Approved: 3-1-06

Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 15, 2006 in Room 234-N of the Capitol.

All members were present except:

Committee staff present:
- Melissa Calderwood, Kansas Legislative Research Department
- Terri Weber, Kansas Legislative Research Department
- Ken Wilke, Office of Revisor of Statutes
- Bev Beam, Committee Secretary

Conferees appearing before the committee:
- Debs McIlhenny, Kansas Trial Lawyers
- John Klamann, Attorney
- Doug Wareham, KBA
- Terry Neher, U. S. Bank
- Chuck Henry, Unified Government
- Tom Franzen, Johnson Co. Finance Mgr.
- Randall Allen, Exec. Dir. Kans. Assn Counties
- Erik Sartorius, City of Overland Park
- Don Molar, League of Municipalities
- Matthew Goddard, Heartland Bankers' Assn.
- Kathy Strunk, CBA of Kansas
- John Fowler, First State Bank, Burlingame
- Brian Vaubel, St. Marys State Bank, St. Marys, KS

Others attending:
- See attached list.

The Chair welcomed everyone to the meeting.

The hearing continued on (**SB 512**) - **An act enacting the silicosis claims act.**

The Chair asked Debs McIlhenny, Kansas Trial Lawyers' Association, to continue her testimony. Ms. McIlhenny said the Kansas Trial Lawyers Association has grave concerns with (**SB 512**). Proponents of (**SB 512**) are seeking sweeping changes to Kansas law despite their own testimony indicating that silicosis and silicosis litigation is not an issue in Kansas. She said the amount of silica in Kansas rock is so low that in some cases it is not measurable and the risk of exposure to silica is therefore low; there is little, if any, silicosis litigation in Kansas; and less than 1.1% mortality in Kansas is from silicosis.

Ms. McIlhenny said given the concerns raised by the proponents, and the additional concerns and implications of (**SB 512**), we believe this issue requires more in-depth study and should be referred to an interim committee for further evaluation. (Attachment 1)

The Chair called on John Klamann, Attorney, Overland Park, Kansas, from the law firm of Klamann and Hubbard. He said it has been his privilege for the past 27 years to represent the victims of mixed dust diseases, primarily asbestos related diseases. He said he would like to speak about the specific provisions of this bill and give examples behind what Debs has said. We will start with the mixed dust definition in the proposed statute. It says, Silica is in one or more other fibrogenic dusts asbestos containing products in this state and everywhere else. Asbestos is a silicate so the question or concern is that this might be interpreted to include asbestos and a number of other dusts that use silicates. (Attachment 2)

The chair announced that the continued hearing on (**SB 512**) was closed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Hearing on (**SB 264**) - **concerning municipalities; relating to depositories for public funds**

The Chair called on Doug Wareham, Kansas Bankers' Association. Mr. Wareham testified that KBA's fundamental belief regarding the investment of local public funds has been and continues to be that they should be invested locally where they can provide the greatest economic benefit for the community that initially produced those revenues. He said KBA believes the report presented to this committee last week by Mr. John Wong of Wichita State University substantiates that belief. Mr. Wareham said the changes proposed in Substitute (**SB 264**) will continue the long-standing Kansas policy of keeping public funds investments local, while still providing a wider array of investment options for communities served by financial institutions whose headquarters are not located in our state. (Attachment 3)

The Chair called Terry Neher, U. S. Bank, Topeka. Mr. Neher testified that the substitute for (**SB 264**) is the correct policy for Kansas with respect to local public funds investments. The substitute for (**SB 264**) will remove the question that various municipalities have had as to whether or not they can take advantage of the products and services U. S. Bank provides. This substitute bill will also create a level playing field for banks, large and small, by allowing more banks to bid to provide services to local governments in communities they already serve. The compromise will also give local governmental units more choices for banking services and will allow financial institutions to provide them with the best possible services. (Attachment 4)

The Chair called on Charles Henry, Director of Revenue, Wyandotte County, Kansas City, Kansas. Mr. Henry said this bill allows local governments to place money in any bank with a physical presence in the jurisdiction. This is a significant change from the current statutes which limited us to placing funds only in those financial institutions with a Kansas Charter or "main" office in Kansas.

Mr. Henry thanked the Kansas Bankers' Association for arranging a conference last summer on this issue and proposing the language currently included in this bill. He said his organization is very appreciative of their listening to the needs of local government in the development of this proposal. He said these changes are significant for our citizens and taxpayers. Mr. Henry said Unified Government of Wyandotte County, Kansas City, Kansas, strongly supports (**SB 264**). (Attachment 5)

The Chair called Tom Franzen, Johnson County Government, to testify. Due to illness, Mr. Stewart Little represented Johnson County Government. Mr. Little said as currently proposed, (**SB 264**) proposes to remove the requirement that any "municipal or quasi-municipal corporation" utilize only depository financial institutions that have a Kansas state charter. The intent of this bill would be beneficial to taxpayers primarily because of the bill's impact on competition, he said. By restricting depository financial institutions to only those with a Kansas state charter, the current environment limits competition between financial institutions, potentially keeping costs of banking services high and yields on cash balances low, he said.

Mr. Little continued that current legislation limits choices regarding depository financial institutions. In light of the merger and acquisition activity within the financial services sector over the past decade, modifying the current legislation is a prudent step to allow governmental entities to conduct business at the lowest possible cost, thereby passing potential savings onto taxpayers in the form of a reduced mill levy. Mr. Little said Johnson County Government supports (**SB 264**). (Attachment 6)

The Chair called on Randall Allen, Executive Director of Kansas Association of Counties. Mr. Allen said (**SB 264**) would allow counties to select any bank, savings and loan association or savings bank that has an office within the county as a depository for county funds, without regard to whether the bank is a federally chartered or state-chartered financial institution. Currently, only state-chartered banks are eligible to be depositories for county funds, which reduces the options that some of our counties have, he said. The current law particularly affects those counties with a very large fund balance because there are relatively fewer banks which can collateralize their deposits and service their needs.

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 15, 2006 in Room 234-N of the Capitol.

Mr. Allen thanked the Kansas Bankers' Association for convening a group of stakeholders last summer in an effort to work through this issue, which has long been a point of contention among our members, he said. We have reached this compromise, he said, which we think makes sense and which assists county commissioners and county treasurers in making the very best business decision they can make. Mr. Allen expressed the Kansas Association of Counties' support for (**SB 264.**) (Attachment 7)

Mr. Erik Sartorius, City of Overland Park, testified that current law limits local units of government to dealing only with financial institutions chartered in the state of Kansas. While such a requirement may have been workable years ago, the reality of the global economy has greatly reduced the number of state-chartered institutions in the financial services industry. This artificial investment barrier for local governments does not protect the best interests of the taxpayer, he said. The State of Kansas recognizes the imprudence of limiting itself to state-chartered institutions, and no longer subjects itself to this limitation. Mr. Sartorius said the City of Overland Park appreciates the work of all parties in coming up with a compromise that meets the needs of cities in their investment of idle funds and the banking services they require. He said the League requests that the Substitute for (**SB 264**) be recommended for passage. (Attachment 8)

Mr. Don Moler, Executive Director, League of Kansas Municipalities, testified that (**SB 264**) accomplishes the goal of providing greater flexibility for cities, counties, and other local units of government by allowing taxpayer dollars to be maximized. Mr. Moler said the League believes (**SB 264**) will be beneficial for both large and small cities and their taxpayers. Specifically, allowing banks which are not chartered in Kansas to bid on public monies would reintroduce competition into the state banking market and thus allow local units+6 to maximize the return on the public's tax dollar. He said the League fully supports the compromise found in (**SB 264**) and hopes the Committee will report the bill favorably. (Attachment 9)

Those submitting written testimony in support of (**SB 264**) were: Matthew Goddard, Heartland Community Bankers Association; Dennis F. Schwartz, President, Kansas Rural Water; Jim Edwards, Kansas Association of School Boards and Michael D. Stevens, Chairman, KBA. (Attachment 10)

Those submitting written testimony in opposition to (**SB 264**) were: Kathy Patton Strunk, CBA; John Fowler, President, First State Bank of Burlingame; and Brian L. Vaubel, President, St. Marys State Bank. (Attachment 11)

The meeting adjourned at 10:30 a.m. The next meeting of this Committee is scheduled for February 16, 2006.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST
DATE: February 15, 2006

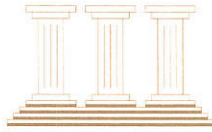
| NAME | REPRESENTING |
|---|---|
| Mike Orozco | US Bank |
| Alan Franklin | U.S. Bank |
| Mike Corless | US Bank |
| Terry Weber | U.S. Bank |
| Brian Vaubel | Comm Bankers Association |
| Kathy Patton Strunk | Com. Bankers Association |
| [illegible] | Comm. Bankers Assoc. |
| Jeanne Goodwin | City of Wichita |
| [illegible] | First State Bank of Burlingame |
| Chuck Henry | Unified Government |
| DERL TREFF | P.M.I.B. |
| Alex Kotoyantz | PIA |
| Clint Patty | KAPA |
| Woody Moses | KAPA |
| Wendy Harms | KAPA |
| Richard Samaniego | Kearney & Assoc. |
| Randall Allen | Ks. Assoc. of Counties |
| Stuart Little | Johnson County Govt |
| Erik Sartorius | City of Overland Park |
| Don Moler | LKM |
| Ron Gaches | GBBA |
| Thomas Robben | Johnson County Gov't |
| Sonya Allen | OSBC |
| Judi Stork | OSBC |

Clancy Norris OSBC

# FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

**DATE:** 2-15-06

| NAME | REPRESENTING |
| --- | --- |
| Doug Wareham | Kansas Bankers Assn. |
| Kathy Olsen | " " " |
| Dan Murray | Federico Consulting |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

To: Senator Ruth Teichman, Chair
Senate Committee on Financial Institutions and Insurance

From: Debs McIlhenny, Hutton & Hutton Law Firm, LLC, Wichita, Kansas
On behalf of the Kansas Trial Lawyers Association

Date: February 13, 2006

Re: SB 512 Silicosis Claims Act

I appear before you today on behalf of the Kansas Trial Lawyers Association, a statewide nonprofit organization of attorneys who represent consumers and advocate for the safety of families and the preservation of Kansas' civil justice system. I appreciate the opportunity to provide you with testimony on SB 512. KTLA is opposed to SB 512 and asks that it not be passed.

The need for SB 512 is predicated on an assumption that there is a tort crisis in Kansas. However, review of Kansas court cases shows that the so-called "litigation crisis" is a myth (see attached fact sheet). In fact, only 2% of cases filed in Kansas are torts, and of that 2%, only 115 were decided by a jury. The median award in 2004 was $18,757, down from $23,416 in 2003. KTLA strongly discourages the Committee from shaping public policy based on the fiction that there is a crisis in Kansas.

In addition, Kansas does not need additional "tort reform" measures because Kansas already has in place strict laws that rigorously control tort cases. Kansas' comparative negligence law (K.S.A. 60-258a) requires that juries divide damages between the plaintiff and negligent defendants according to relative fault. For example, if the jury determines that a defendant is 70% at fault and a plaintiff is 30% at fault, the defendant would be accountable only for 70% of the damages. Kansas also has a cap on non-economic damages that limits recovery of so-called pain and suffering to $250,000 (K.S.A. 60-19a02). Given these laws, and the lack of a tort crisis, we strongly question the need for SB 512.

SB 512 is a fix looking for a problem. The bill offers no public purpose. For good reason: to our knowledge, there is very little – if any – silicosis litigation in Kansas, much less something of the magnitude that would trigger such a wide-sweeping, constitutionally-infirm immunity bill. It impugns the concept of justice because it eliminates a remedy and offers no *quid pro quo*. In short, its proponents do not define the bill's concerns, the bill itself raises more questions than it answers, and it actually creates litigation problems.

If the intent of SB 512 is to immunize employers and owners, then it duplicates the workers' compensation scheme that we already have. If the bill is intended to immunize third parties, it does

Senate FI&I Committee
Attachment 1-1
February 15, 2006

*Terry Humphrey, Executive Director*

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw@ink.org

so without indicating why or who. We cannot even decipher a pattern as to "why or who" from a review of Kansas cases, because there are none.

By its very terms, SB 512 doesn't solve a litigation problem; it creates one by virtually flipping century-old legal processes upside down. SB 512 makes it virtually impossible for any plaintiff to meet the requirements in this bill to show that they have a legitimate case. For example, among other things, it requires every plaintiff to establish the nature, extent, and duration of exposure to silica and/or mixed dust. Sec. 2(b)(2)(A). This requirement helps to establish specific causation, a viable part of every personal injury lawsuit. *Yet, the bill demands that plaintiffs produce this information within 30 days after filing the case.* Sec. 4(a). But the nature, extent, and duration of exposure depend entirely on defendant-held information, specifically, whether or not defendant actually sampled for silica/mixed dust, submitted the samples to a forensics lab, received the results, and then acted on them as required according to NIOSH – not OSHA – standards, and certainly not the undefined 1972 standards supposedly adopted in Kansas. And defendants do not provide that information to any adversary willingly, especially within 30 days after filing a case. In fact, in my experience they produce that information only through discovery during litigation that occurs long-after 30 days from filing the case, and sometimes only if threatened with sanctions for failure to produce. Moreover, even if a defendant willingly provided the information within the 30 days, an expert must review the data and determine the overall exposure level, a time-consuming assimilation process.

As another example, the bill requires that the plaintiff produce evidence from a "competent medical authority" that he is physically impaired due to a medical condition for which silica is a substantial contributing factor. Sec. 2(b). This requirement also helps to establish specific causation. Yet, the bill problematically requires that the "competent medical authority" must be the plaintiff's treating doctor currently or sometime in the past, who spends no more than 25% of his practice time on testimony, gains no more than 20% of his revenue from testifying, and <u>does not rely on the report or opinion of any doctor, clinic, lab, or testing company</u> that has examined or screened the plaintiff. Sec. 1(i). But, because it can be mistaken for other diseases, silicosis more often than not requires an expert to diagnose it, experts who review the treating physician's work, the plaintiff's radiological/pathological test results, and sometimes the plaintiff himself. We find these consulting experts not in the local hospitals and clinics, but in the major research and teaching facilities in this country: Sloan Kettering, M.D. Anderson, Mayo Clinic, Johns-Hopkins, just to name a few. It is difficult to get an appointment with an expert physician quickly, as they are in high demand. And they are very expensive doctors, making them inaccessible to many people as experts, much less as treating physicians. Moreover, they invariably seek to review only <u>original</u> X-rays/scans, seldom available without subpoena power through litigation and never in short order. So, again, the bill makes it virtually impossible for any plaintiff to meet the requirements to show a legitimate case, especially within 30 days from filing the case.

SB 512 punishes a plaintiff that fails to meet the bill's burdensome evidence requirements and time limitations to prove her case. When a plaintiff cannot get her hands on the exposure data or could not afford a treating physician with the experience to diagnose silicosis, the court must dismiss her case . . . treating it as a summary judgment. Sec. 4(b). It is any unbroken rule that a summary judgment is a ruling on the <u>legal</u> merits of the case and <u>not</u> on the <u>factual</u> questions, such as those

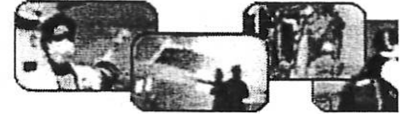
that surround evidence. It prevents issues from reaching the jury because there is nothing in those issues for the jury to consider. Factual questions go to the jury. Yet, this bill forces the court to consider the factual questions and treat them as legal ones, keeping them from a jury, a situation that the legal process does not tolerate. In effect, it creates a litigation problem.

Further, SB 512 would require that every "competent medical authority" either provide an affidavit regarding the 25% testimony/20% revenue issue or provide a plaintiff financial records to satisfy the bill's requirements. This provision appears to target charlatanism, a problem that nobody likes. Yet, it burdens doctors and plaintiffs unnecessarily and may jeopardize doctors' financial privacy.

SB 512 indicates the exposure standards as adopted in Kansas in 1972 apply here, but does not specify under what statute they may be found or suggest to what substance they apply. The bill blatantly does not recognize that silica/mixed dust (that includes silica as an ingredient) exposure standards have changed greatly over the past 40 years. For example, silica was thought to be a human carcinogen up until about 1991 and, thanks to research from Dr. David Goldsmith *et al.*, was thereafter so classified. At that point exposure levels and respiratory protection requirements became more stringent. OSHA standards do not apply in all environments and are less stringent than those of NIOSH (National Institute Of Occupational Safety and Health, part of the Centers for Disease Control), the "gold standard" of standards.

SB 512 creates a class of folks who get special treatment, creating constitutional infirmity. The bill does not explain, much less justify, why owners and holders-in-due-course should have blanket immunity. Secs. 6, 9. It "abrogates" piercing the corporate veil in silica cases, denying plaintiffs their due process rights to establish their case against the defendant. Sec. 9. And it denies the plaintiff's due process rights to have the jury even know about any findings that the court made on the evidentiary issues that may go against the defendant – all of those findings being part of the trial record and traditionally available as evidence. Sec. 2(f).

In short, SB 512 is constitutionally infirm, eliminates a remedy with no *quid pro quo*, has no problem to fix, raises more questions than it answers, and creates litigation problems. On behalf of the Kansas Trial Lawyers Association, I ask you to oppose SB 512.



**Silicosis Fact Sheet for Construction Workers**

NIOSH

National Institute for Occupational Safety and Health
Delivering on the Nation's Promise: Safety and Health at Work for All People...through Prevention

Important Information for Construction Workers
on
Deadly But Preventable Dust Exposure

**Silicosis has taken a serious toll in the United States, attacking workers in many settings. Here is a real-life story...**

A West Virginia driller will not see his 10 year old daughter grow up. He will not be there when she gets married. He will not be there when she starts a family of her own. During the fall of 1988 a driller in his late 40's had chest pain. So he went to a hospital in Morgantown West Virginia. The doctors told him he had silicosis (lung damage). He continued to work and support his family as many workers do. He died from silicosis during the spring of 1994 after 18 years of drilling. After his death his lungs were examined. His lungs were hard because of all the dust in them. It was difficult to cut them even with a scalpel.

**Thousands of People are exposed to crystalline silica dust at work every day.**

**Early Deaths From Dust - Don't Let It Happen To You!**

* 42 year old construction worker in Pennsylvania
* 37 year old construction worker in Ohio
* 49 year old construction laborer in Oklahoma
* 41 year old construction worker in Indiana
* 44 year old construction laborer in North Carolina
* 39 year old construction painter in Ohio

**What Is Silicosis?**

Silicosis is lung damage caused by breathing dust containing extremely fine particles of crystalline silica. Crystalline silica is found in materials such as concrete, masonry and rock. When these materials are made into a fine dust and suspended in the air, breathing in these fine particles can produce lung damage.[1] Silicosis can lead to heart failure and increase the risk of other diseases such as TB (tuberculosis). [2, 3, 4]

**Symptoms of Silicosis:**

* Initially there may be no symptoms.
* Latter there may be difficulty in breathing and cough may be present.
* Infectious complications may cause fever, weight loss, and night sweats.

**See a physician if you experience these symptoms and suspect that you are exposed to crystalline silica.**

1-4

### How Do Construction Workers Get Exposed?

Most crystalline silica comes in the form of quartz. Common sand can be as much as 100% quartz. Concrete and masonry products contain quartz in the form of sand. Therefore, there are many ways to be exposed at construction sites.

### Some Activities In Which Quartz Dust May Be Present In The Air Include:

* Abrasive blasting using silica sand as the abrasive.
* Abrasive blasting of concrete.
* Chipping, hammering, and drilling rock.
* Crushing, loading, hauling, and dumping rock.
* Chipping, hammering, drilling, sawing, and grinding concrete or masonry.
* Demolition of concrete and masonry structures.
* Dry sweeping or pressurized air blowing of concrete or sand dust.

### How Is Silicosis Prevented?

The key to silicosis prevention is to prevent dust from being in the air. The Occupational Safety and Health Administration (OSHA) requires administrative or engineering controls be used whenever possible. A simple control may work. Example: A water hose to wet dust down at the point of generation. Here are some steps you can take to protect yourself:

- **Always use the dust control system** and keep it in good maintenance.
- **When sawing concrete or masonry use saws that provide water to the blade.**
- **During rock drilling use water through the drill stem** to reduce the amount of dust in the air.
- Use dust collection systems which are available for many types of dust generating equipment.
- Use local exhaust ventilation to prevent dust from being released into the air.
- **Minimize exposures to nearby workers** by using good work practices.
- **Use abrasives containing less than 1% crystalline silica during abrasive blasting** to prevent harmful quartz dust from being released in the air.
- **Measure dust levels in the air.**
- **Respirators should only be used after dust controls are in place.** Respirators should not be the primary method of protection. If controls cannot keep dust levels below the NIOSH Recommended Exposure Level (REL) then respirators should be used. Select respirators that provide enough protection. **Keeping respirators fit for use requires continual maintenance.**

When respirators are used OSHA requires employers to establish a comprehensive respiratory protection program. Respiratory protection programs are outlined in the NIOSH Guide to Industrial Respiratory Protection.[5]

All workers breathing crystalline silica dust should have a medical examination. Medical Examinations:

- Chest X-ray (classified according to the 1980 International Labour Office (ILO)

1-5

International Classification of Radiographs of Pneumoconioses(6).

- Pulmonary function test.
- Annual evaluation for TB (tuberculosis)(7).

**Want More Information?**
Two NIOSH Silicosis Alerts available:

1. Preventing Silicosis and Deaths From Sandblasting(8);
2. Preventing Silicosis and Deaths in Rock Drillers.(9)

For free copies call NIOSH at 1-800-35-NIOSH.

**Your Comments**

The National Institute for Occupational Safety and Health (NIOSH) requests assistance in controlling exposures of construction workers to respirable crystalline silica. The need is urgent to inform construction workers, coworkers, and construction managers about the respiratory hazards associated with respirable crystalline silica.
Your comments on how best to inform construction workers about this preventable disease are welcomed. Please send your comments to: Ken Linch, Industrial Hygienist, NIOSH, Division of Respiratory Disease Studies, 1095 Willowdale Road, Morgantown, West Virginia 26505-2888.

**Acknowledgments**

The principal contributors to this fact-sheet were Ken Linch, M.S., Dennis Groce M.P.H., John Parker, M.D. and Karl Musgrave D.V.M. of the NIOSH Division of Respiratory Disease Studies, Dorothy Tan, Intern, Association of Schools of Public Health, Cynthia Robinson, Ph.D., and Carol Bumett of the NIOSH Division of Surveillance, Hazard Evaluation, and Field Studies.

**References**

1. Silicosis and Silicate Disease Committee. Diseases associated with exposure to silica and nonfibrous silicate minerals. Arch Pathol Lab Med 112:673-720. 1988.

2. Myers CE. Hayden C. Morgan J. Clinical experience with silicotuberculosis. Penn Med March pp 60-62. 1973.

3. Sherson D. Lander F. Morbidity of pulmonary tuberculosis among silicotic and non silicotic foundry workers in Denmark. J Occup Med 32:111-113. 1990.

4. Bailey WC, Brown M. Buechner HA. Weill H. Ichinose H. Ziskind M. Silico-mycobacterial disease in sandblasters. Am Rev Respir Dis 110:115-125. 1974.

5. NIOSH Guide to Industrial Respiratory Protection. DHHS (NIOSH) Publication No. 87-116

6. International Labour Office (ILO) Committee on Pneumoconiosis Classification of radiographs of the pneumoconioses Med Radiogr Photogr 57:2-17, 1981.

7. American Thoracic Society (ATS) and Centers for Disease Control (CDC), Treatment of tuberculosis and tuberculosis infection in adults and children Am Rev Respir Dis 134(2):355-363, 1986.

8. National Institute for Occupational Safety and Health NIOSH Alert request for assistance in preventing silicosis and deaths from sandblasting, DHHS (NIOSH) Publication No. 92- 102,

1-6

1992

9. National Institute for Occupational Safety and Health: NIOSH Alert request for assistance in preventing silicosis and deaths in rock drillers, DHHS (NIOSH) Publication No. 92-107, 1992.

Back to Top www.osha.gov

Contact Us | Freedom of Information Act | Information Quality | Customer Survey
Privacy and Security Statement | Disclaimers

Occupational Safety & Health Administration
200 Constitution Avenue, NW
Washington, DC 20210

Esta página en
Español

# Preventing Silicosis

U.S. Department of Labor
October 31, 1996

## What Is Silicosis?

Silicosis is a disabling, nonreversible and sometimes fatal lung disease caused by overexposure to respirable crystalline silica. Silica is the second most common mineral in the earth's crust and is a major component of sand, rock, and mineral ores. Overexposure to dust that contains microscopic particles of crystalline silica can cause scar tissue to form in the lungs, which reduces the lungs' ability to extract oxygen from the air we breathe. Typical sand found at the beach does not pose a silicosis threat.

More than 1 million U.S. workers are exposed to crystalline silica. Each year, more than 250 American workers die with silicosis. There is no cure for the disease, but it is 100 percent preventable if employers, workers, and health professionals work together to reduce exposures.

In addition to silicosis, inhalation of crystalline silica particles has been associated with other diseases, such as bronchitis and tuberculosis. Some studies also indicate an association with lung cancer.

## Who Is at Risk?

Working in any dusty environment where crystalline silica is present potentially can increase a person's chances of getting silicosis. If a number of workers are working in a dusty environment and one is diagnosed with the silicosis, the others should be examined to see if they might also be developing silicosis.

Some examples of the industries and activities that pose the greatest potential risk for worker exposure include:

```
construction (sandblasting, rock
   drilling, masonry work, jack
   hammering, tunneling)

mining (cutting or drilling through
   sandstone and granite)

foundry work (grinding, moldings,
```

```
stone cutting (sawing, abrasive
   blasting, chipping, grinding)

glass manufacturing

agriculture (dusty conditions from distur
   the soil, such as plowing or harvestin
```

1-8

| | |
|---|---|
| shakeout, core room) | shipbuilding (abrasive blasting) |
| ceramics, clay, and pottery | railroad (setting and laying track) |
| manufacturing of soaps and detergents | manufacturing and use of abrasives |

More than 100,000 workers in the United States encounter high-risk, silica exposures through sandblasting, rock drilling, and mining. Workers who remove paint and rust from buildings, bridges, tanks, and other surfaces; clean foundry castings; work with stone or clay; etch or frost glass; and work in construction are at risk of overexposure to crystalline silica.

## What Are the Types, Symptoms and Complications of Silicosis?

There are three types of silicosis, depending upon the airborne concentration of crystalline silica to which a worker has been exposed:

***Chronic silicosis*** usually occurs after 10 or more years of overexposure.

***Accelerated silicosis*** results from higher exposures and develops over 5-10 years.

***Acute silicosis*** occurs where exposures are the highest and can cause symptoms to develop within a few weeks or up to 5 years.

Chronic silicosis, the most common form of the disease, may go undetected for years in the early stages; in fact, a chest X-ray may not reveal an abnormality until after 15 or 20 years of exposure. The body's ability to fight infections may be overwhelmed by silica dust in the lungs, making workers more susceptible to certain illnesses, such as tuberculosis. As a result, workers may exhibit one or more of the following symptoms:

- shortness of breath following physical exertion
- severe cough
- fatigue
- loss of appetite
- chest pains
- fever

## How Can Workers Determine If They Have Silicosis?

A medical examination that includes a complete work history and a chest X-ray and lung function test is the only sure way to determine if a person has silicosis. Workers who believe they are overexposed to silica dust should visit a doctor who knows about lung diseases. The National Institute for Occupational Safety and Health (NIOSH) recommends that medical examinations occur before job placement or upon entering a trade, and at least every 3 years thereafter.

## How Can Silicosis Be Prevented?

Beginning tomorrow, workers and employers will be able to get a package of free materials on how to prevent silicosis by calling a toll-free telephone information service operated by NIOSH in the U.S. Department of Health and Human Services (1-800-35-NIOSH; select option 2, then option 5). The package contains a tip sheet of ideas for preventing silicosis, a guide for working safely with silica, and stickers for hard hats to remind workers that, ***If it's silica, it's not just dust***. Spanish - language versions of materials also will be available soon.

Department of Labor staff will distribute silica materials when they inspect mines, construction sites, and other affected industries.

---

*This page was last updated: October 31, 1996*

---

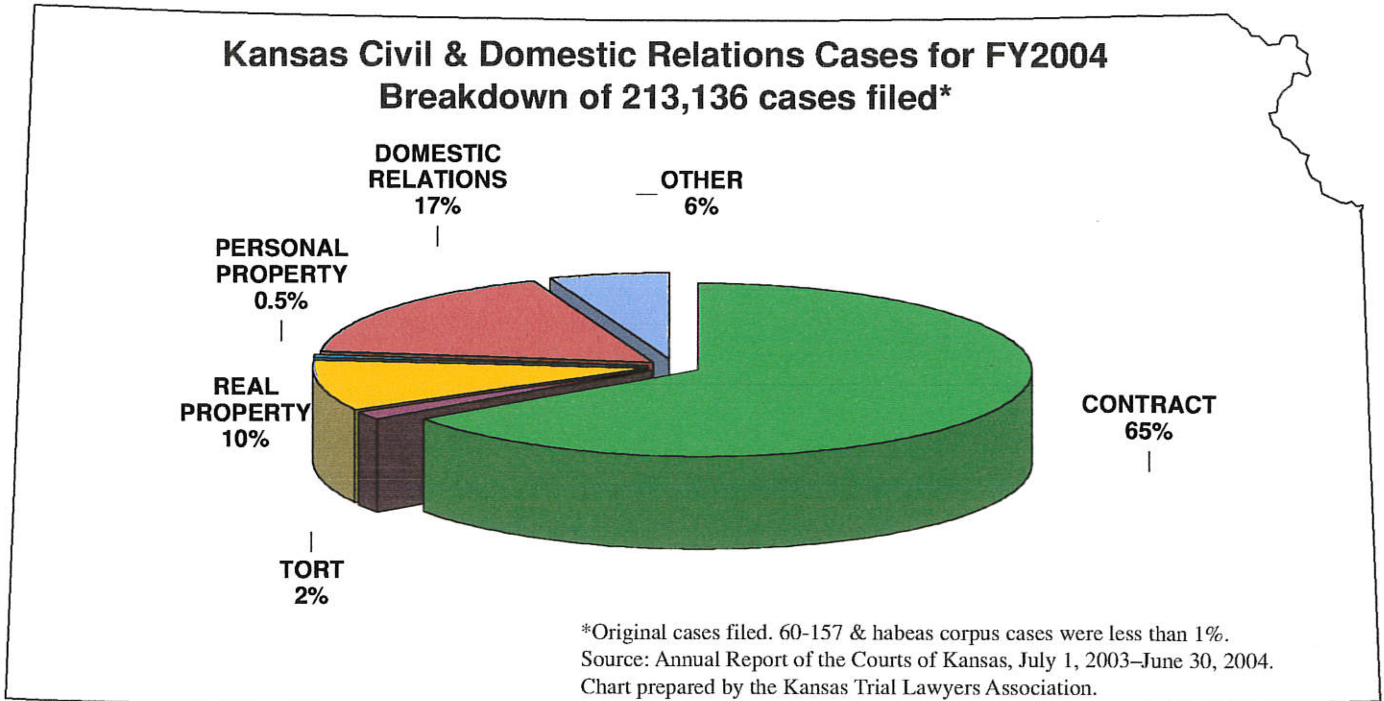
Go back to the NIOSH home page

or to the CDC home page.

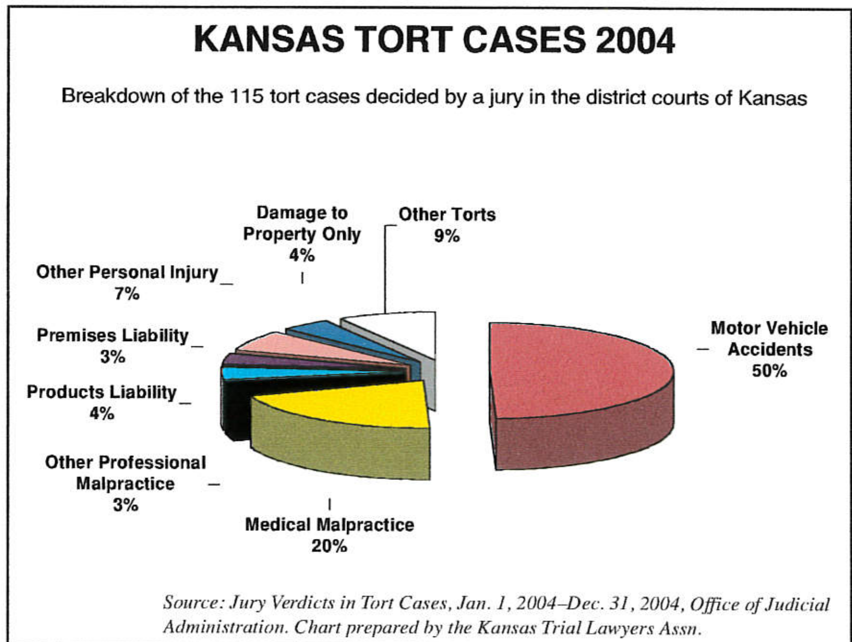

1-10

# There is no "litigation crisis" in Kansas

## Only 2% of cases filed in Kansas are torts.




- √ Only 2% of cases filed in FY2004 were torts, or personal injury cases.
- √ 115 tort cases were decided by Kansas juries in 2004, down from 135 cases in 2001.
- √ Half of all tort cases involved auto accidents.
- √ The median award in 2004 was $18,757, down from $23,416 in 2003.
- √ Punitive damages were awarded in only 5 cases in 2004.




*Check Your Facts Before You Change the Law*

# SENATE BILL NO. SB 512

February 13, 2006

Senators and Committee Members:

My name is John Klamann. I am an attorney with the law firm of Klamann and Hubbard from Overland Park, Kansas. For the past twenty-seven (27) years, I have had the privilege of representing the victims, and the families of victims, of diseases caused by exposure to "mixed dusts" containing asbestos.

Two weeks ago, we buried Mike Allen, a 58 year-old former automobile mechanic from Olathe, Kansas who died of the unique and invariably fatal form of cancer known as "Mesothelioma." Mesothelioma attacks the lining of the lungs. It causes excruciating pain as the victim fights for breath against a tumor that encases the lung, literally squeezing the life out of the patient's lungs as if a boa constrictor snake was wrapped around them. There is no cure and there are very few treatments for Mesothelioma. When a person is diagnosed with Mesothelioma, he has received a death sentence from which there will be no clemency or reprieve no matter how innocent he or she may be. I am here in memory of Mike Allen, his wife Jennifer, and those like him in the State of Kansas who deserve better — much better — than what Senate Bill No. SB 512 would provide. If Mike were here, I have no doubt that he would have used what little air he could muster to speak out against this proposed law.

Senate Bill No. SB 512 is unsound legislation. It is unscientific. It overwhelmingly biased and heavily weighted against the interests of those helpless, frequently disabled, often terminal Kansas residents who have had the misfortune of working with asbestos in their lifetimes and been made ill by it. I believe that SB 512 is deeply flawed and will create confusion and injustice and violate the due process rights of some of Kansas' most vulnerable citizens at a time when they need your help the most. It will impose an unnecessary, additional burden upon our Courts.

SB 512 creates an emergency and a crisis where none currently exists. The number of asbestos and silicosis cases filed in Kansas is de minimus. There is no need for the Draconian measures which this Bill would impose. I am completely mystified as to why Kansas would need such a Bill, and it is my hope that special interests are not taking advantage of our conservative orientation in Kansas thinking our conservatism equates with heartlessness and scientific ignorance. I hope that these special interests are not using Kansas as a springboard for a larger agenda which they hope to put in place elsewhere, but I assure you that there is no crisis in Kansas of a magnitude which warrants this kind of legislation.

I have outlined some of the key features of the proposed Bill below. I would like to take a few minutes to go over these provisions and share with you what I think are the most serious problems with the Bill and why I think its enactment would be irresponsible.

Section 1 – Words and Phrases:

"Competent Medical Authority" – meets the following requirements:

— Board certified Internist, pulmonary specialist, oncologist, pathologist or occupational medicine specialist

**Radiologist excluded?**

— Treater; physician-patient relationship

**Excludes true experts, such as members of the North American Mesothelioma Panel, while legislating a preference for "treating" physicians who lack expertise in specialized medicine**

— Has <u>not</u> relied upon report of any other doctor, lab, etc. that examined without physician-patient relationship

**Treaters cannot rely upon specialists like the North American Meso Panel: Physicians Reference Lab, etc.**

— No more than 25% of time in consultation/expert services in tort actions and earns no more than 20% of income from same

**Potential to exclude retired experts (Kerby from KU) and others on both sides – many of whom are world renowned authorities – Sam Hammar, John Craighead, Ron Dodson, Victor Roggli — arbitrary legislative standard about objectivity and credibility**

"Mixed dust"

— Mixture of dusts composed of silica and other fibrogenic dusts

**Includes asbestos in Thermal Systems Insulation, plasters and drywall compounds in houses, etc.**

"Pathological evidence of mixed dust pneumoconiosis"

— statement by board certified <u>pathologist</u> that > one section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchial and parenchymal star-shaped nodular scarring and that there is no other likely explanation for the presence of the fibrosis

**Excludes needle biopsies, cytology, etc. — "star-shaped" nodular scarring is not present in asbestosis and other forms of asbestos-related pneumoconiosis – contrary to generally accepted, 1982 pathology standards for diagnosis of non-malignant asbestosis (Craighead and Abraham) --- mixed fibrosis (emphuysema and asbestosis) or even two types of asbestos disease (plaques and fibrosis) which are nevertheless district and distinguishable**

"Radiological evidence of mixed dust pneumoconiosis"

— CXR showing bilateral rounded or irregular opacities in the <u>upper</u> lungs field graded by a certified B-reader as a least 1/1 on the ILO scale

**Omits other valuable forms of radiology (CT) – upper lungs is scientifically unsound for asbestosis – an example of flaws when trying to legislate medicine and science – Mis-applies "B" reading (what about "A" readers: board certified radiologists and pulomonologists, etc.) – few if any "B" readers in Kansas (Kerby not a "B" reader) – 1/1 is not the standard for most scietntists (Murphy scandal at the ATS) => 1/0 is most likely asbestosis — 1/0 used in most epidemiological studies of asbestosis**

"Smoker"

— Smoked 1 pack-year during the last 15 years

**Overbroad – some (Surgeon General?) say no risk until 5-7 pack years – what if one pack year and heavy occupational exposure to asbestos**

"Substantial contributing factor"

— ". . . mixed dust is the predominant cause of the physical impairment alleged in the claim, and Dr. says to reasonable degree of medical certainty, without the exposure the impairment would not have occurred

**What does "predominant cause" mean? — Art Elmore – 50-50 asbestosis and COPD, Rheumatoid arthritis, etc.: what if mild COPD manifests first, but asbestosis rages later and kills – almost all laborers and blue collar workers in the 1960s were smokers – these diseases have up to a 60 year latency, or more**

"Substantial occupational exposure to mixed dust"

— employment for a cumulative period of at least five years in an industry and an occupation in which for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

> Abraham peer reviewed and published asbestosis case diagnosed with all of above crieria, except: one Summer of **exposure – Roggli says 15 days for Meso – what is the basis and reason for drawing this line? – even most conservative defense experts say 25 fiber-years which you can get in less than 5 years – what is a "substantial portion" — excludes exposures where "non-substantial portion of the work year involves asbestos exposure (e.g., Norma Sullivan) – years of exposure is irrelevant – dose is the issue**

(1) Handled mixed dust
(2) Fabricated mixed dust-containing products so exposed to same
(3) Worked with . . . so exposed on a regular basis
(4) Worked in close proximity to others engaged in (1), (2), or (3)

> What is "regular basis" and "close proximity" — these are scientific, medical and industrial hygiene issues which will create confusion for the Courts and expose the Courts to varying standards

Section 3: Mixed Dust Exposures:

(a) Physical impairment shall be an essential element of a mixed dust disease claim in any tort action in which the dust exposure is a substantial contributing factor

> **Other legislation requires "injury" not defined as impairment, based upon the current edition of AMA impairment standards — changes in the state-of-the-art require changes in the law? — does diagnosis trigger these other statutes of limitation (S of L)**

(b) (1) Non-malignant cases – prima facie showing required:

(A) Physical impairment
(B) impairment the result of a medical condition

(C) exposure a substantial contributing factor to the medical condition

**Mixed causes => no case**

(2) Prima facie showing shall include:

(A) competent medical authority has taken a detailed occupational and exposure history from the victim, or if deceased, the person most knowledgeable of the exposures, including:

**By definition has to be a treater – No treater takes a "detailed occupational history" – when deceased, no single witness can testify thoroughly to all of below => requires mixture of witnesses, which treaters are <u>not</u> going to interview**

(i) *all* of the person's *principal* places of employment *and exposures to airborne contaminants*

(ii) whether each such place involved exposures to airborne contaminants, including but not limited to mixed dusts, that can cause pulmonary impairment and if that type of exposure is involved, the nature, duration and level of exposure

**What are "airborne contaminants and what is relevance? — what about respiratory impairments that are different and distinguishable? – what treater is going to take this kind of histry and where is he/she going to get it? — what if incomplete – what recourse back on the doctor?**

(B) A competent medical authority has taken a detailed medical and smoking history, including a thorough review of past and present medical problems and the most probable causes of those problems

**What is the relevance of the long list of problems in an aging victim — Irrelevant and wasteful review of non-relevant conditions for what purpose?**

(C) A diagnosis by a competent medical authority based on examination and PFT that:

**PFTs are not always available to every treater and certainly not always done (exercise testing better) — diagnosis oftern based upon symptoms and CXR or CT**

(i) victim has a permanent respiratory impairment rating of "2"
(ii) The person has mixed dust pneumoconiosis based upon minimal radiological or pathological evidence of mixed dust pneumoconiosis

**Definitions above are unsound**

(c) (1) No action for lung cancer caused by mixed dust exposure if is/was a smoker, in the absence of:

**Does this include Mesothelioma?**

(A) physical impairment
(B) physical impairment resulting from a medical condition
(C) exposure was a substantial contributing factor

**Eliminates synergistic effect of tobacco and asbestos – all trades were 90%+ smokers – cannot exclude either tobacco or asbestos but asbestos gets a pass?**

(2) Prima facie showing shall include:

(A) Diagnosis by competent medical authority that:
(i) has primary lung cancer
(ii) mixed dust was a substantial contributing cause

(B) Evidence that is sufficient to demonstrate that at least 10 years have elapsed from the date of first exposure until the date of diagnosis – 10 year latency is a rebuttable presumption which the plaintiff must rebut

(C) Both of the following:

(i) Radiological or pathological evidence of mixed dust pneumoconiosis;

**Very controversial snd not scientifically established that asbestosis (ILO: 1/1) must be present to establish causation**

(ii) Substantial occupational exposure to mixed dust

**5 years cumulative exposure is way too much – Selikoff's Paterson NJ study => 3 months**

(D) (1) No wrongful death action for mixed dust disease (Meso?) in absence of prima facie showing that:

(A) Death was the result of a physical impairment
(B) death and impairment the result of a medical condition; and
(C) exposure was a substantial contributing factor to the medical condition

**Again, passes over synergistic effect**

(2) The prima facie showing shall include:

(A) Diagnosis by competent medical authority that exposure to mixed dust was a substantial contributing factor to the death

**Frequently, the treaters are not experts on causation**

(B) At least 10 years have elapsed from the first exposure until the date of diagnosis or death (rebuttable presumption)

(C) Both of the following:

(i) Radiological or pathological evidence of mixed dust pneumoconiosis

**Legislating an outcome of a scientific debate re necessity of underlying asbestosis, especially asbestosis requiring 1/1 ILO rating**

(ii) Substantial occupational exposure to mixed dust

**No safe level for Meso; 5 years is unnecessary for lung cancer – years of exposure says nothing about <u>amount</u> of exposure (e.g., Mrs. Bates – 2 weeks)**

(3) If a "household" claim, spouse must satisfy elements of the section (d)(1)(C) and victim must have lived with that person for prescribed time

**Cf. Mesothelioma**

Section 4:

(a) W/in 30 days after filing the complaint, plaintiff shall file a written report and supporting test results constituting prima facie evidence of impairment – upon defendant's motion, defendant shall get a reasonable opportunity (120 days) to challenge the adequacy of the proffered prima facie evidence for failure to comply with sections (b), (c), or (d) of section 3

> **Totally unfair – creating work for the District Court – what if the S of L is about to run — what is to be gained by this, except an extra step of litigation – clearly a defense bill, given 120 days (too long – delays equivalent to Federal Court standard total discovery period) to decide whether to challenge**

(b) If a defendant challenges the adequacy of the prima facie evidence of impairment, court shall determine whether the proffered prima facie evidence meets the requirements of (b), (c), or (d) of section 3, applying an SJ standard (****will happen in every case – bog down Courts)

> **Already shown how these provisions are unfair and unscientific**

(c) Court shall administratively dismiss without prejudice if fail to make prima facie showing – plaintiff may move to reinstate once makes showing (S of L?)

Section 5:

(a) No S of L until discovers or should have discovered impairment from non-malignant condition

(b) Cancer and non-malignant conditions give rise to distinct causes of action – no c/a for fear of cancer in non-malignant case

(c) Settlement of non-malignant claim may not require release of future claims for cancer

Section 6:

(a) No premises liability unless the alleged exposure occurred while on the owner's premises

(b) Presumption of safe levels if exposure occurred before 1-1-72 – rebutted if plaintiff proves knew or should have known that levels exceeded State's TLV and

owner allowed that condition to exist

**Giving premises owners a pass – I lectured for EPA on liabilities of premises owners => ordinary negligence standard is sufficient to protect them – some premises owners are truly negligent – ironic to presume that owners knew about dangerous levels and took steps to make safe – presumption of due care — if owner did not measure dust levels, it gets a pass**

(c) (1) No premises liability to invitees working on mixed dust products if worker held self out as qualified for such work unless rebut presumption that worker had superior knowledge to that of owner

**Cf. Worker may be "experienced" but may not know of presence of asbestos – why presumption and tilt against working men and women – what basis?**

(1) No premises liability to contractors before 1-1-72, unless owner directed the activity or denied permission for critical acts

**I.e., owner gets a pass for allowing dangerous conditions to exist?**

(2) No premises liability after 1-1-72 unless owner intentionally violates a safety standard (MAC)

Section 8:

(a) If multiple defendants, must prove substantial contributing cause of injury/loss by each defendant

(b) Plaintiff had Prod id burden along with substantial contributing cause

**Strained definition of substantial contributing cause – without the exposure would not have occurred => cannot say that in Meso or lung cancer and certainly cannot say that with asbestosis where each exposure contributes to the disease – unscientific**

Date: February 15, 2006

To: Senate Financial Institutions & Insurance Committee

From: Doug Wareham, Senior Vice President-Government Relations

Re: Substitute for Senate Bill 264

Madam Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 352 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear in support of Substitute for S.B. 264.

KBA's fundamental belief regarding the investment of local public funds has been and continues to be that they should be invested locally where they can provide the greatest economic benefit for the community that initially produced those revenues. We believe the report presented to this committee last week by Dr. John Wong of Wichita State University's Hugo Wall Institute of Public Affairs substantiates that belief and we want to thank this committee for taking the time to consider Dr. Wong's findings as part of this discussion.

While we believe investing local tax revenues back into the local community is the best policy for Kansas as a whole, we also recognize that there are other factors, including service, competition and community demographics that come into play when one takes a closer look at the investment needs of some local government units in our state. Recognizing these additional factors caused the Kansas Bankers Association to revisit and modify its long-standing policy regarding the exclusion of out-of-state financial institutions as a possible option for the investment of idle public funds.

KBA supports the language contained in Substitute for Senate Bill 264 and appreciates this committee's willingness to adopt this language as an alternative to the original Senate Bill 264, which our bankers were opposed to. Substitute for Senate Bill 264 allows local units of government to invest their active and idle funds in branches of an out-of-state bank or savings and loan, <u>if, and only if, they have a branch in the taxing district of the government unit investing those funds</u>.

To help clarify the impact of this proposal, I have provided you with a county map of the State of Kansas which identifies the counties in Kansas that currently have an out-of-state bank or savings & loan within its boundary. I've also provided a listing of the banking firms in these counties for your review. The outcry for changing Kansas policy regarding the investment of local tax revenues has largely come from the urban centers of our state. As you can see from the map and listing provided, the areas most affected, or in the case of local government units, the areas most benefiting from this change are those urban centers.

Senate FI&I Committee
Attachment 3-1
February 15, 2006

610 S.W. Corporate View 66615 | P.O. Box 4407, Topeka, KS 66604-0407 | 785-232-3444 | Fax 785-232-3484
kbaoffice@ksbankers.com | www.ksbankers.com

I do believe it is important to share that KBA's willingness to support this change is largely based on the fact that there are two federal laws in place that require financial institutions headquartered elsewhere to maintain minimum loan-to-deposit ratios when operating branch offices in the state of Kansas. I am referring to the Community Reinvestment Act of 1977 and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. In enacting the Community Reinvestment Act (CRA), Congress required Federal Banking Agencies to assess each bank's record of helping meet the credit needs of the local communities they operate in. The Riegle-Neal Act provides more specific guidelines for out-of-state banks by requiring their out-of-state branches to maintain a loan-to-deposit ratio of at least 50 percent of the relevant state's average loan-to-deposit ratio.

Attached to my testimony, you will find a copy of the July 7, 2005 notice from The Federal Reserve Board pertaining to the Host State Loan-to-Deposit Ratios and the Riegle-Neal Interstate Branching and Efficiency Act. I would like to draw your attention to the second paragraph of this notice, which states:

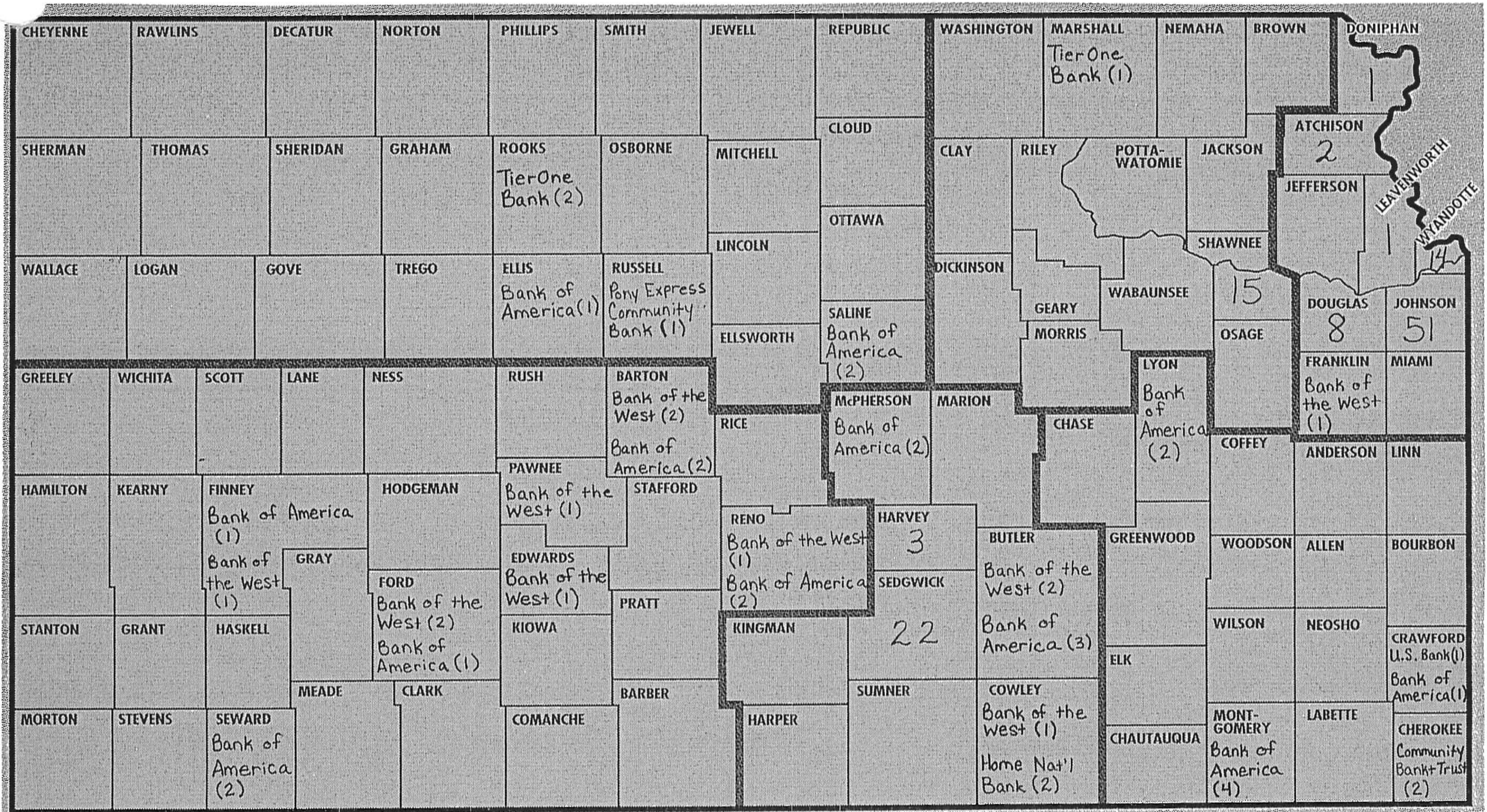
*"In general, section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the purpose of deposit production."*

You will note that the Federal Reserve posted 2005 Loan-to-Deposit Ratio for Kansas banks is 80%. In order to comply with the Riegle-Neal Act, out of state financial institutions must maintain a loan to deposit ratio of at least 40% to avoid facing scrutiny from their federal regulators. Federal regulators have the authority to close branches or restrict further expansion by a financial institution found to be using out-of-state branches solely for deposit production.

We hope this explanation provides you with even greater assurances that the changes proposed in Substitute for S.B. 264 will continue the long-standing Kansas policy of keeping public funds investments local, while still providing a wider array of investment options for communities served by financial institutions whose headquarters are not located in our state.

Finally, I would like to share a brief statement from Mike Stevens, KBA Board Chairman and Chairman of Centera Bank headquartered in Sublette, Kansas.

Thank you for the opportunity to appear in support of Substitute for S.B. 264 and I would be happy to stand for questions now or at the appropriate time.




Counties With Out-of-State Bank Branches

# Counties With Out-of-State Bank or Savings & Loan Branches

Atchison:
Bank Midwest, National Association (1)
World Savings Bank, FSB (1)

Barton:
Bank of the West (2)
Bank of America, National Association (2)

Butler:
Bank of the West (2)
Bank of America, National Association (3)

Cherokee:
Community Bank & Trust (2)

Cowley:
Bank of the West (1)
Home National Bank (2)

Crawford:
U.S. Bank National Association (1)
Bank of America, National Association (1)

Doniphan:
Pony Express Community Bank (1)

Douglas:
Bank of the West (1)
U.S. Bank National Association (6)
Bank of America, National Association (1)

Edwards:
Bank of the West (1)

Ellis:
Bank of America, National Association (1)

Finney:
Bank of the West (1)
Bank of America, National Association (1)

Ford:
Bank of the West (2)
Bank of America, National Association (1)

Franklin:

Bank of the West (1)

Harvey:
Bank of the West (1)
Bank of America, National Association (2)

Johnson:
Midwest Heritage Bank, FSB (2)
NorthStar Bank, National Association (1)
Missouri Bank and Trust Company of Kansas City (1)
Great Western Bank (1)
Enterprise Bank & Trust (1)
Los Padres Bank (2)
Bank Midwest, National Association (6)
Bank of the West (7)
World Savings Bank, FSB (5)
U.S. Bank National Association (11)
Bank of America, National Association (14)

Leavenworth:
Bank Midwest, National Association (1)

Lyon:
Bank of America, National Association (2)

Marshall:
TierOne Bank (1)

McPherson:
Bank of America, National Association (2)

Montgomery:
Bank of America, National Association (4)

Pawnee:
Bank of the West (1)

Reno:
Bank of the West (1)
Bank of America, National Association (2)

Rooks:
TierOne Bank (2)

Russell:
Pony Express Community Bank (1)

Saline:
Bank of America, National Association (2)

Sedgwick:
Bank of the West (6)
World Savings Bank, FSB (2)
Bank of America, National Association (14)

Seward:
Bank of America, National Association (2)

Shawnee:
U.S. Bank National Association (9)
Bank of America, National Association (6)

Wyandotte:
Douglass National Bank (2)
Bank Midwest, National Association (7)
U.S. Bank National Association (3)
Bank of America, National Association (2)

The Federal Reserve Board

**Joint Press Release**

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

For Immediate Release

July 7, 2005

## Banking Agencies Issue Host State Loan-to-Deposit Ratios

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency today issued the host state loan-to-deposit ratios that the banking agencies will use to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. These ratios update data released on August 26, 2004.

In general, section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the purpose of deposit production. Section 109 also prohibits branches of banks controlled by out-of-state bank holding companies from operating primarily for the purpose of deposit production.

Section 109 provides a process to test compliance with the statutory requirements. The first step in the process involves a loan-to-deposit ratio screen that compares a bank's statewide loan-to-deposit ratio to the host state loan-to-deposit ratio for banks in a particular state.

A second step is conducted if a bank's statewide loan-to-deposit ratio is less than one-half of the published ratio for that state or if data are not available at the bank to conduct the first step. The second step requires the appropriate banking agency to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank's interstate branches.

A bank that fails both steps is in violation of section 109 and is subject to sanctions by the appropriate banking agency.

The updated host state loan-to-deposit ratios are attached.

Attachment (136 KB PDF)

**Media Contacts:**

| | | |
|---|---|---|
| Federal Reserve | Andrew Williams | 202-452-2955 |
| FDIC | David Barr | 202-898-6992 |
| OCC | Dean DeBuck | 202-874-5770 |

2005 Banking and consumer regulatory policy

3-7

## SECTION 109 HOST STATE LOAN-TO-DEPOSIT RATIOS

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the agencies) today are making public the host state loan-to-deposit ratios[1] that the agencies will use to determine compliance with section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act). In general, section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state primarily for the purpose of deposit production. Section 106 of the Gramm-Leach-Bliley Act of 1999 amended coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-state bank holding company.

To determine compliance with section 109, the appropriate agency first compares a bank's statewide loan-to-deposit ratio[2] to the host state loan-to-deposit ratio for a particular state. If the bank's statewide loan-to-deposit ratio is at least one-half of the published host state loan-to-deposit ratio, the bank has complied with section 109. A second step is conducted if a bank's statewide loan-to-deposit ratio is less than one-half of the published ratio for that state or if data are not available at the bank to conduct the first step. The second step requires the appropriate banking agency to determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank's interstate branches. A bank that fails both steps is in violation of section 109 and subject to sanctions by the appropriate agency.

---

[1] The host state loan-to-deposit ratio is the ratio of total loans in a state to total deposits from the state for all banks that have that state as their home state. For state-chartered banks and FDIC-supervised savings banks, the home state is the state where the bank was chartered. For national banks, the home state is the state where the bank's main office is located. The home state of a foreign bank is determined by 12 USC 3103(c) and applicable agency regulations at 12 CFR 28.11(o) (OCC), 12 CFR 211.22 (Board), and 12 CFR 346.1(j) (FDIC).

[2] The statewide loan-to-deposit ratio relates to an individual bank and is the ratio of a bank's loans to its deposits in a particular state where the bank has interstate branches.



3-8

Section 109 of the Interstate Banking and Branching Efficiency Act

2005 Host State Loan-to-Deposit Ratios Using Data as of June 30, 2004

(Excludes wholesale or limited purpose CRA-designated banks, credit card banks, and special purpose banks)

| State or U.S. Territory | Host State Loan-to-Deposit Ratio |
|---|---|
| Alabama | 95% |
| Alaska | 75% |
| Arizona | 92% |
| Arkansas | 78% |
| California | 79% |
| Colorado | 72% |
| Connecticut | 88% |
| Delaware | 109% |
| District of Columbia | 77% |
| Florida | 83% |
| Georgia | 93% |
| Hawaii | 70% |
| Idaho | 83% |
| Illinois | 84% |
| Indiana | 149% |
| Iowa | 83% |
| Kansas | 80% |
| Kentucky | 90% |
| Louisiana | 78% |
| Maine | 99% |
| Maryland | 88% |
| Massachusetts | 75% |
| Michigan | 99% |
| Minnesota | 91% |
| Mississippi | 80% |

Section 109 of the Interstate Banking and Branching Efficiency Act

2005 Host State Loan-to-Deposit Ratios Using Data as of June 30, 2004

(Excludes wholesale or limited purpose CRA-designated banks, credit card banks, and special purpose banks)

| State or U.S. Territory | Host State Loan-to-Deposit Ratio |
|---|---|
| Missouri | 86% |
| Montana | 87% |
| Nebraska | 84% |
| Nevada | 61% |
| New Hampshire | 83% |
| New Jersey | 56% |
| New Mexico | 71% |
| New York | 82% |
| North Carolina | 79% |
| North Dakota | 124% |
| Ohio | 131% |
| Oklahoma | 79% |
| Oregon | 90% |
| Pennsylvania | 75% |
| Rhode Island | 79% |
| South Carolina | 92% |
| South Dakota | 85% |
| Tennessee | 92% |
| Texas | 71% |
| Utah | 83% |
| Vermont | 78% |
| Virginia | 76% |
| Washington | 97% |
| West Virginia | 85% |
| Wisconsin | 99% |

| Section 109 of the Interstate Banking and Branching Efficiency Act<br>2005 Host State Loan-to-Deposit Ratios Using Data as of June 30, 2004<br>(Excludes wholesale or limited purpose CRA-designated banks, credit card banks, and special purpose banks) | |
|---|---|
| **State or U.S. Territory** | **Host State Loan-to-Deposit Ratio** |
| Wyoming | 76% |
| American Samoa | 94% |
| Federated States of Micronesia | 19% |
| Guam | 59% |
| Puerto Rico | 71% |
| Virgin Islands | 44% |

Due to the legislative intent against imposing regulatory burden, no additional data were collected from institutions to implement section 109. However, since insufficient lending data were available on a geographic basis to calculate the host state loan-to-deposit ratios directly, the agencies used a proxy to estimate the ratios. Accordingly, the agencies calculated the host state loan-to-deposit ratios using data obtained from the call reports and summary of deposits reports, as of June 30, 2004. For each home state bank, the agencies calculated the percentage of the bank's total deposits attributable to branches located in its home state (determined from the summary of deposits), and applied this percentage to the bank's total domestic loans (determined from the call reports) to estimate the amount of loans attributable to the home state. The host state loan-to-deposit ratio was then calculated by separately totaling the loans and deposits for the home state banks, and then dividing the sum of the loans by the sum of the deposits.

Section 109 of the Interstate Act directs the agencies to determine, from relevant sources, the host state loan-to-deposit ratios. As discussed in the preamble to the joint final rule,

Prohibition Against Use of Interstate Branches Primarily for Deposit Production (62 FR 47728, 47731, September 10, 1997), implementing section 109, banks designated as limited purpose or wholesale banks under the Community Reinvestment Act (CRA) were excluded from the host state loan-to-deposit calculation, recognizing that these banks could have very large loan portfolios, but few, if any, deposits. Likewise, credit card banks, which typically have large loan portfolios but few deposits, were also excluded, regardless of whether they had a limited purpose designation for CRA purposes. Beginning in 2001, special purpose banks, including bankers' banks, were excluded because these banks do not engage in traditional deposit taking or lending.

The host state loan-to-deposit ratios, and any changes in the way the ratios are calculated, will be publicized on an annual basis.

P.O. Box 178
Topeka, KS 66601-0178
785 291-1000

Date: February 15, 2006

To: Senate Financial Institutions & Insurance Committee

From: Terry Neher, Senior Vice President, U.S. Bank, N.A.

Re: Substitute for Senate Bill 264

Madam Chairman and members of the Committee, I am Terry Neher, Senior Vice President appearing on behalf U.S. Bank N.A. of Topeka, Kansas. I appreciate the opportunity to appear in support of Substitute for S.B. 264. U.S. Bank is a member of the Kansas Bankers Association and I want to thank KBA, Kansas Association of Counties, and Kansas League of Municipalities for identifying a compromise on this issue. Due diligence and the fiduciary responsibility of our municipalities to maximize the use and safety of our tax dollars is important. With these proposed adjustments, municipalities will be clear as to their legal options available to them. They will have an array of financial institutions and opportunities to choose from so they can maximize their goal of investment of funds while creating efficiencies in their day to day operational needs.

I would like to begin by describing our bank to you. U.S. Bank, N.A. in the state of Kansas is represented by 400 employees with some lengths of stay being 30+ years. U.S. Bank, N.A. is located in three of the four congressional districts in Kansas and has 35 facilities and 48 ATM locations. We have been in these areas in some cases since the late 1800s with the traditional products and services. Over time, the banking industry has evolved from the traditional loans and deposits to providing efficiencies and speed along with security features through the use of technology. The technology available today is giving customers options to maximize their returns ranging from short term overnight investments to long term laddered sources of investing while creating operational efficiencies through automation of transactions and information. These types of services are provided by our bank and we earn a fee for the services provided and the personal touch of our employees.

From the lending perspective, U.S. Bank, N.A. provides various structures of loans, leases, letters of credit, temporary (temp) note financing, bond underwriting, etc. Our loan portfolio involves customers that have been with our financial institution for up to 50 years and we continue to ask for additional business in and around our communities. Our loan to deposit ratio in our various communities has been over 100%.

U.S. Bank is also an active supporter of the communities it serves by disbursing grants and sponsorships to various organizations, including the Lawrence Schools Foundation, the Kansas City Community Development Initiative, the Topeka Community Foundation and Habitat for Humanity in Kaw Valley.

Senate FI & I Committee
Attachment 4-1
February 15, 2006

At U.S. Bank, we pride ourselves on creating a prescription of products that meet the current and anticipated needs of our customers and prospects. We provide the ability for our customers to collect their funds quickly and efficiently, invest short term and long term while providing ongoing information at their finger tips. We have the ability to wire or ACH monies with various security thresholds determined by the customer and to compensate their employees affectively through the use of technology. Security is a constant and increasing issue that we also provide solutions for. In all consideration, the net effect is to allow municipalities the opportunity to obtain the products and services that for a fee will maximize the bottom line return and use of their resources.

In closing, I would simply state that I believe this is the correct policy for Kansas with respect to local public funds investments. The substitute for S.B. 264 will remove the question that various municipalities have had as to whether or not they can take advantage of the products and services that we provide. The substitute for S.B. 264 will create a level playing field for banks, large and small, by allowing more banks to bid to provide services to local governments in communities they already serve in. The compromise will also give local governmental units more choices for banking services and will allow financial institutions to provide them with the best possible services.

Once again, thank you for the opportunity to appear in support of Substitute for S.B. 264 and I would be happy to stand for questions now or at the appropriate time.

# Kansas and US Bank, N.A.

**The basics:**

- Population: 2,723,507
- Capital: Topeka
- Largest City: Wichita
- Nickname: "Sunflower State"

**U.S. Bank, N.A. presence:**

- Number of U.S. Bank employees: 398
- Statewide Market share (in deposits): 2.42 percent
- ATMs: 48
- Branches: 30
- Private Client Group Offices: 3
- U.S. Bank has mortgage branches in Kansas

**U.S. Bank, N.A. Facilities per Congressional District**

| | | | |
|---|---|---|---|
| 1st District: | 0 | 3rd District: | 23 |
| 2nd District: | 11 | 4th District: | 1 |

**Recent grants:**

- American Cancer Society - Topeka
- American Lung Association of Kansas
- Bishop Miege Foundation
- Catholic Charities of Kansas City
- Catholic Education Foundation - Overland Park
- City Gate Ministries Association
- Habitat For Humanity - Kaw Valley
- Heart of America Council Boy Scouts
- Housing & Credit Counseling, Inc.
- Johnson County Young Matrons, Inc. (JCYM)
- Juvenile Diabetes Research Foundation - Shawnee Mission
- Kansas City Community Development Initiative
- Kansas City Jazz Orchestra
- Lawrence Arts Center
- Lawrence Schools Foundation
- Marian Clinic
- St. Joseph Institute for the Deaf
- Topeka Community Foundation
- Topeka Festival Singers, Inc.
- United Way
- Washburn Endowment Association

# U.S. Bank, N.A. Facilities

| DISTRICT | ADDRESS | CITY | STATE | ZIP |
|---|---|---|---|---|
| 2 | 2701 Iowa St | Lawrence | KS | 66046-4155 |
| 2 | 309 N Broadway St | Pittsburg | KS | 66762-4806 |
| 2 | 443 N Main St | Rossville | KS | 66533-9803 |
| 2 | 10030 NW Hwy 24 | Silver Lake | KS | 66539 |
| 2 | 434 SW Jackson St | Topeka | KS | 66603-3328 |
| 2 | 1017 SW Gage Blvd | Topeka | KS | 66604-1797 |
| 2 | 5730 SW 21st St | Topeka | KS | 66604-3720 |
| 2 | 1064 SW Wanamaker Rd | Topeka | KS | 66604-3807 |
| 2 | 3600 SW Topeka Blvd | Topeka | KS | 66611-2279 |
| 2 | 800 SW Jackson St | Topeka | KS | 66612-1216 |
| 2 | 3625 NW 46th St | Topeka | KS | 66618-2500 |
| 3 | 700 Central Ave | Kansas City | KS | 66101-3548 |
| 3 | 5429 Turner Dr | Kansas City | KS | 66106-1116 |
| 3 | 10959 Parallel Ave | Kansas City | KS | 66109-4432 |
| 3 | 402 West Ninth St. (Motor Bank) | Lawrence | KS | 66044 |
| 3 | 900 Massachusetts St | Lawrence | KS | 66044-2868 |
| 3 | 1807 W 23rd St | Lawrence | KS | 66046-2747 |
| 3 | 1600 E 23rd St | Lawrence | KS | 66046-5014 |
| 3 | 3500 W 6th St | Lawrence | KS | 66049-3245 |
| 3 | 4901 W 119th St | Leawood | KS | 66209-1524 |
| 3 | 8600 Shawnee Mission Pkwy | Mission | KS | 66202-2959 |
| 3 | 4700 W 50th Ter | Mission | KS | 66205-1268 |
| 3 | 4700 W 50th Ter | Mission | KS | 66205-1268 |
| 3 | 15380 W 119th St | Olathe | KS | 66062-1073 |
| 3 | 16665 W 151st St | Olathe | KS | 66062-5641 |
| 3 | 7000 W 75th St | Overland Park | KS | 66204-3029 |
| 3 | 7500 College Blvd | Overland Park | KS | 66210-1855 |
| 3 | 9900 W 87th St | Overland Park | KS | 66212-4745 |
| 3 | 10100 W 119th St | Overland Park | KS | 66213-1604 |
| 3 | 8401 W 135th St | Overland Park | KS | 66223-1199 |
| 3 | 5100 W 95th St | Prairie Village | KS | 66207-3305 |
| 3 | 6940 Mission Rd | Prairie Village | KS | 66208-2609 |
| 3 | Roeland Park | Roeland Park | KS | 66205 |
| 3 | 15610 Shawnee Mission Pkwy | Shawnee | KS | 66217-9324 |
| 4 | 7570 W 21st St N | Wichita | KS | 67205-1734 |

# UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

**Charles A Henry**
**Director of Revenue/Treasury**

710 North 7th Street
Kansas City, Kansas 66101

Phone: (913) 573-2819
Facsimile: (913) 573-8169

## TESTIMONY
## COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
## SENATE BILL 264

February 15, 2006

Senator Teichman, Chair, and Members of the Committee,

I am here on behalf of the Kansas County Treasurers Association and the Unified Government of Wyandotte County/Kansas City, Kansas to offer strong support for Senate Bill 264 and urge its passage.

The main change to this bill is the change in the definitions outlined in K.S.A. 9-1408 and K.S.A. 12-1675a. In particular, this bill allows local governments to place money in any bank with a physical presence in the jurisdiction. This is a significant change from the current statutes which limited us to placing funds only in those financial institutions with a Kansas Charter or "main" office in Kansas.

In our County, a lot of banks have a physical presence and an active banking presence. However, only a few of those have a Kansas Charter. In particular, consideration must be given to Douglass Bank, Bank Midwest, U.S. Bank, and Bank of America. Each of these institutions provide many jobs in our community, pay property taxes to us, handle deposit accounts for many of our residents, provide loans to many of our residents and businesses, make considerable charitable donations to organizations in our community, and undertake projects that are for the benefit of citizens of our community. Despite this effort to be positive citizens of our community, current law prevents the Unified Government from investing with them except under very complex circumstances.

U.S. Bank has underwritten loans for several housing projects in Wyandotte County. Included in a summary of their activity are: $1.4 million equity capital for a new 48 unit affordable housing project, over $3 million in equity capital and $1.35 million in debt financing to renovate townhomes for rental to families with income of 60% of the statistical median family income, and the arrangement of financing of over $9 million to renovate a 345 unit apartment complex for rental to low income citizens. U.S. Bank has also made cash donations of approximately $50,000 per year to charitable organizations that serve our citizens.

Bank of America was the financing partner on the first new multifamily development in downtown Kansas City Kansas in 30 years. This involved demolition of a blighted block and considerable new construction. Financing of this project included over $5 million in loans. They have also been the primary sponsor of a project which involves the renovation of the old City Hall in Kansas City into loft apartments. This project involved a loan in excess of $5 million and equity capital of nearly $4 million.

We would like to expressly thank the Kansas Bankers Association for arranging a conference last summer on this issue and proposing the language currently included in this bill. We appreciate their listening to the needs of local government in the development of their proposal. We strongly support this bill and urge the passage of it immediately. These changes are significant for our citizens and taxpayers.

Senate FI&I Committee
Attachment 5-1
February 15, 2006

# SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

Wednesday, February 15, 2006

Senate Bill No. 264

Testimony of Thomas G. Franzen. CTP
Director of Financial Management, Johnson County, KS

Madam Chair and Members of the Committee:

My name is Thomas Franzen, and I am representing Johnson County Government. I am appearing in support of Senate Bill No. 264.

As currently proposed, Senate Bill No. 264, in effect, proposes to remove the requirement that any "municipal or quasi-municipal corporation" (governmental entity) utilize only depository financial institutions that have a Kansas state charter. The intent of this bill would be beneficial to taxpayers primarily because of the bill's impact on competition. By restricting depository financial institutions to only those with a Kansas state charter, the current environment limits competition between financial institutions, potentially keeping costs of banking services high and yields on cash balances low.

The financial services sector in general, and the banking industry in particular, continue to experience an increase in mergers and acquisitions in recent years. Conceivably, this continued trend could lead to a minimal number of depository financial institutions with Kansas state charters. Decreasing the pool of eligible depository financial institutions could lead to a deterioration of the competitive landscape between eligible institutions. Financial institutions compete primarily on cost and service. Without sufficient competition, cost increases could be more prevalent, while service levels could decline.

In certain geographical areas of the State, the number of eligible depository financial institutions may be limited. Acquisition by a national or regional banking organization without a Kansas state charter could force some governmental entities with limited choices to establish a new relationship with an eligible depository financial institution that is more costly, or less convenient, or both.

Current legislation limits choices regarding depository financial institutions. In light of the merger and acquisition activity within the financial services sector over the past decade, modifying the current legislation is a prudent step to allow governmental entities to conduct business at the lowest possible cost, thereby passing potential savings onto taxpayers in the form of a reduced mill levy.

Thank you for the opportunity to address this important issue before the committee. I would be pleased to answer any questions.

Senate FI & I Committee
Attachment 6-1
February 15, 2006

KANSAS
ASSOCIATION OF
COUNTIES

**TESTIMONY**
concerning Senate Bill No. 264
**re. Fund Depositories for Municipalities**
Senate Financial Institutions and Insurance
Presented by Randall Allen, Executive Director
Kansas Association of Counties
February 15, 2006

Chairman Teichman and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. I am here today to express our support for Senate Bill 264, reforming the statutory bank depository requirements for municipalities.

As you probably know the bill would allow counties to select any bank, savings and loan association or savings bank that has an office within the county as a depository for county funds, without regard to whether the bank is a federally chartered or state-chartered financial institution. Currently, only state-chartered banks are eligible to be depositories for county funds, which reduces the options that some of our counties have. The current law particularly affects (adversely) those counties with very large fund balances in that there are relatively fewer banks which can collateralize their deposits and service their needs.

Essentially, what SB 264 does is to allow any bank within the jurisdiction which has a bricks and mortar presence to be eligible to hold the funds. SB 264 removes the very old restriction which has been placed on municipalities which was long ago removed from the State and its banking practices. We want to emphasize that **nothing** in SB 264 **requires** the board of county commissioners to move its funds from a bank or banks which currently hold the county's funds. In many cases throughout Kansas, we suspect that no significant changes will be made in where the funds are deposited as a result of this proposed legislation. However, for purposes of granting county decision makers the right to place county funds where they will have the best return on their deposits, we think this bill is good public policy.

Finally, we want to offer our thanks to the Kansas Bankers Association for convening a group of stakeholders last summer in an effort to work through this issue, which has long been a point of contention among our members. We have reached this compromise, which we think makes sense and which assists county commissioners and county treasurers in making the very best business decisions they can make.

Thank for your hearing our testimony. I would be happy to stand for questions at the appropriate time.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler by calling (785) 272-2585.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

Senate FI&I Committee
Attachment 7
February 15, 2006

8500 Santa Fe Drive
Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

Testimony Before The
Senate Financial Institutions & Insurance Committee
Regarding Senate Bill 264
February 15, 2006

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in favor of the Substitute for Senate Bill 264. We believe this substitute legislation is a fair compromise for cities, financial institutions, and taxpayers.

Current law limits local units of government to dealing only with financial institutions chartered in the State of Kansas. While such a requirement may have been workable years ago, the reality of the global economy has greatly reduced the number of state-chartered institutions in the financial services industry. This artificial investment barrier for local governments does not protect the best interests of the taxpayer. The State of Kansas recognized the imprudence of limiting itself to state-chartered institutions, and no longer subjects itself to this limitation.

Allowing cities to work with nationally chartered financial institutions will increase competition for the use of taxpayer dollars. Increased competition will aid efforts to maximize interest earnings on idle funds, improving cities' revenue situations and helping offset the need for possible property tax increases.

The presentation made last week by Dr. John Wong of Wichita State University provided an interesting look at the impact of public funds investing. Unfortunately, the study did not consider two important elements to the investment of idle funds issue. One is the role of elected bodies. Quite simply, the elected members of governing bodies will look carefully at the risks and benefits associated with the investment of idle public funds. We cannot conceive of a governing body making investment decisions that would be harmful to the communities they are elected to represent.

The second issue not discussed in Dr. Wong's report is the availability of banking services. Finding state chartered institutions that can provide necessary banking services – purchase card programs and credit card services, for example – is in some communities a daunting task. For the City of Overland Park and many other local jurisdictions, these services are as integral to our financial management as additional opportunities for the investment of idle public funds.

Again, we appreciate the hard work of all parties, particularly the financial institutions, in coming up with a compromise that meets the needs of cities in their investment of idle funds and the banking services they require. We request that you recommend Substitute for Senate Bill 264 favorably for passage.

Senate FI&I Committee
Attachment 8
February 15, 2006

League of Kansas Municipalities

300 SW 8th Avenue, Suite 100
Topeka, Kansas 66603-3951
Phone: (785) 354-9565
Fax: (785) 354-4186

**To:** Senate Financial Institutions and Insurance

**From:** Don Moler, Executive Director

**RE:** Support for SB 264

**Date:** February 15, 2006

First, I would like to thank the Committee for allowing the League to testify today in strong support of SB 264. SB 264 provides greater flexibility for cities, counties, and other local units of government, by allowing taxpayer dollars to be maximized. The League convention of voting delegates, at our October Conference in Wichita, adopted the following as part of our action agenda:

> *"Support legislation which would increase competition for the placement of idle public funds..."*

We believe SB 264 accomplishes this very straight-forward goal. It has been brewing as an issue of concern to local governments for several years as a result of the continuing changes in the banking industry. We now have a situation where many of our larger units of government find that most of the banks which would logically be depositories for their funds are no longer eligible to hold these funds because they are not state chartered banks and do not have a main office located in the state of Kansas.

This legislation will be beneficial for both large and small cities and their taxpayers. Specifically, allowing banks which are not chartered in Kansas to bid on public moneys would reintroduce competition into the state banking market and thus allow local units to maximize the return on the public's tax dollar. This is a point which cannot be overstated as the difference of a .5% interest, when investing billions of dollars, is a sizeable amount of money, perhaps as much as $10,000,000 - $20,000,000 per year. It should also be stressed that the safety of the public's money will not be impacted. This is the case because the rules which apply to investments today would apply to investments tomorrow. The only difference would be fostering competition by allowing more banks to be eligible to bid on active and inactive funds of local governments in Kansas.

We fully support the compromise found in SB 264 and hope the Committee will report the bill favorably.

Senate FI & I Committee
Attachment 9
February 15, 2006

HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 15, 2006

Re: Substitute for Senate Bill No. 264

The Heartland Community Bankers Association appreciates the opportunity to share some observations regarding Substitute for Senate Bill 264 with the Senate Committee on Financial Institutions and Insurance.

The contents of the substitute bill reflect HCBA's long-time position on public funds. HCBA believes the compromise contained in Substitute for SB 264 balances the desire of units of government to get a greater return on their money versus the need to support Kansas-based financial institutions. We opposed Senate Bill 264 as it was originally drafted because the bill would have allowed public funds to be deposited with depositories that had no ties to, or investments in, the local communities from which they would be accepting deposits. However, we believe the substitute bill represents a fair compromise for all parties.

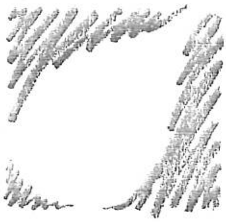
Despite the compromise on the issue of eligible depositories, we remain concerned with other parts of the current public funds process in Kansas. For all of the talk about the need for greater competition and more choices for local units of government, HCBA occasionally hears from member institutions that they are having difficulties with being allowed into the bidding process. We do not understand why the local units of government who want to broaden the pool of eligible depository institutions fail to make full use of already eligible depositories.

The way we read current law, if a bank, savings and loan or savings bank can provide "satisfactory security therefor," they "**shall** be designated as such official depositories." Several of our members have contacted governmental units in markets where they have a branch office and have encountered difficulties being designated as official depositories. In some instances repeated phone calls and letters inquiring as to the process for becoming an official depository go unanswered. These institutions have demonstrated their ability to provide satisfactory security for other units of government. In other instances, we hear from members who are designated as official depositories but are not given regular opportunities to bid on funds. They know of no, and are not given any, rationale for being excluded from the public funds process.

We would encourage the proponents of the original SB 264 to make sure their various constituencies are not excluding would-be eligible depositories from the public funds bidding process. It would be a shame if public funds were suddenly made available to out-of-state institutions while Kansas institutions are refused a seat at the bidding table.

Thank you for your consideration of these thoughts.

Senate FI & I Committee
Attachment 10-1
February 15, 2006



KANSAS
RURAL
WATER
*association*

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 785/336-3760
FAX 785/336-2751 • http://www.krwa.net

**Comments on SB 264**
**Before the Senate Financial Institutions**
**and Insurance Committee**
**February 15, 2006**

Dear Madam Chairman and Members of the Committee:

My name is Dennis Schwartz. I am President of the Board of Directors of the Kansas Rural Water Association. I am also Manager of Rural Water District No. 8, Shawnee County. I appreciate the opportunity to present written comments in support of SB 264 on behalf of the 295 rural water districts in Kansas and 450 member cities.

As a general principal, the Kansas Rural Water Association supports legislation that allows its Rural Water District and municipal members to obtain the best service possible for their water system customers and to obtain the best return on their investments. I would note that, even with the changes contained in this Bill, many of our members that are located in more rural areas still will find themselves with extremely limited choices available to them under the law. However, to the extent that this Bill relaxes restrictions that limit where depository accounts can be maintained and where and how idle funds can be invested, KRWA's goals are being furthered. As a result KRWA respectfully request that the committee act favorably on SB 264.

Respectfully submitted,

Dennis F. Schwartz
President

KANSAS ASSOCIATION

OF SCHOOL BOARDS
1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on **SB 264**
before the
**Senate Financial Institutions and Insurance Committee**

by

**Jim Edwards, Governmental Relations Specialist**
Kansas Association of School Boards

**February 14, 2006**

Chairman Teichman and Members of the Committee:

I thank you for allowing me the opportunity to present KASB's position as it relates to the investment of idle public funds as described in SB 264, as amended by the Committee last Thursday. We appear as a proponent to the language developed by the Kansas Bankers Association.

We understand the points made in the report of Dr. Wong as presented to the Committee on Thursday of last week. We also understand the point that local school boards are elected by the patrons of their districts to represent them and to ensure that the dollars provided to schools are used wisely and they take their elected offices, just as you do, seriously. We believe that the language drafted by the Kansas Bankers Association is a compromise that allows both the points alluded to above to be taken into account.

Thank you for allowing me to present KASB's position on this important matter and I would respond to questions at a later date, should it be requested.

Date: February 15, 2006

To: Chairman Ruth Teichman
Senate Financial Institutions & Insurance Committee Members

From: Michael D. Stevens, KBA Board Chairman

Re: Substitute for Senate Bill 264

On behalf of the Kansas Bankers Association, I want to thank the Senate Financial Institutions and Insurance Committee for the time and energy you are devoting to this latest discussion on public funds investment policy. I can assure you, the process of discussing and developing the language you are currently considering in the form of Substitute for Senate Bill 264 was a challenging one for the many bankers that serve on KBA's State Affairs Committee, KBA's Board of Directors and KBA's Governing Council. I am proud of the fact that when faced with this difficult issue, KBA was able to identify a solution.

Once again, thank you for your on-going efforts on behalf of the State of Kansas and I encourage your positive consideration of Substitute for S.B. 264.

610 S.W. Corporate View 66615 | P.O. Box 4407, Topeka, KS 66604-0407 | 785-232-3444 | Fax 785-232-3484
kbaoffice@ksbankers.com | www.ksbankers.com

Community Bankers
Association of Kansas

*Directed By The Members We Serve*

Senate Financial Institutions and Insurance Committee
February 15, 2006
Community Bankers Association of Kansas
Kathy Patton Strunk, Government Relations

Madame Chairman and Members of the Committee.

The Community Bankers Association of Kansas appreciates the time allowed to testify before your committee today.

The whole idea of change to the current Public Funds Investment Law would severely weaken the Kansas economy, especially on the local level. As the study by Dr. Wong indicated the impact of the loss in rural areas would be magnified by the fact that it would be much more difficult for borrowers in these areas to secure alternative resources, especially for small business and agricultural purposes. In fact, a loss of economic activity and property tax revenues would also be experienced by urban areas according to the research Dr. Wong compiled.

The ability to loan funds to the local community would change dramatically if all of the public funds went to other financial institutions. Changes would still occur even if the funds were replaced with other borrowing sources. Public funds are simply core and stable deposits.

One of our member banks from Paola explained how important public funds are in their area. When the public entities invest with us, we invest back into the communities with home loans, business loans, commercial real estate projects, auto loans and home improvement loans—all of which increase valuations and sales tax revenues. All of which flow back into the public entities. If that money is removed from circulation for the local taxpayer, it would then hamper economic development and potential increase to the tax base.

Is the possibility of the following events occurring to the Kansas communities worth the risk of Public Funds deposits leaving the rural banks? As one of our member banks explained this could occur: 1) Diminished loan making possibilities, 2) Diminished rural economies and 3) Diminished 'Main Street' growth. All of which would have a huge ripple effect throughout the local economy.

Senate FI & I Committee
Attachment 11-1
February 15, 2006

3003 SW Van Buren, Suite A • Topeka, Kansas 66611-2224 • Phone 785.271.1404 • FAX 785.271.1508 • E-mail: info@cbak.com • www.cbak.com

After extensive discussion and deliberations about Public Funds and listening to Dr. Wong's presentation this week the Community Bankers Association of Kansas continues to support current law with regard to Public Funds. A review of the study proved what we have known all long...that local county government units receive the highest benefit when taxes can be used for reinvestment by local financial entities. When funds leave the county, they eliminate potential dollars available for reinvestment. Thus, we oppose Senate Bill 264. The bankers emphasized the issue is not about urban and rural or large and small. It is about the Kansas economy, counties and local communities.

Respectfully submitted.

BURLINGAME, KANSAS 66413
115 S. Topeka • P.O. Box 5
Phone 785-654-2421
FAX 785-654-3567

OSAGE CITY, KANSAS 66523
18 Main • P.O. Box 275
Phone 785-528-3133
FAX 785-528-3160

**Testimony before The Kansas Senate Financial Institutions and Insurance Committee regarding Senate Bill No. 264**

February 15, 2006

By John H. Fowler, President – First State Bank of Burlingame

Good Morning Madame Chairman and members of the Committee. I am John Fowler, President of the First State Bank of Burlingame, Kansas and I am here to speak in opposition to Senate Bill No. 264. I appreciate the opportunity to address you on this issue of vital importance to both Kansas community banks and Kansas public entities.

I was raised in Burlingame, Kansas, a town of 1,200, the son of a banker, who was also the son of a banker. My grandfather started a bank in Arcadia, Kansas, which at the time had a population of around 1,000. He also started banks in Kansas in the towns of Weir and Arma, both some of the smallest communities in the state. These banks were run by uncles and aunts and after my grandfather's death, my grandmother was an active part of their boards. I tell you this to show that I am keenly aware of the symbiotic relationship between small community banks and the communities they serve. In addition to my over 10 years of experience in a small community bank with total assets of less than $60,000,000, I was also a field examiner for the state bank commissioner for five years before moving to the main office for another three years to review applications for bank changes. My position in the commissioner's main office was created to handle the introduction of inter-state banking in Kansas.

Much of what I have to say in regard to the interdependence of community banking and public fund deposits in the state of Kansas is backed up by a study jointly commissioned by the Community Bankers Association of Kansas and the Kansas Bankers Association. For this study, Dr. John D. Wong was engaged to determine how public funds investment policy impacts the Kansas economy.

Dr. Wong's bio is attached to this study and notes that he served on the Governor's Tax Equity Task Force as a consultant on the distributional impact of tax reform and the effect of taxation on economic development in 1995. He is presently the principal author of the annual Governor's Economic and Demographic Report and has previously served as a consultant for several cities and counties.

My primary and foremost concern in regard to the deposit of public monies is that they benefit the public that paid the taxes to create them. This has been the long standing intent of laws regulating the deposit of public funds for good reason. Carl C. Nielsen in his 1985 study "The Investment of Surplus Funds of Local Governments in the State of Kansas," noted that if there were to be deterioration in deposits caused by a change in legislation, one of two things would happen. Either the financial institutions would replace the lost deposits by purchasing deposits from other sources, perhaps at inflated rates, or they would find it necessary to reduce their levels of lending. If the former were to occur, the higher costs of funds would result in higher rates to borrowers. If the latter occurred, some customers; agricultural, commercial, or consumer; might find credit difficult to obtain. EITHER WAY, THE IMPACT ON BORROWERS WOULD BE DAMAGING. Mr. Nielsen went on to say that the most likely scenario, if local idle funds were removed from local financial institutions, would be reductions in loans. Such reductions in loanable funds, he concluded, would have an adverse effect of major segments of

the Kansas economy. An analysis adapted from the model developed by Joseph Haslag in his 2004 study prepared for the two Missouri Bankers Associations concludes that if Senate Bill No. 264 were adopted, local governments in Kansas would be allowed to deposit funds in any financial institution that has an office in Kansas. Although the Community Reinvestment Act (CRA) limits the magnitude of the loss, this could result in a substantial loss of financial resources for many communities. An all too common example of this loss of financial resources is seen as we recently gained an agricultural customer who was dropped by one of the largest multi-state banking organizations in the nation because they decided they didn't want to financial agricultural projects anymore. Without local public funds deposits, which account for approximately 20% of our total deposits, we would not have been able to accommodate this borrower.

I do understand the desire to earn more on the assets one has and the administrators of public entities are no different. Another thing I understand is that it is important to have safeguards in place to ensure investments are not lost. Mr. Haslag also stated in his 2004 study that "the primary rationale for restricting local government investments is to protect local government funds." He went on to state that "state and local government revenues depend on tax receipts and relative returns paid on local government's investments. The upshot is that simply picking the highest yielding asset is not always the investment strategy that yields the highest general fund revenues. It should be kept in mind that because Kansas bankers specialize in assessing risks of Kansas borrowers, deposits placed in Kansas banks are more likely to be returned to the Kansas economy."

Dr. Wong notes that in a review of present Kansas law, there is a "safety net" provision in the law. Regardless of how few bids are received on local idle funds, the highest bid must equal or exceed the 91-day Treasury bill rate or alternatives are provided to the governmental unit. Hence, it would appear that even in units with no competition, their idle funds can be invested at market rates.

After review of Dr. Wong's study, it would appear the public entities supporting Senate Bill No. 264 have a very narrow view of their vital role in their communities' prosperity as a whole and are grasping for only that additional revenue which is obvious and requires little or no forethought. The term "shooting ones self in the foot" comes to mind.

One objection which has been addressed to me is that it appears community banks are uncomfortable with competing for the public funds in our taxing units. Let me first say that for us, First State Bank, in a community of approximately 1,000, many of the public funds we have in our bank were gained and are maintained by a competitive bid process. We also have been awarded bids on a county-wide basis in a county with a population of approximately only 17,000. We hold deposits for over 20 different public fund units with over $10,000,000 in total balances. We pay the 91-day Treasury bill rate on non-bid deposits and more on bid deposits. My question is why would a public fund entity want to remove their funds, which Dr. Wong's report clearly shows to be a "precious commodity," from within their unit? In discussions with Dr. Wong, a state recognized expert and authority on the Kansas economy as well as public finance and policy issues, HE STATED IN NO UNCERTAIN TERMS that there would be no way a public fund unit could earn sufficient additional revenue from investment outside the community or local economy to overcome the loss of the benefit of those funds staying within that local economy.

He likened the obsession with earning an additional 50 to 100 basis points in rate on funds without regard to other factors to someone counting the change in their front pocket while someone is stealing their wallet from their back pocket.

I once heard a quote - "I have never seen a successful bank in an unsuccessful community." It seems abundantly apparent to me that you cannot have a successful community without the participation of the community government.

Thank you for your time and I would be happy to answer any questions.

ST. MARYS STATE BANK

CHRISTIAN A. ROYER, Chr ard
BRIAN L. VAUBEL, President
DAVE BRUNIN, Exec. Vice Pres.
JAMES L. MEES, Vice Pres.
MARK D. METZLER, Vice Pres.
ED DEWEY, Vice Pres.
LONNIE L. WILD, Vice Pres.
KAREN S. LETT, Cashier
LINDA K. DOHRMAN, Asst. Tr. Officer

# Testimony before the Kansas Senate Financial Institutions and Insurance Committee Regarding Senate Bill No. 264

February 15, 2006

Brian L. Vaubel – President, St. Marys State Bank, St. Marys, KS

Good morning Madam Chairman & committee members. I am Brian Vaubel, President of the St. Marys State Bank in St. Marys, KS. I very much appreciate the opportunity to speak in support of current public funds policy.

For a bit about my background, I have a degree in accounting, I spent five years as an examiner with the FDIC in Overland Park and I have been a commercial banker for 26 years. I have been with the St. Marys State Bank for 21 years, the last four as President.

St. Marys is a town of approximately 2,500 people and is located just 20 miles West of Topeka. We have two financial institutions in our city: our bank has been in St. Marys since 1927 and a branch of the Clifton bank moved into town approximately 12 years ago.

I know this committee has already heard testimony containing the theories, the research, the technical economics, the so-called "models", etc., etc., etc. My goal today is to give you a short simple picture of what it is like in the "trenches" of Kansas banking. I would like to start by telling you a little about how our bank works. We have approximately $70,000,000 in assets of which $50,000,000 are loans. We fund these assets with a mix of $7,000,000 in owners' capital, $10,000,000 of borrowed money and



905 E. BERTRAND • P.O. BOX 188 • ST. MARYS, KANSAS 66536 • PHONE (785) 437-2271 • FAX (785) 437-6471 • www.smsb.org

$53,000,000 in deposits. Of those deposits, approximately $4,500,000 are public funds. The local school district and the City of St. Marys are the major source of public funds in St. Marys and they are shared with the local branch bank on a 5-year rotating basis. From the numbers you can see that our loan-to-deposit ratio is 94%, i.e. 94% of the money we have on deposit is loaned to our customers. In my days as a bank examiner, this would warrant some extreme supervision because of liquidity problems. Today it is of less concern because banks like ours are able to borrow funds from the Federal Home Loan Bank in Topeka, and, we do that as indicated by our $10,000,000 in borrowed money. But, this is an expensive source of funds. The problem I face every day is where am I going to find additional funds to loan to my customers. My community is growing and the loan demand is great but the deposits just aren't there. Why not you ask? Like many small communities in Kansas, our core depositors are retired folks who have their life savings in our bank. But unfortunately, these folks sometimes pass on and the money is passed to the children who have moved away to other areas of the country. I have personally seen this happen in our bank many times in the last few years. There goes my deposit base and off I go to the Federal Home Loan Bank to borrow more money, to loan to my customers, so my community can keep growing.

And now today we are here discussing ways to take more money out of my community, tax dollars that were paid by my customers, and redirect them to some investment counselor who can promise a few more basis points on their return. My source of funds for loans for local businesses, farmers, cars, homes, remodeling etc. is slowly being eaten away.

I have been a member of the Community Bankers Association of Kansas for over 18 years and have met some very good bankers during this time. I don't know anybody that is prouder of their community and the role they play in making that community a special place to live than a Kansas banker. Please don't make it harder for us to do our job. Let's keep Kansas tax dollars at work in Kansas.

Therefore, I must oppose Senate Bill 264 as I feel it would have a dramatic and detrimental effect on the economic development of my community, my county and the State of Kansas. Let's keep the status quo and continue to make Kansas the great place it is to work and play.

Thank you.