate shall be credited to the IMPACT program repay-  
34 ment fund, and (2) the remaining portion shall be credited to the IM-  
35 PACT program services fund.

36 On and after July 1, ~~2006~~ 2008, the aggregate of all amounts credited  
37 to the IMPACT program repayment fund under this section during any  
38 fiscal year to pay bond repayment obligations on bonds to finance major  
39 project investments shall not exceed 20% of the amount which results  
40 when the rate of 2% is applied to all money withheld from the wages of  
41 individuals and received under the Kansas withholding and declaration  
42 of estimated tax act.

43 Sec. 2. K.S.A. 2005 Supp. 74-50,107 ~~is~~ hereby repealed.

Insert K.S.A. 46-1601 here as Sec. 2. Renumber remaining sections.

K.S.A. 46-1601 is hereby amended to read as follows: 46-1601.  
Legislative committees on economic development; purpose. (a) The  
purpose of the legislative committees shall be to:  
(1) Facilitate the growth, diversification and expansion of existing  
enterprises and the creation by Kansans of new wealth-generating  
enterprises;  
(2) promote economic diversification and innovation within the basic  
industries and sectors of the state;  
(3) promote increased productivity and value added products,  
processes and services among wealth-generating enterprises, and the  
export of those goods and services created by small and large Kansas  
enterprises to the nation and world;  
(4) maintain and revitalize economically depressed rural areas and  
urban neighborhoods by annually targeting scarce resources by size,  
sector and location to communities and enterprises of particular need and  
opportunity, and by working in close collaboration with local communities;  
~~[and]~~  
(5) protect and enhance the environmental quality of the state in ways  
consistent with dynamic economic growth; and  
(6) promote and evaluate workforce development to meet the needs of  
the economy.

are

46-1601 and K. S. A.

SENATE BILL No. 516

By Committee on Commerce

2-7

AGC  
Proposed  
Compromise  
- Balloon  
3/2/06

9 AN ACT concerning public construction contracts; enacting the Kansas  
10 fairness in public construction contract act.

11

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

13 Section 1. (a) Sections 1 through 7, and amendments thereto, shall  
14 be known and may be cited as the Kansas fairness in public construction  
15 contract act.

16 (b) The rights and duties prescribed by this act shall not be waivable  
17 or varied under the terms of a contract. The terms of any contract waiving  
18 the rights and duties prescribed by this act shall be unenforceable.

19 Sec. 2. As used in this act:

20 (a) "Construction" means furnishing labor, equipment, material or  
21 supplies used or consumed for the design, construction, alteration, ren-  
22 ovation, repair or maintenance of a building, structure, road, bridge, water  
23 line, sewer line, oil line, gas line, appurtenance or other improvement to  
24 real property, including any moving, demolition or excavation.

25 (b) "Contract" means a contract or agreement concerning construc-  
26 tion made and entered into by and between an owner and a contractor,  
27 a contractor and a subcontractor or a subcontractor and another  
28 subcontractor.

29 (c) "Contractor" means a person performing construction and having  
30 a contract with an owner of the real property or with a trustee, agent or  
31 spouse of an owner.

32 (d) "Owner" means a public entity that holds an ownership interest  
33 in real property.

34 (e) "Public entity" means the state of Kansas, political subdivisions,  
35 cities, counties, state universities or colleges, school districts, all special  
36 districts, joint agreement entities, public authorities, public trusts, non-  
37 profit corporations and other organizations which are operated with pub-  
38 lic money for the public good.

39 (f) "Retainage" means money earned by a contractor or subcontractor  
40 but withheld to ensure timely performance by the contractor or  
41 subcontractor.

42 (g) "Subcontractor" means any person performing construction cov-  
43 ered by a contract between an owner and a contractor but not having a

Senate Commerce Committee

March 10, 2006

Attachment 3-1

**Add new:** (h) "Substan. completion" means the stage of a construction project where the project, or a designated portion thereof, is sufficiently complete in accordance with the contract, so that the owner can occupy or utilize the constructed project for its intended use.

1 ~~contract with the owner.~~

2 Sec. 3. (a) Subject to the provisions of subsections (b), (c), (d), (e),  
3 (f), (g) and, (h) and sections 4 and 5, and amendments thereto, all persons  
4 who enter into a contract for public construction after the effective date  
5 of this act, shall make all payments pursuant to the terms of the contract.

**Add:** "and (i)"

6 (b) The following provisions in a contract for public construction shall  
7 be against public policy and shall be void and unenforceable:

8 (1) A provision that purports to waive, release or extinguish the right  
9 to resolve disputes through litigation in court or substantive or procedural  
10 rights in connection with such litigation except that a contract may require  
11 ~~binding arbitration as a substitute for litigation or require nonbinding~~ ←  
12 alternative dispute resolution as a prerequisite to litigation;

**Delete:** ... "binding arbitration as a substitute for litigation or require"

13 (2) a provision that purports to waive, release or extinguish rights to  
14 file a claim against a payment or performance bond, except that a contract  
15 may require a contractor or subcontractor to provide a waiver or release  
16 of such rights as a condition for payment, but only to the extent of the  
17 amount of payment received; and

18 (3) a provision that purports to waive, release or extinguish rights of  
19 subrogation for losses or claims covered or paid by liability or workers  
20 compensation insurance except that a contract may require waiver of sub-  
21 rogation for losses or claims paid by a consolidated or wrap-up insurance  
22 program, owners and contractors protective liability insurance, or project  
23 management protective liability insurance or a builder's risk policy.

24 (c) Any provision in a contract for public construction providing that  
25 a payment from a contractor or subcontractor to a subcontractor is con-  
26 tingent or conditioned upon receipt of a payment from any other public  
27 party, including an owner, is no defense to a claim to enforce a bond to  
28 secure payment of claims pursuant to the provisions of article 11 of chap-  
29 ter 60 of the Kansas Statutes Annotated, and amendments thereto.

30 (d) All contracts for public construction shall provide that payment  
31 of amounts due a contractor from an owner, except retainage, shall be  
32 made within 30 days after the owner receives a timely, properly com-  
33 pleted, undisputed request for payment.

**Add new:** "(e) The architect/engineer of record shall review, approve and forward undisputed requests for payment to the owner within seven business days."

34 (e) If the owner fails to pay a contractor within 30 days following  
35 receipt of a timely, properly completed and undisputed request for pay-  
36 ment, the owner shall pay interest to the contractor beginning on the  
37 thirty-first day after receipt of the request for payment, computed at the  
38 rate of 18% per annum on the undisputed amount.

**Change:** "(e)" to "(f)"

39 (f) A contractor shall pay its subcontractors any amounts due within  
40 seven business days of receipt of payment from the owner, including  
41 payment of retainage, if retainage is released by the owner, if the sub-  
42 contractor has provided a timely, properly completed and undisputed  
43 request for payment to the contractor.

**Change:** "(f)" to "(g)"



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(g) h) If the contractor fails to pay a subcontractor within seven business days, the contractor shall pay interest to the subcontractor beginning on the eighth business day after receipt of payment by the contractor, computed at the rate of 18% per annum on the undisputed amount.

(h) i) The provisions of subsections (f) g) and (g) h) shall also apply to all payments from subcontractors to their subcontractors.

Sec. 4. (a) An owner, contractor or subcontractor may withhold no more than 5% retainage from the amount of any undisputed payment due. ~~Retainage shall be released by the owner upon completion of any portion of work that is described in a specification section.~~ No more than 150% of the value of work that is not completed due to no fault of the subcontractor may be withheld pending completion.

(b) If an owner, contractor or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract for public construction or as required by this act, the owner, contractor or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at a rate of 18% per annum.

Sec. 5. If any undisputed payment is not made within seven business days after the payment date established in a contract for public construction or in this act, the contractor and any subcontractors, regardless of tier, upon seven additional business days' written notice to the owner and, in the case of a subcontractor, written notice to the contractor, shall, without prejudice to any other available remedy, be entitled to suspend further performance until payment, including applicable interest, is made. The contract time for each contract affected by the suspension shall be extended appropriately and the contract sum for each affected contract shall be increased by the suspending party's reasonable costs of demobilization, delay and remobilization.

Sec. 6. In any action to enforce K.S.A. sections 3, 4 or 5, and amendments thereto, including arbitration, the court or arbitrator shall award costs and reasonable attorney fees to the prevailing party. Venue of such an action shall be in the county where the real property is located and under Kansas law. The hearing in such an arbitration shall be held in the county where the real property is located.

Sec. 7. Any provision in a contract that purports to waive the rights of a party to the contract to collect for damages for delays caused by another party to the contract shall be void, unenforceable and against public policy. This provision is not intended to create a contract between parties where a contract did not otherwise exist.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Change: "(g)" to "(h)"

Change: "(h)" to "(i)"

Change: "(f)" to "(g)" and "(g)" to "(h)"

Add: "unless the owner and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed 10% of the value of the contract."

Delete sentence: "Retainage shall... specification section."

Add: "An owner must release the retainage on any undisputed payment due on a construction project within 30 days after substantial completion of the project: provided, however, if any subcontractor is still performing work on the project under its subcontract, an owner may withhold that portion of the retainage attributable to such subcontract until 30 days after such work is completed."

**SENATE BILL No. 516**

By Committee on Commerce

2-7

PROPOSED AMENDMENT  
Payment Provision  
March 9, 2006

9 AN ACT concerning public construction contracts; enacting the Kansas  
10 fairness in public construction contract act.

11

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

13 Section 1. (a) Sections 1 through 7, and amendments thereto, shall  
14 be known and may be cited as the Kansas fairness in public construction  
15 contract act.

16 (b) The rights and duties prescribed by this act shall not be waivable  
17 or varied under the terms of a contract. The terms of any contract waiving  
18 the rights and duties prescribed by this act shall be unenforceable.

19 Sec. 2. As used in this act:

20 (a) "Construction" means furnishing labor, equipment, material or  
21 supplies used or consumed for the design, construction, alteration, ren-  
22 ovation, repair or maintenance of a building, structure, road, bridge, water  
23 line, sewer line, oil line, gas line, appurtenance or other improvement to  
24 real property, including any moving, demolition or excavation.

25 (b) "Contract" means a contract or agreement concerning construc-  
26 tion made and entered into by and between an owner and a contractor,  
27 a contractor and a subcontractor or a subcontractor and another  
28 subcontractor.

29 (c) "Contractor" means a person performing construction and having  
30 a contract with an owner of the real property or with a trustee, agent or  
31 spouse of an owner.

32 (d) "Owner" means a public entity that holds an ownership interest  
33 in real property.

34 (e) "Public entity" means the state of Kansas, political subdivisions,  
35 cities, counties, state universities or colleges, school districts, all special  
36 districts, joint agreement entities, public authorities, public trusts, non-  
37 profit corporations and other organizations which are operated with pub-  
38 lic money for the public good.

39 (f) "Retainage" means money earned by a contractor or subcontractor  
40 but withheld to ensure timely performance by the contractor or  
41 subcontractor.

42 (g) "Subcontractor" means any person performing construction cov-  
43 ered by a contract between an owner and a contractor but not having a

Senate Commerce Committee  
March 10, 2006

Attachment 4-1

2-1-17

1 contract with the owner.

2 Sec. 3. (a) Subject to the provisions of subsections (b), (c), (d), (e),  
3 (f), (g) and (h) and sections 4 and 5, and amendments thereto, all persons  
4 who enter into a contract for public construction after the effective date  
5 of this act, shall make all payments pursuant to the terms of the contract.

6 (b) The following provisions in a contract for public construction shall  
7 be against public policy and shall be void and unenforceable:

8 (1) A provision that purports to waive, release or extinguish the right  
9 to resolve disputes through litigation in court or substantive or procedural  
10 rights in connection with such litigation except that a contract may require  
11 binding arbitration as a substitute for litigation or require nonbinding  
12 alternative dispute resolution as a prerequisite to litigation;

13 (2) a provision that purports to waive, release or extinguish rights to  
14 file a claim against a payment or performance bond, except that a contract  
15 may require a contractor or subcontractor to provide a waiver or release  
16 of such rights as a condition for payment, but only to the extent of the  
17 amount of payment received; and

18 (3) a provision that purports to waive, release or extinguish rights of  
19 subrogation for losses or claims covered or paid by liability or workers  
20 compensation insurance except that a contract may require waiver of sub-  
21 rogation for losses or claims paid by a consolidated or wrap-up insurance  
22 program, owners and contractors protective liability insurance, or project  
23 management protective liability insurance or a builder's risk policy.

24 (c) Any provision in a contract for public construction providing that  
25 a payment from a contractor or subcontractor to a subcontractor is con-  
26 tingent or conditioned upon receipt of a payment from any other public  
27 party, including an owner, is no defense to a claim to enforce a bond to  
28 secure payment of claims pursuant to the provisions of article 11 of chap-  
29 ter 60 of the Kansas Statutes Annotated, and amendments thereto.

30 (d) All contracts for public construction shall provide that payment  
31 of amounts due a contractor from an owner, except retainage, shall be  
32 made within 30 days after the owner receives a timely, properly com-  
33 pleted, undisputed request for payment.

34 (e) If the owner fails to pay a contractor within 30 days following  
35 receipt of a timely, properly completed and undisputed request for pay-  
36 ment, the owner shall pay interest to the contractor beginning on the  
37 thirty-first day after receipt of the request for payment, computed at the  
38 rate of 18% per annum on the undisputed amount.

39 (f) A contractor shall pay its subcontractors any amounts due within  
40 seven business days of receipt of payment from the owner, including  
41 payment of retainage, if retainage is released by the owner, if the sub-  
42 contractor has provided a timely, properly completed and undisputed  
43 request for payment to the contractor.

, except that payment shall be made within 45 days after the owner receives such payment request if an owner requires approval prior to payment and meets no more than once per month

4-2

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 As Amended by House Committee
 

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Session of 2006

**HOUSE BILL No. 2658**

By Representative Huff

1-19

10 AN ACT relating to gift certificates **and gift cards**; concerning certain  
11 restrictions.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) On and after January 1, 2007, no person, firm, part-  
15 nership, association or corporation shall sell a gift certificate **or gift card**  
16 to a purchaser containing an expiration date **which is less than five**  
17 **years from the date of purchase.** ~~Any gift certificate sold after that~~  
18 ~~date shall be redeemable in cash for its cash value or subject to replace-~~  
19 ~~ment with a new gift certificate at no cost to the purchaser or holder.~~

20 (b) A gift certificate **or gift card** sold without an expiration date is  
21 valid until redeemed or replaced. **A merchant shall not be required**  
22 **to redeem a gift card or gift certificate for cash.**

23 (c) **No dormancy fee shall be charged against a gift certificate**  
24 **or gift card. No fees may be charged against the balance of a gift**  
25 **card or gift certificate within 12 months from the date of issuance**  
26 **of the card.**

27 ~~(e)~~ (d) This section shall not apply to any of the following gift certif-  
28 icates **or gift cards** issued on and after January 1, 2007, provided the  
29 expiration date appears ~~in capital letters in at least 10-point font on the~~  
30 front of the gift certificate **or gift card**:

31 (1) Gift certificates **or gift cards** that are distributed by the issuer to  
32 a consumer ~~pursuant to an awards, loyalty or promotional program with-~~  
33 ~~out any money or other thing of value being given in exchange for the~~  
34 gift certificate **or gift card** by the consumer; or

35 (2) gift certificates **or gift cards** that are sold below face value at a  
36 volume discount to employers or to nonprofit and charitable organizations  
37 for fund-raising purposes ~~if the expiration date on such gift certificates is~~  
38 ~~not more than 30 days after the date of sale.~~

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

41 (e) **All conditions and limitations shall be disclosed to the pur-**  
42 **chaser of a gift certificate or gift card at the time of purchase. If**  
43 **such conditions or limitations are not complied with by the pur-**

Senate Commerce Committee

March 10, 2006

Attachment

5-1

1 chaser, the issuer shall not be required to, but may, redeem such  
2 gift certificate or gift card.

3 (f) As used in this section:

4 (1) "Dormancy fee" means a charge imposed against the un-  
5 used value of a gift certificate or gift card due to inactivity;

6 (2) "gift card" means a tangible device, whereon is embedded  
7 or encoded in an electronic or other format a value issued in  
8 exchange for payment, which promises to provide to the bearer  
9 merchandise of equal value to the remaining balance of the device.

10 "Gift card" does not include a prepaid bank card;

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

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

21 (e) (g) This section shall be part of and supplemental to the Kansas  
22 consumer protection act.

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



As Amended by House Committee

Session of 2006

**HOUSE BILL No. 2658**

By Representative Huff

1-19

10 AN ACT relating to gift certificates **and gift cards**; concerning certain  
11 restrictions.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) On and after January 1, 2007, no person, firm, part-  
15 nership, association or corporation shall sell a gift certificate **or gift card**  
16 to a purchaser containing an expiration date **which is less than five**  
17 **years from the date of purchase.** ~~Any gift certificate sold after that~~  
18 ~~date shall be redeemable in cash for its cash value or subject to replace-~~  
19 ~~ment with a new gift certificate at no cost to the purchaser or holder.~~

20 (b) A gift certificate **or gift card** sold without an expiration date is  
21 valid until redeemed or replaced. **A merchant shall not be required**  
22 **to redeem a gift card or gift certificate for cash.**

23 (c) **No dormancy fee shall be charged against a gift certificate**  
24 **or gift card. No fees may be charged against the balance of a gift**  
25 **card or gift certificate within 12 months from the date of issuance**  
26 **of the card.**

27 ~~(e)~~ (d) This section shall not apply to any of the following gift certif-  
28 icates **or gift cards** issued on and after January 1, 2007, provided the  
29 expiration date appears in capital letters in at least 10-point font on the  
30 front of the gift certificate **or gift card**:

31 (1) Gift certificates **or gift cards** that are distributed by the issuer to  
32 a consumer pursuant to an awards, loyalty or promotional program with-  
33 out any money or other thing of value being given in exchange for the  
34 gift certificate **or gift card** by the consumer; or

35 (2) gift certificates **or gift cards** that are sold below face value at a  
36 volume discount to employers or to nonprofit and charitable organizations  
37 for fund-raising purposes ~~if the expiration date on such gift certificates is~~  
38 ~~not more than 30 days after the date of sale.~~

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

41 (e) **All conditions and limitations shall be disclosed to the pur-**  
42 **chaser of a gift certificate or gift card at the time of purchase. If**  
43 **such conditions or limitations are not complied with by the pur-**

Senate Commerce Committee  
March 10, 2006  
Attachment 6-1

1 chaser, the issuer shall not be required to, but may, redeem such  
2 gift certificate or gift card.

3 (f) As used in this section:

4 (1) "Dormancy fee" means a charge imposed against the un-  
5 used value of a gift certificate or gift card due to inactivity;

6 (2) "gift card" means a tangible device, whereon is embedded  
7 or encoded in an electronic or other format a value issued in  
8 exchange for payment, which promises to provide to the bearer  
9 merchandise of equal value to the remaining balance of the device.

full or discounted

10 "Gift card" does not include a prepaid bank card;

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

or without any  
money or other  
thing of value  
being given in  
exchange

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

21 (g) This section shall be part of and supplemental to the Kansas  
22 consumer protection act.

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

**As Amended by House Committee**

*Session of 2006*

**HOUSE BILL No. 2658**

By Representative Huff

1-19

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18 ~~date shall be redeemable in cash for its cash value or subject to replace-~~  
19 ~~ment with a new gift certificate at no cost to the purchaser or holder.~~

20 (b) A gift certificate **or gift card** sold without an expiration date is  
21 valid until redeemed or replaced. **A merchant shall not be required**  
22 **to redeem a gift card or gift certificate for cash.**

23 (c) **No dormancy fee shall be charged against a gift certificate**  
24 **or gift card. No fees may be charged against the balance of a gift**  
25 **card or gift certificate within 12 months from the date of issuance**  
26 **of the card.**

27 ~~(e)~~ (d) This section shall not apply to any of the following gift certif-  
28 icates **or gift cards** issued on and after January 1, 2007, provided the  
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30 front of the gift certificate **or gift card**:

31 (1) Gift certificates **or gift cards** that are distributed by the issuer to  
32 a consumer ~~pursuant to an awards, loyalty or promotional program with-~~  
33 ~~out any money or other thing of value being given in exchange for the~~  
34 gift certificate **or gift card** by the consumer; or

35 (2) gift certificates **or gift cards** that are sold below face value at a  
36 volume discount to employers or to nonprofit and charitable organizations  
37 for fund-raising purposes ~~if the expiration date on such gift certificates is~~  
38 ~~not more than 30 days after the date of sale.~~

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

41 (e) **All conditions and limitations shall be disclosed to the pur-**  
42 **chaser of a gift certificate or gift card at the time of purchase. If**  
43 **such conditions or limitations are not complied with by the pur-**

Senate Commerce Committee  
March 10, 2006

Attachment 7-1



1 chaser, the issuer shall not be required to, but may, redeem such  
2 gift certificate or gift card.

3 (f) As used in this section:

4 (1) "Dormancy fee" means a charge imposed against the un-  
5 used value of a gift certificate or gift card due to inactivity;

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

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

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

21 ~~(e) (g) This section shall be part of and supplemental to the Kansas~~  
22 ~~consumer protection act.~~

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

(g) A violation of this act shall be an unclassified misdemeanor punishable by a fine not to exceed \$100.

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2658

By Representative Huff

1-19

10 AN ACT relating to gift certificates **and gift cards**; concerning certain  
11 restrictions.

12  
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14 Section 1. (a) On and after January 1, 2007, no person, firm, part-  
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18 ~~date shall be redeemable in cash for its cash value or subject to replace-~~  
19 ~~ment with a new gift certificate at no cost to the purchaser or holder.~~

20 (b) A gift certificate **or gift card** sold without an expiration date is  
21 valid until redeemed or replaced. **A merchant shall not be required**  
22 **to redeem a gift card or gift certificate for cash.**

23 ~~(c) No dormancy fee shall be charged against a gift certificate~~  
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27 ~~(e)~~ (d) This section shall not apply to any of the following gift certif-  
28 icates **or gift cards** issued on and after January 1, 2007, provided the  
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34 gift certificate **or gift card** by the consumer; or

35 (2) gift certificates **or gift cards** that are sold below face value at a  
36 volume discount to employers or to nonprofit and charitable organizations  
37 for fund-raising purposes ~~if the expiration date on such gift certificates is~~  
38 ~~not more than 30 days after the date of sale.~~

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

41 (e) **All conditions and limitations shall be disclosed to the pur-**  
42 **chaser of a gift certificate or gift card at the time of purchase. If**  
43 **such conditions or limitations are not complied with by the pur-**

Senate Commerce Committee  
March 10, 2006

Attachment 8-1

1 chaser, the issuer shall not be required to, but may, redeem such  
2 gift certificate or gift card.

3 (f) As used in this section:

4 (1) ~~“Dormancy fee” means a charge imposed against the un-~~  
5 ~~used value of a gift certificate or gift card due to inactivity;~~

6 (2) “gift card” means a tangible device, whereon is embedded  
7 or encoded in an electronic or other format a value issued in  
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9 merchandise of equal value to the remaining balance of the device.

10 “Gift card” does not include a prepaid bank card;

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

15 (4) “prepaid bank card” means a general use, prepaid card or  
16 other electronic payment device that is issued by a bank or other  
17 financial institution in a predenominated amount useable at mul-  
18 tiple, unaffiliated merchants or at automated teller machines, or  
19 both, but shall not include a card issued by a retail merchant or a  
20 card issued by a shopping mall for use at multiple locations.]

21 (g) This section shall be part of and supplemental to the Kansas  
22 consumer protection act.

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

(renumber  
sections)