

February 11, 2014

The Honorable Joe Seiwert, Chairperson
House Committee on Utilities and Telecommunications
Statehouse, Room 481-W
Topeka, Kansas 66612

Dear Representative Seiwert:

SUBJECT: Fiscal Note for HB 2441 by House Committee on Corrections and Juvenile Justice

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2441 is respectfully submitted to your committee.

HB 2441 would require the Kansas Bureau of Investigation (KBI) to establish a Mobile Communications Devices Identification System (MCDIS) to be used as a central repository of information received by sellers of mobile communication devices from purchasers and maintained for providing information to law enforcement. All information in the MCDIS would be the property of the KBI and could not be sold or used for any purpose unless authorized by rules and regulations adopted by the KBI. The KBI could retain information collected by the MCDIS for up to two calendar years from the date the information was added to the system. Any information associated with a record that has been stored in the MCDIS for two calendar years and that is not part of an on-going investigation would have to be destroyed. The information contained in the MCDIS would be used only for investigative or evidentiary purposes related to criminal violations of state and federal law. Information contained in the MCDIS would not be subject to the Kansas Open Records Act.

All sellers in the state, prior to the completion of any sale of any pre-paid mobile device or SIM card to a purchaser, must collect information about the purchaser that is specified in the bill. Information contained in the MCDIS would be available to all law enforcement officers in Kansas upon production of a subpoena or court order. HB 2441 would also allow information to be provided to a law enforcement officer without a court order or subpoena in certain emergency situations. HB 2441 would impose a civil penalty on any seller who willfully fails to report the required purchaser information. The penalty would be recoverable in an action brought by the Attorney General and the penalty could not exceed \$100 for the first offense. Subsequent offenses would result in a penalty up to \$1,000. All penalties would be credited to the Attorney General's Litigation Fund.

Beginning on January 1, 2015, the bill would impose a Mobile Communications Devices Identification Fee (MCDIF) of 0.4 percent per retail transaction. This fee would increase to 0.5 percent per transaction on January 1, 2016. Monies collected from the fee would be used for the creation and maintenance of the MCDIS. The Kansas Department of Revenue would establish registration and payment procedures for the collection of the MCDIF. The Department would transfer all fee monies to the Mobile Communications Devices Identification System Fee Fund within the KBI, which the bill would establish. The Department could retain up to \$70,000 from fee monies during FY 2015 only for use in paying for programming and other one-time costs for establishing a system to collect the MCDIF.

On July 1, 2014, \$300,000 would be transferred from the State Highway Fund of the Kansas Department of Transportation (KDOT) to the Mobile Communications Devices Identification System Fee Fund of the KBI. On or before June 30, 2019, the transfer would be repaid in full to the State Highway Fund by the KBI. During FY 2015, the Secretary of Transportation would be authorized to enter into an agreement with the KBI to provide for the repayment of the transfer.

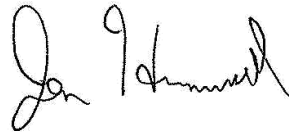
The KBI states that enactment of HB 2441 would result in additional expenditures of \$869,940 and an additional 2.00 new FTE positions in FY 2015. Of this amount, \$300,000 would be for building a database, client application, and interface; \$320,000 would be for building a dedicated infrastructure to receive connections from systems across the state; \$150,000 would be for salaries and wages for the 2.00 new FTE positions; \$3,260 would be for other operating expenditures; \$3,200 would be for equipment for the 2.00 new FTE positions; \$60,000 would be for ongoing costs related for maintenance of the dedicated infrastructure; and \$33,480 would be for additional fees assuming an 18-month project timeframe. The agency indicates it would take expenditures of \$213,260 for on-going yearly expenses after the MCDIS is completed. The agency also estimates it would take sales of 10,874,250 of devices in FY 2015 at \$20 each to maintain the system with sales of 21,326,000 devices needed for subsequent years to maintain the system.

The Department of Revenue indicates that Kansas is a member of the Streamlined Sales Tax Agreement, which prohibits a state from having multiple sales tax items sold or to impose replacement taxes on certain defined goods and services, which include prepaid wireless calling services. The passage of HB 2441 could place the state out of compliance with the Agreement. As a result, the passage of the bill could result in the loss of \$42.7 million in FY 2015 from sales and compensating use tax revenues that would be attributed to the Agreement if the state is determined to be out of compliance with the Agreement. Costs associated with setting up the fee for collection are estimated at \$25,500. These costs are based on using the existing prepaid E-911 fee collection and reporting system. The Department would modify the electronic filing reporting process to allow for entry of both the prepaid E-911 fee and the MCDIF. Taxpayer identification and fee remittance data would be maintained and made available to the KBI for the Bureau's use. The costs would consist of \$18,000 for computer related changes and \$7,500 for processing changes in FY 2015.

The Office of Judicial Administration indicates passage of HB 2441 would have a fiscal effect upon the Judicial Branch as judges' time would be used to review subpoenas or other court orders requested under the provisions of the bill. The Office further estimates that civil penalties could be appealed and could result in actions being taken. However, until the courts have had an opportunity to operate under the provisions of HB 2441, an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given.

The Board of Indigent Defense Services indicates there would be no fiscal effect on agency operations if HB 2441 were passed; however, once the MCDIS is established it is possible the Board would experience an increase in the utilization of experts in this field to counter prosecution experts. The Attorney General indicates that HB 2441 would require the agency to enforce the act via civil lawsuit. The agency estimates there would be approximately ten cases per year at a cost of \$1,000 to \$5,000 in staff time and other resources per case to pursue violations of the bill. Additional costs could be incurred defending any legal challenges to the bill if it were enacted. Further, the Attorney General indicates passage of HB 2441 could be challenged in court, possibly on First or Fourth Amendment grounds and, in that event, the agency may need to consider outsourcing the defense of the bill. If the state were to lose the litigation, it could be ordered to pay attorneys' fees of the prevailing party, with litigation estimates between \$50,000 to \$200,000. KDOT indicates passage of HB 2441 would reduce revenues to the State Highway Fund by \$300,000 in FY 2015, which would be repaid by FY 2019. Any fiscal effect associated with HB 2441 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is fluid and cursive, with the first name "Jon" being more prominent than the last name "Hummell".

Jon Hummell,
Interim Director of the Budget

cc: Linda Durand, KBI
Steve Neske, Revenue
Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office
Ben Cleaves, KDOT