Approved April 8, 1983
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 a.m./p.m. on March 23, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Wunsch
Representative Justice was excused.

Committee staff present:
Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

January Scott, Committee on Child Abuse Investigations
Pat Ireland, Kansas Committee for the Prevention of Child Abuse
Senator Nancy Parrish
Michael Boyer, Kansas Bureau of Investigation
Elizabeth Taylor, Kansas Association for Education of Young Children
Judy Culley, Shelter, Inc., Lawrence
Senator Bert Chaney
Representative Dean Shelor
Jerry Smith, Consumer, Kansas City
Representative Mary Jane Johnson
Representative Alfred Ramirez
Charles Herman, Ford Motor Company, Chicago
Bud McMullen, General Motors, Oklahoma City
Leigh Nichols, Motor Vehicles Manufacturing Association
Jack Quinlan, Motor Car Dealers Association
Wayne Hundley, Consumer Division, Office of the Attorney General

SB 105 - An act relating to juveniles.

The Chairman said the subcommittee on this bill's amendments had met for two hours prior to this meeting.

The hearing on the bill was continued from the March 22 meeting. January Scott, chairpers of the ad hoc committee formed to study concerns of K.S.A. 38-1523 regarding child abuse i vesitgations, gave a background of this group's participation in recommendations for SB 10 (in Attachment No.1).

Pat Ireland said the ad hoc committee favors 38-1523 as is and is concerned that changes in wording will lead to the same problems experienced in previous years. She opposed the provision on page 26, Section 22, which would allow law enforcement officers to place children in need of care in jail facilities without a court order and suggested this be stricken. It goes against the philosophy of deinstitutionalizing juveniles. If the provision is not stricken, she suggested allowing law enforcement officers to do this until 1984 to provide a transition period.

Senator Parrish gave a statement (Attachment No.2) on behalf of the Judicial Council Advisory Commission on Juvenile Offender Programs supporting the bill. She addressed the concern of losing statistical information pertaining to a juvenile's record and noted the Commission's recommendation that information be maintained and collected by a Juvenile Justice Information System. Amendments concerning the data collection system (see Attachment No.9, March 22 minutes) were submitted to the subcommittee on amendments.

Michael Boyer said the KBI would administer the information system and prepare reports. He said the KBI Director, Tom Kelly, feels strongly that fingerprinting juveniles was necessary in order to ensure accurate identification of three felony-type offenders. He suggested amending SB 105 to allow law enforcement people to take prints and transfer them to the KBI. The wording in the current statute regarding these fingerprints should be changed from "may" to "shall".

Elizabeth Taylor supported the bill and, particularly, Section 16(e) regarding SRS.

Andy Kenkel said his testimony (Attachment No.3) did not get a hearing on the Senate side. Section 22 should be deleted because children should not be placed in city or county jails.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 xxx./p.m. on March 23, 1983

His remarkes did not pertain to detention centers.

Judy Culley, administrator of Shelter, Inc., Lawrence, supported the bill as amended by the Senate. She proposed an amendment to include Attachment No.4 in the bill to clarify to police it is all right to pick up children who have run away.

A statement from Bruce Linhos, Assistance Director of The Villages, Topeka, was distributed. It explains the supportive position of the Kansas Association of Licensed Private Child Care Agencies (Attachment No.5).

Attachment No.6 contains a statement from the League of Women Voters supporting SB 105.

The Kansas Association of School Boards' statement (Attachment No.7) generally supports the bill. Suggestions for amendments are listed.

The Attorney General supports the bill (Attachment No.8).

Objections to certain sections of SB 105 as they relate to the Community Corrections Act and suggested solutions are in Attachment No.9 from the Department of Corrections.

A statement from the Kansas Action for Children group is in Attachment No.10.

SB 199 - An act relating to car warranties (lemon law).

Senator Chaney, sponsor, said the bill was the same as HB 2394 which is in Committee. SB 199 is based on the Connecticut law. It was introduced as the result of a constituent's problems in getting repairs made to his car. Senator Chaney noted the dealer wanted to be able to satisfy the customer, but the manufacturer would not cooperate. He said the Recreation Vehicle Industry Association had requested that motorhomes be exempted from the bill (Attachment No.11), but he believed this would kill the bill. Other states have pending legislation where motorhomes have been exempted. Senator Chaney said the bill was not directed to the persons who build the cars but to the manufacturers who should stand behind their products.

A letter from David Mikesic, consumer and judge in the Kansas City area, endorsing SB 199 is attached (Attachment No.12).

In discussion, a member noted that Kansas has a very liberal consumer act, and provisions of the bill are already covered in the Kansas Consumer Code. Senator Chaney said this bill would give positive substance to strengthen the code. Another member noted, if motorhomes are exempted, other vehicles and appliances should be also.

Representative Shelor supported the bill and gave an example of a constituent's problems in getting vehicles fixed, resulting in a court case. The judge in the case believes legislation such as SB 199 is needed. Representative Shelor noted the dealer cooperated, but the manufacturer would not.

Jerry Smith, a consumer from Kansas City, told of his problems with Ford vehicles during the last 5 years, noting the dealer wants to help, but Ford won't let him. Mr. Smith was not familiar with any present legislation that would solve his problem.

Representative Mary Jane Johnson, sponsor of HB 2394, supported SB 199 (Attachment No.13).

Representative Al Ramirez supported the bill, noting most businesses will occasionally have a bad product for which the consumer should have some recourse. He furnished a statement (Attachment No.14) from Marion Lawrence, a Leavenworth consumer, supporting the bill.

Charles Herman, representing the Ford Motor Company, opposed SB 199. His statement is attached (Attachment No.15). He said amendments would be offered that would address some of the manufacturer's problems should the bill pass. He noted a manufacturers' consumer advocate system will be instituted this summer which will not cost the consumer. Mr. Herman did not know how many lawsuits were presently pending in Kansas in regard to car warranties.

Bud McMullen, representing General Motors, said GM wants satisfied customers and has had a settlement procedure set up for 4 years. GM pays part of the expense. Attachment No.16 contains figures regarding the arbitration program.

Amendments suggested by the manufacturers are in Attachment No.17.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 XXX./p.m. on March 23, 1983

Leigh Nichols, representing the Motor Vehicles Manufacturing Association, supported the statements of Mr. Herman and Mr. McMullen.

Jack Quinlan, Motor Car Dealers Association, said this group is neutral on the bill. His statement with recommended amendments is attached (Attachment No.18). In additional remarks, he said there are remedies already on the books, but, if a customer is going to be entitled to a refund or given a comparable vehicle as provided in SB 199, this might not be spelled out in the Uniform Commercial Code.

Wayne Hundley, Consumer Division of the Office of the Attorney General, supported SB 199. Although it does not add anything new to the law, it adds worthwhile clarification and makes the consumer aware there is a remedy available.

SB 355 - An act relating to the consumer protection act and unconscionable acts.

Mr. Hundley said the bill clarified present law.

SB 356 - An act relating to transactions subject to the consumer protection act.

Mr. Hundley said the bill amends the definition of "consumer transactions" to delete securities from the consumer protection act because there is a separate securities act. He noted the confusion in interpretation concerning which act covers a securities case. The Securities Commissioner supports SB 356.

SB 357 - An act relating to the consumer protection act and health spas and buying clubs.

Mr. Hundley said the bill would add a 3-day cooling off period for health spas and buying clubs contracts. He noted the high-pressure sales tactics used by these groups which have caused a lot of trouble for his division.

The Chairman adjourned the meeting at 5:20 p.m.

KANSAS COMMITTEE FOR PREVENTION OF CHILD ABUSE

214 West 6th, Suite 301
Topeka, Kansas 66603-3792
913-354-7738

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January H. Scott

ATTACHMENT # 1

TESTIMONY

OF

JANUARY H. SCOTT

Before

HOUSE JUDICIARY COMMITTEE

March 22, 1983

Re: S.B. 105, Section 38-1523
Section 38-1528(a)

Since the passage of the Juvenile Code in the 1982 Legislative Session, numerous concerns have been expressed to our organization related to the section on child abuse investigation. These concerns prompted Kansas Committee to organize an ad hoc committee to study this section. As you may recall, Section 38-1523 was introduced in its entirety during the 1982 legislative session. It was not studied or recommended by the Juvenile Code Advisory Committee, the Judicial Council or the Interim Judiciary Committee.

I served as Chairperson of the Ad Hoc Committee. The Ad Hoc Committee began meeting last fall, and met three hours a day, once a week for four weeks. A substantial amount of time was spent between meetings on research, communication, and development of written material for study by the committee. The committee chose as its primary goal to have an investigation statute which provided the greatest protection for the child.

Representatives from the following organizations served on the Ad Hoc Committee:

Kansas Committee for Prevention of Child Abuse

Kansas Children's Service League

Kansas Action for Children

Kansas Association of Licensed Private Child Care Agencies

Kansas Association for Education of Young Children

Kansas Foster Parents' Association

Child abuse/neglect unit of Wyandotte County Court Services

Johnson County Sexual Abuse Program

Included on the committee were two former Assistant District Attorneys, one from Shawnee County and one from Johnson County, who had had previous experience prosecuting deprived cases.

In addition, Major Troy Hampton of the Wichita Police Department acted as a law enforcement consultant to the committee.

The Ad Hoc Committee is very appreciative of Youth Services Commissioner Robert Barnum allowing three of his personnel to attend our meetings as resource consultants. They were:

Jan Waide - Administrator, Child Protection and Family Services Section

Alenne Griggs - Child Protection Specialist

Jim Baze - Section Chief, Lawrence SRS

Members of the Ad Hoc Committee presented their recommendations to the Juvenile Code Subcommittee of the Judicial Council in December, 1982. At that time, Judge Morrison, a member of the subcommittee, presented similar recommendations. The recommendations were incorporated and presently appear in S.B. 105, Section 38-1523.

Pat Ireland, a member of the Ad Hoc Committee, will present the basis for the recommendations as they appear in Section 38-1523, and will address the concerns Kansas Committee for Prevention of Child Abuse has related to Section 38-1528(a).

AD HOC COMMITTEE
ON CHILD ABUSE INVESTIGATIONS

CHAIRPERSON: January H. Scott, Kansas Committee for Prevention of Child Abuse

MEMBERS OF THE COMMITTEE

Pat Ireland: Kansas Committee for Prevention of Child Abuse

Cynthia Robinson: Kansas Action for Children, former Johnson County Assistant District Attorney assigned to deprived child cases

Nancy Lignitz: Child Abuse Consultant, Johnson County Mental Health Center

Pat Joseph: Former Shawnee County Assistant District Attorney assigned to deprived child cases

Joyce Ritter/Mary Edwards: Child abuse/neglect unit, Wyandotte County Court Services

Bill Preston: Kansas Association of Licensed Private Child Care Agencies

Andy Kenkel: Kansas Children's Service League

Elizabeth Taylor: Kansas Association for Education of Young Children

Lorraine Atkinson/Wanda Parks: Foster Parents' Association

****

Law Enforcement Consultant: Major Troy Hampton, Wichita Police Department

****

The following people were invited to serve on the Committee but did not participate. They have been provided all materials prepared by the Committee: Jim Clark, Kansas County and District Attorney's Association; Fred Howard, Kansas Police Officers' Association; Adrian Farver, Kansas Sheriff's Officers' Association.

****

Resource Consultants from the Department of Social and Rehabilitation Services:

Jan Waide: Administrator, Child Protection & Family Services Section, Youth Services

Aleene Griggs: Child Protection Specialist

Jim Baze: Section Chief, Lawrence SRS

NANCY PARRISH
STATE SENATOR, NINETEENTH DISTRICT
SHAWNEE COUNTY
3632 S. E. TOMAHAWK DR.
TOPEKA, KANSAS 66605
913-379-0702 HOME
913-296-7373 BUSINESS

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FEDERAL AND STATE AFFAIRS
LOCAL GOVERNMENT
JOINT COMMITTEE ON SPECIAL CLAIMS
LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT
CONFIRMATIONS

March 22, 1983

ATTACHMENT # 2

Testimony given to the House Judiciary Committee on Tuesday, March 22, 1983

As chairperson of the Advisory Commission on Juvenile Offender programs, I'm appearing as a proponent of S.B. 105. The Advisory Commission was created by the 1982 legislature to oversee Juvenile Offender Programs. The membership on the Commission includes 4 legislators, the Secretary of SRS or the secretary's designee, the Commissioner of Education or the commissioner's designee, the Attorney General or his designee, 2 judges appointed by the Chief Justice, and 4 members appointed by the governor, one representing law enforcement, one representing the field of corrections, and 2 persons actively involved in providing services for juvenile offenders.

The Advisory Commission on Juvenile Offender Programs first met last October to begin on-site visits to the Youth Centers and to review Juvenile Offender Programs and policies. The first issue that the Juvenile Offender's Commission confronted was the problem of retaining all the juvenile justice statistics that had been reported prior to the implementation of the new Juvenile Code. Prior to January 1 two sets of records on juveniles were sent to the Statistical Analysis Center of the KBI.

The first set was the standard offense report which includes reported police contacts and arrests and is prepared by law enforcement officers. The second set of data is data that had been reported by the Court Service Officers in each judicial district and was compiled on a form called the Juvenile Court Statistical Card. The problem that occurs with the implementation of the new juvenile code is that now the court is not involved prior to the filing of charges by the County and District Attorneys. The records received by the court services officers would only pertain to those cases where a formal complaint is filed which according to the information we received amounts to only around 30% of the cases. Another 30% of the cases are handled through diversion or through informal disposition. In order to salvage the information on informal dispositions and diversions that used to be reported by the Court Service Officers, the Juvenile Offender Commission recommends that the responsibility for reporting dispositions be shifted to the County or District Attorney's office. In New Sec. 33 "Juvenile justice agency" is defined to include any county or district attorney. In New Sec. 34 all juvenile justice agencies are required to report juvenile justice history record information.

The second policy change recommended by the Juvenile Offenders Commission is to allow the maintenance and collection of personally identifiable information or name-based information by the Juvenile Justice Information System for statistical purposes.

This second change we proposed goes beyond preserving the status quo of the Juvenile Justice Information System prior to the implementation of the new juvenile code.

Allowing the Juvenile Justice Information System to maintain personally identifiable information would enable statistics to be compiled that would tie the information received on the standard offense report to the information received as to the disposition. The reports are separate now and there is no way to determine if there are 10 juveniles each committing 1 crime or 1 juvenile committing 10 different crimes. When Mike Boyer, director of SAC, was asked last year during the discussion of the new juvenile code about the number of juveniles that the "3 strikes-you're out" provision would have applied to, Mike was unable to answer because his statistics were tabulated according to separate incidents and the disposition of cases and not according to individual records. The Juvenile Offenders Commission did recommend an important limitation on the dissemenation of this information. The limitation is that accessibility be limited in the same way as the Social file is limited under 38-1607(b). In other words, the information is privileged and is open to inspection only by an attorney for the party or upon order by the judge.

The third policy change that the Advisory Commission on Juvenile Offender Programs recommends is the fingerprinting of juveniles who have been adjudicated of a felony-type offense.

Fingerprinting is necessary in order to ensure an accurate identification of those juveniles that have 3 felony-type offenses and should be adjudicated in the adult system. This change is not currently in S.B. 105. The Advisory Commission endorsed this recommendation at our last meeting on March 11 which was after S.B. 105 had already been passed by the Senate.

Several other minor amendments are needed in the bill and are included on the attached sheet.

The advisory commission discussed at length why it is important to collect statistical information within the juvenile justice system. The simplistic answer is that if statistical information is collected the information should be complete and accurate. But the Juvenile Offenders Commission tried to analyze the need for collecting this information and also the benefits that would be derived from the information.

Specifically, the identification of juveniles with two prior felony-type offenses would be nearly impossible without a central repository for juvenile justice information.

Generally, the information will be invaluable in analyzing trends in the juvenile justice area which will be used for planning purposes by SRS and other agencies. The information will be helpful in evaluating our juvenile justice system. Accurate Statistical information is a necessary projective component in planning and implementing policy changes.

Senate Bill 105

Amendments recommended by the Advisory Commission on Juvenile Offender Programs:

1) The Advisory Committee endorses the K.B.I.'s recommended language on fingerprinting of a juvenile upon adjudication of a felony-type offense.

2) The Advisory Commission recommends that the court be mandated to: a) identify in the journal entry whether the adjudicated offense was a felony or misdemeanor offense and b) to specify the number of the statute under which the juvenile was charged.

3) p. 41 line 726 strike "youth residential facility" and insert "state youth center"

4) p. 41 line 729 strike "court order" and insert "warrant"

5) p. 41 line 731 strike "child" and insert "juvenile"

6) p. 41 line 732 strike "child" and insert "juvenile"

7) p. 43 line 785 insert "county or district attorney or" before "attorneys"

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ATTACHMENT # 3

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SENATE BILL 105
MARCH 22, 1983

Mr. Chairman and members of the House Judiciary Committee.
Thank you for allowing me to appear before you today. Kansas Children's Service League would like to speak in support of Section 18, 19 and 20 of Senate Bill 105 as amended by the Senate Committee of the Whole.

We feel that these changes in Child Abuse and Neglect reporting contained in Senate Bill 105 are practical for the following reasons:

1. Section 19 is not asking SRS to perform any function that it was not performing in December of 1982.

2. The child abuse investigation procedures in Section 19 and 20 is an efficient use of both SRS and law enforcement personnel.

3. These procedures will not require the training of large numbers of law enforcement personnel in the particularities of child abuse.

4. These procedures involve law enforcement in those cases that are most in need of their particular skills, i.e., those cases in which the abuse has been especially violent and evidence needs to be gathered for the county attorneys office.

5. Section 20 recognizes that law enforcement needs to be involved immediately to protect the child in imminent danger; to protect children when SRS is not open for business and provides for that coverage.

6. Provides for interagency cooperation between law enforcement, SRS and schools in order that the child might be protected from harm.

In Section 19, Subsection F on Page 25 of Senate Bill 105 as amended by the Senate Committee of the Whole, we would take note of the fact that the Department of Social and Rehabilitation Services is mandated to "assist" law enforcement in taking necessary action to protect the child. We wonder if the word "assist" might be interpreted in the future to mean that SRS would be required to do an immediate investigation of every alligation of Child Abuse and Neglect when they are not open for business. We feel that the department should work out a procedure to consult with law enforcement but should not be required, with their current staffing pattern, to conduct investigations during non-agency hours.

We would recommend that the additional wording be included on Line 93 as follows:

> "to include consultation, if needed, when the State Department of Social Rehabilitation Services is not open for business". (See Attachment #1)

In this way SRS can advise law enforcement on the appropriate placement of children if it appears to the law enforcement personnel that the child is in imminent danger and should be removed from the home immediately.

We recommend that Section 22 on Page 26, Line 149 to be changed and read as follows:

> "without a court order, the child shall be placed in the legal custody of the Secretary of the State Department Social & Rehabilitation Services and shall forthwith be delivered to the court designated shelter facility, court service officer, or other person willing to accept the child". (See Attachment #II)

This change is needed to resolve the issue of who is responsible for the payment of the child care prior to a temporary order of custody being issued by the court. This would also allow SRS to give medical consent for emergency treatment for children picked up under this code when parents cannot be found.

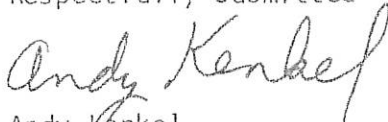
This wording is contained in Attachment VIII of the staff memo to the Judiciary Committee dated 2-28-83. It is my understanding that the wording originated with Judge Mikesic.

We recommend the deletion in Section 22, Page 26 of the sentence beginning in Line 152 and ending at the beginning of Line 156. (See Attachment #II)

This sentence would allow law enforcement to place the child in a city or county jail as well as a juvenile detention facility. Kansas Children's Service League remains opposed to the placement of children in the city and county jails. I have been in several jails in the state, and I have visited children in jails. The city and county jails I have seen are not places you would want children held.

In Section 38-1542(c) the code for care of children currently allows a judge to place a child in a juvenile detention facility (defined in 38-1502 Subsection i to include city or county jails) in unusual circumstances. The wording in Section 22 38-1528(a) on Page 26 Lines 152 to 156 will lead to the routine placement of children in juvenile detention facilities and city and county jails. Kansas Children's Service League strongly opposes this section.

Respectfully Submitted



Andy Kenkel
Child Advocate
Kansas Children's Service League

0083 *or district attorney shall take charge of, direct and coordinate the*
0084 *investigation.*
0085 *(e) Investigations concerning certain facilities. Any investi-*
0086 *gation involving a facility subject to licensing or regulation by*
0087 *the secretary of health and environment shall be promptly*
0088 *reported to the state secretary of health and environment.*
0089 *(f) Cooperation between agencies. Law enforcement agen-*
0090 *cies and the department of social and rehabilitation services*
0091 *shall assist each other in taking action which is necessary to*
0092 *protect the child regardless of which party conducted the initial*
0093 *investigation.*

to include consultation, if needed, when the State Department of Social and Rehabilitation Services is not open for business.

0094 ~~(g) Cooperation of school personnel. Administrators of pri-~~
0095 ~~mary and secondary schools shall cooperate with the state~~
0096 ~~department of social and rehabilitation services or any law~~
0097 ~~enforcement agency, when investigating reports of child abuse~~
0098 ~~or neglect, by allowing employees of the department or law~~
0099 ~~enforcement agency to have access to the child while on school~~
0100 ~~premises for the purpose of investigating a report.~~
0101 *(g) Cooperation between school personnel and investigative*
0102 *agencies. Elementary and secondary schools, the state depart-*
0103 *ment of social and rehabilitation services and law enforcement*
0104 *agencies shall cooperate with each other in the investigation of*
0105 *reports of suspected child abuse or neglect. Administrators of*
0106 *elementary and secondary schools shall provide to employees of*
0107 *the state department of social and rehabilitation services and*
0108 *law enforcement agencies access to a child in a setting on school*
0109 *premises determined by school personnel for the purpose of the*
0110 *investigation of a report of suspected child abuse or neglect.*
0111 Sec. ~~17~~ *20*. K.S.A. 1982 Supp. 38-1524 is hereby amended to
0112 read as follows: 38-1524. *(a) When a report to a law enforcement*
0113 *agency indicates that a child may be in imminent danger, the*
0114 *law enforcement agency shall promptly initiate an investiga-*
0115 *tion. If the law enforcement officer reasonably believes the*
0116 *child is in imminent danger, the officer shall remove the child*
0117 *from the location where the child is found as authorized by*
0118 *K.S.A. 1982 Supp. 38-1527 and amendments thereto.*
0119 *(b)* Whenever any person furnishes information to the state

ATTACHMENT #II

0120 department of social and rehabilitation services that a child
0121 appears to be a child in need of care, the department shall make a
0122 preliminary inquiry to determine whether the interests of the
0123 child require further action be taken. Whenever practicable, the
0124 inquiry shall include a preliminary investigation of the circum-
0125 stances which were the subject of the information, including the
0126 home and environmental situation and the previous history of
0127 the child. If reasonable grounds to believe abuse or neglect exist,
0128 immediate steps shall be taken to protect the health and welfare
0129 of the abused or neglected child as well as that of any other child
0130 under the same care who may be in danger of abuse or neglect.
0131 After the inquiry, if the department determines it is not possible
0132 to provide otherwise those services necessary to protect the
0133 interests of the child, the department shall recommend to the
0134 county or district attorney that a petition be filed.
0135 Sec. ~~18~~ *21*. K.S.A. 1982 Supp. 38-1526 is hereby amended to
0136 read as follows: 38-1526. Anyone participating without malice in
0137 the making of an oral or written report to a law enforcement
0138 agency or the department of social and rehabilitation services
0139 relating to injury inflicted upon a child under 18 years of age as a
0140 result of physical, mental or emotional abuse or neglect or sexual
0141 abuse or in any follow-up activity to *or investigation of* the report
0142 shall have immunity from any liability, civil or criminal, that
0143 might otherwise be incurred or imposed. Any such participant
0144 shall have the same immunity with respect to participation in
0145 any judicial proceedings resulting from the report.
0146 Sec. ~~19~~ *22*. K.S.A. 1982 Supp. 38-1528 is hereby amended to
0147 read as follows: 38-1528. (a) When any law enforcement officer
0148 takes into custody a child under the age of 18 years, without a
0149 court order, the child shall forthwith be delivered ~~*to the state*~~
0150 ~~*department of social and rehabilitation services or*~~ to a court
0151 designated shelter facility, court services officer or other person.
0152 *If the officer has reason to believe that the child will not remain*
0153 *in a shelter facility, the child may be delivered to and detained*
0154 *in a juvenile detention facility, designated by the court, for not*
0155 *more than 24 hours, excluding Saturdays, Sundays and legal*
0156 *holidays.* It shall be the duty of the law enforcement officer to

be placed in the legal custody of the Secretary of the Department of Social and Rehabilitation Services and

delete

willing to accept the child

delete

ATTACHMENT # 4

#4

38-1527. Child under 18, when law enforcement officers or court services officers may take into custody. (a) A law enforcement officer or court services officer may take a child under 18 years of age into custody when:

(1) The law enforcement officer or court services officer has a court order commanding that the child be taken into custody as a child in need of care; or

(2) the law enforcement officer or court services officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction.

(b) A law enforcement officer may take a child under 18 years of age into custody when the officer has probable cause to believe that the child is a child in need of care and that there are reasonable grounds to believe that the circumstances or condition of the child is such that continuing in the place or residence in which the child has been found or in the care and custody of the person who has care or custody of the child would present an imminent danger to the child.

History: L. 1982, ch. 182, § 24; Jan. 1, 1983.

TO: House Judiciary Committee

RE: Position of Kansas Association of Licensed Private Child Care Agencies (KALPCCA) on SB 105

FROM: Bruce Linhos, Assistant Director, The Villages, Inc., Topeka, Kansas

DATE: March 22, 1983

ATTACHMENT # 5

The Kansas Association of Licensed Private Child Care Agencies is a state-wide organization of agencies that provide out-of-home placements for children in need of shelter and/or treatment. Our members provide 2/3 of the group residential beds that SRS contracts for, excluding detention facilities. It is the desire of our group, then, to advocate for quality care for children in group settings and for all children in the state of Kansas.

Our organization is in total support of SB 105. We are particularly in support of the amended Section 19 KSA Supp. 38-1523, making SRS the primary agency responsible for investigation of all abuse and neglect reports, with law enforcement and district attorney's offices becoming involved as needed. We are in support of this section for the following reasons:

1. We think that SRS workers are the most thoroughly trained and most experienced people to do all abuse and neglect investigations, regardless of who the alleged perpetrator is. Their training and experience allows them to assess the degree of trauma to the people involved, the best way of approaching the investigation so as not to exacerbate the situation, and the best way to approach treatment. Criminal prosecution will still be possible for any perpetrator, as SRS workers will refer criminal concerns to law enforcement.

2. Because of their training and experience, we want SRS workers to do abuse and neglect investigations in our facilities. We are committed to providing the best possible care available to children, and we think that SRS workers can provide the best information to agency administrators on how we can improve our service. Improving services should be the goal of any investigation in a licensed facility.

3. Investigations done initially by SRS workers will cause the least possible trauma to children in licensed facilities. With law enforcement handling initial investigations, children are likely to be questioned twice, SRS workers becoming involved as a licensing concern. Two investigations are unnecessarily traumatic if there is the possibility, when there is not a criminal concern, that the work could be done with one investigation by SRS. Initial investigations by law enforcement can also cause a child to believe, perhaps unnecessarily, that there are serious problems in a facility in which he or she lives. This causes more insecurity for children already in tenuous situations.

4. Investigations done initially by SRS will cause the least possible trauma to anyone caring for children in a licensed home, thus insuring more consistent care for children. By far the majority of people who work in child care are motivated by a sincere concern for children. Law enforcement investigation provided for in the current code may be seen by those people as an implication that they have seriously broken the law and are subject to criminal prosecution regardless of the actual nature of the complaint. This is unduly traumatic on an initial investigation to people providing child care. The problem has the most serious consequences in family foster care, where under the current code, any report of a spanking goes to law enforcement. Initial law enforcement investigations in foster care could cause a serious decrease in the number of foster homes available and in the interest shown by law enforcement in investigation.

We sincerely appreciate the efforts made by Senator Pomeroy and other members of this committee. The changes you have proposed demonstrate a concern for the children of this state and a knowledge of the ways to provide the best care for those children.

LEAGUE OF WOMEN VOTERS OF KANSAS

LWVK

909 Topeka Boulevard-Annex 913/354-7478 Topeka, Kansas 66612

ATTACHMENT # 6

March 23, 1983

Statement to the House Judiciary Committee in support of S.B. 105.

Mr. Chairman and Members of the Committee:

The League of Women Voters of Kansas supports S.B. 105 with emphasis on the following sections:

1. Section 1 - The use of detention as an alternative to jail.

2. Section 5 - The establishment of a Kansas juvenile justice information system as described. As long as names are to be kept confidential, the League believes that without such available information, planning for future needs is an impossible task.

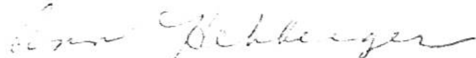
3. Section 16 - No consent shall be required to medically examine a child less than 18, to determine whether there has been sexual abuse.

4. Section 19 - Suspected child abuse or neglect by SRS employees shall be investigated by the appropriate law enforcement agencies.

5. Section 28 - Allowing the court to determine whether a future act of a juvenile will be dealt with under the Juvenile Code or the Criminal Code.

6. Section 35 - Giving authority to direct the release of a juvenile prior to a detention hearing in the absence of a court order to the contrary.

We urge your support of S.B. 105, and thank you for your consideration.



Ann Hebberger, Lobbyist
League of Women Voters of Kansas

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

ATTACHMENT # 7

To: House Judiciary Committee

Re: Senate Bill 105

Please accept our apologies for being unable to remain for testimony on March 22 regarding Senate Bill 105.

On behalf of 300 public boards of education we generally support the changes embodied in this bill. In order to maximize the cooperation between various agencies which is necessary to deal with the problems of abused children, we propose an amendment to the bill.

Proposed Substitute Subsection of "g" of Section 19:

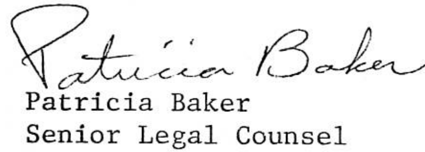
(g) Cooperation between school personnel and investigative agencies. Elementary and secondary schools, the state department of social and rehabilitation services and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. Upon receipt of a written statement from the director of an area office of the state department of social and rehabilitation services that a child abuse case has been opened with respect to a particular child, administrators of elementary and secondary schools shall provide to employees of the state department of social and rehabilitation services and law enforcement agencies access to a child in a setting on school premises determined by school personnel for the purpose of the investigation of a report of suspected child abuse or neglect.

The language suggested would insure that no individual SRS employee or law enforcement official would act outside the authority granted by law and would recognize the role that school administrators play in _loco parentis_ to children in their care.

Representatives of the Attorney General's office have informed us that they have no objection to inclusion of this language.

Thank you for your consideration of this proposal.

Sincerely,



Patricia Baker
Senior Legal Counsel

ATTACHMENT # 8

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

March 22, 1983

The Honorable Robert Frey
Chairman, House Judiciary Committee
526 South, Statehouse
Topeka, Kansas

Dear Representative Frey:

On behalf of the Attorney General, I wish to express our support for SB 105 as amended by the Senate Committee of the Whole. We ask that you direct your attention to two particular aspects of the bill.

Section 8(g) now requires schools, SRS and law enforcement to cooperate in investigating reports of suspected child abuse. Based upon recent experiences of this office, we believe this section is of vital importance. About a month ago, our office was contacted by a deputy sheriff who was attempting to investigate a report of alleged incest which a school counselor had reported. A thirteen-year-old girl had told the counselor that her adoptive father had been forcing her to have intercourse with him since she was eight. When the deputy tried to contact the girl at school, the principal refused to permit the deputy to talk to the girl unless her parents were present, based on a school board policy. The school board took the positions that the school had to protect the rights of the parents and that the child should have parental support in such a traumatic experience. In a lengthy discussion with the school board attorney, I tried to point out that the child was a possible victim of a crime perpetrated by her parent and that the child was unlikely to talk openly in front of either of them. We suggested that the counselor or principal might be present during the interview to provide protection and support to the girl. However, the principal and board only backed down when we advised them that the deputy could file criminal charges against them for interference with official duty of a law enforcement officer. Because of the deputy's diligence and concern for the girl, he finally found a way to talk to the girl and subsequently obtained a confession from the father.

We have found that this is not an isolated case. SRS workers and law enforcement officers have faced this problem for several years. The school boards have apparently been worried about their civil liability in such cases. At a state meeting of school administrators, teachers and parents held last week, teachers were told by administrators that regardless of their legal duty to report suspected child abuse, they could be fired for making reports or assisting in investigations if their school boards had contrary policies. The teachers are thus put in a position of facing criminal charges if they fail to report, or being terminated if they do report.

Research in the area of child abuse clearly indicates that it is imperative for a child who has been subjected to abuse to be interviewed in a safe, familiar environment to avoid making the experience even more traumatic. Since the home is clearly not a safe place for the child to talk openly, the school is the most desirable environment available. Therefore, we encourage you to retain this amendment so that it is clearly the intent of the legislature to protect all children from abuse.

We also support the creation of the juvenile justice information system. When the Juvenile Code was bifercated into the two new codes, no provision was made to obtain the information that used to fall within the duties of Court Services. The proposed system would ensure that none of the information which was obtained under the previous law would be lost. In addition, the new system would provide more accurate data which would allow persons working with juvenile offenders to evaluate the effectiveness of various dispositions and to make more accurate projections regarding the need for various programs throughout the state.

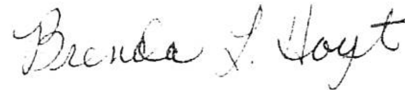
We realize that there is some concern about collecting individually identifiable information on juveniles; but we believe that the proposed amendments regarding limitations of accessibility of these records adequately protect the juvenile offender. Further, because the new Juvenile Offenders Code states that 16 and 17-year-old offenders who have had two prior felony-type adjudications are to be tried as adults, we believe individually identifiable information must be available to prosecutors to establish jurisdiction in such cases. This information is now only available if a prosecutor contacts the other 104 counties to see if a juvenile has any previous adjudications in those counties.

We believe prosecutors should be able to contact one source for this information rather than spending so much time investigating.

Thank you for your consideration.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN



Brenda L. Hoyt
Assistant Attorney General

BHL:may

KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR • • ~~PATRICK McMANUS~~ — SECRETARY

MICHAEL A. BARBARA

535 KANSAS AVENUE • TOPEKA, KANSAS • 66603
• 913-296-3317 •

ATTACHMENT # 9

March 23, 1983

TO: Representative Robert Frey, Chairperson, House Judiciary Committee

FROM: Michael A. Barbara, Secretary of Corrections

RE: Proposed changes to the Community Corrections Act in S.B. 105

The Department of Corrections has studied proposed changes to the Community Corrections Act in S.B. 105 and has concluded that both the amendment to bring the Community Corrections Act language into conformity with language in the new juvenile code which is presently contained in S.B. 105, and the new amendment offered by Judge Morrison are contrary to the purpose of the Community Corrections Act as explained below.

1. <u>Insertion of the words "juvenile offender" on line 1154, S.B. 105, Section 45, K.S.A. 1982 Supp. 75-52, 104(b).</u> This wording was evidently added so that the language in the Community Corrections Act would match the language in the new juvenile code.

   <u>Problem:</u>

   This wording produces an unintended consequence of excluding misdemeanor sex offenses, such as prostitution, from the chargeback category. The problem is a result of the fact that "juvenile offender" in the new juvenile code means both "delinquent" and "miscreant". It was clearly not the intent of the Community Corrections Act to exclude any misdemeanor offenses from the chargeback category.

   <u>Proposed Solution:</u>

   Add the word "felony" before sex offense on line 1157. Please see attachment.

2. <u>Proposal by Judge Morrison to not charge counties for youth center placements if SRS makes the placement rather than the court ordering a commitment to the youth center.</u> Judge Morrison's proposal would delete "or placed" in line 1150 and the word "or placement" in line 1153, S.B. 105, section 45(b).

   <u>Problem:</u>

   The purpose of the Community Corrections Act is to have local criminal justice and social agencies develop and/or coordinate services and sanctions in order to retain non-violent offenders in the community for whom youth center or prison confinement is not necessary to maintain the public safety. Whether the agency making a youth center placement is the court or is SRS does not make any difference in terms of the goals of the act.

SRS, the court, and other local agencies are cooperating to achieve the goals of the Community Corrections Act in the eight (8) counties already participating. To alter the chargeback mechanisms of the Act at this time would be a disincentive to the coordination and cooperation already achieved and would be contrary to the purpose of the Act.

kansas action for children, inc.
2053 kansas avenue • p.o. box 5283 • topeka, kansas 66605 • 913/232-05

March 22, 1983

SUMMARY OF TESTIMONY ON SB 105
OFFERED BY KANSAS ACTION FOR CHILDREN, INC.

ATTACHMENT # 10

Mr. Chairman and Members of the Committee:

Kansas Action for Children has done extensive public education on the new Juvenile Codes; it being our 1981-82 annual project. As part of that project the agency held six public forums. Of the two topics of most concern, one was the handling of initial reports and investigations of abuse under the Code for Care of Children.

In response to these concerns and those heard following the passage of SB 520, KAC became a member of an ad hoc committee. This committee was formed to study the reporting and investigation of abuse or neglect.

It is the opinion of our agency that SB 105 proposes sound solutions based on the following components:

* in depth research
* broad spectrum of expertise utilized
* cooperation of agency and organization personnel in identifying potential problems
* careful consideration of possible solutions

Our organization strongly emphasizes the importance of having responsibilities specifically assigned by law. We feel more children will have better protection if the concepts in Sec. 19 are preserved.

Kansas Action for Children also supports new Sec. 34 establishing the Kansas Juvenile Justice Information System. It is our agency's position that good statistical data is essential for policy setting and program planning.

I appreciate this opportunity to express the agency's opinions and thank you for your time.

1122 *a boarding home for children or a family day care home in order*
1123 *to determine whether or not the home meets the requirements of*
1124 *K.S.A. 65-516 and 65-519, and amendments thereto.*
1125 Sec. ~~39~~ *45.* K.S.A. 1982 Supp. 75-52,104 is hereby amended
1126 to read as follows: 75-52,104. (a) Each county receiving grants
1127 under this act shall be charged a sum determined by the secre-
1128 tary of corrections which shall be equal to the total of the per
1129 diem costs to the state general fund of confinement and rehabil-
1130 itation of those persons who are committed to the secretary of
1131 corrections on and after the first day of the calendar quarter for
1132 which the county first receives grant payments under K.S.A.
1133 ~~1982 Supp.~~ 75-52,105 and amendments thereto, except that no
1134 charge shall be made for those persons: (A) Convicted of a class
1135 A, B or C felony; (B) convicted of a class D or E felony who had
1136 more than one prior felony conviction; (C) convicted of aggra-
1137 vated assault under K.S.A. 21-3410 and amendments thereto; (D)
1138 convicted of a sex offense under article 35 of chapter 21 of the
1139 Kansas Statutes Annotated and amendments and supplements
1140 thereto; or (E) sentenced under K.S.A. 21-4618 *and amendments*
1141 *thereto.*
1142 (b) In addition to amounts charged under subsection (a) to
1143 each county receiving grants under the community corrections
1144 act, on and after the first day of the calendar quarter for which the
1145 county first receives grant payments under K.S.A. ~~1982 Supp.~~
1146 75-52,105 and amendments thereto, a charge shall be assessed
1147 against the county in the amount of $3,000 for the first calendar
1148 year the county receives the grants and $6,000 during the second
1149 calendar year and each calendar year thereafter that the county
1150 receives the grants for each juvenile committed to or placed in a
1151 state youth center, as defined by K.S.A. 1982 Supp. 38-1602 *and*
1152 *amendments thereto,* except that no charge shall be assessed
1153 when the commitment or placement in any such facility involves
1154 a juvenile adjudged *to be* a delinquent *or a juvenile offender* as a
1155 result of conduct which if committed by an adult would consti-
1156 tute a class A, B or C felony, an aggravated assault under K.S.A.
1157 21-3410 and amendments thereto or a sex offense under article
1158 35 of chapter 21 of the Kansas Statutes Annotated and amend-

felony

RECREATION VEHICLE INDUSTRY ASSOCIATION

P.O. Box 204 • 14650 Lee Road • Chantilly, Virginia 22021 • AC 703 968-7722

ATTACHMENT # 11

March 2, 1983

Senator Elwain Pomeroy
Chairperson, Senate Judiciary Committee
Senate Chamber
State House, 3rd Floor
Topeka, Kansas 66612

Dear Senator Pomeroy:

S 199, a bill dealing with motor vehicle warranties, is currently before the Senate Judiciary Committee. For reasons stated below, the Recreation Vehicle Industry Association (RVIA) requests the bill be amended to exclude motor homes.

The RVIA is a national trade association which represents 118 manufacturers and 157 suppliers of family camping vehicles (motor homes, travel trailers, and pickup campers). Association members produce nearly 95 percent of the recreation vehicles sold in the United States.

As S 199 is currently written, the definition of "motor vehicle" includes motor homes and subjects motor home manufacturers to the same repair or replace provisions it imposes on car manufacturers. While initially it may not seem unreasonable to extend this requirement to the motor home industry (which also produces motorized vehicles), a better understanding of the motor home industry produces the opposite conclusion.

A fully completed motor home is typically manufactured by two manufacturers. The first stage manufacturer, usually GM, Ford, or Chrysler, builds the motor home chassis and sells it to a motor home manufacturer (the second stage manufacturer) who then assembles and permanently attaches the motor home body to the chassis.

The chassis purchased by the motor home manufacturer is a complete product. It is capable of self-propulsion and is delivered to the motor home manufacturer with its own GM, Ford, or Chrysler consumer warranty. This includes a warranty on all the mechanical parts commonly warranted on any GM, Ford, or Chrysler car, for instance, the transmission, the engine, the brakes, etc. The GM, Ford, or Chrysler warranty stays with the chassis and is passed by the motor home manufacturer to the consumer when a completed motor home is purchased. Although the motor home is sold under a motor home manufacturer trade name such as Georgie Boy, El Dorado, or Esquire, if the automotive parts need servicing, the consumer takes the vehicle to an authorized GM, Ford, or Chrysler warranty service center. This method of warranty service is clearly understood by both the automobile industry and the motor home industry.

-more-

EASTERN REGION OFFICE: 54809 County Road 17 South, RR 7, Elkhart, Indiana 46514, AC 219 294-6567

WESTERN REGION OFFICE 1748 W. Katella • Suite 206 • Orange, California 92667 • (714) 532-1688

The body of the motor home is the portion that is actually produced by the second stage manufacturer or motor home manufacturer. This half of the vehicle is assembled to provide a self-contained living environment complete with cooking, dining, sleeping, bathing and toileting facilities. It is essentially a "home on wheels" and contains all the systems and furnishings common to stick-built houses. Because no one manufacturer could ever manufacture the vast array of products needed to equip and furnish a home, the motor home manufacturer contracts with suppliers from whom purchases of items such as kitchen appliances, furnaces, hot water heaters, plumbing fixtures, beds, sofas, chairs, etc., are made. As was the case with the chassis manufacturer, each of these product suppliers provides a consumer warranty for his own product. Thus, when a "house" feature of the motor home; e.g., a refrigerator, requires warranty service, the refrigerator manufacturer, perhaps Dometic or Norcold, services it, not the motor home manufacturer.

S 199 mandates replacement of vehicles whose use or value is substantially impaired by a defect that does not respond to four repair attempts. In the case of a motor home, the concept of "use" becomes significant. For, unlike cars whose sole purpose is to transport people, motor homes are intended to transport and house people and to house them in a totally self-contained living environment. This difference between the function and "use" of cars and motor homes, reveals a new facet of S 199. S 199's repair or replace provisions may now be triggered by mechanical failures which render motor homes incapable of providing self-contained living. Of the elements which contribute to self-contained living, one essential is refrigeration. Therefore, four failures of a motor home refrigerator may cause a motor home manufacturer to replace an entire motor home. The failure of numerous other motor home products; i.e., furnaces, plumbing fixtures, hot water heaters, etc., would have the same effect on the self-containment feature of the motor home and could cause the repurchase or replacement of the vehicle by the motor home manufacturer. Repurchasing or replacing a $35,000 motor home when a $100 assembly on a refrigerator fails is clearly too drastic a remedy. Additionally, it seems to imply that four failures of a motor home refrigerator is somehow more onerous for consumers than four failures of that same refrigerator in a home kitchen.

S 199 also requires car manufacturers to guarantee consumers the repair or replacement of their vehicles. Likewise, it requires motor home manufacturers to assure the repair or replacement of motor homes sold under their trade name. Placing this same requirement on motor home manufacturers does not recognize a basic difference between car manufacturers and motor home manufacturers; while car manufacturers are "true manufacturers" who design, build, assemble, and warrant their product, motor home manufacturers are really assemblers of the products of other manufacturers. When a motor home manufacturer purchases a truck chassis from GM, Ford, or Chrysler, he is purchasing a completed product which has its own GM, Ford, or Chrysler consumer warranty. He is doing business with a company that does not belong to him and over which he can be expected to exert little or no control. It is unreasonable to expect a motor home manufacturer to assume liability for the chassis when the liability so clearly belongs to another manufacturer.

The motor home industry is a unique industry. It is not part of the car industry and it does not do business in a similar way. The product it produces is significantly different from that produced by the car manufacturer. These differences render S 199 unworkable for the motor home industry.

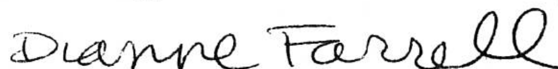
RVIA recommends adoption of one of the following solutions:

1. Redefine the term "motor vehicle" to exclude motor homes

- OR -

2. Exempt the house half of the motor home and the motor home manufacturer from S 199 but continue to include the vehicle half of the motor home; i.e., the chassis and the chassis manufacturer. This choice recognizes the significant differences between the car industry and the motor home industry and limits S 199's focus to its true intent -- the functioning of automotive parts.

Sincerely,



Dianne Farrell
Administrator of Governmental Affairs

DF/pm

MOTOR HOME

ATTACHMENT # 12

March 22, 1983

Senator Bert Chaney
Senate
State Capitol
Topeka, Kansas 66612

Re: SB 199

Dear Senator Chaney:

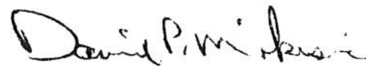
Thank you for a copy of SB 199 concerning the proposed Kansas Lemon Law.

As a consumer I of course am in great support of a measure of this type. It seems that at many social events I attend someone will come up and seek advice as to what they should do with a car they refer to as a "lemon". I, of course, tell them to talk with an attorney about any recourse they might have.

It also seems to me that a bill of this nature could have the desirable effect of resolving some cases outside of legal proceedings which would allow the courts to concentrate on more serious matters.

If I can be of any assistance, please feel free to contact me.

Sincerely,



David P. Mikesic
3116 W. Barker Circle
Kansas City, Kansas 66104

DPM:lj

MR. CHAIRMAN,

ATTACHMENT # 13

MEMBERS OF THE HOUSE JUDICIARY COMMITTEE. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU AND LEND MY SUPPORT FOR PASSAGE OF SB 199. AS YOU ARE AWARE THIS BILL HAS BEEN COMMONLY REFERRED TO AS THE LEMON LAW, BUT I PREFER TO CALL IT THE KANSAS NEW VEHICLE CONSUMERS PROTECTION ACT. BECAUSE THAT IS EXACTLY WHAT THIS BILL SEEKS TO DO - PROTECT OUR KANSAS CITIZENS FROM MANUFACTURERS WHO POORLY BUILD EXPENSIVE VEHICLES. HB 199 IS ALMOST EXACTLY THE SAME AS HB 2394 INTRODUCED BY MYSELF AND ELEVEN OTHER BI-PARTISAN MEMBERS IN THE HOUSE. HB 2394 HAS REMAINED IN YOUR COMMITTEE AND SB 199 HAS PASSED THE SENATE ON A VOTE OF 39-1.

AS YOU ARE AWARE IF YOU HAVE RECENTLY VENTURED OUT TO PURCHASE A NEW MOTOR VEHICLE THE PRICE OF CARS CAN VARY FROM $5,000 DOLLARS TO $20,000 DOLLARS PLUS! NEXT TO A HOME PURCHASE, THE PURCHASE OF A MOTOR VEHICLE IS THE MOST EXPENSIVE AND IMPORTANT DECISION WE CONSUMERS WILL MAKE. DOESN'T IT MAKE SENSE TO GIVE THE AVERAGE WORKING CONSUMER SOME PROTECTION IF THE "DREAM MACHINE" TURNS OUT TO BE A "METAL NIGHTMARE"? WHAT RECOURSE DOES THE AVERAGE CONSUMER HAVE IF A MANUFACTURER POORLY DESIGNS, BUILDS AND SELLS DEFECTIVE MERCHANDISE? FIGHTING GENERAL MOTORS, FORD, CHRYSLER OR THE BIG IMPORT CORPORATIONS IS LIKE PUTTING DAVID UP AGAINST GOLIATH. OFTEN TIMES THE CONSUMER MUST LEARN TO LIVE WITH THE DEFECT OR IN THE ALTERNATIVE SEEK LEGAL RECOURSE THROUGH THE COURTS WHICH COSTS MORE TIME AND MONEY THAN MOST CONSUMERS CAN AFFORD.

WITH AMERICAN MANUFACTURERS STRESSING Q U A L I T Y IN THE NEW CARS HOPEFULLY THERE WON'T BE MUCH NEED FOR SB 199. THIS LAW HAS BEEN ENACTED IN CALIFORNIA AND CONNECTICUT WITH NO APPARENT ILL EFFECTS ON THE AUTO INDUSTRY. AS A MATTER OF FACT IT MAY BE AN INDUCEMENT FOR PERSONS IN NEIGHBORING STATES TO CROSS THE STATE LINE TO PURCHASE A VEHICLE IN KANSAS, TO BE PROTECTED BY OUR ACT. IN MY COUNTY THE STATE LINE IS ONLY A FIVE MINUTE DRIVE FROM MY

RESIDENCE TO KANSAS CITY, MISSOURI, AND ITS POPULATION OF OVER 1 MILLION PERSONS. PASSAGE OF THIS BILL COULD RESULT IN A FINANCIAL SHOT IN THE ARM FOR WYANDOTTE COUNTY AND JOHNSON COUNTY CAR DEALERS FROM INCREASED SALES TO OUT-OF-STATE CONSUMERS. OUR OWN CITIZENS WOULD BE LESS APT TO DRIVE TO MISSOURI TO PURCHASE A CAR IF THEY WERE LOSING THE VALUABLE CONSUMER PROTECTION AFFORDED BY SB 199 OR HB 2394.

SINCE THE INTRODUCTION OF HB 2394, I HAVE RECIEVED MORE COMPLIMENTS AND INQUIRIES AS TO ITS NEED FOR PASSAGE THAN ANY OTHER ISSUE INCLUDING THE SEVERANCE TAX! I DO NOT FEEL THE UNIFORM COMMERCIAL CODE OR CONSUMER PROTECTION ACT PROVIDE THE CLEAR CUT REMEDIES PROVIDED FOR IN SB 199 OR HB 2394, AS BOTH THESE LAWS ARE GENERAL IN NATURE AND COVER EVERY SITUATION POSSIBLE FROM A TO Z WHEREAS SB 199 AND HB 2394 DEAL ONLY WITH NEW VEHICLE SALES TO CONSUMERS.

I HAVE NO OBJECTION TO THE SENATE AMENDMENTS TO SB 199, BUT I HAVE SOME CONCERN FOR THE AMENDMENT THAT STRUCK THE WORD "NEW" ON LINE 45 PAGE 1 AND INSERTED "COMPARABLE" IN LIEU THEREOF ON LINE 46 PAGE 2. WHILE I AGREE THE WORD NEW WAS AMBIGUOUS, I FEEL THE WORD COMPARABLE IS EQUALLY AMBIGUOUS AND WOULD RECOMMEND THAT ON PAGE 2 LINE 46 THE WORD COMPARABLE BE STRICKEN, REINSERT "NEW" AND INSERT AFTER VEHICLE "OF THE SAME MODEL AND BODY STYLE,". I FEEL THIS CHANGE MAKES IT CLEAR THAT THE MANUFACTURER MUST REPLACE THE DEFECTIVE VEHICLE WITH THE SAME TYPE VEHICLE AND CANNOT SUBSTITUTE A 2 DOOR FOR A 4 DOOR OR A 4 DOOR FOR A STATION WAGON, ETC. THIS SHOULD ALSO EASE THE CONCERN OF THE MANUFACTURER WHO MIGHT FEEL THEY MIGHT HAVE HAD TO REPLACE A CHEVETTE WITH A CORVETTE, OR A PINTO WITH A THUNDERBIRD!! ETC., ETC.!!

IN CLOSING I SINCERELY HOPE THAT THIS COMMITTEE NOT ONLY CONSIDERS THIS BILL BUT ALSO RECOMMENDS IT FAVORABLE FOR PASSAGE SO THAT THE ENTIRE HOUSE CAN BE GIVEN THE OPPORTUNITY TO PASS THIS NEEDED CONSUMER PROTECTION DURING THE REMAINING DAYS OF THIS 1983 SESSION. THANK YOU.

Rep. Mary Jane Johnson
36th District
Wyandotte County, Kansas

To Whom it Might Concern:

ATTACHMENT # 14

I, Marion E. Lawrence, bought a car, a 1980 Fairmont Ford from Rusty Eck Ford, Leavenworth, Kansas, in May 1980. It was sold as a new car. It burns oil at a rate of a quart every 1,000 miles. It leaked water around the doors. Air comes in around the heater; the paint is bad in about 10 different places, plus other defects. I took the car back to Rusty Eck Ford three different times to be fixed. The last time it was there a month and still did not get fixed right. I refused to take the car and they told me if I did not get the car off their lot in 12 hours they would have the police tow it off, so I took the car. I wrote the Consumer Protection Agency. They also did nothing (see enclosed).

I wrote to Ford Motor Company, Dearborn, Michigan, at least seven times. I also called Ford Motor Co., Kansas City, Missouri, at least ten times and they just laughed at me and said there was nothing I could do about it as the Consumer Protection Agency was on their side all the time, which I say is true, as I was told by them to get a lawyer. I cannot afford a lawyer as I am disabled and get only disability Social Security.

The car, as of February 21, 1983, still is like it was, only the doors fit worse after they worked on it. It still burns oil; the paint is still bad; water still leaks in and the floor rugs are oily from them not cleaning after they had it a month. There is still rust that was never fixed and paint on the chrome where they tried to paint.

All I ever asked Ford Motor Company to do was fix it right or give my money back, or give me another car like this one without all these defects. They refused, and said if I wanted a good Ford motor car I would have to pay fifteen to twenty thousand dollars, as it would be built better. A Mike Shepard of Ford Motor Company said this. I have a witness to this and other things they told me, so if there is any way you can help us consumers in matters like this it would be of great importance to us, as we have no help.

Enclosed are some of the things I have been talking about. I have a lot more. It is a shame when you try to buy American-made cars and they do you like they have me. There are millions that have the same thing being done to them now, so please, pretty please, help us if you can.

Thank you.

Marion E. Lawrence
2404 No. 123rd Street
Kansas City, Kansas 66109

P.S. Why doesn't the state cut Consumers Protection Agency staff, as they do very little for the consumers of Kansas.

Repair/Replace Legislation

ATTACHMENT # 15

Kansas Senate Bill 199, now being considered by the General Assembly is a cruel hoax on the consumer. It appears to offer the purchaser of a new automobile a magic wand that returns his money or replaces his vehicle if it cannot be repaired in four trips to the dealership. In reality it offers him only what he already has, and offers it at a higher price in both time and attorney's fees.

1. The bill is unnecessary because present laws already protect the customer. The customer can bring suit against the manufacturer or the dealer under either the Federal Magnuson/Moss Act or under the Uniform Commercial Code of the state statutes. No new law is needed. In fact, existing laws cover more products and protect more people.

2. The legislation does nothing to improve the quality of repairs. It provides nothing to solve the customer's problem. The manufacturer, the dealer and the mechanic actually doing the work already are trying to repair the vehicle. They want it to be repaired. This legislation does nothing to help them. It does nothing to get the parts there more quickly, and nothing to diagnose the difficulty.

3. The bill is punitive and unfair. It penalizes the manufacturer who must bear the full cost even though the dealer's employees and not the manufacturers are working on the vehicle. It penalizes the dealer because the customer comes to the dealership with heightened expectations and expects to get something for nothing. This unrealistic blank-check type of promise is unfair both to the dealer and the customer.

4. The bill is discriminatory. It singles out automobiles unfairly even though the automobile industry almost certainly has a more complete system for handling complaints and stocking parts and training personnel than any other service industry. Why should automobiles be singled out any more than household appliances or any of the complex industrial equipment purchased by individual businesses, sometimes small businesses, that suffer greatly when equipment fails? Why should they be targeted rather than homes with poor insulation or flooding basements? Motor vehicles already have a longer and more inclusive warranty than almost anything else the customer buys.

5. The legislation penalizes automobile manufacturers and dealers at a most difficult time. It adds additional costs for litigation and administration just when they can least support such costs. The automobile industry more perhaps than any other has been hurt by the continuing recession. Manufacturers and dealers alike have suffered great losses. The number of dealerships that have failed is significant. This legislation adds to the burden for no good reason.

6. The legislation discourages good will adjustments, repairs done by the manufacturer or the dealer to repair vehicles out of warranty at no cost to the customer.

7. Three or four attempts to repair the vehicle does not in any way mean that the vehicle cannot be repaired. It does not mean that it is a "lemon." It may merely mean that the right person has not yet tried to repair it or that the right person is on the job but has not had the time to do the job right. Customers themselves even can be at fault for not having described the problem correctly or sufficiently, for having abused or neglected the vehicle or for not having allowed the dealership sufficient time to complete the work and test the vehicle.

8. The legislation leaves both the manufacturer and the dealer open to involvement in frivolous claims. An individual customer could, under this legislation, report 10, 25, or even 100 different symptoms in order to cover virtually every possible problem that might arise during the lifetime of the vehicle. This very real possibility would make warranty planning virtually impossible for the manufacturer and poses the real possibility of a serious nuisance to the dealer.

9. While this legislation offers the customer nothing new and holds out hope only for proceeding through the long and expensive maze of the courts, both manufacturers and dealers already have systems in place that attempt to solve the customers problems as fairly as possible with independent, outside, consumer judges without any cost at all to the customer and which bind the manufacturer and the dealer but not the customer. What could be more fair?

There are additional specific problems with the language of the legislation that also can be pointed out if (the committee/members of the legislature) want to discuss them.

This legislation should be defeated. It promises a great deal but will not deliver.

Thank you.

Charles E. Herman
Chicago Regional Governmental Affairs
Ford Motor Company
312/236-2126

Ford Motor Company

The American Road
P.O. Box 1899
Dearborn, Michigan 48121-1899

March 24, 1983

The Honorable Robert G. Frey, Chairman
House Judiciary Committee
State Capitol, Room 112-S
Topeka, Kansas 66612

Dear Representative Frey:

At yesterday's House Judiciary Committee's hearing on SB 199 we tried:

1) To suggest some amendments we think necessary to improve the bill's language and avoid pitfalls if the committee determines to recommend it, and

2) To oppose it as strenuously as possible in the hope of forestalling passage of legislation we think unnecessary, unfair and of no direct value in solving the problems it addresses.

We acknowledge that the legislation is well intentioned and that there are in fact vehicles that require service and service facilities that do not repair them every time on the first attempt. We acknowledge, furthermore, that it is extremely tempting to try to solve all service problems by enacting legislation.

The fact is however, that such legislation will not help provide parts or diagnose difficulties. It has the potential for actually causing problems or making them worse rather than solving them.

What happens, for example:

- o If or when a customer falls behind on auto payments and sabotages a car or complains about it to get out from under the payments?

- o When customers with increased expectations make unrealistic demands on dealers? Is a "noise" in the transmission a sufficient reason to refund the purchase price? Poor gas mileage? How poor?

- If or when, dealers refuse to accept vehicles for service after one or two unsuccessful attempts to repair it?

Lastly, we ask whether it is preferable for auto owners to take their problems to court rather than to the no-cost, customer panels now conducted by the National Automobile Dealers Association and Better Business Bureaus or the Ford Customer Appeals Boards now conducted in 10 states and scheduled to become a national program this summer? We ask the committee to give these programs a fair chance?

Thank you once again and thanks to the members of your committee for their consideration.

Sincerely yours,

CHARLES E. HERMAN
Regional Manager
State Government Relations

sjb

cc: House Judiciary Committee

ATTACHMENT # 16

HISTORY OF GM THIRD PARTY ARBITRATION PROGRAM

(THRU Dec. 31, 1982)

- Program begun in late 1978
- Breakdown: Total cases -- 30,071 of 16 million vehicles sold 75.29%

22,643	closed in mediation	(87.2%)
3,310	arbitrated	(12.8%)
	(41.4% no award to customer)	
	(13.4% award = to divisional offer)	
	(45.2% award greater than div. offer)	
3,510	open cases in mediation	
608	open cases in arbitration	
30,071		

- 137 buybacks

Per John Day, Consumer Relations

rlb/ 2/8/83

As Amended by Senate Committee

Session of 1983

SENATE BILL No. 199

By Senator Chaney

2-9

0018 AN ACT concerning motor vehicles; automobile warranties;
0019 commonly called the lemon law.

0020 *Be it enacted by the Legislature of the State of Kansas:*
0021 Section 1. (a) As used in this act:
0022 (1) "Consumer" means the purchaser, other than for purposes
0023 of resale, of a motor vehicle, any person to whom such motor
0024 vehicle is transferred during the duration of an express warranty
0025 applicable to such motor vehicle, and any other person entitled
0026 by the terms of such warranty to enforce the obligations of the
0027 warranty; and
0028 ~~(2)~~ "motor vehicle" means a passenger motor vehicle which
0029 is sold in this state.
0030 (b) If a new motor vehicle does not conform to all applicable
0031 express warranties, and the consumer reports the nonconformity
0032 to the manufacturer, its agent or its authorized dealer during the
0033 term of such express warranties or during the period of one year
0034 following the date of original delivery of the motor vehicle to a
0035 consumer, whichever is the earlier date, the manufacturer, its
0036 agent or its authorized dealer shall make such repairs as are
0037 necessary to conform the vehicle to such express warranties,
0038 notwithstanding the fact that such repairs are made after the
0039 expiration of such term or such one-year period.
0040 (c) If the manufacturer, or its agents or authorized dealers,
0041 are unable to conform the motor vehicle to any applicable ex-
0042 press warranty by repairing or correcting any defect or condition
0043 which substantially impairs the use and value of the motor
0044 vehicle to the consumer after a reasonable number of attempts,
0045 the manufacturer shall replace the motor vehicle with a ~~new~~

(2) "manufacturer's express warranty" or "warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty;

(3)

and registered

ATTACHMENT # 17

0046 ***comparable*** motor vehicle ***under warranty*** or accept return of
0047 the vehicle from the consumer and refund to the consumer the
0048 full purchase price including all ~~collateral charges~~, less a rea-
0049 sonable allowance for the consumer's use of the vehicle. Refunds
0050 shall be made to the consumer, and lienholder if any, as their
0051 interests may appear. A reasonable allowance for use shall be
0052 that amount directly attributable to use by the consumer ***and any***
0053 ***previous consumer*** prior to the first report of the nonconformity
0054 to the manufacturer, agent or dealer and during any subsequent
0055 period when the vehicle is not out of service by reason of repair.
0056 It shall be an affirmative defense to any claim under this act (1)
0057 that an alleged nonconformity does not substantially impair such
0058 use and value or (2) that a nonconformity is the result of abuse,
0059 neglect or unauthorized modifications or alterations of a motor
0060 vehicle by a consumer.
0061 (d) ***If the manufacturer receives actual notice of the non-***
0062 ***conformity***, it shall be presumed that a reasonable number of
0063 attempts have been undertaken to conform a motor vehicle to the
0064 applicable express warranties, if (1) the same nonconformity has
0065 been subject to repair four or more times by the manufacturer or
0066 its agents or authorized dealers within the express warranty term
0067 or during the period of one year following the date of original
0068 delivery of the motor vehicle to a consumer, whichever is the
0069 earlier date, but such nonconformity continues to exist or (2) the
0070 vehicle is out of service by reason of repair for a cumulative total
0071 of 30 or more calendar days during such term or during such
0072 period, whichever is the earlier date. The term of an express
0073 warranty, such one-year period and such thirty-day period shall
0074 be extended by any period of time during which repair services
0075 are not available to the consumer because of war, invasion,
0076 strike, fire, flood or other natural disaster.
0077 (e) Nothing in this act shall in any way limit the rights or
0078 remedies which are otherwise available to a consumer under any
0079 other law.
0080 (f) If a manufacturer has established an informal dispute
0081 settlement procedure which complies in all respects with the
0082 provisions of title 16, code of federal regulations, part 703, as

, at its option,

sales tax, license or registration fees and any similar governmental charges

written

and given an opportunity to cure the defect alleged

substantially

083 from time to time amended, the provisions of subsection (c) of
084 this section concerning refunds or replacement shall not apply to
085 any consumer who has not first resorted to such procedure.

(g) Any action brought under this act shall be commenced within 18 months following the date of original delivery of the motor vehicle to the consumer.

(h) The provisions of this section shall apply only to motor vehicles of model years beginning on or after July 1, 1983.

086 Sec. 2. This act shall take effect and be in force from and
087 after its publication in the statute book.

Statement Before the

HOUSE JUDICIARY COMMITTEE

ATTACHMENT # 18

Regarding SB 199

March 23, 1983

Mr. Chairman and members of the Committee. I am Jack Quinlan, Legislative Counsel for the 415 member Kansas Motor Car Dealers Association.

The Kansas Motor Car Dealers Association neither endorses or opposes this bill, but rather we appear before you today for informational purposes.

At present under current Kansas law, consumers have several remedies by which they may seek restitution from a manufacturer if the consumer feel that the product purchased is substandard.

First of all, agencies such as the Better Business Bureau have formed informal third-party arbitration panels which review consumer complaints against manufacturers. Recently, General Motor endorsed the Better Business Bureau program as their formal third-party arbitration panel. We understand that Ford and Chrysler either currently have a similar system or are in the process of forming such a system.

Additionally, the Kansas Motor Car Dealers Association Board of Directors voted at their December 6, 1982, meeting, to implement an AUTOCAP program in Kansas. AUTOCAP stands for Automotive Consumer Action Program, and is also a third-party arbitration panel. The panel will consit of 6-8 members with at least 50% of the members being from the general public with absolutely no ties with the automotive industry. Currently, American Motors and 16 import manufacturers, including Honda, Nissan (Datsun), and Toyota, formally endorse

the AUTOCAP program as their official third-party arbitration mechanism for their customer's warranty and product-liability complaints. At present, there are 44 state and local AUTOCAP program in operation with several others, including Kansas, scheduled to being operation by early summer. Also, it is our understanding that General Motors, Ford Motor Company, Chrysler Corporation, and Volkswagen of American are considering endorsing the AUTOCAP program as well as their own programs. The national AUTOCAP Office is hopeful of receiving these endorsements in the near future.

One thing we would like to point out about the AUTOCAP program is that it is binding only on the dealer and/or manufacturer. It is not binding on the consumer. Any decision rendered by the panel which the consumer does not agree with can be further pursued by the consumer. Dealers or Manufacturers participating in the program are bound to honor the decision of the panel.

We feel that the AUTOCAP or any third-party mediation panel will fairly resolve disputes of this type, and would also point out that SB 199 contains language in Section 1, (f), that requires a consumer to follow such arbitration procedure if one has been established by the manufacturer.

The Kansas Motor Car Dealers Association also feels that sufficient protection exists under the Kansas Consumer Protection Act and the Kansas Uniform Commercial Code so that any consumer who feels that they have a defective vehicle can seek remedy under those acts.

Should this Committee and this Legislature feel it necessary to enact SB 199 or similar legislation, we would like to ask for certain amendments to the bill as it is currently written.

Attached to this written statement is a balloon indicating our suggested amendments. These amendments would clear up what we feel to be some problem areas in interpretation as well as areas which we feel should be addressed or specified.

I will briefly, with your permission, review these recommended amendments:

On line 0022, following the word "vehicle," strike the comma and insert "normally used for personal, family, or household purposes," and on line 0023 following "transferred" insert "for the same purposes."

We feel this change is necessary as it limits this act to the "family" car. We can see problems on the horizon if this act included commercial vehicles. The normal abuse a commercial vehicle, such as a large truck, is subjected to on a daily basis, could cloud a complaint to the degree that it might be impossible to determine if the defect was a manufacturer's defect, normal wear and tear, or abuse by the owner. The change in line 0023 is technical so that the sentence conforms with the amendment on line 0022.

On line 0044, we would ask that the work "new" be deleted, and in it place inserted, "comparable

This change is necessary, in our view, to specify what type of replacement vehicle is to be provided. With the word "new" it is conceivable that someone who has a Chevrolet Chevette, for example, could be awarded or demand a Chevrolet Caprice in exchange. Of course, there is a vast difference in these two cars, and this would be unfair to the manufacturer replacing the vehicle.

On line 0068 we would suggest striking "calendar" and inserting "business" to allow the manufacturer, its agent or authorized dealer more time to make the necessary repairs or adjustments.

On line 73, following "disaster.," we would suggest that a new sentence be added reading: "In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has recieved prior direct notification from or on behalf of the consumer and an opportunity to cure the defect alleged."

This is a point of clarification. We feel that the consumer should have the responsibility to contact the manufacturer directly informing them of the defect and giving the manufacturer amply opportunity to cure the defect, if one actually exists. It is possible that a problem might occur with a vehicle which a dealer, especially a smaller dealer, might not be able to correct, but that would be correctable if the factory had the opportunity to have one of their service representatives work on the problem.

On line 0077, following "established," we would suggest inserting "or participates in" and on line 0078 striking "in all respects" and inserting "substantially."

This allows the manufacturer to endorse a program such as AUTOCAP rather than having to form their own specific program.

Inserting new subsection (g) to read as follows: "Any action brought under this act shall be commenced within six months following (1) expiration of the express warranty term or (2) one year following the date of original delivery of the motor vehicle to the consumer, whichever is the earlier date."

This is simply a statute of limitations whereby the consumer must begin any action within the prescribed time.

Mr. Chairman and members of the Committee. We hope that if you decide Kansas needs this legislation, you will amend SB 199 to conform with the above.

Thank you for your time and attention, and I will be happy to attempt to answer any questions you may have.

* * * * *

SENATE BILL No. 199

By Senator Chaney

2-9

0017 AN ACT concerning motor vehicles; automobile warranties;
0018 commonly called the lemon law.

0019 *Be it enacted by the Legislature of the State of Kansas:*
0020 Section 1. (a) As used in this act:
0021 (1) "Consumer" means the purchaser, other than for purposes
0022 of resale, of a motor vehicle~~,~~ any person to whom such motor
0023 vehicle is transferred during the duration of an express warranty
0024 applicable to such motor vehicle, and any other person entitled
0025 by the terms of such warranty to enforce the obligations of the
0026 warranty; and
0027 (2) "motor vehicle" means a passenger motor vehicle which
0028 is sold in this state.
0029 (b) If a new motor vehicle does not conform to all applicable
0030 express warranties, and the consumer reports the nonconformity
0031 to the manufacturer, its agent or its authorized dealer during the
0032 term of such express warranties or during the period of one year
0033 following the date of original delivery of the motor vehicle to a
0034 consumer, whichever is the earlier date, the manufacturer, its
0035 agent or its authorized dealer shall make such repairs as are
0036 necessary to conform the vehicle to such express warranties,
0037 notwithstanding the fact that such repairs are made after the
0038 expiration of such term or such one-year period.
0039 (c) If the manufacturer, or its agents or authorized dealers,
0040 are unable to conform the motor vehicle to any applicable ex-
0041 press warranty by repairing or correcting any defect or condition
0042 which substantially impairs the use and value of the motor
0043 vehicle to the consumer after a reasonable number of attempts,
0044 the manufacturer shall replace the motor vehicle with a ~~new~~
0045 motor vehicle or accept return of the vehicle from the consumer

[Annotation to line 0022: normally used for personal, family, or household purposes,]

[Annotation to line 0023: for the same purposes]

[Annotation to line 0044: comparable]

0046 and refund to the consumer the full purchase price including all
0047 collateral charges, less a reasonable allowance for the con-
0048 sumer's use of the vehicle. Refunds shall be made to the con-
0049 sumer, and lienholder if any, as their interests may appear. A
0050 reasonable allowance for use shall be that amount directly at-
0051 tributable to use by the consumer prior to the first report of the
0052 nonconformity to the manufacturer, agent or dealer and during
0053 any subsequent period when the vehicle is not out of service by
0054 reason of repair. It shall be an affirmative defense to any claim
0055 under this act (1) that an alleged nonconformity does not sub-
0056 stantially impair such use and value or (2) that a nonconformity is
0057 the result of abuse, neglect or unauthorized modifications or
0058 alterations of a motor vehicle by a consumer.
0059 (d) It shall be presumed that a reasonable number of attempts
0060 have been undertaken to conform a motor vehicle to the appli-
0061 cable express warranties, if (1) the same nonconformity has been
0062 subject to repair four or more times by the manufacturer or its
0063 agents or authorized dealers within the express warranty term or
0064 during the period of one year following the date of original
0065 delivery of the motor vehicle to a consumer, whichever is the
0066 earlier date, but such nonconformity continues to exist or (2) the
0067 vehicle is out of service by reason of repair for a cumulative total
0068 of 30 or more ~~calendar~~ days during such term or during such
0069 period, whichever is the earlier date. The term of an express
0070 warranty, such one-year period and such thirty-day period shall
0071 be extended by any period of time during which repair services
0072 are not available to the consumer because of war, invasion,
0073 strike, fire, flood or other natural disaster.
0074 (e) Nothing in this act shall in any way limit the rights or
0075 remedies which are otherwise available to a consumer under any
0076 other law.
0077 (f) If a manufacturer has established an informal dispute
0078 settlement procedure which complies ~~in all respects~~ with the
0079 provisions of title 16, code of federal regulations part 703, as from
0080 time to time amended, the provisions of subsection (c) of this
0081 section concerning refunds or replacement shall not apply to any
0082 consumer who has not first resorted to such procedure.

business

In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct notification from or on behalf of the consumer and an opportunity to cure the defect alleged.

or participates in

substantially

(g) Any action brought under this act shall be commenced within six months following (1) expiration of the express warranty term or (2) one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date.

0083 Sec. 2. This act shall take effect and be in force from and
0084 after its publication in the statute book.

provisions applicable to the buyer's liability for infringement under Section 2-312.

8. All of the provisions of the present section are subject to any explicit reservation of rights.

Cross References:

Point 1: Section 1-201.
Point 2: Section 2-608.
Point 4: Sections 1-204 and 2-605.
Point 5: Section 2-318.
Point 6: Section 2-717.
Point 7: Sections 2-312 and 3-803.
Point 8: Section 1-207.

Definitional Cross References:

"Burden of establishing." Section 1-201.
"Buyer." Section 2-103.
"Conform." Section 2-106.
"Contract." Section 1-201.
"Goods." Section 2-105.
"Notifies." Section 1-201.
"Reasonable time." Section 1-204.
"Remedy." Section 1-201.
"Seasonably." Section 1-204.

84-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(*a*) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(*b*) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [L. 1965, ch. 564, § 88; Jan. 1, 1966.]

KANSAS COMMENT

This section substitutes the concept of "revocation of acceptance" for the "rescission" terminology of prior law. The Code does not use the term rescission because of its ambiguous application either to transfer of title to the goods or to the contract of sale. The change in terminology is also prompted by the Code's rejection of the requirement of prior law that the buyer elect between rescission and recovery of damages for breach. The remedy under this section is simply referred to as revocation of acceptance and involves no suggestion of election of any sort. Subsection (3) and the Code comment make clear that both remedies are available to the buyer.

Subsection (1) defines the conditions precedent to entitlement to the remedy of revocation of acceptance. Subsection (2) states the time and notice requirements which must be met for an effective revocation of acceptance. Apart from the changes noted above, the section continues the basic policy of prior law. See 3 Williston, Sales, §§ 608 et seq. (2d ed. 1948).

Kansas cases requiring an election between the remedies of rescission and damages for breach: Lyman v. Wederski, 95 K. 438, 148 P. 642 (1915); Hull v. Prairie Queen Manufacturing Co., 92 K. 538, 141 P. 592 (1914). Accord with subsection (1) (*b*): Bowhan v. Collinson Auto Co., 117 K. 189, 231 P. 69 (1924). Accord with subsection (2); Brandtjen & Kluge, Inc. v. Lucas Brothers Co., 153 K. 138, 109 P. 2d 197 (1941); Wilson v. Doolittle, 114 K. 582, 220 P. 508 (1923); Hull v. Prairie Queen Manufacturing Co., *supra;* Hay Press Co. v. Ward, 89 K. 218, 131 P. 595 (1913); Salina Implement and Seed Co. v. Haley, 77 K. 72, 93 P. 579 (1908).

RESEARCH AND PRACTICE AIDS

Sales⟹179.
C. J. S. Sales § 225.
Vernon's Kansas U. C. C.—Howe & Navin, 84-2-608.
Rescission by buyer. Am. Jur. 1st ed., Sales §§ 668, 727, 758 et seq.
Forms: 13A Am. Jur. Legal Forms 2:554, 2:555.

OFFICIAL UCC COMMENT

Prior Uniform Statutory Provision:

Section 69(1) (d), (3), (4) and (5), Uniform Sales Act.

Changes:

Rewritten.

Purposes of Changes:

To make it clear that:

1. Although the prior basic policy is continued, the buyer is no longer required to elect between revocation of acceptance and recovery of damages for breach. Both are now available to him. The nonalternative character of the two remedies is stressed by the terms used in the present section. The section no longer speaks of "rescission," a term capable of ambiguous application either to transfer of title to the goods or to the contract of sale and susceptible also of confusion with cancellation for cause of an executed or executory portion of the contract. The remedy under this section is instead referred to simply as "revocation of acceptance" of goods tendered under a contract for sale and involves no suggestion of "election" of any sort.

2. Revocation of acceptance is possible only where the nonconformity substantially impairs the value of the goods to the buyer. For this purpose the test is not what the seller had reason to know at the time of contracting; the question is whether the nonconformity is such as will in fact cause a substantial impairment of value to the buyer though the seller had no advance knowledge as to the buyer's particular circumstances.

3. "Assurances" by the seller under paragraph (b) of subsection (1) can rest as well in the circumstances or in the contract as in explicit language used at the time of delivery. The reason for recognizing such assurances is that they induce the buyer to delay discovery. These are the only assurances involved in paragraph (b). Explicit assurances may be made either in good faith or bad faith. In either

and does become surety for the landowner for other of his debts, on the agreement of the landowner that he will deed to the other certain lands to secure him for the debts, money loaned, money paid and obligations incurred, becomes an equitable mortgagee of the lands agreed to be conveyed from the time of making such agreement. (Following *Fitzgerald v. Fitzgerald*, 97 Kan. 408, Syl. 1, 155 Pac. 791 [1916].)

5. When parties enter into a contract for the sale of real estate pursuant to which the seller retains legal title as security for the purchase price and all of the beneficial incidents of ownership pass to the buyer, the seller has no greater rights than he would possess if he had conveyed the property and taken back a mortgage, and the buyer becomes the 'owner' when the beneficial interest passes to him. (Following *Roberts v. Osburn*, 3 Kan. App. 2d 90, Syl. 5, 589 P.2d 985 [1979].)

6. While a discharge in bankruptcy under the Bankruptcy Act of 1898 will prevent the bankrupt from being personally liable on a dischargeable debt, the debt itself is not extinguished and a creditor holding a security interest in exempt property may look to that property for satisfaction of the debt.

7. Where a mortgage is given to secure a debt specifically named, the security will not ordinarily be extended to cover debts subsequently incurred unless they be of the same class or character and so related to the primary debt secured that the assent of the mortgagor can be inferred. (Following *Emporia State Bank & Trust Co. v. Mounkes*, 214 Kan. 178, Syl. 5, 519 P.2d 618 [1974].)

8. In the absence of clear evidence of a contrary intention, a mortgage containing a dragnet type provision will not be extended to cover subsequent advances or loans unless they be of the same kind and quality or relate to the same transaction or series of transactions or unless the document evidencing the same refers to the mortgage as providing security therefor. (Following *Emporia State Bank & Trust Co. v. Mounkes*, 214 Kan. 178, Syl. 6, 519 P.2d 618 [1974].)

BLACK V. DON SCHMID MOTOR, INC.
SEDGWICK DISTRICT COURT
JUDGE JAMES V. RIDDEL, JR.
AFFIRMED
OPINION BY SCHROEDER, C.J.
29 PAGES — NO. 53,947

DIGEST: Plaintiff purchased an automobile which developed persistent problems that remained unrepaired despite five trips to the dealership within five months of purchase. Plaintiff sued Schmid to revoke acceptance for breach of express and implied warranties. Schmid filed a third-party action against its seller, Peugeot Motors of America, Inc. The jury found plaintiff entitled to revoke acceptance and recover the purchase price as well as consequential damages. The court awarded plaintiff attorney's fees under the Magnuson-Moss Federal Warranty Act, 15 U.S.C. § 2301 *et seq*. The jury found Peugeot not liable to Schmid for any part of the judgment. Defendant appeals.

HELD

1. Under the Uniform Commercial Code the purchaser of a motor vehicle who seeks to enforce a revocation of his acceptance pursuant to K.S.A. 84-2-608 must establish (1) the nonconformity of the vehicle, (2) the needs and circumstances of the purchaser, and (3) that the nonconformity in fact substantially impairs the value of the vehicle to the purchaser.

2. In an action where the purchaser of a motor vehicle seeks to enforce the revocation of his acceptance of a vehicle, the nonconformity of the vehicle, the needs and circumstances of the purchaser, and substantial impairment of value of the vehicle to the purchaser are all issues to be determined by a trier of fact.

3. A seller's repeated failure to repair defects in a vehicle may constitute a nonconformity which substantially impairs the value of the vehicle to the purchaser, entitling him to seasonably revoke acceptance of the vehicle pursuant to K.S.A. 84-2-608.

4. To establish a breach of the implied warranty of merchantability under 84-2-314(2)(c) a buyer must prove first, the ordinary purpose of the type of goods involved, and second, the particular goods sold were not fit for that purpose. Kansas case law has interpreted this to mean that the buyer must show the goods were defective and the defect existed at the time of the sale.

5. A breach of implied warranty may be proved by circumstantial evidence.

6. A pretrial order should be liberally construed to cover any possible legal or factual theories that might be embraced in its language.

7. Under K.S.A. 60-251(*b*) where no objection is made to an instruction it becomes the law of the case unless clearly erroneous.

8. Where damages result from the seller's failure or refusal to repair goods rather than from any manufacturing defect in the goods, the seller's right to indemnity against the manufacturer for breach of warranty is barred.

9. Error cannot be predicated on the refusal to give an instruction when its substance is adequately covered in other instructions. If the instructions properly and fairly state the law as applied to the facts in the case when considered as a whole, and if the jury could not reasonably be misled by them, the instructions should be approved on appeal.

10. The determination whether the probable effect of an instruction has been to mislead the jury and whether the error has been prejudicial so as to require reversal depends upon all the circumstances of the case, including a consideration of all the evidence.

11. An award of attorney's fees to a prevailing party under the Magnuson-Moss Federal Warranty Act, 15 U.S.C. § 2310 (d)(2), is within the discretion of the trial court.

APPRAISAL REPORTS OF CLOSELY-HELD BUSINESS INTERESTS

For the following Purposes:

- Estate Tax
- Employee Stock Ownership Trusts
- Litigation Involving Breach of Fiduciary Duty
- Transactions Between Trustee, Employer, and Trust
- Divorce Settlements
- Buy-Sell Agreements
- Acquisitions and Sales

Phillip Schneider & Associates, Inc.
Suite 101
1603-22nd Street
West Des Moines, IA 50265
(515) 225-0000