

Approved February 8, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Martha Jenkins, Vice Chairman at  
~~Chairperson~~

3:30 ~~xxx~~/p.m. on February 1,, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Crowell, Douville, Fuller, O'Neal, Peterson, Sebelius and Snowbarger, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Art Weiss, Deputy Attorney General, Consumer Protection Division  
Pat Barnes, Kansas Motor Car Dealers Association

HEARING ON H.B. 2070 - Consumer protection, actions brought by Attorney General, attorney fees

Art Weiss testified that under the Consumer Protection Act the Attorney General is not currently awarded attorney fees when prevailing in a consumer protection action. This bill would allow the Attorney General and county or district attorneys who prevail in consumer protection actions to receive reasonable attorney fees. He said in actions brought by the Attorney General, the fees would be deposited in the State Treasury to be used for costs and expenses of services performed by the Attorney General in consumer protection cases. In actions brought by county or district attorneys, attorney fees would be deposited to a special consumer protection fund in the county treasury to be expended as directed by the county or district attorney, see Attachment 1. He informed the Committee the Kansas County and District Attorneys Association supports H.B. 2070.

In answer to Committee questions, Mr. Weiss replied the fees would be awarded by the court, and the amount requested would be based on what the local attorneys receive. He also replied the attorneys in the Attorney General's office do keep records of the time they spend on these cases. The fees collected would be used for investigating cases and could result in lowering their budget requests. Most of their cases are settled by consent judgment, where there is no prevailing party. He said last year about \$75,000 was collected in investigative fees. He did not have an estimate for how much they could have collected in attorney fees.

Pat Barnes testified the Kansas Motor Car Dealers Association is opposed to H.B. 2070. He said many cases are settled not because they are meritorious, but because the expense of litigation to the business, as well as other threatened action, is simply too great. By forcing the legitimate businessman to risk failure and compensate the state for litigation expenses will essentially deny Kansas businesses of realistic access to Kansas courts in instances where they are wrongfully, vaguely or erroneously accused of Consumer Protection Act violations. He indicated there is no need to change the present law. If a Kansas consumer has a meritorious case, he can bring action to recover his damages, a civil penalty of up to \$2,000 and his attorney fees, see Attachment 11.

The hearing on H.B. 2070 was closed.

The Committee meeting was adjourned at 4:25 p.m. The next meeting will be February 2, 1989 at 3:30 p.m. in room 313-S.





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

TESTIMONY OF ARTHUR R. WEISS

DEPUTY ATTORNEY GENERAL

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

HEARING ON HOUSE BILL 2070

FEBRUARY 1, 1989

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan I wish to thank this committee for allowing us the opportunity to address you concerning House Bill 2070. This bill was requested by the Attorney General in an effort to insure that the taxpayers of the State of Kansas do not continue to bear the full burden of those who have been found by our courts to deceive Kansas consumers.

Under the Consumer Protection Act, the Attorney General is not currently awarded attorneys fees when prevailing in a consumer protection action. This bill would allow the Attorney General and county or district attorneys who prevail in consumer protection actions to receive reasonable attorney fees. In an action brought by the Attorney General, those

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*2/1/89*  
*Attachment I*

fees would be deposited in the state treasury to be used for costs and expenses of services performed by the Attorney General in consumer protection cases. In actions brought by county or district attorneys, attorney fees would be deposited to a special consumer protection fund in the county treasury to be expended as directed by the county or district attorney.

It makes no sense for businesses who have been found guilty of deceiving Kansas consumers by committing violations of the Kansas Consumer Protection Act to escape reimbursement to the taxpayers of the state. In virtually all civil lawsuits, the prevailing party is awarded attorney fees. In virtually all criminal cases, the defendant is required to pay court costs. It is a well established principal that wrongdoers not escape the responsibility of reimbursing the taxpayers for the funds expended in order to enforce our laws.

Already, private attorneys who bring consumer protection action cases against businesses engaged in deceptive practices are allowed to recover attorney fees if they prevail. It seems inequitable that Kansas taxpayers are not entitled to the same treatment.

Thank you very much for this opportunity. The Attorney General requests your favorable action on House Bill 2070.

Testimony of the  
KANSAS MOTOR CAR DEALERS ASSOCIATION  
Before the  
HOUSE COMMITTEE ON JUDICIARY

Wednesday, February 1, 1989

Re: House Bill #2070 Dealing with Providing Attorney Fees for the Kansas Attorney General Under the Provisions of the Consumer Protection Act When the Attorney General is the Prevailing Party.

Mr. Chairman, Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association. Our Association represents most of the new automobile and truck dealers in the State of Kansas.

House Bill #2070 would allow the attorney general (or county/district attorneys, as the case may be) to receive attorney fees for actions prosecuted in our courts against suppliers in instances where the attorney general prevails. We are absolutely opposed to the provisions of this bill and the additional liabilities to which it subjects Kansas business simply because the business decided to leave the issue as to whether or not a violation of the Consumer Protection Act has occurred to an impartial fact finding court. Imposing this additional risk of liability has a chilling effect upon the Kansas business, particularly small businesses, and will further deprive suppliers, as defined under the Consumer Protection Act,

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Attachment II*

of due process and equal protection under the law for the reasons which follow.

When the attorney general enforces the Consumer Protection Act he is enforcing it with the power of the state behind his actions. The same is true when a county or district attorney enforces the Act. The same coercive powers that can be brought to bear in a criminal proceeding are essentially perceived as being brought to bear in a civil proceeding when carried on under the Consumer Protection Act by representatives of the State of Kansas. The only difference is that the action is conducted as a civil proceeding, rather than a criminal proceeding.

There are many cases where liability cannot be predicted under the present provisions of the Consumer Protection Act. The provisions are designed to be broad so as to catch dishonest practices by unscrupulous businesses. Unfortunately, however, the Act also catches accidental and innocent practices which some people would not even think need to be addressed.

In attorney general proceedings which we have seen, it is not uncommon to encounter demands for relief accompanied by threats of ~~investigating~~ <sup>subpoenaing</sup> all of the business' records for investigation or court action, and going back ten years to investigate and prosecute other possible consumer violations, however many can be found, if the claimed consumer violation is not settled in accordance with the demand. You must remember that there are two sides to every story, and not every consumer complaint rises to the level of an injury or violation of the

law.

In those instances where there are unscrupulous sales practices, then the consumer should be fully compensated. The attorney general should have full authority to aid the consumer in this matter. It is good public policy for this state. However, our tax dollars support the office of the attorney general in this endeavor, as well as our local county and district attorney offices, and we do not think we should have to concede our right to question a somewhat vague Consumer Protection Act in those instances when the state is prosecuting the action based upon the financial risk an adverse attorney fee award presents.

Many cases are settled not because they are meritorious, but because the expense of litigation to the business, as well as other threatened action, is simply too great. By forcing the legitimate businessman to risk failure and compensate the state for litigation expenses will essentially deny Kansas businesses of realistic access to our Kansas courts in instances where they are wrongfully, vaguely or erroneously accused of Consumer Protection Act violations.

Passing this bill will do very little for the Kansas consumer. Presently, if a Kansas consumer has a meritorious case he can bring an action to recover his damages, a civil penalty of up to \$2,000, and his attorney fees. There is virtually no need to change this law as it presently stands. We have operated under this law for approximately 15 years and we are unconvinced

that there is any need to strengthen its already strenuous provisions.

I realize that we have provided you a rather strong statement against this bill. I even realize it may appear to be unpopular for our group to take such a strong position on this action. However, we have to be able to live and operate in this state, too. Our members are also people and they also deserve fairness. Why shouldn't Kansas businesses have equal access to the courts to defend themselves? All of our members are not large, and all of them are not wealthy. Provisions of this bill don't apply just to Kansas car dealers, but to all businesses, large and small. We would ask that this bill receive no further consideration.

Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have.