

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:34 a.m. on February 11, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator David Haley- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Phil Perry, Home Builders Assn. Of Kansas City
Dan Murray, Kansas Cable Telecommunications Assn.
Ed Klumpp, Kansas Assn. of Chiefs of Police & Kansas Peace Officers
Patrick Broxterman, Assistant Attorney General

Others attending:

See attached list.

The Chairman opened the hearing on **SB 237 - Scrap metal, regulations concerning selling and buying.**

Phil Perry appeared in support stating the proposed legislation will expand the scope of materials covered under current law, require increased identifying information of sellers, and enhanced penalties for violators. Enactment of the bill will deter theft from construction sites, utilities, vehicles, public parks, and other areas that place the public in danger. (Attachment 1)

Dan Murray testified in favor indicating the cable industry continues to suffer tremendous losses due to the theft of copper and other materials. Disruption of service, costly repairs, and replacement materials has become a severe economic, customer service, and safety issue. (Attachment 2)

Ed Klumpp spoke in support indicating the need to strengthen existing scrap metal laws. Offenders continue to find new ways to circumvent existing laws and offered several amendments to clarify and define language in the current bill. (Attachment 3)

Written testimony in support of **SB 237** was submitted by:

Kent Cornish, President, Kansas Association of Broadcasters (Attachment 4)
Whitney Damron, City of Topeka (Attachment 5)
Eric Stafford, Associated General Contractors of Kansas, Inc. (Attachment 6)
Larry Berg, Midwest Energy (Attachment 7)
Mark Schreiber, Westar Energy (Attachment 8)

There being no further conferees, the hearing on **SB 237** was closed.

The Chairman opened the hearing on **SB 159 - Enforcement of tobacco settlement.**

Patrick Broxterman appeared in support providing a review of the bill and discussing the proposed changes. **SB 159** would amend the escrow statutes concerning the tobacco Master Settlement Agreement by clarifying the type of information required by stamping agents and non-participating manufacturers. The bill clarifies deceptive trade practices, the penalties for these violations, and then ensures recovery of investigative costs to the state agency initiating the action. Mr. Broxterman emphasized the enactment of **SB 159** will ensure continued receipt of monies from the Agreement by proving diligent enforcement as defined in the Master Settlement Agreement. (Attachment 9)

There being no further conferees, the hearing on **SB 159** was closed.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:34 a.m. on February 11, 2009, in Room 545-N of the Capitol.

The Chairman called for final action on **SB 135 - Kansas open meetings act; interactive communications constituting open meetings.** Jason Thompson, staff revisor, reviewed the bill.

Senator Schmidt moved, Senator Vratil seconded, to recommend SB 135 favorably and, because it is technical correction to previous legislation, be placed on the consent calendar. Motion carried.

The next meeting is scheduled for February 12, 2009.

The meeting was adjourned at 10:15 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-11-09

NAME	REPRESENTING
Ed Klumpp	KACP & KPOA
Ann Zimm	KDBR
Ron Hein	Reynolds American Inc
John C. BOTTENBERG	BOTTENBERG & Assoc.
Nancy Zogelman	Polsinelli
Diane Minear	Sec. of State
Andrew Holmes	Senator Bruce
Richard Samanigo	Kenney & Assoc.
Jim Englemer	AT&T
SEAN MILNER	CAPITOL STRATEGIES
Shelby Dopita	Pineau, Smith & Assoc.
Wigh Keck	Hein Law firm
Cheri Protschen	DOB
[Signature]	KMLIA



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

**Testimony on SB 237
Phil Perry, Staff VP, Governmental Affairs
Senate Committee on Judiciary
February 11, 2009**

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today. My name is Phil Perry and I am the Staff VP of Governmental Affairs for the Home Builders Association of Greater Kansas City and I am appearing before you today to speak in favor of SB 237, an act relating to the regulation of scrap metal.

The Home Builders Association of Greater Kansas City and a diverse group business entities that includes utilities, contractors, telecommunication companies, municipalities and others, believe that the changes proposed in SB 237 will help bring Kansas law in line with surrounding states, specifically our neighbors to the east – Missouri.

The proposed changes in SB 237 accomplishes several things including; 1) expanding the scope of materials covered under the law, 2) requiring additional record keeping for the buyer (scrap metal dealer), and most importantly,...3) increasing the penalties for violation of the law. Scrap metal thefts from constructions sites, vacant buildings, residences, utilities, vehicles, and other areas are not likely to decrease in the near future unless we step in and increase the penalties for committing these crimes. We feel strongly that passage of SB 237 goes a long way in dis-incenting the extremely disruptive and costly behavior of certain criminals.

SB 237 is modeled after an ordinance the Unified Government of Wyandotte County and Kansas City, KS recently adopted. As we understand, the Unified Government vetted their ordinance quite thoroughly and spent close to a year tweaking it after receiving feedback from all interested parties. The impetus for the enhancements to the UG's ordinance came after hearing from neighborhood groups who were experiencing an increase in "backyard" scrap metal dealers. These unlicensed and unregulated "dealers" were buying scrap metal from individuals for cash and then proceeding to sell it to legitimate dealers in the area. Legitimate dealers participated in the process in Wyandotte County to help keep the unscrupulous dealers out of the business and to protect their reputation.

With the changes made by the Unified Government, coupled with those in Kansas City, MO and the State of Missouri, we feel that it is important that there be some uniformity throughout the State of Kansas to prevent thefts in other areas and the materials brought in to our State to be sold. At the end of the day, in a very "challenging" economic environment, we do not need to make it easy for those that resort to stealing copper and other materials, to add cost to existing businesses, to those investing in new developments and infrastructure, or the consumer.

Thank you very much for your time and I would be glad to answer any questions..



Kansas **Cable Telecommunications** Association

Testimony In Support of SB 237

Offered By

John J. Federico, J.D.

On Behalf of the KCTA

Senate Judiciary Committee

February 11, 2009

Chairman Owens, I appreciate the opportunity to appear before your committee in strong support of SB 237. I am John Federico, President and Legislative Counsel for the Kansas Cable Telecommunications Association.

In short, the cable industry stands alongside the many industries represented by the proponents of this bill, and support any efforts by the Kansas Legislature to deter the theft of copper and other materials necessary to serve our customers.

The increased frequency and severity of these crimes has made the bolstering of the current penalty provisions in our Kansas statutes one of our industries highest priorities.

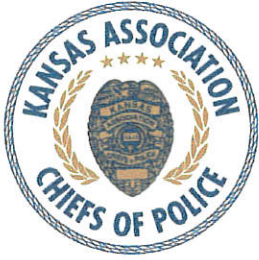
As you can imagine, the theft of copper and other materials creates disruption of service and costly repair and replacement of parts and materials. Most times, the theft of these materials is indiscriminate, and destructive. What was once a nuisance is now a severe *economic, customer service* and *safety* issue.

We strongly urge your support of SB 237 and we stand ready to assist in any way possible to pass this important legislation.

I am happy to stand for questions.

Senate Judiciary

2-11-09



Kansas Association of Chiefs of Police
PO Box 780603, Wichita, KS 67278 (316)733-7301

Kansas Peace Officers Association
PO Box 2592, Wichita, KS 67201 (316)722-8433



February 11, 2009

Testimony to the Senate Judiciary Committee
In Support of SB 137 Scrap Metal Sales

Chairman Owens and committee members,

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association strongly believes there is a need to strengthen the existing scrap metal laws. To that end, we support SB 137.

THE PROBLEM:

The theft of metal and the selling of that stolen metal to scrap yards continue to plague the state. Utility companies, businesses, homebuilders, property owners, school districts, and government entities of our state lose hundreds of thousands of dollars to these thefts each year. These thieves are finding new ways to circumvent the laws passed a few years ago. Manhole covers, utility poles, roadway signs/posts, guard rails, and even the seats from stadium bleachers have been targets of these thieves. These items are not in the current definition of "regulated scrap metal." The problem is not isolated and is impacting virtually every geographical area of our state. It should be obvious to anyone buying these items that they do not belong to the seller. The current definition of "regulated scrap metal" is too narrow and allows for circumvention by criminal ingenuity.

THE SOLUTION:

1. Redefine "regulated scrap metal" as proposed in section 1, line 36, page 1 through line 17, page 2.
2. Add to the law a provision to cover the sale and purchase of items that a reasonable person would recognize as not belonging to the seller as proposed in section 3, line 21, page 4 through line 8, page 5.
3. Clarify the dealer cannot dispose of or destroy items law enforcement has reason to believe is stolen for a period of time sufficient to allow for further investigation. See section 3, lines 9-15 on page 5.
4. Expand the identifying information collected by scrap metal dealers that will aid the law enforcement investigation of stolen items. See line 39, page 2 through line 21, page 3.
5. Enhance the penalties with progressive increases for subsequent offenses as proposed in section 4 lines 16-34, page 5.

REQUESTED POLICY DECISIONS:

1. Recognize that these thefts and their associated costs are sufficient to require additional legislative solutions.
2. Identify and apply the appropriate balance between the cost to victims, the law enforcement needs to address this crime, and the business needs of legitimate scrap metal buyers and sellers.
3. Improve requirements for scrap metal purchasers to retain adequate information for law enforcement to return stolen property to the owner and to identify and arrest the criminals responsible.
4. Establish appropriate cost effective punishment to deter persons from engaging in the theft of these materials; and to deter businesses who make those thefts profitable when a reasonable person would know the items are stolen or who fail to comply with legislation to collect the data identified in policy decision 3.

We strongly encourage the committee to adopt the requested policy decisions and to recommend SB 137 favorably to the full Senate for passage.

Ed Klumpp
Legislative Committee Chair-KACP
Legislative Committee Chair-KPOA
eklumpp@cox.net
(785)640-1102

Senate Judiciary

2-11-09

Attachment 3

1 at all times to peace or law enforcement officers and shall be kept for two
2 years. If the required information is maintained in electronic format, the
3 scrap metal dealer shall provide a printout of the information to peace or
4 law enforcement officers upon request.

5 (b) It shall be unlawful for any scrap metal dealer to purchase any
6 item or items of regulated scrap metal in a transaction for which K.S.A.
7 2008 Supp. 50-6,110, and amendments thereto, requires information to
8 be presented by the seller, without obtaining from the seller a signed
9 statement that: (1) each item is the seller's own personal property, is free
10 of encumbrances and is not stolen; or (2) that the seller is acting for the
11 owner and has permission to sell each item.

12 (c) It shall be unlawful for any scrap metal dealer to purchase any
13 junk vehicle in a transaction for which K.S.A. 2008 Supp. 50-6,110, and
14 amendments thereto, requires information to be presented by the seller,
15 without: (1) inspecting the vehicle offered for sale and recording the ve-
16 hicle identification number; and (2) obtaining an appropriate vehicle title
17 or bill of sale issued by a governmentally operated vehicle impound facility
18 if the vehicle purchased has been impounded by such facility or agency.

19 (d) It shall be unlawful for any scrap metal dealer to, directly or
20 indirectly, purchase or receive any regulated scrap metal from a minor
21 or receive any stolen property or any property which such dealer has
22 reason to believe or suspect cannot be rightfully or lawfully sold by the
23 person offering it.

24 (e) It shall be unlawful for any scrap metal dealer to purchase any of
25 the following items of regulated scrap metal property without obtaining
26 proof that the seller is an employee, agent or person who is authorized to
27 sell the item of regulated scrap metal property on behalf of the govern-
28 mental entity, utility provider, railroad, cemetery, civic organization or
29 scrap metal dealer:

- 30 (1) Utility access cover;
- 31 (2) street light poles and fixtures;
- 32 (3) road and bridge guard rails;
- 33 (4) highway or street sign;
- 34 (5) water meter cover;
- 35 (6) traffic directional and traffic control signs;
- 36 (7) traffic light signals;
- 37 (8) any metal marked with any form of the name or initials of a gov-
38 ernmental entity;
- 39 (9) property owned and marked by a telephone, cable, electric, water
40 or other utility provider;
- 41 (10) property owned and marked by a railroad;
- 42 (11) funeral markers ~~and~~ vases;
- 43 (12) historical markers;

- 1 (13) bales of regulated scrap metal property;
- 2 (14) beer kegs;
- 3 (15) manhole covers;
- 4 or fire hydrant caps (16) fire hydrants!
- 5 (17) junk vehicles with missing or altered vehicle identification
6 numbers;
- 7 (18) real estate signs; and
- 8 in whole or in part (19) bleachers or risers.

9 (f) It shall be unlawful for any scrap metal dealer to sell, trade, melt
10 or crush, or in any way dispose of, alter or destroy any regulated scrap
11 metal, junk vehicle or vehicle part upon notice from any law enforcement
12 agency, or any of their agents or employees, that they have cause to believe
13 an item has been stolen. A scrap metal dealer shall hold any of the items
14 that are designated by or on behalf of the law enforcement agency for 30
15 days, exclusive of weekends and holidays.

16 Sec. 4. K.S.A. 2008 Supp. 50-6,112 is hereby amended to read as
17 follows: 50-6,112. (a) Except as provided in subsections (b) and (c), any
18 person intentionally violating the provisions of K.S.A. 2008 Supp. 50-
19 6,109 through 50-6,111, and amendments thereto, shall be guilty of a
20 class C misdemeanor- and shall be subject to a fine of not less than \$200
21 nor more than \$500 or confinement in the county jail for a term of not
22 more than one month, or both such fine and confinement.

23 (b) Any person convicted of violating the provisions of K.S.A. 2008
24 Supp. 50-6,109 through 50-6,111, and amendments thereto, for the second
25 time within a two-year period shall be guilty of a class B misdemeanor
26 and shall be subject to a fine of not less than \$500 nor more than \$1000
27 or confinement in the county jail for a term of not more than six months,
28 or both such fine and confinement.

29 (c) Any person convicted of violating the provisions of K.S.A. 2008
30 Supp. 50-6,109 through 50-6,111, and amendments thereto, for the third
31 and subsequent times within a two-year period shall be guilty of a class
32 A misdemeanor and shall be subject to a fine of not less than \$1000 nor
33 more than \$2500 or confinement in the county jail for a term of not more
34 than one year, or both such fine and confinement.

35 Sec. 5. K.S.A. 2008 Supp. 50-6,109, 50-6,110, 50-6,111 and 50-6,112
36 are hereby repealed.

37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the statute book.

or

SB 237 Scrap metal sales and purchases
Amendment suggestion by KACP/KPOA

There is no provision to cover acts by an employee or agent of the “scrap metal dealer.” So a person acting on behalf of the dealer who violates one of the laws provisions could not be charged with that violation while the dealer who might have instructed his employees to do the right things can be. This can be fixed in several different ways.

Alternative 1

Change the term “scrap metal dealer” to “scrap metal dealer or person representing the scrap metal dealer” in the following locations:

Lines 21 & 22 on page 2

Line 36 on page 3

Lines 5, 12, 19, and 24 on page 4.

Line 9 on page 5.

The remaining uses of “scrap metal dealer” would remain unchanged.

Alternative 2

Create and insert in the definitions in section 1 a new term to use in the relevant locations. Such as:

Purchasing agent means the scrap metal dealer or any person acting on behalf of the scrap metal dealer who conducts the business transaction; performs or fails to perform any of the acts required in sections 2, 3, or 4; or performs any act prohibited in sections 2, 3, or 4.

Then replace “scrap metal dealer” with “purchasing agent” in the following locations:

Lines 21 & 22 on page 2

Line 36 on page 3

Lines 5, 12, 19, and 24 on page 4.

Line 9 on page 5.

The remaining uses of “scrap metal dealer” would remain unchanged.



2709 SW 29th Street Topeka, KS 66614
785-235-1307 www.kab.net

Testimony in Support of SB 237
For hearing on Wednesday, February 11
Senate Judiciary Committee

Good Morning Judiciary Committee –

I am Kent Cornish, President/Executive Director of the Kansas Association of Broadcasters. We represent nearly 300 radio and television stations across the state. Every station has transmission lines made of copper that run from a building up a tower. Those heights can range from as low as 400 feet to as high as 1200 feet.

These towers generally sit in remote rural locations and surrounded with fencing and many times remote cameras. When the lines are damaged or replaced, the old lines are usually rolled up and left inside or right outside the building. A number of stations have reported thefts of these lines as well as other metals and materials.

Because these building are not manned on a regular basis, discovery of these thefts could be days after the crime, so locating suspects is very rare. However, here is one example that occurred in Johnson County to a radio station there (excerpt from an email)...

“... We had 7 break-ins at one transmitter site over a 3 month period. They stole all the hand tools at the site, some power tools, and several pieces of copper transmission line and elbows. During one break-in, they had stolen a section of Southwestern Bell Telco line that took down our alarm line. Also taken were the ground lines for the guy anchors and tower. The last lot that they got away with was recovered by the police at the scrap yard. They had received \$180 for what was at least \$2000 worth of elbows and transmission line. Many of the parts were damaged and will not be able to be used but we did get them back...”

We support SB 237 and any legislation that will increase penalties that would deter these thefts.

Thank you.

Senate Judiciary

2-11-09
Attachment 4



SUBMITTED TESTIMONY

TO: The Honorable Thomas C. (Tim) Owens
And Members of the Senate Committee on Judiciary

FROM: Whitney Damron
On Behalf of the City of Topeka

RE: SB 237 – An Act concerning scrap metal; relating to regulation thereof.

DATE: February 11, 2009

Good morning Chairman Owens and Members of the Senate Committee on Judiciary.

The City of Topeka respectfully asks for your support of SB 237 that would increase penalties for metal theft and impose additional restrictions on the acceptance of metal by recycling centers and scrap metal dealers.

The City of Topeka has considered enhancing penalties through a local ordinance as recently as 2007, but deferred action when the Kansas Legislature initially adopted a statewide scrap metal bill that same year. That law was tinkered with in 2008 to include additional metals, but the City of Topeka and other municipalities continue to express frustration with stemming the ever-rising tide of these kinds of thefts.

The City of Topeka believes a statewide approach to this problem is appropriate, so as to not allow metal thieves to forum shop from city to city as to where to sell their goods. Furthermore, legislation that is comparable or stronger than our surrounding states will insure that Kansas does not become a scrap metal haven for these thieves.

While the thief who turns in an assortment of metal parts for salvage might only receive a few dollars for their exchange, the damage they often do when stealing the metal can be exorbitant, such as in the case of catalytic converters on motor vehicles, air conditioning coils from the top of commercial buildings or copper pipes in homes either temporarily vacant or under construction.

The City of Topeka supports the enhanced criminal penalties in SB 237 and the increased reporting requirements placed upon those in the scrap metal and recycling business. The state has appropriately placed similar restrictions upon other businesses that knowingly or unknowingly receive stolen products (i.e., pawn shops) and the scrap metal business would appear to sustain the need for increased record keeping by its operators as well.

Accordingly, we express our support for SB 237 and respectfully request your favorable consideration of this legislation.

Thank you for your attention to our submitted remarks.

WBD



Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE SENATE COMMITTEE ON JUDICIARY
SB 237**

February 11, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas supports Senate Bill 237 and asks that you recommend it favorably for passage.

Scrap metal theft remains a major problem for the commercial construction industry. The passage of HB 2035 in 2007 took positive steps in requiring scrap metal dealers in maintaining records of individuals looking to sell regulated scrap metals.

With this legislation in place however, theft remains an issue to AGC members with material costs at all-time highs. For example, a new 500 foot role of 500MCM wire would cost about \$3,000. Members are fearful of installing copper piping at jobsites for fear of individuals stealing the metal for resale.

SB 237 would require additional information to be collected by the scrap metal dealer for the individual selling the metal while also strengthening the penalties and fines for offenders. Legislation that would deter property theft crime of scrap metals is supported by AGC.

Again, the AGC of Kansas respectfully requests that you recommend SB 237 favorably for passage. Thank you for your consideration.

Senate Judiciary

2-11-09

Attachment 6

Larry Berg Consulting

February 11, 2009

Dear Chairman Owens and members of the Senate Judiciary Committee,

Thank you for the opportunity to provide written testimony in support of Senate Bill No. 237 on behalf of my client, Midwest Energy. Midwest Energy is a member-owned electric and natural gas utility company headquartered in Hays. Midwest Energy serves 48,000 electric and 42,000 gas customers in 41 central and western Kansas counties.

In the past two years, Midwest Energy has sustained approximately \$20,000 in damages to their electric system due to theft of copper wire and distribution transformers. The total amount includes material and labor to repair the damages caused by individuals who chose to criminalize their electric system.

Although Midwest Energy is concerned about theft and the cost of repairs, they are more concerned about the safety of their employees and the public in general. Only professional linemen are trained to work on equipment with voltages higher than 120/240 volts. When theft occurs, it places the public and their employees in possible peril.

Midwest Energy believes that imposing fines for individuals who choose to steal electric equipment is a measure to deter individuals from placing their employees and the public in harm's way. To that end, Midwest energy encourages the passage of SB 237.

Thank you for taking time to read this testimony!

Sincerely,



Larry Berg

Larry Berg Consulting

Kansas City Office • 10904 Delavan Ct., Kansas City, KS 66109 • **Topeka Office** • 835 SW Topeka Blvd., Topek

Phone 913.940.2454 • Fax 913.357.4732

lbconsult@att.net

Senate Judiciary

2-11-09

Attachment 7



MARK A. SCHREIBER
Director, Government Affairs

**Written Testimony of Mark Schreiber
Before the Senate Judiciary Committee
On SB 237
February 11, 2009**

Chairman Owens and members of the committee, thank you for the opportunity to provide written testimony in support of SB 237.

For many years, electric utilities, such as Westar Energy, have been victims of metal theft. Copper is the most common target for theft. With recent high commodity prices, we saw record numbers of thefts. Last year, we incurred an estimated \$130,000 of known losses from metal thefts. Commodity prices have declined, but thefts still occur on a regular basis.

We have two reasons to support this legislation, our employees and our customers. Many times, the targets of metal theft are devices or equipment that provide safety from electric shock. Eighty percent of the thefts that occur on our property happen at our substations. These thefts directly impact safety and reliability. There is a reason substations have physical barriers to entry. The equipment in those facilities can be dangerous if not handled by experienced professionals.

In Wichita, you could drive in most neighborhoods and find our poles have lost their grounding wires. Thieves have literally chopped out these wires with a hatchet and put the strand of wire in their car and driven to the next pole to repeat the process. During the ice storm recovery in late 2007, our linemen arrived at a site near Manhattan to put the conductor back on a pole and found someone had already chopped out the span of conductor and carried it off. There is a financial impact to these thefts, but our greater concern is for the safety of our employees and customers.

We support SB 237 because it provides additional deterrent to the theft of metals. Thank you for your consideration of my comments. My contact information is on this testimony if you would need additional information.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

Senate Judiciary Committee
Senate Bill 159
Assistant Attorney General Patrick Broxterman
February 11, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony in support of Senate Bill 159, legislation that is complementary to our tobacco Master Settlement Agreement (“MSA”) escrow statutes. I am the senior Assistant Attorney General in the Tobacco Enforcement Unit of the Office of Attorney General Steve Six. Attorney General Six is a strong proponent of this legislation and believes it will help ensure continued receipt of monies from the MSA.

The MSA is an agreement between 52 states and territories (“Settling States”), and multiple Participating Tobacco Manufacturers (“PMs”). Pursuant to this agreement, Kansas receives a payout of approximately \$55 million per year, plus an approximate additional \$15 million per year from 2008 through 2017.¹ To receive this money, all Settling States, including Kansas, must “diligently enforce” certain laws ensuring that Non-Participating Tobacco Manufacturers (“NPMs”) to the MSA deposit the required funds into individual escrow accounts.

According to our current law, these escrow funds ensure “that the state will have an eventual source of recovery from [NPMs] if they are proven to have acted culpably [regarding certain tobacco health related claims]. It is thus in the interest of the state to require that NPMs establish a reserve fund to guarantee a source of compensation for future claims, and to prevent NPMs from deriving large, short-term profits and then becoming judgment-proof before liability may arise.” (K.S.A. 50-6a01). The proposed legislation assists with these efforts.

Currently, the PMs are challenging every Settling State on the diligent enforcement of its MSA escrow laws. Pursuant to the MSA’s dispute resolution procedures, the PMs have initiated nationwide arbitration for enforcement actions in 2003 – 2005. For the 2003 dispute, the arbitration is set to begin November, 2009. The arbitrations for 2004 and 2005 likely will began shortly thereafter. Additionally, the PMs are preparing to challenge enforcement for 2006 and will likely challenge enforcement for each year thereafter.

¹ These numbers differ each year depending on, among other things, nationwide cigarette and roll-your-own tobacco sales.

Senate Judiciary

2-11-09
Attachment 9

Regardless of the diligent enforcement determination for any past year, we must ensure that Kansas diligently enforces its escrow statute or risk losing annual MSA payouts.

Senate Bill 159 proposes changes to the laws supporting the Requirements for Sale of Cigarettes Act (“MSA Escrow Statutes”) (K.S.A. 50-6a01 – 50-6a03). The bill amends K.S.A. 50-6a04, and proposes eighteen new sections. It provides enhanced enforcement of the MSA Escrow Statutes and thus helps ensure continued receipt of MSA payouts. The majority of other MSA Settling States have already adopted most of this legislation.

SUMMARY OF BILL SECTIONS

Section 1: Updates and adds to the definitions currently in K.S.A. 50-6a04(j). Particularly important is the addition of “brand family,” which describes how stamping agents must classify cigarette sales on their monthly reports to the Kansas Department of Revenue (“KDOR”).

Section 2: Changes the resident agent requirements for NPMs and requires the NPMs to consent to the jurisdiction of the 3rd Judicial District Court of Kansas in Shawnee County. The section is modeled after the Kansas Registered Office and Resident Agent statutes (K.S.A. 17-6203 – 17-6205).

Section 3: Details general reporting requirements for licensed Kansas distributors and wholesale dealers (“stamping agents”) in relation to the MSA.

Section 4: Allows the Attorney General (“AG”) and KDOR to share information. Also, allows information sharing with federal agencies and agencies of other states for enforcement of similarly situated laws. Information shared under this section by the AG or KDOR remains confidential, however any person lawfully releasing information pursuant to this section shall not be subject to Kansas’s confidential taxpayer liability laws (K.S.A. 75-5133.) Also allows Tobacco Product Manufacturers (“TPMs”) to inquire to stamping agents regarding products sold.

Section 5: Requires a new NPM or “high risk” for non-compliance NPM to post a bond of at least \$50,000. If an NPM fails to meet its escrow obligation, the state may use this bond for a judgment.

Section 6: Requires a stamping agent to provide assurance of compliance with this act.

Section 7: Allows KDOR to suspend or revoke the license of and impose a civil penalty on any stamping agent violating this act. Also, allows KDOR to request help from the AG's office for administrative hearings.

Section 8: Identifies contraband items and provides exceptions. Generally, the exceptions allow stamping agents to bring certain contraband (or "delisted") product into the state to store for sale in another state.

Section 9: Allows the AG to seek an injunction against a stamping agent violating this act.

Section 10: In addition to the Class A misdemeanor for NPMs submitting false information under current law, establishes a Class B misdemeanor for anyone who sells or possesses product in violation of this act. Also, gives the Attorney General concurrent authority along with a county or district attorney to prosecute violations of this act.

Section 11: Makes violations of this act a deceptive trade practice under the Kansas Consumer Protection Act.

Section 12: Allows for reclaiming attorneys fees and costs of an action.

Section 13: Presumes numbers of cigarettes and roll-your-own product submitted by KDOR to the AG accurate for any action brought under this act.

Section 14: Allows the AG to promulgate rules regarding TPMs. Allows KDOR to do the same for stamping agents.

Section 15: Establishes that K.S.A. 50-6a01 – 50-6a03 controls if there are any conflicts.

Section 16 (Changes to K.S.A. 50-6a04):

Subsection (a): Makes it illegal to affix or caused to be affixed tax stamps to tobacco products of TPMs not listed on the directory. Second, makes it illegal to sell, offer, possess for sale, or import cigarettes of a TMP not included in the directory.

Subsection (b): Updates AG's directory language.

Subsection (c): Requires TPMs to annually certify that they are either a PM to the MSA, or an NPM that is in compliance with the Kansas escrow laws, and all relevant rules and regulations. Requires PMs to provide a list of brand families for purposes of calculating payments under the MSA, and certify that it is a party to the MSA. Requires NPMs to provide a list of brand families, the number of cigarettes sold by brand family, a copy of the escrow agreement, details of any withdrawals or transfers from the escrow fund, and to certify they have made the required escrow deposits. It also requires joint and several liability of NPM importers for escrow payments and lists document retention requirements.

Section 17: Repeals former K.S.A. 50-6a04.

Thank you for allowing me to testify today in support of Senate Bill 159. I am happy to answer any questions.