Approved March 16, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Michael O'Neal
Chairperson at

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

All members were present except:

Representatives Peterson and Roy, 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
Glenn Logan, Kansas Association of Broadcasters
Pat Barnes, Kansas Motor Car Dealers Association
Ron Hein, American Advertising Federation
Patricia O'Sullivan, Kansas Bankers Association, Trust Division
William Mitchell, Kansas Land Title Association
Stephen Todd, Regional Counsel, Chicago Title Co.
Everett Fritz, Jefferson County Attorney

HEARING ON H.B. 2095 - Deceptive price advertising

Art Weiss, Deputy Attorney General, Consumer Protection Division testified Attorney General Robert Stephan requests language in the Consumer Protection Act which specially addresses deceptive practices in advertising. Deceptive advertising is the use of large advertised prices that do not properly reflect the true price for the goods or services which they advertise. The proposed amendment by the Air Transport Association of America would insert on line 73 "and any tax , fee, charge, or surcharge allowed to be excluded by a federal statute, rule or other, or by any other law of this state". This amendment is acceptable to Attorney General Robert Stephan, see Attachment 1.

George Logan, Kansas Association of Broadcasters, testified in opposition to H.B. 2095. He stated the Kansas consumer protection act in its present form addresses deceptive price advertising. He listed as concerns State-by-State adoption of price advertising requirements which would cause a patchwork of non-uniform set of standards among the states and would interfere with the free flow of information to the consumer about nationally or regionally marketed products and services; arbitrary restrictions on price advertising could result in less price advertising and ultimately in higher prices for Kansas consumers; and if national and regional advertisers are subject to more stringent price advertising requirements in Kansas than in other states they might remove their advertising dollars from Kansas media, see Attachment II.

Pat Barnes, Kansas Motor Car Dealers Association, testified the Kansas Motor Car Dealers Association has promoted good advertising practices within their own industry. He said any abuses which exist may presently be addressed under the current law. He stated the Kansas Motor Car Dealers in association with the Attorney General's Consumer Protection Division developed a fair and reasonable advertising and price offer guideline. A copy of the guideline is attached to his testimony, see Attachment III.

Ron Hein, American Advertising Federation, testified in opposition to H.B. 2095. He said less price competition in the marketplace will provide less information and produce a less informed consumer. The bill is based on the assumption that the advertiser has an "intent to deceive" and that the consumer has an inability to apply simple common sense. Federal regulations are already in place to regulate price advertising, see Attachment IV.

The hearing on H.B. 2095 was closed.

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.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 a.m./p.m. on March 1, 1989

HEARING ON H.B. 2461 - Surviving natural guardian nominating a guardian or conservator by a trust agreement
H.B. 2462 - Construction and interpretation of trusts
H.B. 1362 - Distribution of trust assets

Patricia O'Sullivan, Kansas Bankers Association, Trust Division, testified these bills address revocable living trusts in estate planning. H.B. 2461 would allow a surviving natural guardian to appoint a guardian and conservator for such natural guardian's minor children under the provisions of a revocable living trust. H.B. 2462 would add a provision to K.S.A. 59-103(a) allowing for construction and interpretation of living trusts under probate proceedings. H.B. 2463 would bring living trusts into conformity with wills. For those who utilize the living trust plan, it would prevent the cost and necessity of amending the trust each time such personal property is added to the trust, sold, or the intent of the grantor changes as to whom is to receive the money, see Attachment V.

The hearings were closed on H.B. 2461, H.B. 2462 and H.B. 2463.

HEARING ON H.B. 2395 - Mechanics and materialmen's liens

William Mitchell, Kansas Land Title Association, introduced Stephen Todd, Regional Counsel, Chicago Title Company. He explained Mr. Todd would address the problems in closings on titles and transfers of real estate.

Stephen Todd, Regional Counsel, Chicago Title Company, testified H.B. 2395 amends K.S.A. 60-1103b by requiring that the notice of intent to perform be recorded before the transfer of title, regardless of whether the claimant is claiming as an original contractor or as a subcontractor. New subsection (d) in K.S.A. 60-1103b provides for the filing of a waiver of lien which extinguishes the Notice of Intent to Perform. K.S.A. 60-1106 is amended to make it clear that only lienholders who are claimed to be junior to the mechanic's lien need to be named. K.S.A. 60-1110 is amended to allow a bond to be filed in the contract amount which would encompass all potential liens, or allow the filing of a bond in the amount of an individual claim. He stated these and other amendments proposed would not affect any substantive rights of parties heretofore existing under the Kansas mechanic's lien statutes, but are only to clarify actions previously taken by the Kansas Legislature in 1977 and 1986, or to effect improvements in procedural matters, see Attachment VI.

Everett Fritz, Jefferson County Attorney, testified in opposition to H.B. 2395. A big share of his practice for 40 years has been in the real estate field. He said this bill protects special interests, not the consumer. He stated K.S.A. 60-1103 should be put back the way it was before and not amend K.S.A. 60-1101.

The hearing was closed on H.B. 2395.

CONSIDERATION OF BILLS:

H.B. 2461 - Surviving natural guardian nominating a guardian or conservator by a trust agreement
H.B. 2462 - Construction and interpretation of trusts
H.B. 2463 - Distribution of trust assets

Representative Solbach moved to report H.B. 2461, H.B. 2462 and H.B. 2463 favorably for passage. Representative Sebelius seconded the motion. The motion passed.

H.B. 2370 - Case directly to the Supreme Court on appeal

Representative Walker moved to report H.B. 2370 favorably for passage. Representative Douville seconded the motion.

The Committee discussed the purpose of the bill and their concerns. The Chairman stated the minutes should reflect that the Committee was taking the representation made by the Court on faith. What the Committee heard is that cases will be transferred to the Court of Appeals, and the Supreme Court will take more complicated cases. The Supreme Court is going to be handling some cases they should now be doing and the Court of Appeals will be getting relief with some of the complicated civil cases that may end up in the Supreme Court anyway. This is not in the legislation, but that is what was represented as the intent of this legislation. The Chairman said he approved of the passage of this bill and suggested following up on the application of the legislation if the bill passes this session.

A vote was taken on the motion by Representative Walker, and the motion passed.

H.B. 2396 - Audio tape recordings of sexually expoiting a child

A motion was made by Representative Whiteman and seconded by Representative Lawrence to report H.B. 2396 favorably for passage. The motion passed.

Representative Jenkins moved to approve the minutes of February 13, 14, 15, 16, 20, 21, and 22. The motion was seconded by Representative Douville. The motion passed.

The Committee meeting was adjourned at 5:30 p.m. The next meeting will be Thursday, March 2, 1989, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: March 1, 1989

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Patricia O'Sullivan	8241 Greenbriar Ct Wichita KS 67226	Kansas Bankers Assoc/ Trust Division
JEFF SONNICH	TOPEKA	KLSI
Paul Shelby	Topeka	OJA
Priscilla Marsh	Leawood	Leagues Women Voters
PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.
Art Weiss	"	AG's office
Kevin Allen	Topeka	Ks Motor Carriers Assn
PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn
Harriet Lange	"	Ks Assn Broadcasters
GEORGE LOGAN	"	Ks Assn of Broadcasters
Ronald Nelson	"	American Advertising Federation
JOHN C. BOTTENBERG	"	AIR TRANSPORT ASSOC
Everett Frick	Jefferson County	atty - BOCC
DAVID M. TRASTER	Topeka	KDHE
M.S. MITCHELL	WICHITA	HBA-K
Janet Stubbs	Topeka	"
H. Kurt Dequasie	Topeka	N.E.C.A.

STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

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CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF ARTHUR R. WEISS

DEPUTY ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

HEARING ON HOUSE BILL 2095

March 1, 1989

Mr. Chairman and Members of the Committee:

Attorney General Stephan requested the introduction of this bill to deal with what is becoming an increasingly common method of deceptive advertising.

That is the use of large advertised prices which do not properly reflect the true price for the goods or services which they advertise. Airlines formerly advertised one-half of the round trip fare in large bold letters. A consumer would then be required to read the fine print at the bottom of the ad to learn this was one-half the round trip fare and the ticket must be purchased as a round trip. Additionally, the consumer must read further to learn that to some cities, there were additional fuel or airport imposed surcharges. For example, a Braniff Airlines ad touted a $27 fare from Kansas

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Attachment I

City to Chicago. Only after reading the fine print at the bottom of the ad did you learn that the fares are one-way and require a round trip purchase. Therefore, the product or service advertised is $54. However, we're not done yet. The City of Chicago also imposes a $5 surcharge for flights leaving from its airports. Therefore, the true cost of the round trip ticket from Kansas City to Chicago is $59 not $27.

Another example is an ad by Hertz Rent-A-Car Company. Hertz, in an attempt to make their advertised rates appear competitive with those of its discount competitors, lowered the large printed rate. Hertz, which has many of its locations located on airport property, pays a concession fee to the airport for the use of airport space. This concession fee amounts to a part of the car rental company's overhead. It is actually rent. In order to have its rates appear competitive with off airport locations which do not pay that fee, Hertz lowered its large advertised rate. Hertz then put an asterisk next to that rate corresponding to the fine print at the bottom that the rate did not include airport imposed fees. These fees were mandatory and average from 8 to 12 percent. They were automatically added to the rental rate much to the consumer's suprise. We are currently investigating a jewelry store which advertised earrings at the "per ear" price rather than per pair.

The practice of advertising only a portion of the product or service is clearly deceptive. It is for that reason, that

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Att I
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Attorney General Stephan requests language in the Consumer Protection Act which specifically addresses this deceptive practice. Without such language, we are forced to try to stretch other sections of the Consumer Protection Act to meet this specific problem. If a business elects to advertise its products or services, consumers have a right to know the true price of those products or services.

Thank you.

H.J. 3/1/89
Att I

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(10) falsely stating, knowingly or with reason to know, the reasons for offering or supplying property or services at sale or discount prices; and

(11) representations that any item is being offered at specific price, unless:

(A) The representation sets forth the total price that must be paid in order to obtain the item, which shall include all mandatory charges but may exclude any sales and other comparable taxes levied by a governmental entity and any tax, fee, charge, or surcharge allowed to be excluded by a federal statute, rule, or order, or by any other law of this state and any actual mail order shipping charges;

(B) if the representation is in writing and a price other than the total price is set forth, the total price also appears in the representation, is the most prominent price set forth in the representation, is in a type size larger than any other price which appears in the representation and is in close proximity to such other price; and

(C) if the representation is made orally, whether in person or through any visual or sound broadcast, only the total price is set forth.

Sec. 2. K.S.A. 50-626 is hereby repealed.

Sec. 3 This act shall take effect and be in force from and after its publication in the statute book.

H.J. 3/1/89
att I
pg 4

RECE
KAN
FEB 16 9

Air Transport Association ata OF AMERICA

1709 New York Avenue, NW
Washington, DC 20006-5206
Phone (202) 626-4000

February 10, 1989

Mr. Arthur R. Weiss
Deputy Attorney General
Consumer Protection Division
Kansas Judicial Center
Topeka, KA 6612-1597

Dear Art:

Pursuant to our discussions, we concur that the following revisions to HB 2095 should address our concerns with the legislation.

Beginning on page 2, line 73, insert the following after the word "entity":

"and any tax, fee, charge, or surcharge allowed to be excluded by a federal statute, rule, or order, or by any other law of this state."

Thanks for you kind cooperation on this issue and we look forward to seeing you on your next visit to Washington, D.C. Please call if we can provide anything additional.

Sincerely,

Roger Cohen
Assistant to Vice President

RC/mj

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Att I
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TESTIMONY
Before the House Judiciary Committee
March 1, 1989
By
George Logan, General Manager, WIBW TV
Government Relations Chairman
Kansas Association of Broadcasters

RE: HB 2095

Mr. Chairman, members of the committee, I am George Logan, general manager of WIBW TV, and government relations chairman for the Kansas Association of Broadcasters (KAB). The KAB is a state trade association representing 110 radio and 20 television stations in Kansas.

We appreciate the opportunity to appear before you to present our views concerning HB 2095.

Certainly we do not object to the goals of HB 2095. Deceptive or misleading advertising practices are not in the best interest of the broadcast industry, just as they are not in the consumer's best interest.

However, we have serious reservations about the need for this legislation. The Kansas consumer protection act in its present form, addresses deceptive advertising (lines 45 through 49).

In addition to the fact that there is no demonstrated need for this legislation, our concerns are:

1). State-by-state adoption of price advertising requirements, causes a patchwork or non-uniform set of standards among the states and will interfere with the free flow of information to the consumer about nationally or regionally marketed products and services.

2). Arbitrary restrictions on price advertising could result in less price advertising and ultimately in higher prices for Kansas consumers, since price as an area of competition would be diluted or diminished.

3). If national and regional advertisers are subject to more stringent price advertising requirements in Kansas than in other states,

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Attachment II

it is quite probable that they will remove their advertising dollars from Kansas media. This is of great concern to broadcasters in particular, because our ONLY source of revenue is advertising.

Individual state authority over national advertising was challenged recently by three airlines in Texas. A federal court issued a preliminary injunction against the Texas attorney general (and other states) prohibiting him from enforcing the state's deceptive trade practices law on advertising practices in the air travel industry. Although the court did not address violation of the Commerce Clause or the airlines' First Amendment rights, some believe the case may be a landmark in state regulation of national advertising.

To summarize: we do not see the need for this legislation; if enacted it could have a negative impact not only on advertising revenues flowing into Kansas but on information flowing to the consumer as well.

Thank you for your consideration.

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Testimony of the

KANSAS MOTOR CAR DEALERS ASSOCIATION

Before the

HOUSE COMMITTEE ON JUDICIARY

Wednesday, March 1, 1989

RE: House Bill #2095 Making Certain Price Offers or Advertising a Deceptive Act or Practice Under the Consumer Protection Act.

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 2095 would make it a deceptive act or practice in violation of the Consumer Protection Act to fail to advertise or make price offerings in a manner other than total price as set forth in the bill. We oppose this bill for a number of reasons.

First, and foremost, we have promoted good advertising practices within our own industry. We believe any abuses which exist may presently be addressed under current law. More importantly, however, is the fact that our Association, representing our members, sat down with the Attorney General's office, through Art Weiss, in the spring and fall of 1988 and developed fair and reasonable advertising and price offer guidelines. A copy of those guidelines are attached. We think

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Attachment III

it is questionable to now ask the Legislature to codify an advertising rule since the guidelines themselves indicate how complex this area can be.

Second, the proposal you have before you would, without question, target auto dealers for selective enforcement. Others will not be pursued under this statute as frequent as our industry, although violations may be accidental or subject to questions of interpretation. If the present law on such practices is not being enforced, we see little sense in enacting yet another law.

Third, despite this statute, there will still be advertising from outside our state's borders. Television and radio stations dot our borders. Border newspapers freely circulate in Kansas, particularly in the Kansas City area. How is this law expected to accomplish anything given the nature of media advertising today?

Fourth, while price offers from Missouri can continue to mislead consumers (if that is, in fact, happening), Kansas dealers will be required by law to present their material in a certain manner, thus appearing to make them less competitive with their brethren across the state line. The point is that these matters should be dealt with elsewhere through current law, the attached advertising guidelines, and dealer groups operating in several states.

The "dealer groups" to which I have referred are groups organized by the manufacturers within their own dealer networks.

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These groups are self-regulating and help develop advertising programs with factory support. They generally consist of dealers from several states within a region. Some groups are advertising cooperatives. They should not have to operate with staff lawyers just to advertise their products.

This law will have another effect, too. Dealers rely upon national factory advertising since the funds necessary for the highly appealing formats you see are beyond most dealer budgets in terms of cost. The quality of these productions is generally much better than what the average dealer can produce. With this bill such ads would either have to be discontinued or no regulation of those ads can take place due to their interstate character. Either way, the dealer is the loser, both financially and in terms of goodwill. Customers, viewing those national ads will relate them to their local Kansas dealer who will be expected to honor them when he may not be able to do so because of variable costs, such as freight charges, or model availability.

Next, there is a question about federal pre-emption in this area. The F.T.C. currently has advertising or price offer guidelines. Obviously, national advertising is in interstate commerce. Some of these broadcast ads may also be subject to F.C.C. regulation. Whatever the case, it seems to us to be a highly questionable bill when one considers the complexities created by cable television, radio and other media advertising from outside our borders. How does Kansas expect to

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realistically dictate its law to the rest of the country?

Finally, this bill infringes on first amendment free speech rights. Each little nick you create in the armor of our constitutional rights makes it that much easier to go a step further the next time. Although "commercial free speech" is legally recognized as being subject to some regulation, we would hope these types of issues would be viewed with the utmost seriousness any control over free speech requires.

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STATE OF KANSAS

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CONSUMER PROTECTION: 296-3751

March 2, 1988

Mr. Patrick R. Barnes
Scott, Quinlan & Hecht
3301 Van Buren
Topeka, Kansas 66611

RE: Guidelines for New & Used Vehicle Sales & Leases

Dear Mr. Barnes:

Thank you for reviewing the Guidelines for New and Used Vehicle Sales and Leases. I reviewed them in the final form. As of the date of this letter, the guidelines are in force. I appreciate your cooperation in advising your members of the new guidelines. At this time, I do not plan to make a formal printing of the guidelines. They will not be available in quantity through this office.

A copy has also been sent to Mr. Carl Zscheile.

Very truly yours,

ROBERT T. STEPHAN
Attorney General

RTS:tk

Enc.

N. J. 3/1/89
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GUIDELINES FOR NEW AND USED VEHICLE SALES AND LEASES

The following is a list of some of the more common practices that the Kansas Attorney General's Consumer Protection Division considers misleading and deceptive. These guidelines are not rules or regulations promulgated under the Kansas Administrative Practices Act and do not have the force of law.

The guidelines are not intended to be a comprehensive listing of all conceivable deceptive practices. It is not intended that literal compliance with these guidelines be an absolute protection against the filing of a lawsuit seeking civil penalties for violation of the Kansas Consumer Protection Act. In order to be in compliance with that Act, dealerships should review their advertising and sales practices to determine whether the overall impression or any specific statement contained therein has the capacity to mislead or deceive a reasonable consumer.

Violation of these guidelines may result in action by the Attorney General under the Kansas Consumer Protection Act.

1. DISCOUNTS

1.1 Manufacturers are required by federal law to label new automobiles with the suggested retail price. 15 U.S.C. 1232 (f)(1). Automobiles as defined by federal law include passenger cars and station wagons. The following guidelines

on discount pricing must be followed on passenger cars and station wagons. Federal law does not require similar labeling for new trucks. The guidelines on discount pricing do not apply to new trucks.

1.2 It is deceptive for a dealer to raise the price of a new vehicle, lower it a short time later, and then advertise a discount or savings based on the difference between the increased price and the new price.

1.3 Discount claims on new vehicles should be made in reference to the manufacturer's suggested retail price.

1.4 If a dealership uses any price other than the manufacturer's suggested retail price as the basis for a discount price, it must clearly disclose which price is being discounted.

1.5 Before advertising a manufacturer's suggested retail price as a basis for comparison with his own lower price, the dealer should determine whether the suggested retail price is in fact the price regularly charged by dealers in his area. 16 C.F.R. §233.3.

2. "OVER INVOICE/UNDER INVOICE" DISCOUNT CLAIMS

2.1 The general buying public equates a dealer "invoice" with the actual cost to the dealer. For the purposes of these guidelines, "invoice" means the invoice received by the dealer at the time of shipment.

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2.2 Advertisements and sales offering prices based on "invoices" must disclose that dealers may receive further factory or manufacturer rebates or dealer incentives which are not passed along to the consumer. Advertisements must disclose the fact of those rebates but not the actual dollar figures. Rebates to dealers include carryovers.

2.3 Any sale based on the "invoice" which includes dealer added options must disclose that the price is "over invoice" or "under invoice" plus dealer added options.

3. PRICE MUST INCLUDE DEALER ADDED OPTIONS

3.1 The advertised price must include all costs to the purchaser except motor vehicle sales tax and vehicle registration fee and property tax.

3.2 Options requested by the purchaser may be added at the time of sale to the purchase price.

4. BELOW MARKET FINANCE CHARGE

4.1 If dealer participation will affect the final price of the vehicle, that fact must be disclosed in the advertisement.

4.2 Advertisements with below market financing rates must clearly disclose all the terms which must be met in order to qualify for that advertised rate. Examples are large down payments, hidden finance charges or terms of the loan.

4.3 The advertisement may offer cash rebates as an alternative to a low interest rate.

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5. HIDDEN DISCLOSURES

All disclosures or disclaimers in advertisements must be clear and conspicuous and adjacent to the terms they modify.

6. "FREE GIFTS"

If a product or service usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another product or service is being offered "Free" with the sale. FTC Guideline at 16 C.F.R. §251.1(g).

7. GUARANTEED TRADE-INS

It is deceptive to advertise and give guaranteed minimum trade-ins if the dealership raises the price of the new vehicle prior to a sale in order to compensate for the allowance of the guaranteed trade-in.

8. CREDIT ADVERTISING

Dealers must follow any requirements in federal or state statutes or guidelines which apply to credit advertising.

9. ADVERTISED PRICE AVAILABLE TO ALL

9.1 It is deceptive for a dealership to sell a vehicle for more than the advertised price.

9.2 Advertised vehicles must be sold at or below the advertised price regardless of whether the advertised price has been actually communicated to the purchaser prior to the sale.

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9.3 The actual sale price must appear on the sales order signed by the purchaser.

10. ADVERTISED VEHICLE AVAILABILITY

10.1 Dealerships must disclose by specific number at the time an advertisement is placed any limited quantities on vehicles currently in stock.

10.2 It is deceptive for a dealership to advise prospective customers by telephone that an advertised vehicle is still available when the vehicle has already been sold.

11. "NO DOWN PAYMENT"

It is deceptive for a dealership to advertise that no down payment is required if a down payment is required.

12. CONTRACT ADDITIONS WITHOUT CUSTOMER'S KNOWLEDGE

12.1 It is deceptive for a dealership to negotiate the terms of a sale and then add the cost of such items as extended warranty, credit life, dealer preparation, undercoating, etc. to the contract without the purchaser's prior knowledge and consent.

12.2 It is deceptive to use "documentary fee" for any charges other than those actually required by law for processing of documents.

13. CONTRACT SUBJECT TO FINANCING

13.1 If a sale is based on availability of financing to be obtained by the purchaser and the purchaser is unable to

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obtain financing, the dealership must promptly return all consideration it received.

13.2 If a used vehicle has been traded in as part of the payment for the vehicle to be purchased, that traded in vehicle shall be returned to the consumer after payment of a reasonable charge for any necessary repairs performed by the dealership (if any).

13.3 If the traded in vehicle has been previously sold by the dealership the amount received for it minus a selling commission of the usual percentage charged by the dealership and all reasonable expenses for storing, insuring, conditioning or advertising the vehicle for sale shall be returned to the consumer.

14. EXTENDED WARRANTIES

14.1 It is deceptive to misrepresent the terms or conditions of an extended warranty.

14.2 The terms of an extended warranty should be fully explained to the purchaser. Any overlapping of coverage

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between the extended warranty and manufacturer's warranty must be fully explained to the purchaser.

15. USE OF INITIALS OR ABBREVIATIONS

All initials or abbreviations used in the dealer added advertisement of an automobile, including any dealer added window sticker and supplementary sticker, must be clearly defined in the advertisement or window sticker.

16. SUPPLEMENTAL STICKER PRICES

16.1 It is deceptive to charge or attempt to charge a purchaser more than the manufacturer's suggested retail price (on the sticker required by 15 U.S.C. 1232) unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker posted adjacent to the federally required sticker.

16.2 It is deceptive for a dealership to misrepresent the reasons for additional charges listed on a supplemental sticker.

16.3 It is deceptive for a dealership to charge more for dealer added services or options than the dealership's regular prices.

16.4 It is deceptive for a dealership to represent that options have been added to a vehicle before they have been added.

16.5 It is deceptive for a dealership to represent or imply that any environmental protection packages or other equipment is required by federal or state statute when it is not required.

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TESTIMONY TO HOUSE JUDICIARY COMMITTEE
ON BEHALF OF AMERICAN ADVERTISING FEDERATION
RE: HB 2095
PRESENTED BY RONALD R. HEIN
FEBRUARY 29, 1989

Mr. Chairman, members of the committee:

My name is Ron Hein and I am legislative counsel for the American Advertising Federation. The AAF opposes HB 2095.

This bill will not prevent deceptive advertising as intended, but will in fact encourage it. Despite the best intentions, disclosure of all applicable charges leveled within and beyond Kansas borders for various products and services is unwieldy and impractical. What price, for example, should be specified for a product which is bought through a catalog, for which postage costs vary by geographical location of the recipient, and for which the method of shipment is selected by the consumer? How do you specify an automobile rental rate when rates are based on where the consumer drops the car, and how long he keeps it? How can airline pricing address differing charges imposed at different destination points and tickets purchased at different times? It is virtually impossible to communicate all the infinite variations on pricing. As a result, all advertising will be incomplete and, hence, deceptive.

This bill will result in less price advertising instead of more. Contrary to its original intent, HB 2095 will provide advertisers an incentive to avoid, rather than employ the mention of pricing in their ads. Less price competition in the marketplace will provide less information and produce a less informed consumer.

Federal regulations are already in place to regulate price advertising. The Department of Transportation does this for airlines; and the Federal Trade Commission regulates all other price advertising.

This bill is based on the assumption that the advertiser has an "intent to deceive" and that the consumer has an inability to apply simple common sense. Companies, networks, and the media in general, have in place a wide variety of mechanisms for insuring the highest standards of conduct. The last thing any advertiser seeks to do is price deception. Honesty is not only good morality, but it is simply good business. And the consumer is well able to interpret general pricing with qualifiers such as "prices may vary".

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Attachment IV

This bill won't work. State by state regulations on advertising are impractical to police and impossible to execute. The reason we have one overall federal regulation is that no advertiser or agency could comply with multiple standards originating from fifty different state legislators. Advertising is a $100 billion a year business and is truly interstate commerce in its purest form.

Thank you for permitting me to testify today. I would be happy to yield for any questions.

Kansas Bankers Association
TRUST DIVISION
Merchants National Bldg.
Eighth & Jackson, Topeka, KS 66612

Presentation Before House Judiciary Committee
on March 1, 1989

Prepared By: Patricia O'Sullivan
Chairman
Legislative Affairs Committee
Kansas Bankers Association/Trust Division

RE: House Bill 2461
House Bill 2462
House Bill 2463

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Attachment V

Kansas Bankers Association
TRUST DIVISION
Merchants National Bldg.
Eighth & Jackson, Topeka, KS 66612

INTRODUCTORY REMARKS:

The usage of revocable living trusts in estate planning for individuals has been steadily increasing over the past few years. Retired persons, the elderly and widowed individuals have established such trusts for various reasons:

1) personal estate planning
2) privacy of financial affairs as well as personal affairs
3) avoiding use of conservatorship
4) management of assets
5) savings on time, costs and inconvenience of probate administration
6) personal freedom to enjoy quality of life
7) a revocable living trust may be less vulnerable to a legal contest than a will
8) the trust can be revoked or amended at any time and assets added or withdrawn
9) possible savings on estate taxes

Many working couples are doing their estate planning in their younger years to provide not only for themselves but for their minor children. With the use of "self-trusteed" revocable living trusts, these persons can have all the advantages of the trust but still maintain control over their investments and financial matters.

Disadvantages of revocable living trusts are relatively few. Two concerns are the paperwork of transferring title of assets to the trust and the initial set-up legal fees. However, it appears obvious that the advantages in the long range estate planning concept by far exceed these disadvantages.

Since revocable living trusts at the time of death serve the same purpose as wills, we feel it is only appropriate to have the same concepts apply to both the trust and the will. These concepts include construction and interpretation after death of grantor, disposition of personal property by a written memorandum and the ability to appoint a conservator for minor children.

Kansas Bankers Association
TRUST DIVISION
Merchants National Bldg.
Eighth & Jackson, Topeka, KS 66612

HOUSE BILL 2461

CURRENT STATUTE: 59-3004 provides that a natural guardian, if not the surviving natural guardian, by last will, may nominate a conservator of only that portion of the estate of such guardian's minor children...which is devised or bequeathed by such natural guardian. The surviving natural guardian may then name by last will a guardian for such minor children, as well as a conservator for such minor children's entire estate.

PROPOSED CHANGE: Allow a surviving natural guardian to appoint a guardian and conservator for such natural guardian's minor children under the provisions of a revocable living trust.

BENEFITS: This change would apply the same concept available to wills (with respect to a surviving natural guardian) to revocable living trusts in order that individuals may have a complete financial and estate plan incorporated in the trust agreement. For individuals utilizing revocable living trusts who have minor children, this will eliminate the need to probate a will upon the surviving natural guardian's death solely to appoint a guardian or conservator for their minor children.

Kansas Bankers Association
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HOUSE BILL 2462

CURRENT STATUTE: 59-103(a)(7) provides for supervision of administration of trusts and powers created by wills admitted to probate and trusts and powers created by written instruments other than by wills in favor of persons subject to conservatorship...

PROPOSED CHANGE: Add a provision to 59-103(a) allowing for construction and interpretation of living trusts under probate proceedings.

BENEFITS: With the continued use of living trusts, it is possible for such construction issues to result as they do with wills. This change would allow such issues to be resolved in the probate division where the judge has the most knowledge and experience in such areas.

At the current time such issues are handled under Chapter 60 and personal service must be given to all interested parties. The use of Chapter 59 would allow such notice to be given by a mailing which is done for construction of wills.

It is important to note that both Chapter 59 and Chapter 60 would be available for such matters.

In smaller judicial districts, it may be preferable to use Chapter 60 for appearance before a district judge.

Kansas Bankers Association
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HOUSE BILL 2463

CURRENT STATUTE: 59-623 states a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will...

PROPOSED CHANGE: Make same procedure available to revocable living trusts.

BENEFITS: This change also would bring living trusts into conformity with wills and the same purpose of the statute is being served. For those who utilize the living trust plan, it would prevent the cost and necessity of amending the trust each time such personal property is added to the trust, sold or the intent of the grantor changes as to whom is to receive the property.

As with the statute for wills, this applies only to tangible personal property and does not apply to money, evidences of debt, documents of title, securities and property used in trade or business.

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Revocable Living Trusts Become Popular Option in Estate Planning

YOUR MONEY MATTERS

By EARL C. GOTTSCHALK JR.
Staff Reporter of THE WALL STREET JOURNAL

When John Tapp's father died four years ago, he left a will and complicated business affairs that went through probate. "It was a mess," Mr. Tapp says. Estate taxes and probate fees were hefty.

After that, Mr. Tapp and his wife, Linda, both 42-year-old accountants in San Gabriel, Calif., placed all their assets in a revocable living trust. Says Mr. Tapp, "Our two children will end up with more money and fewer headaches."

More and more Americans are doing what the Tapps did—putting their assets in revocable living trusts. In such a plan, titles to real estate, securities and other assets are placed in a trust while the owner is still alive. The trust document outlines instructions for managing the assets and distributing them after the individual's death. The people who create the trust can act as their own trustees, so there are no management fees or loss of control. They can change the trust at any time.

The advantages of living trusts over wills are considerable. Under a will, an estate must be settled in probate court. Lawyers' fees and court costs often are substantial; there may be exasperating delays, and the proceedings are a matter of public record. In contrast, a living trust is settled without a court proceeding; a successor trustee simply distributes assets according to the trust's instructions, with an accountant, notary public or lawyer certifying any transfer of titles. The process is much quicker, cheaper and more private than settling a will, and it may save on estate taxes.

Trusts can be contested, but not as easily as contesting a will. When an estate goes to probate in California, the court freezes its assets for four months and asks anyone to come forward and contest the will if they please. Someone contesting a will doesn't even need to hire a lawyer.

But to contest a trust, a disgruntled heir needs to hire a laywer and file a civil suit. The assets of a living trust aren't frozen, however, and the trustee can distribute them to the beneficiaries immediately. The disgruntled heir then would have to sue each beneficiary.

Flexibility and Savings

Many other kinds of trusts are used for estate planning, but the revocable living trust is growing in popularity. An irrevocable living trust offers the same advantages of avoiding probate and perhaps saving on estate taxes, but causes problems because it can't be changed, lawyers say. A testamentary trust, created after death, must go through probate.

"(Revocable) living trusts have become the preeminent modern estate-planning tool," says Lynn Hopewell, a Falls Church, Va., financial planner.

Disadvantages of revocable living trusts are relatively few, estate planners say. But there are some, including the hassles of transferring the titles to homes and other property, bank accounts, securities, businesses and other investments into the name of the trust. Legal fees for setting up a trust range from $700 to $1,800.

For a home refinancing, some lenders demand that the house title be taken out of a living trust. Lawyers say some institutions that buy mortgages in the secondary market from thrifts and banks won't buy mortgages in the name of a trust, because they fear that some irrevocable trusts may have stipulations preventing a trustee from selling the property. After the refinancing is completed, the home can be transferred back to the trust.

The living trust business is booming—especially in California, where several law firms have sprung up specializing in living trusts. Targeting people age 55 and over, they give seminars at retirement clubs of corporations. Bezaire, Bezaire, Bezaire & Bezaire, San Marino, Calif., says it has set up 4,000 living trusts in the past four years. Robert Armstrong, a San Diego attorney, says his firm has completed 2,000 living trusts in the past five years. A Glendale, Calif., investment club even offers seminars at which members, aided by a trust attorney, fill out trust documents for $325 each.

But many lawyers don't go out of their way to tell clients about living trusts, says Maria Bezaire, a partner in the Bezaire law firm. Lawyers would rather write wills for $60 and then make a bundle when the will is probated, she says.

Lawyers' probate court fees, as mandated by California law, average 4% to 7% of the gross value of an estate—$6,300 for a $100,000 estate and $42,300 for a $1 million estate. (Average fees in other states range from 3.8% in Utah to 11% in Alaska.) In addition, special fees are granted by a court for sales of assets during probate, preparation of estate-tax returns and litigation costs. The average probate takes two years to complete in California.

In contrast, Bezaire & Bezaire charges 0.5% of the net value—or value of the estate after debts are paid—for terminating a living trust. People willing to settle a trust with a notary or accountant need not pay even that much, and the process can be completed in a matter of days.

Most married couples hold title to their house as joint tenants. Upon the death of the first spouse, the house doesn't have to pass through probate. But when the second spouse dies, unless he or she has placed the home in joint tenancy with another person, the property will be probated. The same is true of bank accounts, stocks and other assets. A living trust is one way to avoid that problem.

It can also save on federal estate taxes. If a couple has a so-called A-B living trust, with separate trusts for the husband and wife, they can pass on up to $1.2 million tax-free to their children, trust attorneys say. Under this method, each trust can use

The Cost of Probate

California's probate fees—set by law—are about average among states. These fees to settle an estate in court don't include special fees for the sale of assets, tax preparation and litigation.

ASSETS	MINIMUM FEES
$ 200,000	$ 10,300
300,000	14,300
400,000	18,300
500,000	22,300
750,000	32,300
1,000,000	42,300
2,000,000	62,300
3,000,000	82,300
5,000,000	122,300

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the $600,000 federal estate-tax exemption, even if one spouse dies before the other; in that case the surviving spouse can draw on the other's trust, with certain restrictions; when the second dies, both trusts go to the children. Without the A-B plan, the children would pay $235,000 in federal taxes on a $1.2 million estate, Ms. Bezaire says.

'The Groucho Marx Problem'

A growing number of older Americans are putting their assets into living trusts because they want to avoid being placed under a court-appointed guardian if they become unable to manage their affairs. If a home or stock is in joint tenancy, a wife can't sell it if her husband has a stroke and isn't competent. So she must get the court to appoint her as conservator and then must keep scrupulous records.

A living trust "avoids the Groucho Marx problem," says W. Bailey Smith, a Newport Beach, Calif., lawyer who specializes in estate-tax planning. In his 80s, contrary to his desire, Mr. Marx was declared incompetent by a Los Angeles court. At the time, he was living with a woman named Erin Fleming, who said he preferred her as his guardian. After a messy court battle, though, a relative was appointed as his guardian. "With a living trust, he could have specified in advance whom he wanted to manage his affairs if he ever became incompetent," Mr. Smith says. A will can't be used for this kind of contingency.

Privacy is another argument for a living trust. "Anyone can go down to Los Angeles probate court and find out that Natalie Wood had a $6 million estate that included 29 fur coats," Mr. Smith says. If a living trust is contested, the barrier of privacy may be breached; otherwise, no details about beneficiaries or the estate enter the public record. Bing Crosby, for example, set up a living trust before he died in 1977, and "you can't find any public details" about his estate, Mr. Smith says.

EXPLANATION OF THE NEED FOR CHANGES

A PROPOSAL FOR CLARIFICATION OF KANSAS MECHANIC'S LIEN LAWS

I.

Amendments were made to the Kansas Mechanic's Lien Statutues in 1986 for the purpose of offering protection to purchasers of new homes against the filing of mechanic's liens following the receipt of payment in full by the builder and transfer of title of the home to the buyer. The procedure established for this protection was to require parties furnishing labor and material to the home while it was still owned by the builder to file with the Clerk of the District Court in the county in which the house is located a "notice of intent to perform" prior to the time title is transferred to the buyer. The filing of such a notice was made a prerequisite to a mechanic's lien claim under K.S.A. 60-1103. The intention was to enable a buyer to determine, at the time of parting with his purchase money, whether any third parties claimed a right to file a mechanic's lien against the home he was buying.

However, the decision of the Kansas Supreme Court in Star Lumber & Sup. Co. v. Capital Const. Co., Inc., 238 Kan. 743, 715 P2d 11 (1986) determined that a party furnishing labor or material to the builder could file a mechanic's lien either as subcontractor under K.S.A. 60-1103 or as an original contractor under 60-1101.

House Judiciary
3/1/89
Attachment VI

The proposed amendment to K.S.A. 60-1101 and 60-1103b would give recognition to the Star Lumber decision and require that the notice of intent to perform be recorded before the transfer of title, regardless of whether the claimant is claiming as an original contractor under K.S.A. 60-1101 or as a subcontractor under K.S.A. 60-1103.

Another problem that has arisen is that the 1986 Act made no provision for extinguishing a notice of intent to perform once the claim had been satisfied. A new subsection (d) is added to K.S.A. 60-1103b to provide for the filing of a waiver of lien, which will extinguish the Notice of Intent to Perform.

II.

In 1977, K.S.A. 60-1101 was amended for the apparent purpose of abolishing the "first spade" rule. The "first spade" rule says that all mechanics' liens rank in priority from the date the first spade is put into the earth. All mechanics' liens relating to the same improvement had equal rank with one another, and all had priority over any other encumbrance such as a mortgage, that was recorded subsequent to the commencement of work. The 1977 amendment added the

single word "unsatisfied" to the statute, in the following context:

> The lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimants shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.

It is felt, however, that the failure to modify the preceding sentence which says that "the lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor ... [or] material ..." creates an ambiguity which is clarified by the proposed addition of the words "by such claimant" immediately following the phrase just quoted. This would establish beyond any doubt that all mechanics' liens resulting from the same improvement are of equal rank with one and another, and that their priority vis-a-vis other liens is measured not from the date that work was commenced by some party who has been paid in full, but from the date of commencement of work by the claimant.

III.

The requirement of existing section 60-1106 that "other incumbrancers of record" be made parties to a suit to enforce a mechanic's lien is overly broad. If the party or parties claiming mechanic's liens do not contend that their liens would be prior to another lien of record, such as a mortgage, then the other lien would not be disturbed by the mechanic's lien action, and there is no purpose to having such a lienholder as a party to the action.

The best example of the injustice caused by the existing provision is in the case of a purchase money mortgage which might have been in place for years. Under §60-1106 a suit to enforce a mechanic's lien for work done years later would nonetheless have to name the mortgagee as a party defendant to the suit. The mortgagee would incur the expense of making a defense to the claim, which at today's legal costs, would likely run to several thousand dollars.

This injustice would be cured by amending §60-1106 to make it clear that only lienholders who are claimed to be junior to the mechanic's lien need be named.

IV.

The procedure for the filing of a statutory bond established by K.S.A. 60-1110 requires that the bond be in the amount of the contract. This provision fails to recognize that at times there is a need to bond off a single lien claim which might be in dispute, and which is probably in a relatively small amount when compared to the whole contract. To require a bond in the full amount of the contract is onerous in such a case, and an amendment to the section is proposed which would allow a bond to be filed in the contract amount which would encompass all potential liens, or it would allow the filing of a bond in the amount of an individual claim which would extinguish a lien for that claim alone.

Additionally, it should be provided that in suits filed on such bonds, the only proper parties defendant are the principal and surety on the bond, and other parties, if any, who are contractually liable for the debt. Principally, this is an attempt to make clear that there is no need to join an owner or mortgage lender (who may have been a proper party if the suit were one to enforce a mechanic's lien rather than one to recover on a statutory bond), and therefore alleviate

the incurring of defense costs by such parties for what are tantamount to nuisance claims. The proposed amendment to K.S.A. 60-1110 would resolve this problem.

The foregoing amendments are not intended to affect any substantive rights of parties heretofore existing under the Kansas mechanic's lien statutes, but are only to clarify actions previously taken by the Kansas Legislature in 1977 and 1986; or to effect improvements in procedural matters.