

Approved: March 8, 1996
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 7, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Harris, Petty, Reynolds, and Steffes.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Ron Thornburgh, Secretary of State
Shirley K. Sicilian, Director, Research and Revenue Analysis, Department of Revenue
Harry Herington, General Counsel, Information Network of Kansas
Jennifer Chaulk Wentz, Legal Counsel, Office of the Secretary of State
Ron Smith, Kansas Bar Association
David Becker, General Counsel, Seaboard Corporation; Past President, Corporate law section of the Kansas Bar Association
Representative Shari Weber
Robert E. Taylor, Professional Security, Inc.
Ronald R. Hein, Legislative Counsel, Heart of America Staffing Services Association

Others attending: See attached list

HB 2826: Authorizing electronic filing of business documents

Ron Thornburgh, Secretary of State, appeared in support of HB 2826. Mr. Thornburgh stated HB 2826 will permit the Secretary of State to adopt rules and regulations to provide for the electronic filing of documents filed pursuant to the Kansas Corporation Code and Kansas' partnership acts. The Uniform Commercial Code division has been accepting electronically filed financing statements for approximately one year. The response to this filing option has been quite positive. Mr. Thornburgh stated HB 2826 will eliminate repetitious information and burdensome paperwork. Attachment 1

Shirley K. Sicilian, Director, Research and Revenue Analysis, Department of Revenue, appeared to request an amendment to HB 2826. The proposed amendment would clarify that the electronic recording and storing of information from records would be deemed an original record of the information. Ms. Sicilian stated it may be necessary to amend K.S.A. 45-412 to include language to cover "information recorded and stored using an image recognition and information storage system." Attachment 2

The Committee stated its concern regarding the admissibility of such records in a legal proceeding and asked what other states have this type of system. The Committee will obtain additional information relating to the legality of the amendment requested by the Department of Revenue.

Harry Herington, General Counsel, Information Network of Kansas (INK), submitted written testimony in support of HB 2826. Mr. Herington related INK will work in conjunction with the Secretary of State's Office, the Department of Revenue and Department of Human Resources to develop an online procedure for filing new business applications. HB. 2826 makes business filing in Kansas easier, quicker and cheaper. Attachment 3

HB 2742: Business entity cleanup; expansion of fax filings; addressing shareholders' filing requirements

Jennifer Chaulk Wentz, Legal Counsel, Office of the Secretary of State, appeared in support of HB 2742. Ms. Wentz stated HB 2742 was introduced at the request of the Secretary of State. The provisions of

HB 2742 are of a technical nature. Ms. Wentz advised HB 2742 expands the availability of fax filing to limited partnerships; conforms the Kansas statute regarding dissenting shareholders' right with the corresponding Delaware Code section; permits a foreign corporation to file a certificate of withdrawal by fax; permits a corporation to fax file a name reservation; clarifies who may sign a certificate of merger filed by a limited liability company; clarifies the filing requirement for a general partnership that is converting to a limited liability company; and clarifies that both domestic and foreign corporations qualified to do business in Kansas must file with the appropriate register of deeds if they are parties to a merger with a non-corporate entity. Attachment 4

Ron Smith, Kansas Bar Association, introduced David Becker, General Counsel, Seaboard Corporation and past president of the Corporate law section of the Kansas Bar Association. Mr. Becker stated a special ad hoc committee of the KBA studied and discussed the corporation code and reached a consensus that the code should be amended to provide minority shareholders of closely held corporations limited relief. Mr. Becker stated the Committee proposed amendments to HB 2742. The proposed amendments allow stockholders which own at least ten percent of the stock of a corporation having 100 or fewer shareholders to apply to the district court for relief when it is established that (1) the directors or those in control of the corporation have acted in a manner that is illegal or fraudulent or constitutes breach of a fiduciary duty causing injury to the corporation or stockholders; or (2) material injury to the corporation has resulted from the misapplication or waste of a substantial portion of the corporate assets. Mr. Becker stated the proposed amendments bring Kansas more in line with allowing aggrieved minority shareholder judicial relief in limited circumstances. The KBA supports HB 2742 in its original form and request the attached amendment be adopted. Attachment 5

Sub HB 2660: Increasing the caps on applicant fees which may be charged by private employment agencies

Representative Shari Weber, stated she chaired the subcommittee in the House which considered regulation of private employment agencies in Kansas. The original bill was intended to deregulate the personnel industry and repealed all the current statutes. SubHB 2660 raises applicant fees of up to \$100 to be charged by licensed private employment agencies, strikes the fee refund clause and strikes the exemption clause added last year. It was the intent of the subcommittee to level the playing field for Kansas businesses who want to compete with out-of-state employment agencies. The subcommittee also heard from both the Attorney General and the Department of Human Resources who indicated these changes would not impact their agencies in a negative way. The subcommittee felt there should be a change in current law due to the computer generated employment lists and because telecommunications capabilities are changing the availability of employment information.

The Chair, who also chaired the Interim Committee which recommended deregulation of the employment industry, asked what evidence compelled the House Committee to recommend regulation of the industry as set out in SubHB 2660. Representative Weber stated it had received additional information from the Consumer Division of the Attorney General's Office and the Department of Human Resources. Attachment 6

Robert E. Taylor, Vice President/General Manager, Professional Security Companies in Kansas, requested that SB 330 be amended into Sub HB 2660. Mr. Taylor advised that SB 330 provides for the statewide licensing of private security and courier services. SB 330 establishes a regulatory and/or licensure board under the jurisdiction of the Attorney General. The license fees would wholly fund the board. Mr. Taylor stated statewide licensing would serve to remove licensing/tracking responsibilities from the local police departments and would assist in providing safe private security services to Kansas communities. Attachment 7

Attorney General Carla Stovall submitted written testimony in support of HB 2660 and requesting SB 330 be amended into HB 2660. General Stovall stated the bill establishes a state-wide system of regulating security officers, companies and courier services under a three person board appointed by the Attorney General. The board would establish consistent statewide criteria to obtain a license, firearms training and requirements for insurance and identification. Attachment 8

Ronald R. Hein, Legislative Counsel, Heart of America Staffing Services Association (HASSA), appeared in favor of totally deregulating the employment agency industry. HB 2660 resulted from an interim study conducted by the Special Committee on Labor and Industry. It is HASSA's position that if the state chooses to regulate the employment industry, they should regulate only in those areas of applicant paid fees. HASSA requests the removal of the amendment which mandates notice of benefits to temporary employees, Page 2, New Section 3. Mr. Hein stated the language under the Consumer Protection Act provides a mechanism which permits applicants to seek relief for deceptive practices, including misrepresentation or other deceptive acts. Attachment 9

The Chair advised the hearing on SubHB 2660 is continued to March 8, 1996. The Chair requested additional information from the Attorney General and the Department of Human Resources on SubHB 2660.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m.
on March 7, 1996.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 8, 1996.

Ron Thornburgh
Secretary of State



2nd Floor, State Capitol
300 S.W. 10th Ave.
Topeka, KS 66612-1594
(913) 296-4564

STATE OF KANSAS

Senate Commerce Committee

March 7, 1996

Hearing on HB 2826

Senator Salisbury and Members of the Committee:

Thank you for considering HB 2826, a bill which I believe further advances the options we provide to businesses who need to use the services of state agencies.

This bill permits my office to adopt rules and regulations to provide for the electronic filing of documents filed pursuant to the Kansas Corporation Code and Kansas' partnership acts. The uniform commercial code division in my office has been accepting electronically filed financing statements for nearly one year, and the response to this filing option has been overwhelmingly positive. I anticipate a no-less-than enthusiastic response to the availability of electronic corporate filing services.

It is my hope that by providing electronic filing services, along with the departments of revenue and human resources, the state will cut down on the red tape of starting a business or making changes in a business's existing structure, because electronic filing would enable a business person to enter relevant information into a computer once, and that information could be dispersed among all three agencies as needed. There would be no need to make three, separate filings. For Kansas businesses, electronic filing will be convenient, accessible and timely. It will eliminate repetitious information and burdensome paperwork.

I ask for your favorable consideration of this bill. Thank you.

Ron Thornburgh
Secretary of State

*Senate Commerce Committee
March 7, 1996*

Attachment 1

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Shirley K. Sicilian, Director
Research and Revenue Analysis
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Research and Revenue Analysis

MEMORANDUM

TO: Chair, Senate Commerce Committee
Senate Commerce Committee
FROM: Shirley K. Sicilian, Director
Research and Revenue Analysis
Kansas Department of Revenue
DATE: March 7, 1996
SUBJECT: Suggested Amendment of House Bill 2826

Chair and members of the Senate Commerce Committee, thank you for this opportunity to appear before you to request amendment of House Bill 2826. The Department proposal would add to this legislation by clarifying that electronic recording and storing of information from records would be deemed an original record of the information, so as not to require the additional storage of all paper originals or full copies of an original.

The statute being considered for the above purpose could read as follows:

For an image recognition and information storage system which is used by an agency to record and store information from records, papers or documents, the agency's statement of the information shall be deemed to be an original record of the information for all purposes, including introduction into evidence in all courts or administrative agencies.

The current statute at K.S.A. 75-3506 requires that the copying of those documents "comply with standards recommended by the state archivist and approved by the state records board pursuant to K.S.A. 45-412, and amendments thereto." Given that the above language does not factor in the integrity of the recording and storing system, it may be necessary to change it to read as follows:

For an image recognition and information storage system which is used by an agency to record and store information from records, papers or documents and which complies with standards recommended by the state archivist and approved by the state records board pursuant to K.S.A. 45-412, and amendments thereto, the agency's statement of the information shall be deemed to be an original record of the information for all purposes, including introduction into evidence in all courts or administrative agencies.

If the above language is used, K.S.A. 45-412 will need to be amended to include language to cover "information recorded and stored using an image recognition and information storage system."

Thank you very much.

Senate Commerce Committee
March 7, 1996

Attachment 2



Information Network of Kansas

TO: Senate Committee on Commerce
FROM: Harry Herington, General Counsel
DATE: March 6, 1996
RE: Testimony Supporting HB 2826

I appreciate the opportunity to appear on behalf of the Information Network of Kansas to express our support for HB 2826, authorizing the electronic filing of business records. Initially, the Information Network of Kansas (INK) will work in conjunction with the Kansas Secretary of State's Office, the Kansas Department of Revenue and Kansas Department of Human Resources to develop an online procedure for filing new business applications. Under the current system, an entity must acquire and complete numerous forms from these agencies in order to create a new business. The majority of the forms need the same basic information, thus requiring the applicant to fill in the same information time and time again. After completing the numerous forms, the applicant would then submit them to the various agencies and await a response. The process of filing for a new business in Kansas could take several weeks, and possibly months, as the applicant identifies all the proper forms to complete and files them with the appropriate offices. In addition, if an error is discovered by an agency, it usually means that the applicant will have to resubmit a completely new form. The electronic filing of new business would remove most of the current frustration that applicants encounter.

In order to file for a new business electronically, an applicant would access an electronic form on INK via the Internet. By responding to a few simple questions, the applicant would be presented with the appropriate requests for information necessary for their particular type of business. Duplicate information required by the different agencies would only be entered once. After completing the electronic application, the information would be transmitted to INK where an automated process would occur, separating specific information for the appropriate agencies. If the applicant failed to include necessary information, the electronic application would not be sent and the applicant would be immediately advised of the problem. The appropriate information would then be electronically sent to each of the agencies and the applicant would receive an electronic confirmation that the information was received by the agencies. This process would occur in a matter of seconds.

After receiving the information, each of the agencies would be responsible for taking the appropriate measures to either accept or reject the new business filing. If the filing is rejected because additional information is required, the original applicant will be able to amend the original electronic form to include the requested information. The agencies would then send the applicant an electronic acceptance, along with any additional information that the new business owner might need, i.e. business tax ID number. In most circumstances, this process should occur within a few days without any paper being sent back and forth.

*Senate Commerce Committee
March 7, 1996*

KANSAS BUSINESS ELECTRONIC FILING SYSTEM

Goal: Make Business Filings in Kansas EASIER, QUICKER, and
 CHEAPER.

The Kansas Business Electronic Filing System is an effort to decrease the complexity of starting a business in Kansas and to increase state agency productivity. The Kansas Secretary of State's office, the Department of Revenue, and the Department of Human Resources are seeking to develop a "One-Stop Shop," thereby allowing new business seeking to file the necessary registration applications in the State of Kansas to do so in a single step without duplication of data entry. The aforementioned agencies have proposed a plan that would utilize the capabilities of the Information Network of Kansas (INK) to make this effort a reality.

Once the system is in place, the system will allow a filer to enter information required by specific state agencies on a single World-Wide Web page data entry form. Once the requisite information is entered into the data entry fields the user will transmit the information to INK. INK will then run an automated process that will transmit the information in the form requested by each agency over a secured network connection. When each agency approves the information received from the business, the agency will--by the stroke of the keyboard--transmit its acceptance of the application to the filer.

Ron Thornburgh
Secretary of State



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STATE OF KANSAS

Senate Commerce Committee

March 7, 1996

Hearing on HB 2742

Senator Salisbury and Members of the Committee:

Thank you for the opportunity to appear before you in support of HB 2742.

This bill was introduced at the request of the Secretary of State, and contains measures which he considers to be of a technical nature.

New Section One. This section expands the availability of fax filing to limited partnerships. In 1990, the legislature permitted corporations to fax file most documents filed with the secretary of state, and in 1993, this privilege was extended to limited liability companies. Granting the privilege to limited partnerships will equalize the opportunity for the major types of business entities that file with the secretary of state.

Section Two. This section, on page 4, lines 16 through 18, amends the Kansas statute dealing with dissenting shareholders' rights to conform with the corresponding Delaware Code section. It exempts from the notice and right to arbitration provisions of the statute in a merger or consolidation situation shareholders who own stock which is listed on NASDAQ.

Section Three. This section, on page 5, lines 21 through 23, permits a foreign corporation to fax file a certificate of withdrawal. When the legislature authorized fax filing in 1990, it permitted those documents executed in accordance with K.S.A. 17-6003 to be fax filed. This covered virtually all corporate documents, with the exception of name reservations, withdrawals and annual reports. Permitting withdrawals to be fax filed makes the corporate fax filing provisions more uniform.

Section Four. This section, on page 6, lines 11 and 12, permits a corporation to fax file a name reservation. Again, permitting name reservations to be fax filed makes the corporate fax filing provisions more uniform. We request that the committee make one technical amendment, and amend page 6, line 12 to change the citation to "K.S.A. 17-6003a". K.S.A. 17-6003a is the fax filing statute; there is no K.S.A. 17-6002a.

Senate Commerce Committee

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March 7, 1996

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Attachment 4 thru 4-2

Section Five. This section, on page 6, lines 32 and 33, clarifies who may sign a certificate of merger filed by a limited liability company. The statute currently does not specify who may sign this certificate, which is authorized to be filed under K.S.A. 17-7650.

Section Six. This section, on page 7, lines 7 through 9, clarifies the filing requirement for a general partnership that is converting to a limited liability company. General partnerships do not file certificates of partnership with the secretary of state, and this section deletes references to such filings.

Section Seven. This section, on page 8, lines 29 through 31, clarifies that both domestic and foreign corporations qualified to do business in Kansas must file with the appropriate register of deeds if they are parties to a merger with a non-corporate entity. The statute presently only requires a local filing if a domestic corporation is involved, which is inconsistent with corporate filing requirements pursuant to K.S.A. 17-6003.

I will address any questions you may have at this time.

Jennifer Chaulk Wentz
Legal Counsel



**KANSAS BAR
ASSOCIATION**

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Senate Commerce Committee
HB 2742

Testimony of
David Becker,
General Counsel,
Seaboard Corporation
Overland Park, Kansas

My name is David Becker. I am a licensed Kansas attorney having practiced for approximately ten years. I am currently corporate counsel but practiced corporate law for a large Kansas City firm prior to my current position. I am also the past president of the Corporate law section of the Kansas Bar Association.

At the request of the Corporate Section of KBA, Professor Fred Lovitch, Kansas University Law School, conducted research as to the law respecting minority shareholder's rights in all 50 states. Results of that fifty state survey, along with a comparison of Kansas law, were set forth in a report he prepared. The obvious conclusion from his report was that almost every state in the U.S. afforded broader grounds for relief to aggrieved minority shareholders of closely held corporations than that of the laws of Kansas.

Upon receipt of the report I formed a special ad hoc committee of the KBA to study and discuss whether any recommendations should be made to change the corporation code. The persons serving on the committee with me were Bob Crangle, Metz & Crangle, Lincoln, Kansas who is the current chair of the Corporation Section of KBA; Stan Woodworth, Polsinelli White Vardeman & Shalton, Overland Park, Kansas; Chuck Zarter, Lathrop and Norquist, Overland Park, Kansas; Bart Cohen, Blackwell Sanders Matheny Weary and Lombardi, Overland Park, Kansas; Professor Lovitch, Mary Giese, Olathe; Martin Ufford, Redmond, Redmond and Nazar, Wichita; Ben Langel, Foulston & Siefkin, Wichita; and Dick Hertel, Spencer Fane Britt & Browne, Overland Park.

The Committee conducted a full study and discussion of the topic and reached a consensus that the corporation code should be amended in accord with the proposed amendments to HB 2742.

Reasons for these amendments. It was the experience of many members of the Committee that minority shareholders of closely held corporations had very limited judicial grounds when such shareholders were aggrieved by minority shareholders or majority controlled directors. Despite the limited grounds available for relief in Kansas, the Kansas Court of Appeals in *Richards v. Bryan*, 19 Kan. App. 2d 952 (1994) recognized a direct action by a minority shareholder of a closely held corporation against the minority shareholders under certain circumstances.

This legislation is partly in response to the *Richards* case and also moves Kansas more into the main stream of what other states have done in this area. In particular the legislation allows stockholders which own or lease ten percent of the stock of the corporation having 100 or fewer shareholders to apply to the district court for relief when it is established that

1. the directors or those in control of the corporation have acted or are acting in a manner that is illegal or fraudulent or constitutes breach of a fiduciary duty causing substantial injury to the corporation or stockholders; or

Senate Commerce Committee
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Attachment 5 thru 5-4

2. material injury to the corporation has resulted from the misapplication or waste of a substantial portion of the corporate assets.

It should be noted that while affording relief in these circumstances, the proposed legislation does not go as far as many states in that it does not give a cause of action to minority shareholders based only on a showing of "oppression." It was the belief of our committee that the term "oppression" was too vague and that it should not be utilized until the meaning of this term is further developed through case law. It should also be noted that relief is only available to stockholders who have some significant ownership, ten percent of corporate stock, and that there must be a showing that there is either substantial or material injury to the corporation from the alleged bad acts.

The legislation gives the district court the ability to craft the remedy which it feels is most appropriate, but sets forth a list of remedies which may be appropriate.

The research shows that 40 states have grounds for relief based on fraud, 37 states grant relief based on illegality, 32 states grant relief based on misapplication of assets or waste, and 28 states grant relief based on oppression. The neighboring states of Arkansas, Colorado, Iowa, Minnesota, Missouri, Nebraska and Texas include fraud, illegality, misapplication of assets and waste as grounds for seeking judicial intervention in the operation of the corporation. It should be noted that Delaware is not among the states which contain relief for minority shareholders of closely held corporations, which is not surprising because its statute is largely geared toward public corporations. I am sure this is the reason why Kansas does not prevent much relief for aggrieved minority shareholders. Given that a majority of corporations in Kansas are closely-held and not public, I believe that the proposed legislation is advisable for Kansas.

This issue was presented to the KBA Board of Governors at their February 16th board meeting and they approved it as Board policy. On behalf of the Special Ad Hoc committee of the Corporation Section of KBA, I would recommend adoption of these proposed amendments. It brings Kansas more in line with allowing aggrieved minority shareholders of closely held corporations judicial relief in limited circumstances.

As to original HB 2742. We have no problems with this original bill. Nor do we intend that our amendment adversely affect this bill. We just felt it was the most logical vehicle for the amendment, given its noncontroversial nature in the House, and that the time for filing new bills had passed.

Proposed KBA Corporation Section amendment:

Amend KSA 17-6516. Appointment of custodian or receiver for deadlocked corporation; powers of custodian.

~~(a) The district court, upon application of any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for any corporation when *one or more stockholders of a corporation organized under the laws of this state, may grant one or more forms of relief specified in subsection (c) when it is established that:*~~

(1) At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(2) The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(3) The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

(b) The district court, upon application of one or more stockholders which individually or collectively owns of record at least 10% of the issued and outstanding shares of all classes of common stock taken as a whole of a corporation having 100 or fewer stockholders of record may grant, subject to KSA 17-6002(b)(8), and amendments thereto, one or more forms of relief specified in subsection (c) below when it is established that: (A) the directors or those in control of the corporation have acted or are acting in a manner that is illegal or fraudulent or constitutes breach of a fiduciary duty causing substantial injury to the corporation or the stockholders, or (B) material injury to the corporation has resulted from the misapplication or waste of a substantial portion of the corporate assets.

(c) If one or more of the grounds for relief described in subsections (a) or (b) exist, the district court may order one or more of the following types of relief: (1) the appointment of one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation;

(2) the performance, prohibition, alteration, or setting aside of any action of the corporation or the prohibition or setting aside of any action of

those in control of the corporation (whether such action is taken in their capacity as stockholder, director, officer or other otherwise);

(3) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(4) the removal from office of any director or officer;

(5) the appointment of any individual as director or officer;

(6) an accounting with respect to any matter in dispute;

(7) the payment of dividends;

(8) The aware of damages to any aggrieved party; or

(9) such other relief as the court may deem fair and equitable under the circumstances.

(d) A custodian appointed under this section shall have all the powers and title of a receiver appointed under K.S.A 17-6901, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the court shall otherwise order and except in cases arising under subsection (a)(3) of this section or subsection (a)(2) of KSA 17-7212. Any officer or director appointed under this section shall have all the powers and duties specified in the articles of incorporation or bylaws of the corporation, as limited or further specified by order of the court.

History: L. 1972, ch. 52, Sec. 69; July 1.

THE KANSAS HOUSE

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Representative Shari Weber

Testimony for Senate Commerce Committee
Re: H.B.#2660 Hearing: March 7, 1996

Thank you Madame Chairman and members of the Committee for the opportunity to appear before you, today. I am here to give you background information about how substitute H.B.#2660 evolved to this point.

This bill reflects the work of a sub-committee that I chaired with regard to the regulating of private employment agencies in Kansas. Representatives Presta and Standifer also served on the sub-committee. Originally the bill was intended to deregulate the personnel industry by repealing all of the statues currently regulating employment agencies. However, in its current form, this 1911 law has been updated to allow applicant fees of up to \$100.00 (rather than the \$2.00 limit) to be charged by licensed private employment agencies. The bill strikes the fee refund clause and also strikes the exemption clause that the legislature added last year.

The intent of these changes is to level the playing field for Kansas businesses who want to compete with out-of-state employment agencies. Out-of-state employment agencies are currently charging fees for listings of jobs available to applicants. Kansas based businesses are unable to charge market-driven fees because the current 1911 law sets the fee at \$2.00 and the refund of such fee if a job is not secured by the applicant within several days. By elevating the applicant fee ceiling to \$100.00, the law would allow businesses to charge competitive applicant fees and would eliminate the necessity for specific business exceptions in the law.

Please note that both the office of the Attorney General and the Department of Human Resources indicated that these changes would not impact them in a negative way. Representatives from the private employment agency association also indicated that the impact on their business would not be negative.

One of the catalysts for change in current law is that computer generated employment lists and telecommunications capabilities have changed the way we make employment information available. It may be

Senate Commerce Committee

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Attachment to the 6-2

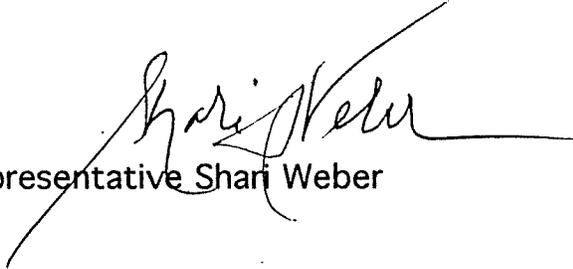
Rep. Shari Weber - Testimony for Senate Commerce Committee 3-7-96

necessary to revisit this law within a short period of time, due to rapid changes in the electronic marketing of employment information.

Currently, most employers pay the fees associated with locating employment for an applicant. Currently, the Department of Human Resources does not have any licensed Kansas private employment agencies. Currently, we have made an exception in the law for just two businesses who are utilizing computer listings of employment to match with applicants for employment.

While realizing that totally deregulating the personnel industry by repealing all of the statues currently regulating employment agencies may work well, sub.H.B.#2660 modifies current law to allow reasonable applicant fees and open up the field to Kansas private employment agencies.

Thank you for your favorable consideration. I am available to answer questions of the committee.


Representative Shari Weber

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PROFESSIONAL SECURITY INC.

STATEMENT OF TESTIMONY

Senate Commerce Committee

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DATE: March 7, 1996

RE: Request for Senate Bill 330 (Statewide licensing of Private Security and Courier Services) to be amended into House Bill 2660.

FROM: Robert E. Taylor, Professional Security, Inc.

I am the Vice President/General Manager of the Professional Security Companies in Kansas. I'm here to request that Senate Bill 330 be amended into House Bill 2660.

Senate Bill 330 provides for the statewide licensing of Private Security and Courier Services. This act recommends a regulatory and/or licensure board, under the jurisdiction of the attorney general, that would be wholly underwritten by licensing fees.

The most important feature of SB 330 is its' ability to promote a strong degree of public safety, security and trust for the citizens of Kansas. Local law enforcement agencies continue to experience increasingly difficult workloads, overall decreases in manpower and troublesome funding conditions.

A competent, well trained and more closely regulated private security network within the state would strongly compliment our fine group of overworked law enforcement organizations.

Regulation would further assure the impossibility for criminals to pose under the guise of 'private security operatives' in order to commit crimes against Kansans.

A few of the communities in this state currently have licensing requirements for private security companies and their employees; most do not. No two cities, however, have the same licensing provisions or procedures. This makes it extremely restrictive for private security providers to shift or move the appropriate, qualified security personnel quickly to points of need in the state.

Cities with very lax or no licensing requirements may, perhaps inadvertently, be subjecting their local businesses and/or citizenry to becoming victims of unscrupulous or under insured providers. It is not uncommon for known felons to be employed by businesses where there is no required criminal or other background checking of employees.

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The largest concern with SB 330, as it was originally written, was the requirement for retired, formerly commissioned law enforcement officers to be licensed under this act. We'd ask the revisor to add, under Sec. 3 of the act, a provision allowing these individuals to perform on a non-licensed basis; therefore, not requiring them to pay certain licensure fees.

One other point of concern, deals with a 'misprint' found in Sec. 5, subsection (e), lines 22-25. When corrected, the annual licensure fee for a company is not exceed \$350; the annual licensure fee for an individual officer would not exceed \$50.00.

During the initial testimony on SB 330 (2/14/96) there was no opposition to it. Some of the Public and private institutions in support of SB 330 were/are as follows:

- 1) The Office of the Kansas Attorney General
- 2) The Kansas Bureau of Investigation
- 3) Local Law Enforcement Groups including members of the Wichita and Topeka Police Departments; and others.
- 4) The Wichita City Attorney's Office
- 5) The Dillon Stores of Kansas
- 6) Wells Fargo, Kansas Operations
- 7) Professional Security, Inc., Kansas Operations
- 8) PSI Armored Services, Kansas Operations
- 9) Armored Services, Inc., Kansas Operations
- 10) The Entz & Chanay Law Firm

Further, the proponents of SB 330 believe that statewide licensing would serve to remove licensing/tracking responsibilities currently loaded onto local police departments, freeing up valuable time and resources; statewide licensing would assist in providing safe, top flight private security services to Kansas communities when and where they are needed.

Once again, SB 330 is revenue neutral; with licensure fees providing the funding to operate the regulatory board.



State of Kansas

Office of the Attorney General

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March 7, 1996

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Senator Alicia Salisbury
Chairman, Senate Commerce Committee
State Capitol
Topeka, KS 66612

RE: Amendment to House Bill 2660

Dear Sen. Salisbury and Members of Senate Commerce Committee

I appreciate the opportunity to ask for an amendment to House Bill 2660. I ask for your consideration and support in amending Senate Bill 330 into H.B. 2660. I support S.B. 330. This bill was initiated at the request of the private security community. It would establish a state-wide system of regulating security officers, companies and courier services under the authority of a three person board appointed by the Attorney General. My support of the concept of state-wide regulation was elicited by the private security community shortly after I took office.

Currently security officers, companies and courier services are regulated by some, but by no means all, municipalities in Kansas with varying licensure qualifications and requirements. In addition, under current law such persons are permitted to carry concealed weapons in the absence of any consistent education or firearms training requirements. The current system of city by city regulation creates a situation of potential harm to the public who may come into contact with security personnel with little or no training in the use of firearms.

Under the provisions of Senate Bill 330 a board under the jurisdiction of the Attorney General would establish consistent state-wide criteria relating to qualifications to obtain a license, firearms training and requirements for insurance and identification.

The creation of a private security licensure board under the authority of the Attorney General would be consistent with the Attorney General's responsibility to license and regulate

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private detectives. Under Senate Bill 330 this fee funded board would be financially supported by the licensees, thus not creating an additional tax burden to the public at large.

I urge your favorable consideration of amending Senate Bill 330 into House Bill 2660 because of its value to public safety which would derive from the standardization of qualifications and training for those who would carry concealed weapons.

I thank you for your consideration.

Very truly yours,

Carla Stovall *by NL*

Carla J. Stovall
Attorney General

HEIN, EBERT AND WEIR, CHTD.

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Stephen P. Weir

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SENATE COMMERCE COMMITTEE

TESTIMONY RE: HB 2660

Presented by Ronald R. Hein

on behalf of

HEART OF AMERICA STAFFING SERVICES ASSOCIATION

March 7, 1996

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Heart of America Staffing Services Association, representing the temporary and full-time staffing service firms in Kansas.

HB 2660 was originally introduced as a bill to repeal the state statutes regarding regulating employment agencies in the state of Kansas. This bill resulted from an interim study conducted by the Special Committee on Labor and Industry that was reviewing employment agency laws after passage of two exemptions from the act in 1995.

The interim committee asked HASSA to review other states' laws. After hearing testimony and reviewing the statutes in other states, HASSA came to the conclusion that it would have no objection if the Legislature totally deregulated the industry.

Applicant fees are permitted in some states, and restricted or regulated in some capacity in others. Given the nature of the industry, which is heavily telecommunications oriented, it is virtually impossible for such restrictions to be imposed in such a manner as to protect the citizens of the state. At most, such regulation will simply prohibit the industry from having its business located within the state, [as was evidenced by Cattleman's decision to move their operation to Oklahoma when they were subject to the restriction of existing state law]. Existing law does not stop the conduct from occurring, nor Kansas consumers from having the availability of the applicant paid fee services.

The House Committee, after subcommittee meetings, amended the bill back to the current law with the adjustment in the fee allowed to be charged to an applicant. Since the employment services industry is heavily telecommunications oriented and with all the new technology services (Internet, 800 #'s, 900 #'s, computer database listings, etc.), it is necessary to change the law to allow a higher fee to be charged for these types of services. But the subcommittee chose not to deregulate.

Our position on this policy question is that if the state chooses to regulate, they should regulate only in those areas of applicant paid fees. The state of Kansas has

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previously had a policy of not allowing applicant paid fees. Even states that allow applicant fees have only a small percentage of the industry charging those applicant fees.

HASSA would ask the removal of the amendment offered on the House floor, which mandates notice of benefits to temporary employees by the employment agency. Temporary placement companies currently provide a document explaining the benefits available if they work full time for a temporary agency because it provides a great incentive for applicants to work full time. No employer is required to give notice of statutorily mandated benefits such as workers compensation. The law requires that and numerous other actions of employers. There is no need to treat temporary companies any differently than any other company. This mandate is not necessary and does not relate to this section of law which does not regulate temporary placement companies. HASSA therefore opposes the House floor amendment.

Regarding the House Committee amendment, HASSA has maintained consistently that outright repeal of the statute (deregulation) is the preferable choice. HASSA believes that the language under the Consumer Protection Act provides a mechanism which will permit applicants to seek relief for deceptive practices, including misrepresentation or other deceptive acts. In addition, having the industry be regulated, as all other industries, pursuant to the Consumer Protection Act, would also accomplish KDHR's desired goal of moving jurisdiction to the Attorney General. The Consumer Protection Act is generally enforced by the Attorney General, the county or district attorneys, and numerous city attorneys pursuant to each respective jurisdiction's Consumer Protection Division.

HASSA would leave the issue of applicant fee limitation to the wisdom of the committee.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.