

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 January 31, 2007 in Room 234-N of the Capitol.

All members were present.

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:

Representative Gatewood  
Gary Blackburn, KDHE

Others attending:

See attached list.

The Chair called the meeting to order and welcomed everyone.

Melissa Calderwood, Legislative Research Department, gave an overview of the National Conference of State Legislatures' annual meeting.

Gift Cards and Gift Certificates

The 2006 Kansas Legislature made amendments to the Kansas Consumer Protection Act to create requirements for the sale of gift cards and gift certificates. **HB 2858** makes it a violation of the Kansas Consumer Protection Act from and after January 1, 2007, to sell a gift card or gift certificate containing an expiration date which is less than five years from the date of purchase. A gift certificate is defined as a written promise given in exchange for full or discounted payment or without any money or other thing of value being given in exchange, to provide merchandise in a specified amount or of equal value to the bearer of the certificate. A prepaid bank card is defined as a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution in a predenominated amount useable at multiple, unaffiliated merchants or at automated teller machines, or both.

The bill also provides that a merchant shall not be required to redeem a gift card or gift certificate for cash. No fees may be charged against the balance of a gift card or gift certificate within 12 months from the date of issuance of the card.

In Kansas, 2007 **HB 2179** would amend the gift card and gift certificate exemption created by the 2006 Legislation to include gift certificates or gift cards that are sold or distributed by non-profit or not-for-profit organizations for the purpose of the promotion of civic improvement, including economic development. The bill has been referred to the House Commerce and Labor Committee.

Interchange fees

The U. S. Government Accountability Office recently reviewed credit card fees and disclosures. Among other things, the GAO analyzed disclosures from popular credit cards and obtained data on the rates and fees paid on accounts from six large issuers. A usability expert reviewed the issuers' disclosures and found that the information was often written well above the eighth-grade level (half of Americans read at this level). The disclosures were found to have buried important information in text, failed to properly group and label like items in the statements, and used small typefaces. Cardholders who were tested often had difficulty using these disclosures to find and understand key rates or applicable terms. It is important to note that the GAO study focused on direct consumer fees, rather than rates such as interchange.

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on January 31, 2007 in Room 234-N of the Capitol.

The Interchange fees are an emerging issue that states have begun to address. An interchange fee is defined as a rate paid by the merchant's bank to the cardholder's bank. It is a component of the overall merchant discount rate. The Interchange fee is set competitively by MasterCard and Visa as part of their payment systems.

According to the National Conference of State Legislatures, four states (Florida, Nebraska, Oklahoma and Washington) have introduced legislation this year and five states considered legislation in 2006 (Alabama, Kentucky, New York, Tennessee and Washington). The 2007 Washington legislation **SB5065** defines "interchange fee" and limits the amount that financial institutions may charge in interchange fees to no more than one and one-half percent of the total cost of the retail transaction.

### Kansas Identity Theft Legislation

House Substitute for **SB 196** enacts new law by allowing for protection and restriction of the use of certain personal information and amends existing identity theft law and the Fair Credit Reporting Act. The bill also creates associated penalties and remedies for violations of the use of personal information. Specifically, the bill creates new law for the illegal possession or use of scanning devices, protections for personal identifying information and notification requirements associated with a breach of security of computerized data, allowances for the use of and protections associated with security freezes on consumer reports, and procedures for the destruction of data. (Attachment 1)

### Hearing on:

Melissa Calderwood gave an overview of **SB 127 - concerning insurance; pertaining to subsidence insurance**. There is hereby created the mine subsidence insurance fund, which shall be administered by the mine subsidence insurance governing board for the purpose of making available insurance coverage against mine subsidence as to any structure within this state. The mine subsidence insurance governing board shall submit to the commissioner of insurance, for the commissioner's approval, a proposed plan of operation for the economical, fair, and nondiscriminatory administration of the mine subsidence insurance fund. At least once each year, the commissioner of insurance shall audit the affairs of the mine subsidence insurance fund in order to determine its financial condition and ability to fulfill its obligations. Every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in this state shall offer mine subsidence coverage provided by the Kansas mine subsidence insurance underwriting association in each policy of basic property and homeowners insurance that is issued or renewed in this state.

The Chair called Representative Gatewood for his testimony on **SB 127**. Representative Gatewood said his house district includes the cities of Galena, Baxter Springs and Treece. These three cities are part of a lead and zinc mining operation known as the tri-state mining district. This district was mined between 1870 and 1970 with mines ranging from 40 feet to 500 feet deep.

This past summer the Green Parrot bar with living quarters in the back of the historic building partially collapsed into a 40 foot sinkhole. The entire living quarter of the building disappeared into this abandoned mine. The insurance company looked at the damage and told the owner that the building is not covered due to the nature of the subsidence. Kansas has mines throughout the state, especially in Johnson, Reno, Crawford and Cherokee counties yet we have no insurance policy to deal with incidents such as this when there are no possible responsible parties.

This bill is based on an Ohio Law and is a totally optional program. This bill was introduced after several financial institutions have expressed concerns about renewing and/or issuing loans on land without some assurance on the structures.

The city of Galena, along with the Kansas Department of Health & Environment, have proposed a subsidence evaluation study and a plan to fill these voids with chat and fly ash. This plan is estimated to cost \$64 million and take 20 years to complete. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on January 31, 2007 in Room 234-N of the Capitol.

Gary Blackburn, Director, Bureau of Environmental Remediation, testified that this bill develops an insurance program for areas of the state where underground mining has occurred and the affected property owners want to purchase insurance to protect their property from future collapse or subsidence. KDHE has knowledge of and has worked with numerous property owners whose properties have been damaged by subsidence from past mining operations. The companies responsible for the underground mining should be responsible for the damage but much of the mining took place many decades ago and the responsible companies are often not available.

Mr. Blackburn said this insurance program would be beneficial to several areas of the state where underground mining has taken place. The areas with the greatest concern are located in the southeast portion of the state and are primarily related to lead and zinc mining. Most of the lead and zinc mining ceased in the 1950's, but the last mine closed in 1970 near Baxter Springs. Underground coal mining also took place in many areas of eastern Kansas and left large underground voids, primarily under the city of Pittsburg. A number of cities in central Kansas have been undermined for salt and gypsum. The cities of Hutchinson, Lyons, and Kanopolis have areas where residents live over mine voids. Limestone mining was also very common in the Kansas City area with hundreds of acres left undermined in Wyandotte County.

While KDHE supports the bill, they would like to propose several amendments related to **SB 127**. First, to add gypsum mining to Section 1 (e) to the definition of: "Mine Subsidence." Second, that the mine subsidence insurance governing board be chaired by the Commissioner of Insurance or the commissioner's designee rather than KDHE. Third, an amendment that a provision should be added to the bill that requires an inspection of the property prior to insurance coverage to document any existing damage and to exclude the prior damage from coverage.

KDHE Supports **SB 127** because we know there is a need for this insurance. (Attachment 3)

The meeting adjourned at 10:30 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: January 31, 2007

NAME	REPRESENTING
Alex Kotoyantz	P. I. A
Lee Wright	Farmers Ins.
Gary Blackburn	KDHE
Lori Church	KAPCIC
Ron GACHES	CBBA
Ron Seeber	Kurland Firm
RA Mid	LGA
Dan Murray	Federico Consultng
John Meetz	KID
Leo Henning	KDHE
Shari Keller	CBA
Judi Stork	OSBC
Sonya Allen	✓

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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

kslegres@klrd.state.ks.us

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

January 31, 2007

**To:** Senate Financial Institutions and Insurance Committee  
**From:** Melissa Calderwood, Principal Analyst  
**Re:** Update, National Conference of State Legislatures

The National Conference of State Legislatures' annual meeting and forums in the spring and fall provided an overview of states' and the federal government's activities and policies on a wide range of subjects, including the area of Financial Services. This memorandum addresses two of the issues reviewed by the Financial Services Standing Committee (now part of the Communications, Financial Services and Interstate Commerce Committee). A third issue presented at the annual meeting in Nashville, "State Innovations to Combat Identity Theft," is highlighted in two attached documents ([Attachments 1 and 2](#)).

## Gift Cards and Gift Certificates

The 2006 Kansas Legislature made amendments to the Kansas Consumer Protection Act to create requirements for the sale of gift cards and gift certificates. Specifically, **2006 HB 2858** makes it a violation of the Kansas Consumer Protection Act from and after January 1, 2007, to sell a gift card or gift certificate containing an expiration date which is less than five years from the date of purchase. A gift certificate is defined as a written promise given in exchange for full or discounted payment or without any money or other thing of value being given in exchange, to provide merchandise in a specified amount or of equal value to the bearer of the certificate. A prepaid bank card is defined as a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution in a predenominated amount useable at multiple, unaffiliated merchants or at automated teller machines, or both.

The above provision does not apply to the following gift certificates or gift cards, provided the expiration date appears on the front of the gift certificate or gift card:

- Gift certificates or gift cards that are distributed by the issuer to a consumer without any money or other thing of value being given in exchange for the gift certificate or gift card by the consumer; or
- Gift certificates or gift cards that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes.

The bill also provides that a merchant shall not be required to redeem a gift card or gift certificate for cash. No fees may be charged against the balance of a gift card or gift certificate within 12 months from the date of issuance of the card.

Ten states are considering gift card and gift certificate legislation for introduction in 2007. Minnesota legislation (SF 69) would prohibit expiration dates and service fees on these cards and certificates. Alaska and Montana are reviewing measures that would consider gift cards and gift certificates as unclaimed property (abandoned gifts). In Kansas, **2007 HB 2179** would amend the gift card and gift certificate exemption created by the 2006 Legislation to include gift certificates or gift cards that are sold or distributed by non-profit or not-for-profit organizations for the purpose of the promotion of civic improvement, including economic development. The bill has been referred to the House Commerce and Labor Committee.

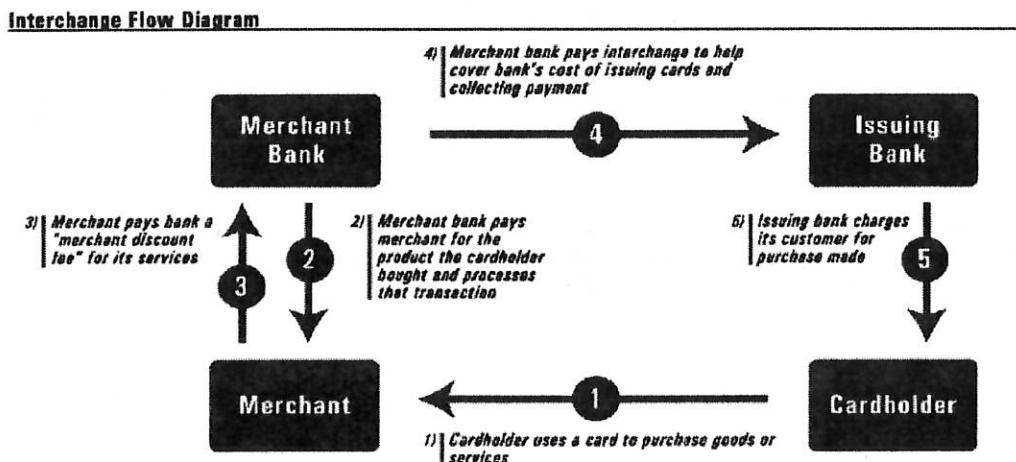
## Interchange Fees

The United States Government Accountability Office recently reviewed credit card fees and disclosures (*Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, GAO-06-929). Among other things, the GAO analyzed disclosures from popular credit cards and obtained data on the rates and fees paid on accounts from six large issuers. A usability expert reviewed the issuers' disclosures and found that the information was often written well above the eighth-grade level (half of Americans read at this level). The disclosures were found to have buried important information in text, failed to properly group and label like items in the statements, and used small typefaces. Cardholders who were tested often had difficulty using these disclosures to find and understand key rates or applicable terms. It is important to note that the GAO study focused on direct consumer fees, rather than rates such as interchange.

Interchange fees are an emerging issue that states have begun to address. An interchange is defined as a rate paid by the merchant's bank to the cardholder's bank. It is a component of the overall merchant discount rate. Interchange is set competitively by MasterCard and Visa as part of their payment systems. The question: what role, if any, should state and federal regulators play in the establishment of or oversight of interchange fees?

The following diagrams outline the interchange flow in a four-party system (used by MasterCard and Visa):

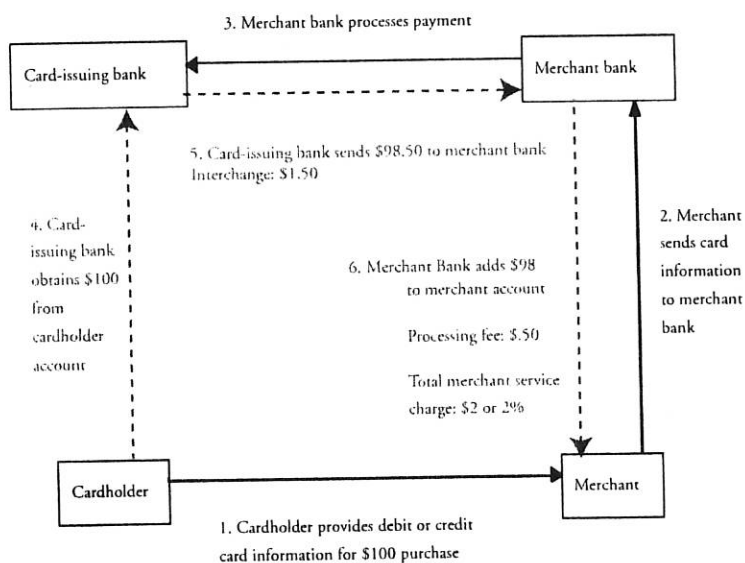
**Chart 1: Interchange Flow Diagram**



Source: <http://www.electronicpaymentscoalition.com/abouttheissue>

## Chart 2: Four-Party Card Payment System

### A FOUR-PARTY CARD PAYMENT SYSTEM



Source: *Economic Review*, Federal Reserve Bank of Kansas City, First Quarter 2006: 93

Proponents of maintaining the current rate note that interchange helps issuing banks develop, maintain and expand the electronic payments network. Interchange also serves to cover costs for issuers such as fraud losses; billing and administrative services; and reward programs that encourage consumers to use payment cards. The merchant discount rate (which includes interchange) also covers the Electronic Payments Coalition notes, payments for many of the services banks and payment card networks provide to merchants. The Merchant Payments Coalition (MPC) opposes the current practice of interchange rate setting as hidden fees that drive up the cost of goods and services for all consumers, no matter what payment method is used. The coalition, an organization of retailers, department stores, supermarkets, drug stores, convenience stores, on-line merchants, and others are advocating for a more competitive and transparent credit card fee system.

**State Solutions.** According to the National Conference of State Legislatures, four states (Florida, Nebraska, Oklahoma, and Washington) have introduced legislation this year and five states considered legislation in 2006 (Alabama, Kentucky, New York, Tennessee, and Washington). The 2007 Washington legislation (SB 5065) defines "interchange fee" and limits the amount that financial institutions may charge in interchange fees to no more than one and one-half percent of the total cost of the retail transaction. AB 11193 (New York 2006) would prohibit the imposition of interchange rates or transaction fees on the sales tax portion of credit or debit card charges where the fee or charge assessed is a percentage of the gross dollar amount of the credit or debit card transaction.

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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

kslegres@klrd.state.ks.us

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

August 16, 2006

## AN OVERVIEW OF KANSAS IDENTITY THEFT LEGISLATION

*Limit to 1.5 of attempt sales for*

**House Sub. for SB 196** enacts new law by allowing for protection and restriction of the use of certain personal information and amends existing identity theft law and the Fair Credit Reporting Act. The bill also creates associated penalties and remedies for violations of the use of personal information. Specifically, the bill creates new law for the illegal possession or use of scanning devices, protections for personal identifying information and notification requirements associated with a breach of security of computerized data, allowances for the use of and protections associated with security freezes on consumer reports, and procedures for the destruction of data. The published version of the law and related comments are attached to this memorandum (Attachment 1).

### ***Illegal Possession or Use of Scanning Devices and Reencoders (Skimmers)***

The bill creates provisions, as part of the Kansas Criminal Code, to make it unlawful for any person to knowingly and with the intent to defraud, possess or use a scanning device to access, read, obtain, memorize or store, either temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card. The bill also makes it unlawful for the defrauding, possession, or use of a reencoder. A violation of these provisions would be a severity level 6, nonperson felony.

### ***Personal Identifying Information; Breach of Information***

The bill also prohibits, unless required by federal law, a document that is available for public inspection or copying from containing an individual's social security number if such document contains an individual's personal information. Personal information includes the name, address, phone number, or e-mail address. These personal information requirements do not apply to documents recorded in the official records of any recorder of deeds of the county or to documents filed as official records of the court including, but not limited to, the following documents of any records that when filed constitutes:

- A consensual or nonconsensual lien;
- An eviction record;
- A judgment;
- A conviction or arrest;
- A bankruptcy;
- A Secretary of State filing; or
- A professional license.



Persons, including individuals, firms, corporations, associations, partnerships, joint ventures, or other business entities are prohibited from soliciting, requiring, or using for commercial purposes, an individual's social security number unless that number is necessary for the person's normal course of business and there is a specific use for the number that no other identifying number may be used. This provision does not apply to or limit access to documents or records that are recorded or required to be open to the public. In addition, this provision does not apply to the collection, use or release of social security numbers for the purposes of mailing documents that include social security numbers that are sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number; internal verification or administrative purposes; investigate or prevent fraud and for other purposes, including conducting background checks, conducting social or scientific research, collecting a debt, obtaining a credit report or furnishing data to a consumer reporting agency, and locating an individual who is missing; and as otherwise required by state or federal law or regulation. An individual who is aggrieved by a violation of the personal data requirements is permitted to recover a penalty of no more than \$1,000 for each violation.

The bill also provides a number of definitions associated with the unauthorized access and use of computerized data that compromises the security, confidentiality, or integrity of personal information. The bill defines the term "security breach" as the unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity and that causes, or such individual or entity reasonably believes has caused or will cause, identity theft to any consumer. Good faith acquisition of personal information by an employee or agent of an individual or commercial entity would not be considered a breach of security of the system, provided that the personal information is not used for or is not subject to further unauthorized disclosure. Notification requirements for a security breach include:

- Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system. A reasonable and prompt investigation is required to be conducted prior to the notification to determine if personal information has been or will be misused, and if misuse has or is likely to occur, the person or entity must give notice as soon as possible to the Kansas resident.
- An individual or a commercial entity that maintains the computerized data that includes personal information, that the individual or entity does not own or license, is required to give notice to the owner or licensee of the information of any breach of security of the data following discovery of a breach, if the personal information was, or is reasonably believed to have been, accessed and acquired by an authorized person.
- The required notice may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. This required notice is to be made in good faith without unreasonable delay and as soon as possible after the agency determines that notification will no longer impede the investigation.
- An individual or entity that maintains its own notification procedures as part of its information security policy, and whose procedures are otherwise consistent with the timing requirements of this bill, is deemed to be in compliance with the notice

requirements of the bill if the individual or entity notifies affected consumers in accordance with its policies in the event of a breach of security of the system.

- If an individual or entity that is regulated by state or federal law and maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator, the individual or entity is deemed to be in compliance with this bill's provisions. This provision does relieve an individual or a commercial entity from a duty to comply with other requirements of state and federal law regarding the protection and privacy of personal information.
- If a person discovers circumstances requiring notification of more than 1,000 consumers at one time, the person is required to notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on a nationwide basis of the timing, distribution, and content of the notices.

The Attorney General is empowered to bring action in law or equity to address security breach provisions and for other relief that may be appropriate. Separately, the Insurance Commissioner has the sole authority to enforce the security breach provisions for insurance companies licensed to do business in this state who violate such provisions.

***Petitions for Expungement of Arrest Records and Fees; Current Law Definition of Identity Theft; and the State Forfeiture Law***

In addition to the new law which is enacted by the bill, *Kansas Statutes Annotated* (KSA) 12-4516a is amended to provide that a person who has been arrested as a result of being a victim of identity theft (under KSA 2005 Supp. 21-4018) that petitions the municipal court for an order of expungement would not be charged a fee for such petition. KSA 2005 Supp. 21-4018 is amended to amend the designated penalty for identity theft (severity level 8, nonperson felony), to require that if the monetary loss to the victim or victims is more than \$100,000, identity theft would be a severity level 5, nonperson felony. Identity fraud continues to be a severity level 8, nonperson felony. Damages or loss associated with violations of KSA 21-4018 would include, but are not to be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such provisions, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such provisions.

KSA 2005 Supp. 22-2410 also is amended to provide that no surcharge or fee could be imposed on any person filing a petition for expungement of an arrest record with the district court who was arrested as a result of being a victim of identity theft (under KSA 2005 Supp. 21-4018) that files such petition.

The Kansas Asset and Seizure Forfeiture Act is amended to include the violations that relate to the illegal use of scanning devices and reencoders. KSA 60-4105 is amended to include property used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including but not limited to, any computer, computer system, computer network, or any software or data owned by the defendant which is used in the commission of a violation of the scanning device and reencoder provisions of the bill.

### ***Fair Credit Reporting Act Amendments***

The Fair Credit Reporting Act is amended to provide for security freezes on a consumer report. A consumer who is the victim of identity theft would be allowed to request a security freeze on the consumer's consumer report by written request and sent by certified mail, which includes a valid copy of a police report, investigative report or complaint that the consumer has filed with a law enforcement agency and clear and proper identification to a consumer reporting agency at an address designated by the consumer reporting agency to receive such requests. The reporting agency is required to place a freeze on the consumer report within five business days after receiving the written request from the consumer and proper identification, as defined by the bill's provisions. Information from the consumer report would not be allowed to be released to a third party without prior authorization from the consumer; however, a consumer reporting agency would be permitted to advise a third party that a security freeze is in effect with respect to a consumer report. Additional requirements for a security freeze include:

- A personal identification number or password.
- The consumer reporting agency, within ten business days after the date the agency places a security freeze, is to provide the consumer with a unique personal identification number, password, or similar device to be used by the consumer when providing authorization for the access to the consumer's consumer report for a specific period of time. The agency also is responsible for simultaneously providing to the consumer in writing the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific period while the security freeze is in effect.
- A third party is required to treat an application for credit or any other use as incomplete if a security freeze is in place and the consumer has not allowed the report to be accessed for a specified time.
- A freeze, if access has been limited, may be temporarily lifted if the consumer contacts the reporting agency and provides clear and proper identification, the unique personal identification number or password, and the proper information regarding the time period for which the report is to be available to users of the consumer's consumer report. The agency has three business days to respond to the request.

A security freeze does not apply to a consumer report provided to a federal, state, or local governmental entity, including a law enforcement agency or court; a private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer; a person or entity or the related agent or affiliate of a financial obligation in conjunction with the purposed purchase of the financial obligation or to whom the consumer has an assignment of account or contract for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument; a subsidiary or other agent or assignee to whom access has been granted for the purposes of facilitating the extension of credit; a person, for the purposes for the use of a credit report as defined in 15 U.S.C. §1681b (Fair Credit Reporting Act, Federal); any person for the purposes of providing a consumer with a copy of the consumer's own report at the consumer's request; a child support enforcement agency; a consumer reporting agency that acts only as a reseller of credit information (would be required to honor any security freeze placed on the

report); a check services or fraud prevention services company for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; a deposit account information service company, for the purposes that include use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution, reports regarding accounts closures due to fraud, and substantial overdrafts; an employer in connection with any application for employment with the employer; any person administering a credit file monitoring subscription service to which the consumer has subscribed; or any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

A consumer reporting agency is not allowed to charge a fee for placing, temporarily lifting, or removing a security freeze on a consumer report.

Any person who willfully fails to comply with the security freeze provisions with respect to any consumer would be liable to that consumer in an amount equal to the sum of: actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or such amount of punitive damages as the court may allow; and, in the case of any successful action to enforce any liability under this provision, the costs of action together with reasonable attorney's fees as determined by the court. Any person who obtains a consumer report, requests a security freeze, requests the temporary lifting of the freeze, or the removal of the freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law would be liable to the agency for actual damages sustained by that agency or \$1,000, whichever is greater.

Additionally, any person who is negligent in failing to comply with any requirement imposed by the security freeze provisions with respect to any consumer, is liable to that consumer in an amount equal to the sum of: any actual damages sustained by the consumer as a result of the failure; and, in the case of successful action to enforce any liability, the costs of the action together with reasonable attorney's fees as determined by the court. Upon a finding of the court that an unsuccessful pleading, motion, or other paper filed in connection with an action was filed in bad faith or for the purposes of harassment, the court would award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

The following entities are not to be construed to require under the provisions of the bill a security freeze on a consumer report:

- Check services or fraud prevention services company;
- Deposit account information service company;
- A consumer agency that acts as a reseller of credit information;
- Database or file which consists solely of information adverse to the interests of the consumer, including information such as criminal record information;
- Person to the extent the person offers fraud prevention services; or
- Any bank, savings bank, trust company, savings and loan association, credit union, or any other financial institution regulated by the state or any agency of the United States.

The bill also addresses the destruction of data and requires a person or business, unless otherwise required by federal law or regulation, take reasonable steps to destroy or arrange for the destruction of a customer's record within its custody or control containing personal information which is no longer to be retained by the person or business by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable by any means.

Finally, the bill includes a severability provision to allow that if any provision of the act or its application to person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application.

The act becomes effective upon publication in the statute book. The security freeze amendments to the Fair Credit Reporting Act becomes effective on January 1, 2007.

For more information, contact Melissa Calderwood in the Kansas Legislative Research Department ((785) 296-3181).

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

CHAIRMAN-SOUTHEAST KANSAS  
LEGISLATIVE DELEGATION

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AGRICULTURE

RANKING MEMBER: AGRICULTURE AND NATURAL  
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HOTLINE NUMBER: 1-800-432-3924

SPEECH/HEARING IMPAIRED: (785) 296-8430

DOUG GATEWOOD  
REPRESENTATIVE, 1ST DISTRICT  
HOME ADDRESS: P.O. BOX 306  
COLUMBUS, KANSAS 66725  
(620) 429-3690  
OFFICE ADDRESS: STATE CAPITOL, RM 135-N  
TOPEKA, KANSAS 66612  
(785) 296-7648

Regarding SB 127

Madam Chair and Committee:

Members thank you for allowing me to testify today in support of SB 127. My name is Doug Gatewood and my house district includes the cities of Galena, Baxter Springs and Treece.

These three cities are part of a lead and zinc mining operation known as the tri-state mining district. This district was mined between 1870 and 1970 with mines ranging from 40 ft. to 500 ft. deep.

This past summer the Green Parrot bar with living quarters in the back of the historic building partially collapsed into a 40' sinkhole. The entire living quarter of the building disappeared into this abandoned mine. The insurance company looked at the damage and told the owner, Micky Morang, that the building is not covered due to the nature of the subsidence. Kansas has mines throughout the state, especially in Johnson, Reno, Crawford and Cherokee counties yet we have no insurance policy to deal with incidents such as this when there are no possible responsible parties.

The bill you have before you is based on an Ohio law and is a totally optional program. This bill was introduced after several financial institutions have expressed concerns about renewing and/or issuing loans on land without some assurance on the structures.

The city of Galena along with the Kansas Department of Health & Environment have proposed a subsidence evaluation study and a plan to fill these voids with chat and fly ash. This plan is estimated to cost \$64 million and take 20 years to complete. The task force recommends boring test holes before any new construction takes place, but that does nothing for the buildings that are above mine shafts and drifts that were never mapped out. Some of these drifts were built upon unknowingly while others were dug out underneath existing structures. The responsible parties are long gone and the owners of these properties are left with all that they possess, in most cases, sitting on a piece of land that may or may not be stable.

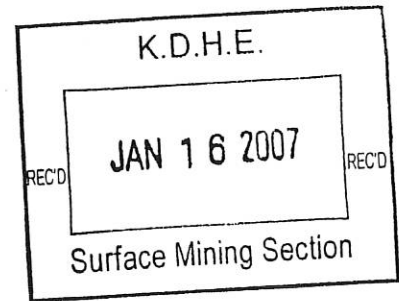
Madam Chair and Committee, please keep in mind this bill will help protect, all that most of these people have, by providing financial protection against cave-ins of these abandoned mines.

Thank you for your consideration and I will be glad to stand for questions at the appropriate time.

*FI&I  
1-31-07  
Attachment 2*

January 8, 2007

Mr. Fred Foshag, Jr.  
Kansas Department of Health and Environment  
Bureau of Environmental Remediation  
Surface Mining Section  
4033 Parkview Drive  
Frontenac, Kansas 66763



RE: Review of Galena, Kansas  
Mine Stabilization Project Funding Request

Dear Fred:

Based on your request, Kleinfelder reviewed a draft copy of your agency's funding request, dated December 22, 2006 for mine stabilization services within the Galena, Kansas area. The purpose of our review was to establish, in our opinion, if the amount of your request for funds for engineering services is reasonable for the scope of services your agency has defined. Based on our preliminary and limited scoping of your request, it is our opinion that \$500,000.00 is reasonable for evaluation of the high school site only.

Briefly, we understand that between the 1870's and 1970's, lead and zinc were being actively mined from the Tri-State Mining District partially located within the extreme southeast corner of Kansas. As a result of this activity, a significant area of Galena and neighboring areas include many mine hazards consisting of abandoned mineshafts, cave-ins, and pits. Because of continuing significant subsidence problems resulting in sink holes and cave-ins, the Surface Mining Section of KDHE has been tasked with reclamation of this area.

Since costs for the reclamation of the Galena area far exceed current available funds, the investigation and ultimate remediation of a number of areas, which have been undermined, have been prioritized. This prioritization was based on potential loss of life, property damage, and current property use.

As an initial step in obtaining funding for this remediation, the Surface Mining Section is in the process of submitting a Funding Request. Part of this request is for engineering studies to establish actual mined areas, geotechnically analyze the stability of the subsurface stratigraphy above the mines, and to perform a risk assessment of areas of highest concern to further prioritize remedial activities.

RE: Review of Galena, Kansas  
Mine Stabilization Project Funding Request

Because there are many site-specific variables involved in performing a geotechnical stability analyses and a risk analysis, a specific site had to be selected in order to estimate a budget with any degree of confidence. Thus, the high school site, which is the first priority, was selected.

The high school site includes some 40 acres with about 20 acres of the site being undermined by the "Maggie Taylor Mine". A 1935 map of that site along with a sketch of the footprint of the high school and associated facilities was provided. In addition, we understand that the depth of this mine is between 90 and 100 feet. No information concerning the height of the mine was made available.

Our proposed scope of work includes the following phases:

- Preliminary Investigation
  - Literature Review
  - Field Reconnaissance
  - Survey
- Subsurface Investigation
  - Surface and Downhole Geophysics
  - Confirmation Borings
- Engineering Evaluation
  - Mine Geometry
  - Stability Evaluation
  - Factors Influencing Magnitude and Characteristics of Subsidence
  - Radius of Potential Subsidence
  - Basic questions we would propose to investigate include:
    - How much vertical subsidence from the surface may or has occurred?
    - What is or will be the lateral extent of surface subsidence?
    - When may (or will) additional subsidence occur?
    - Has subsidence been continuous or episodic?
- Risk Assessment
  - Development of Multi-criteria decision analysis based on Ohio model for ranking areas regarding risk of subsidence.
  - Prioritization of subareas for assessing and managing risk of subsidence.
  - Provide guidance for subsurface investigation and engineering evaluation.
- Report and Recommendations