

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on January 31, 2007 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Bev Beam, Committee Secretary

Conferees appearing before the committee:

Representative Gatewood  
Gary Blackburn, KDHE

Others attending:

See attached list.

The Chair called the meeting to order and welcomed everyone.

Melissa Calderwood, Legislative Research Department, gave an overview of the National Conference of State Legislatures' annual meeting.

Gift Cards and Gift Certificates

The 2006 Kansas Legislature made amendments to the Kansas Consumer Protection Act to create requirements for the sale of gift cards and gift certificates. **HB 2858** makes it a violation of the Kansas Consumer Protection Act from and after January 1, 2007, to sell a gift card or gift certificate containing an expiration date which is less than five years from the date of purchase. A gift certificate is defined as a written promise given in exchange for full or discounted payment or without any money or other thing of value being given in exchange, to provide merchandise in a specified amount or of equal value to the bearer of the certificate. A prepaid bank card is defined as a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution in a predenominated amount useable at multiple, unaffiliated merchants or at automated teller machines, or both.

The bill also provides that a merchant shall not be required to redeem a gift card or gift certificate for cash. No fees may be charged against the balance of a gift card or gift certificate within 12 months from the date of issuance of the card.

In Kansas, 2007 **HB 2179** would amend the gift card and gift certificate exemption created by the 2006 Legislation to include gift certificates or gift cards that are sold or distributed by non-profit or not-for-profit organizations for the purpose of the promotion of civic improvement, including economic development. The bill has been referred to the House Commerce and Labor Committee.

Interchange fees

The U. S. Government Accountability Office recently reviewed credit card fees and disclosures. Among other things, the GAO analyzed disclosures from popular credit cards and obtained data on the rates and fees paid on accounts from six large issuers. A usability expert reviewed the issuers' disclosures and found that the information was often written well above the eighth-grade level (half of Americans read at this level). The disclosures were found to have buried important information in text, failed to properly group and label like items in the statements, and used small typefaces. Cardholders who were tested often had difficulty using these disclosures to find and understand key rates or applicable terms. It is important to note that the GAO study focused on direct consumer fees, rather than rates such as interchange.

The Interchange fees are an emerging issue that states have begun to address. An interchange fee is defined

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as a rate paid by the merchant's bank to the cardholder's bank. It is a component of the overall merchant discount rate. The Interchange fee is set competitively by MasterCard and Visa as part of their payment systems.

According to the National Conference of State Legislatures, four states (Florida, Nebraska, Oklahoma and Washington) have introduced legislation this year and five states considered legislation in 2006 (Alabama, Kentucky, New York, Tennessee and Washington). The 2007 Washington legislation **SB5065** defines "interchange fee" and limits the amount that financial institutions may charge in interchange fees to no more than one and one-half percent of the total cost of the retail transaction.

### Kansas Identity Theft Legislation

House Substitute for **SB 196** enacts new law by allowing for protection and restriction of the use of certain personal information and amends existing identity theft law and the Fair Credit Reporting Act. The bill also creates associates penalties and remedies for violations of the use of personal information. Specifically, the bill creates new law for the illegal possession or use of scanning devices, protections for personal identifying information and notification requirements associated with a breach of security of computerized data, allowances for the use of and protections associated with security freezes on consumer reports, and procedures for the destruction of data. (Attachment 1)

Hearing on:

Melissa Calderwood gave an overview of **SB 127 - concerning insurance; pertaining to subsidence insurance.** There is hereby created the mine subsidence insurance fund, which shall be administered by the mine subsidence insurance governing board for the purpose of making available insurance coverage against mine subsidence as to any structure within this state. The mine subsidence insurance governing board shall submit to the commissioner of insurance, for the commissioner's approval, a proposed plan of operation for the economical, fair, and nondiscriminatory administration of the mine subsidence insurance fund. At least once each year, the commissioner of insurance shall audit the affairs of the mine subsidence insurance fund in order to determine its financial condition and ability to fulfill its obligations. Every insurer that offers basic property and homeowners insurance insuring on a direct basis a structure located in this state shall offer mine subsidence coverage provided by the Kansas mine subsidence insurance underwriting association in each policy of basic property and homeowners insurance that is issued or renewed in this state.

The Chair called Representative Gatewood for his testimony on **SB 127**. Representative Gatewood said his house district includes the cities of Galena, Baxter Springs and Treece. These three cities are part of a lead and zinc mining operation known as the tri-state mining district. This district was mined between 1870 and 1970 with mines ranging from 40 feet to 500 feet deep.

This past summer the Green Parrot bar with living quarters in the back of the historic building partially collapsed into a 40 foot sinkhole. The entire living quarter of the building disappeared into this abandoned mine. The insurance company looked at the damage and told the owner that the building is not covered due to the nature of the subsidence. Kansas has mines throughout the state, especially in Johnson, Reno, Crawford and Cherokee counties yet we have no insurance policy to deal with incidents such as this when there are no possible responsible parties.

This bill is based on an Ohio Law and is a totally optional program. This bill was introduced after several financial institutions have expressed concerns about renewing and/or issuing loans on land without some assurance on the structures.

The city of Galena, along with the Kansas Department of Health & Environment, have proposed a subsidence evaluation study and a plan to fill these voids with chat and fly ash. This plan is estimated to cost \$64 million and take 20 years to complete. (Attachment 2)

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Gary Blackburn, Director, Bureau of Environmental Remediation, testified that this bill develops an insurance program for areas of the state where underground mining has occurred and the affected property owners want to purchase insurance to protect their property from future collapse or subsidence. KDHE has knowledge of and has worked with numerous property owners whose properties have been damaged by subsidence from past mining operations. The companies responsible for the underground mining should be responsible for the damage but much of the mining took place many decades ago and the responsible companies are often not available.

Mr. Blackburn said this insurance program would be beneficial to several areas of the state where underground mining has taken place. The areas with the greatest concern are located in the southeast portion of the state and are primarily related to lead and zinc mining. Most of the lead and zinc mining ceased in the 1950's, but the last mine closed in 1970 near Baxter Springs. Underground coal mining also took place in many areas of eastern Kansas and left large underground voids, primarily under the city of Pittsburg. A number of cities in central Kansas have been undermined for salt and gypsum. The cities of Hutchinson, Lyons, and Kanopolis have areas where residents live over mine voids. Limestone mining was also very common in the Kansas City area with hundreds of acres left undermined in Wyandotte County.

While KDHE supports the bill, they would like to propose several amendments related to **SB 127**. First, to add gypsum mining to Section 1 (e) to the definition of: "Mine Subsidence." Second, that the mine subsidence insurance governing board be chaired by the Commissioner of Insurance or the commissioner's designee rather than KDHE. Third, an amendment that a provision should be added to the bill that requires an inspection of the property prior to insurance coverage to document any existing damage and to exclude the prior damage from coverage.

KDHE Supports **SB 127** because we know there is a need for this insurance. (Attachment 3)

The meeting adjourned at 10:30 a.m.