

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 7, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Steve Kelly, Department of Commerce
Wes Ashton, Overland Park Chamber
Secretary Wagon, Department of Revenue
Representative David Huff
Representative John Edmonds
Representative Ray Merrick
Ron Hein, Kansas Restaurant and Hospitality Association
Emile Burdette Rush, Attorney General's, Consumer Protection
Albert Thompson, Topeka citizen
Mike Miroslaw, President, Store Financial
Michelle Hamilton, Attorney, Store Financial

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2856-Extension of IMPACT program** by introducing Steve Kelly, Deputy Secretary with the Department of Commerce to give his testimony as a proponent on **HB 2856**. Mr. Kelly presented written testimony. (Attachment 1) Mr. Kelly stated the 2005 Legislature amended the IMPACT statute to allow enhanced use for non-training projects. This change was made at the request of the Department of Commerce in consort with a number of Chambers of Commerce. It allowed Kansas to improve our competitiveness in the face of aggressive new economic development measures that were passed by the Missouri legislature. The change to the IMPACT law was made for a limited time only with the understanding that the Department of Commerce and Revenue would work on an analysis of our various programs and come to the 2006 Legislature with the information necessary to modify programs and approaches to be effective in the future. The work has been hampered by lack of data. We have been able to use the financing available through this change to successfully incent projects such as the retention of the Applebees headquarters in Lenexa and the expansion of the Farmers Insurance customer service operation in Olathe. He urged the Committee to give favorable consideration of this bill.

Chairperson Brownlee introduced Secretary Wagon from the Department of Revenue to give her testimony as a proponent for **HB 2856**. Secretary Wagon did not present written testimony. Secretary Wagon gave a brief statement acknowledging she is in strong support of the bill and believes it is the best tool for job retention. She urged the Committee to vote favorably on **HB 2856**.

Chairperson Brownlee introduced Wes Ashton representing the Overland Park Chamber and Overland Park Economic Council. Mr. Ashton presented written testimony. (Attachment 2) Mr. Ashton stated the 2005 Legislature had an extremely positive and immediate effect on economic development projects in Overland Park, as well as the state. This is an improved economic development tool for Kansas, and helped to make their offers more competitive with neighboring states. The benefits of this bill apply statewide; helping create and retain jobs across Kansas. Since the amendments to the IMPACT program last year, there have been five projects in Johnson County alone that have utilized the program. The success for Kansas occurred because of the flexibility this legislation provides. Some of the projects would simply not have been able to use our previous traditional incentives which were restricted primarily to training. In closing, Mr. Ashton stated that passage of the bill would give the Legislature more time to continue looking at options for improving our competitive position with neighboring states in economic development.

Chairperson Brownlee opened the floor for questions. Senator Kelly asked the question of why they were

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asking for an extension to 2008 rather than making this permanent. Mr. Kelly stated they are still gathering data and would have that information before the extension runs out and they would be able to determine if this is the way to continue or if there is another way that would benefit the state better.

Being no further questions or discussion on **HB 2856**, Chairperson Brownlee closed the hearing.

Chairperson Brownlee called the Committee's attention to the fact there was an oversight on a conceptual bill at the request of Senator Wysong who asked for the statute to be amended which gives the purpose of the Senate Commerce Committee and the House Eco Devo Committee to add a 6th item regarding workforce development and Chairperson Brownlee would like to add it to this bill. She stated the Committee would look closer at the balloon one day this week.

Chairperson Brownlee opened the hearing on **HB 2658-Gift certificates, restrictions** by introducing Representative David Huff to give his testimony as a proponent of **HB 2658**. Representative Huff offered written testimony. (Attachment 3) Representative Huff stated **HB 2658** relates to the purchasing and redemption of a gift certificate or gift card. He stated when a gift card is purchased it is paid for in advance and there is no reason there should be an expiration date or reduction of value. He stated he had a business tell him they rely on less than 100% redemption of the prepaid certificates and cards for extra profits. In closing, Representative Huff stated **HB 2658** eliminates the expiration date and the reduction of value on a gift certificate or gift card that was paid for in advance.

Chairperson Brownlee introduced Representative John Edmonds to give his testimony as a proponent of **HB 2658**. Representative Edmonds offered written testimony. (Attachment 4) Representative Edmonds stated he wished to address one specific point of implementation. You may hear from vendors that the costs of record keeping justify their behavior, or that accounting standards greatly increase the cost of carrying gift certificates and the like on the company books. He stated as a practicing CPA that nothing could be further from the truth. In any retail establishment, the numbers of cash, check, and credit card transactions dwarfs the likely volume associated with gift certificates. Secondly, although GAAP does call for specific treatment in the recording of contingent liabilities associated with gift certificates, these are intended to be accounted for in the aggregate, not as individuals, and thus would usually be captured by a single monthly or annual journal entry.

Chairperson Brownlee introduced Representative Ray Merrick to give his testimony as a proponent of **HB 2658**. Representative Merrick stated he was in support of the bill. He feels when a customer pays for a gift certificate, the gift certificate should not have an expiration date or penalty if it is not used by a certain date because the store has already received the money.

Chairperson Brownlee introduced Ron Hein representing the Kansas Restaurant and Hospitality Association to give his testimony as a proponent of **HB 2856**. Mr. Hein presented written testimony. (Attachment 6) Mr. Hein stated although they had previously opposed similar legislation, they stand in support of this bill as amended in the House. Mr. Hein stated when a gift card is purchased for a stated monetary value, and that gift certificate expires and the recipient of the gift certificate is not able to redeem that certificate due to its expiration, the result is frustration and anger. He stated he does have some issues with this bill with some of the language; which is a drafting error and he would like for the language to be cleaned up. Also, he stated the penalty, pursuant to the Consumer Protection Act, would be a \$10,000 civil penalty per occurrence which he feels does not fit the crime. In closing he asked the Committee to address these issues, but either way, the KRHA supports the bill.

Upon the completion of Mr. Hein's testimony, there was discussion with the Committee regarding the punishment for the crime and Mr. Hein's concerns.

Chairperson Brownlee introduced Emile Burdette Rush from the Attorney General's Consumer Protection Division, to give her testimony as a neutral party to **SB 2856**. Ms. Rush presented written testimony. (Attachment 6) Ms. Rush stated the Attorney General's Office raises no objection to the temporal limits on gift certificated proposed by this bill and it is unlikely that such an addition to the KCPA will create any substantial burden on the Attorney's Office. She stated a quick review of other state statutes reveals that a

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handful of states prohibit gift certificate expiration dates.

Chairperson Brownlee introduced Albert Thompson to give his testimony as a proponent of **SB 2856** with an added amendment. Mr. Thompson presented written testimony. (Attachment 7) Mr. Thompson stated he is testifying as a private citizen in Topeka. He urged the Committee to consider including within its scope the amendment he is offering today. He stated his amendment would reduce the abusive effects of certain pricing practices associated with so called "mail in rebate" schemes. Kansas consumers are routinely bombarded with a plethora of advertisements touting ostensibly low prices for a wide variety of goods and services-products that simply cannot be purchased for the stated price. They cannot be purchased for the stated price because the actual dollar amounts required to bring these items home or obtain these services are often two to three times the stated prices, and the purchaser is required to embark upon a tortuous "mail in rebate" process obviously designed to dissuade, deflect, and discourage the consumer's recapture of funds. Mr. Thomas offered amendments to the Committee addressing his concerns.

Upon Conclusion of Mr. Thompson's testimony, Chairperson Brownlee entered in discussion with Ms. Rush, asking if the Attorney General's office could do a search to see if any other states are addressing the issue of rebates. Brian Brown, Deputy Attorney General, entered the discussion and stated he had seen more complaints on rebates than gift cards. He further stated issuers of gift cards in this state should be bonded to protect the consumer. He also discussed the punishment for **HB 2856**. Mr. Thompson entered the discussion citing more facts of the research he had done on the issue of rebates.

Chairperson Brownlee introduced Mike Miroslaw, President of Store Financial to give his testimony as an opponent of **HB 2856**. Mr. Miroslaw offered written testimony for himself and Michelle Hamilton and stated she would speak upon conclusion of his testimony. (Attachment 9) Mr. Miroslaw gave a little background of his company. He stated Store Financial Services is located in Johnson County and employs 41 people in their office. He stated that Store Financial Services handles the gift card programs at Kansas shopping centers including Oak Park Mall, the Legends Shopping Center at Village West (pending), Town Center Plaza and the City of Prairie Village, Kansas. He further stated their gift cards operate on the MasterCard platform.

Upon the conclusion of Mr. Miroslaw's testimony, Chairperson Brownlee introduced Michelle Hamilton, Counsel for Store Financial Services. Ms. Hamilton stated Store Financial Services is opposed to **HB 2658** in its current form and would suggest the following changes. In Section 1 (c) which reads "no dormancy fee shall be charged against a gift certificate", should be stricken; in Section 2, (f), (1) which reads "Dormancy fee means a charge imposed against the unused value of a gift certificate or gift card due to inactivity", should also be stricken. And lastly, Section 2, (f), (3) in the last line the language "but shall not include a card issued by a retail merchant or a card issued by a shopping mall for use at multiple locations", should also be stricken. In closing, Ms. Hamilton urged the Committee to accept the changes.

Upon the conclusion of Ms. Hamilton's testimony there was discussion with the Committee and Ms. Hamilton and Mr. Miroslaw. The Committee was told many states have legislation similar to this legislation on gift cards. The Committee has concerns about the fine print with the terms and conditions of gift certificates. Mr. Brown, the Deputy Attorney General, stated he felt he had a solution for some of the concerns of the Committee and Chairperson Brownlee by adding certain language. Chairperson Brownlee asked Helen Pedigo, to get with Deputy Attorney Brown to discuss his language changes.

With no further discussion, Chairperson Brownlee adjourned the meeting at 9:30 a.m. with the next scheduled meeting being Wednesday, March 8, 2006 at 8:30 a.m. in room 123S.