

Approved: \_\_\_\_\_

3/11/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 9, 1994 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Salisbury, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department  
Jerry Ann Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Senator Robert Vancrum  
Terry Leatherman, KCCI  
Tim Roudebush, TMR Materials, Lenexa  
Steve Brookner, Dun & Bradstreet  
Joe Lieber, Kansas Cooperative Council  
Ben Coates, Kansas Press Association  
Jon Wine, Secretary of State's office

Others attending: See attached list

### Hearing and possible action on SB 795-Business entities, annual reports and franchise fees

Senator Robert Vancrum explained SB 795 would make confidential the statement of assets, liabilities and net worth filed by each corporation with the annual report in the office of the Secretary of State. This is a simple economic development issue. By requiring either foreign or domestic corporations to disclose the net worth and financial statement filed with the annual report we are putting corporations doing business in Kansas at a substantial disadvantage as against those corporations having no operations in Kansas, see attachment 1. Kansas is one of three states that requires the filing of balance sheet information.

Terry Leatherman, KCCI, testified SB 795 calls for the elimination of reporting on the financial condition of a business or corporate annual report filed with the Secretary of State. For many years, disclosing financial information on the reports "balance sheet" has been a vexing problem inherent in doing business in Kansas. In 1989, Kansas recognized the disadvantage it was placing on its businesses by passing legislation to allow companies to have their balance sheet information declared confidential. To qualify, a company must complete an application for confidential file status, and meet several criteria to qualify for the confidential file. Finally, it costs a Kansas business \$20 a year for the privilege of keeping sensitive financial information from being open to public inspection, see attachment 2.

Jon Wine, Secretary of State's office, responded to questions from the Committee that it is consistent across the 50 states that the officers, directors and principal office are filed with the Secretary of State's office. SB 795 sets up a table for computing the franchise tax. Mathematically, the franchise tax would remain the same under SB 795. The revised table is intended to be revenue neutral.

Tim Roudebush, President, TMR Materials Company, testified by speaker phone. He also submitted testimony urging the passage of SB 795. He stated he has another firm called Akro Fireguard Products, Inc. which is the fastest growing firm in the United States percentagewise, serving the commercial airlines worldwide, see attachment 3.

Steven Brookner, District Manager, Dun & Bradstreet Information Services, testified for many years, the citizens of Kansas have required all corporations to report annually on their financial condition. This has been the quid pro quo for the twin privileges of limited liability and indefinite life. This has not only served to protect the citizenry from unscrupulous operators, but it has contributed to the economic growth of the state.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 9, 1994.

SB 795 will enable all corporations to withhold financial information from the public. In the process, it will inevitably delay, and in many cases, prevent the necessary flow of information required for informed decision making, see attachment 4.

Joe Lieber, Kansas Cooperative Council, testified in opposition to SB 795. He said the council has a membership of over 200 cooperatives, of which, over 150 are local farm supply cooperatives. These cooperatives are involved in the buying and selling of grain. The price of grains change daily and the decision to trade must be done in a hurry. Because time is of the essence, most of the cooperatives contact Dun & Bradstreet to check credit. If the records are closed, they will not have this opportunity. He stated closing the records would be a step backwards for Kansas, see attachment 5.

Ben Coates, Kansas Press Association, testified in opposition to SB 795 on the basis that this issue has continually been brought before the Legislature; and in 1989, a compromise was achieved to allow smaller corporations to be exempt from the requirements of this statute. This compromise should be allowed to stand and continued attempts to water down this law should be rejected, see attachment 6.

John H. Cross, President, Cross Manufacturing, Inc., submitted written testimony in support of SB 795, see attachment 7.

Don H. Alexander, President, Perkins Industries, submitted written testimony in support of SB 795, see attachment 8.

G. W. Jerry Moss, EPI Economy Power and Instrument, Inc., submitted written testimony in support of SB 795, see attachment 9.

The hearing on SB 795 was closed.

Senator Vidricksen moved and Senator Reynolds seconded to adopt the minutes of March 8, 1994. The motion carried on a voice vote.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for March 10, 1994.

## GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 3/9/94

[illegible]

**BOB VANCURUM**  
 SENATOR, ELEVENTH DISTRICT  
 OVERLAND PARK, LEAWOOD,  
 STANLEY, STILWELL, IN  
 JOHNSON COUNTY  
 9004 W. 104TH STREET  
 OVERLAND PARK, KANSAS 66212  
 (913) 341-2609



TOPEKA

**SENATE CHAMBER**  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (913) 296-7361

## COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES  
 MEMBER: WAYS AND MEANS  
 JUDICIARY  
 MEMBER: COMMERCE, LABOR AND REGULATIONS  
 COMMITTEE, NATIONAL CONFERENCE ON  
 STATE LEGISLATURES  
 MEMBER: ENVIRONMENTAL TASK FORCE,  
 COUNCIL ON STATE GOVERNMENTS

## TESTIMONY FROM SENATOR BOB VANCURUM

TO

## SENATE COMMERCE COMMITTEE

RE: SENATE BILL 795

I am here today in support of SB 795, a bill which would make confidential the statement of assets, liabilities and net worth filed by each corporation with the annual report in the office of the Secretary of State. This relatively simple measure would bring Kansas into compliance with 47 other states that now treat as confidential the financial statements filed with the annual report or franchise tax filing of the corporation. In fact, in most states this information is filed with the tax return or with the revenue department of the respective state and is treated as confidential as the tax return itself.

This is a simple economic development issue. By requiring either foreign or domestic corporations to disclose the net worth and financial statement filed with the annual report we are putting corporations doing business in Kansas at a substantial disadvantage as against those corporations having no operations in Kansas. Corporations having competitors outside of Kansas some of whom are huge multinational companies are at a **substantial** disadvantage in the competitive market place, since their competitors by digging through financial information filed with the Secretary of State can very easily determine their **profitability**, particularly if it only makes one or two products and obtain the information necessary to determine when the Kansas competitor would have to quit business, and price competing products accordingly.

The credit rating companies such as Dun and Bradstreet are vigorously opposed to this legislation. They will put before you the credit managers of many corporations to tell you that without this information they will be unable to determine the credit worthiness of their customers. They will also tell you that corporations that refuse to disclose this information are trying to hide something. The simple fact is that only three states and Puerto Rico now require the financial information and net worth to be disclosed. Why is it that Dun and Bradstreet is able to operate in these other 47 states. And why is it that the credit managers that tell you all kinds of horrible things will happen if the information is not disclosed manage to determine the credit worthiness of customers in the other 47 states. The simple fact is that you can obtain credit information on any customer by simply asking for their financial statement if that is really the reason for the request.

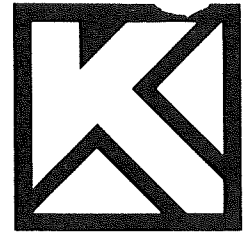
*Commerce*  
*3/9/94*

*Attachment 1-1*

The reason Dun and Bradstreet is opposed to this bill is that it saves them a substantial amount of money in their business. There is no reason why the State of Kansas should continue to sacrifice the interests of the privately held corporations within its boundaries in order to subsidize financial gain by a handful of out of State credit reporting companies. If we are **serious** about attracting modern businesses to our state, our corporate laws simply have to be brought into compliance with those of our surrounding states. None of our surrounding states and no other state in the midwest discloses this information on its domestic corporations, and there is no good reason for us to do so.

You will here today from several **Kansas** businessmen who face stiff competition from competitors in other states that do not have to disclose this information about themselves. I would ask that you listen very carefully to what they have to say. When the opponents start telling you why it is necessary to have this credit information, you might ask them how they do business in other states.

# LEGISLATIVE TESTIMONY



## Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 795

March 9, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Committee on Commerce

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today in support of SB 795.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The reason why KCCI supports passage of SB 795 is the provision in the bill calling for the elimination of reporting on the financial condition of a business on corporate

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*Attachment 2-1*

annual reports filed with the Secretary of State. For many years, disclosing financial information on the reports "balance sheet" has been a vexing problem inherent in doing business in Kansas.

The balance sheet is where a company discloses its financial condition. It is on the report to permit the Secretary of State's office to determine the franchise fee the company owes the state.

In nearly every state, this financial information is considered so sensitive that the information is kept confidential. However, for years, Kansas considered a company's balance sheet an open record available to anyone who asked the Secretary of State's office for a copy. While Kansas' open disclosure policy was portrayed as availing financial details of a corporation open to the public, the reality was the public was not clamoring for the information. Instead, organizations like Dun & Bradstreet, attorneys and business competitors were the entities asking the Secretary of State's office for a peek at a business' balance sheet.

In 1989, Kansas recognized the disadvantage it was placing on its businesses by passing legislation to allow companies to have their balance sheet information declared confidential. While the 1989 legislation was a major step forward, it still left Kansas companies with many hurdles to jump to qualify. Today, a company must contact the Secretary of State's office to request an application for confidential file status. Next, they must complete a form and meet several criteria to qualify for the confidential file. Finally, it costs a Kansas business \$20 for the privilege of keeping sensitive financial information from being open to public inspection.

While the Kansas Legislature has responded to business concerns in this area, SB 795 presents a rare opportunity. First, it would make it simpler for a business to complete the paperwork required by government. Second, elimination of the balance sheet would close the door on a concern privately held corporations have had for years.

Thank you for the opportunity to explain why KCCI supports SB 795. I would be happy to answer any questions.

February 21, 1994

Senator  
State of Kansas  
Senate Chamber  
State Capitol  
Topeka, Kansas 66612-1504

Dear Senator

Would you please consider voting for Senate Bill S-795, which supports confidentiality of financial data distributed by the State of Kansas to firms such as Dunn & Bradstreet. We have another firm called Akro Fireguard Products, Inc., which in 1991 was the fastest growing firm in the U.S., percentage wise, serving the commercial airlines worldwide. By the way, we started making money in order to have a three-fold expansion now employing 15 people. We now have the opportunity to grow to three times our present size.

We have numerous patent-pendings. By reading the public Dunn & Bradstreet reports one of our competitors that has \$8,000,000 cash sitting in the bank offered an inferior product to the market at 20% less cost than we offered. Several billion dollar chemical firms found out through Dunn & Bradstreet that we are in business which we have tried to keep confidential.

I understand that Kansas is one of the only three states in the U.S. that allows private financial data to be given out as public information. This is wrong! If you will please vote for Bill S-795 to correct this matter many small growth companies in Kansas, like ours, can employ more people quicker with permanent good paying jobs. Please help us!

Respectfully,

Tim Roudebush  
President

*Commerce*  
*3/9/94*

*Attachment 3*



# Dun & Bradstreet Information Services

**DB** a company of  
The Dun & Bradstreet Corporation

Steven Brookner  
District Manager  
Information Resources

6800 College Blvd., Suite 400, Overland Park, KS 66211  
913-491-3210

March 9, 1994

TO: Members of the Senate Commerce Committee

RE: Kansas Senate Bill No. 795

Testimony of Steven Brookner  
District Manager  
Dun & Bradstreet Information Services

Thank you for the opportunity to testify on behalf of Dun & Bradstreet Information Services and our more than 6000 associates in the United States and Canada; on behalf of our hundreds of customers here in Kansas.

Since 1841, Dun & Bradstreet has been in the business of fostering the growth of American commerce.

That growth has been based, in large measure, on the extension of credit from one business to another. Emerging businesses, small businesses, and large businesses all rely on credit to grow and prosper.

For many years, the citizens of Kansas have required all corporations to report annually on their financial condition. This has been the quid pro quo for the twin privileges of limited liability and indefinite life. Without doubt, this has not only served to protect the citizenry from unscrupulous operators, but it has contributed to the economic growth of the state.

This Bill will enable all corporations to withhold financial information from the public. In the process, it will inevitably delay and in many cases prevent the necessary flow of information required for informed decision making.

We believe the citizens who are considering a transaction with a corporation should be able to obtain some financial information about that business before extending unsecured trade credit, signing a contract, extending a loan, changing jobs or giving a deposit for work to be done.

In 1989, the Kansas Legislature gave the Secretary of State the authority to place and maintain, in a confidential file, the financial information of a corporation that did not want its financial information made public, provided several conditions were met. These conditions protect the citizens of Kansas from companies that may have a negative net worth or that filed for bankruptcy. This procedure has worked well to date and need not be changed.

It is a balancing act---"privacy" vs "public right to know". But when all the equities are weighed, the citizens are better served by this time-tested statute than by one that eliminates all protection whatsoever.

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*Attachment 4*

Testimony on SB 795  
Senate Commerce Committee  
March 9, 1994

Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the committee. I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The council has a membership of over 200 cooperatives. Of these members, over 150 are local farm supply cooperatives.

These cooperatives are involved in the buying and selling of grain. As you may or may not know, the price of grains change daily and the decision to trade must be done in a hurry.

Because time is of the essence, most of our members will contact Dun & Bradstreet to check credit. If the records are closed, they will not have this opportunity.

They could lose money two ways. One way would be to give credit to a bad firm and another way would be to not give credit to a good firm.

You've been told that Kansas is one of the few states that have not closed their records.

So what! That isn't a good reason to pass poor legislation. A lot of states have initiative and referendum but I don't see a lot of legislators getting in line to pass those.

More importantly, the proponents still haven't shown how revealing a corporation's assets, liabilities and net worth gives their competition an unfair advantage.

*Commence*  
*3/9/94*

*Attachment 5-1*

Twenty years ago, Kansas did not have lotteries or parimutuel gambling. Now there is talk of casinos. I don't have a problem with any of those, but I don't think this is the time to close corporate records.

The Council feels closing the records would be a step backwards for Kansas and that is why we are asking you to oppose SB 795.

**Kansas Press Association  
Inc.**

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5423 S.W. 7th St., Topeka, KS 66606 (913) 271-5304, Fax (913) 271-7341

Testimony on SB 795  
by Kansas Press Association  
before Senate Commerce Committee

My name is Ben Coates and I represent the Kansas Press Association. The KPA is a trade association representing the 250 daily and weekly newspapers in Kansas.

The KPA opposes SB 795 on the basis that this issue has continually been brought before the Legislature and in 1989 a compromise was achieved to allow smaller corporations to be exempt from the requirements of this statute. We believe that compromise should be allowed to stand and continued attempts to water down this law should be rejected.

The KPA has been a strong supporter of openness of the records of corporations doing business in Kansas. The information contained in the annual reports provides a significant safeguard, not just for the media but citizens and corporations doing business in the state.

These records are not accessed on a daily basis, but when there is a question about a corporation, the information in the annual report can provide some degree of assurance that a corporation is legitimate or financially sound.

*Commerce*  
*3/9/94*  
*Attachment 6*



# MANUFACTURING, INC.

*Dependable Hydraulics*

11011 King Street • Suite 210 • Overland Park, Kansas 66210  
Phone: (913) 451-1233 Fax: (913) 451-1235

March 4, 1994

Senator Alicia Salisbury, Chairperson  
Senate Ways and Means Committee  
Room 120 South  
State Capitol Building  
Topeka, Kansas 66612

Chairperson Salisbury:

I support SB 795. Particularly I am interested in reforms to the Annual Report which preserves the confidentiality of the financial affairs of the business.

Our financial status is an open book to anyone who cares to look, thanks to the Kansas corporate annual report disclosure requirements. This puts us at a distinct disadvantage compared to our many out-of-state competitors who enjoy privacy.

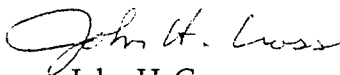
The Confidential File does not help us because a provision in it excludes any business that has EVER filed Chapter XI, even if such event occurred some 12 years ago and creditors were offered 110% repayment, as in our case.

Please pass SB 795 is a form that protects and safeguards the financial privacy of Kansas businesses in the future.

Thank you for your consideration.

Sincerely,

CROSS MANUFACTURING, INC.

  
John H. Cross  
President

/jhc

Enclosures (15 copies for your committee members)



**PERKINS  
INDUSTRIES**

**PERKINS INDUSTRIES INC.**

Suite 422  
6405 Metcalf Ave.  
Overland Park, Kansas 66202

913-677-5831

October 23, 1984

Mr. Robert J. VanCrum  
Gage & Tucker  
Corporate Woods, Building 40  
Suite 400  
P.O. Box 25830  
Overland Park, Kansas 66225

Dear Bob:

We are an adhesives and resins manufacturing company with our head office in Overland Park, Kansas, a laboratory in Merriam, Kansas and five manufacturing plants in southern and eastern states. Our principal competitors are giant companies such as Georgia-Pacific, Getty Oil and the Borden Company. It so happens that these competitors are also among our principal suppliers of basic raw materials. Not by design, but by the simple fact that they often dominate the market of a particular raw material.

We provide all our vendors with basic credit information and our payment record with them is excellent. Nevertheless, they exhaust themselves in digging up every possible piece of information on our company, which includes requests to the Kansas Secretary of State for the complete financial information that we are required to file annually.

We have guarded ourselves not to divulge our financial statement, including net worth, since this would enable our competitors to lower prices, forcing us to follow, and actually determine at what point we would have to throw in the towel.

I strongly object to the release of any financial information by the Kansas Secretary of State, since this is putting us in an extremely vulnerable position. Our neighboring State of Missouri provides better protection and their Secretary of State only releases a Certificate of Good Standing. We are certainly not trying to expose our vendors to undue risk, but are merely trying to protect ourselves from our competitors.

I would appreciate it if you could put forth your efforts to bring about a change in the Kansas legislation, so that companies with corporate headquarters in the State of Kansas are properly protected.

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*Attachment 8-1*

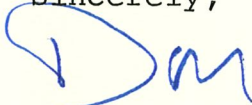
Mr. Robert J. VanCrum  
Page Two  
October 23, 1984

I must add, that I am giving consideration to moving our office across the state line to Missouri when our lease comes up for renewal, if this issue cannot be resolved to my satisfaction.

Thank you for your efforts.

Kind regards,

Sincerely,

A handwritten signature in blue ink, appearing to be 'Dm' or 'Don M.', written over the word 'Sincerely,'.

Don H. Alexander  
President

DHA/at

# EPI ECONOMY POWER AND INSTRUMENT, INC.

(913) 469-1111 • 10616 SUMMIT • LENEXA, KANSAS 66215 • FAX # (913) 469-1054

February 11, 1994

Mr. Bob Vancrum State Representative 29th Dist.  
9004 West 104th St.  
Overland Park, KS 66212

Re: Small Companies

Dear Bob:

I met you in your travels seeking reelection last year when you visited our block, knocking on doors. I am sure you don't remember me but it was nice of you to be concerned about our area.

My problem has to do with our corporation. We file a report every year with the State of Kansas as a foreign corporation doing business in the State of Kansas. We are incorporated in the state of Missouri.

We try to file a confidential report in the state and are denied confidentiality because of our size. In Kansas our annual report is public knowledge. Dun and Bradstreet are camped on the Secretary of States door and pick up this information on us and sell it to anyone that wants to buy it.

When large corporations look at our report, we find it hard to do business with them because of our size. They look at total dollar size and we don't come close to matching what they expect. This hurts us trying to do business.

It is so much of a problem that I feel we are being damaged financially.

My options are: Move out of the state of Kansas; or consider legal action against the state for this damage to us in doing business, operating in the State of Kansas.

Sincerely yours,



G. W. Jerry Moss

GWM/kf

P.S. I am sure many other small businesses feel the same as I do, and some companies have moved to Missouri, because they have experienced this same problem.

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*Attachment 9*