

Approved *Ginger Barr*  
February 27, 1990

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at  
Chairperson

1:35 ~~am~~/p.m. on February 13, 1990 in room 526-S of the Capitol.

All members were present except:

Representatives Eckert  
Gjerstad  
Peterson

Committee staff present:

Mary Galligan, Kansas Department of Legislative Research  
Lynne Holt, Kansas Department of Legislative Research  
Mary Torrence, Revisor of Statutes' Office  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Jerry Simpson, Executive Director, Kansas Lottery  
Rick Kready, Executive Assistant for Governmental Affairs, Governor's Office  
Leo Hafner, Legislative Post Audit  
Jim Edwards, Director of Chamber and Association Relations, Kansas Chamber of  
Commerce and Industry (KCCI)  
Reverend Richard Taylor, Kansans for Life at Its Best  
Art Weiss, Deputy Attorney General, Consumer Protection Division  
Esther Wolf, Secretary, Department on Aging  
Ray Petty, Independent Living, Inc., Lawrence, Kansas

Lottery - Performance Audit

Chairman Barr explained the purpose of the meeting was not to reopen the hearing on continuation of the lottery (HCR 5038 held January 30, 1990) but to provide the committee an opportunity to ask questions concerning the recently released performance audit, on file in the Legislative Division of Post Audit. The majority of the audit covers a period during which Mr. Simpson was not executive director and was so noted by the committee.

Committee discussion:

1. Employee evaluations were done by the former executive director but specifics were not available.
2. Mr. Simpson plans an evaluation of the entire lottery operation to include staff, administrative costs, rents and offices.
3. Mr. Simpson explained that reduction of administrative costs and increased sales are ways of refraining from using retained earnings to meet the 30% obligation to the state gaming fund.
4. re: Six categories comparing costs to other lotteries - the percentage of sales is higher and advertising costs have been cut out of necessity. Travel expenses can be examined and salaries held at the current level. Sales must be increased to reduce the percentage to favorably compare to other state lotteries. The on-line vendor contract runs through 1995 and accounts for 6.7% The lottery has no capital investment in the machines, or their maintenance, necessary for games. Mr. Simpson expressed there is potential for growth in the on-line sales.
5. There are currently three employee vacancies which have not been filled, an area which Mr. Simpson plans to further evaluate.
6. The previous external auditor has been replaced by Myers and Stauffer, Topeka. Mr. Simpson promised the financial and quarterly reports will be filed on a timely basis.
7. re: Suggestions for the legislature and what further oversight might be needed to avoid another similar situation - using himself as an example, Mr. Simpson explained it was his job to run the lottery with integrity, accountability and security which he intends to do according to the statutes.
8. Differences from other state lotteries are: others didn't have a fixed amount dedicated to the state fund; others are operated outside government and more like a corporation; Kansas is a conservative state which player participation may or may not reflect.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 1:35 ~~am~~/p.m. on February 13, 1990.

9. Most other states are paying above 50% on instant games (scratch off tickets). Mr. Simpson suggested the 30% dedicated to the gaming fund could have been phased in.
10. Mr. Simpson had no specific changes to suggest regarding future changes to the percentages of dedicated lottery revenue.
11. According to statute, the role of the Lottery Commission is to advise and give direction to the executive director as well as approve changes to the rules and regulations applicable to the lottery. It would be considered more advisory than supervisory. Mr. Simpson called it "workable if everyone was doing his job".
12. In most other states, the executive director reports to the governor though there are states where the commission hires the director, who in turn reports to it.
13. The five members of the Kansas Lottery Commission are:  
Duane Nightingale, Chairman  
Pete Cline, Wichita  
Trish Rose, Hutchinson  
Elaine Morgan, Kansas City  
Paul Steele, Colby
14. re: The transfers discussed on page 14 of the audit, Mr. Simpson explained the lottery operates on an accrual basis whereas the state operates on a cash basis. The accrual basis could reflect a negative balance due to the monthly fluctuation of sales. The lottery will be developing both numbers to have available to the auditors.
15. One member requested Mr. Simpson study the statutes and make recommendations to the committee whether the language should be changed regarding the 30%.
16. The Lottery Commission is appointed by the governor and approved by the senate. The members are compensated per meeting, at least quarterly according to statute, and travel per diem. The commission may meet at the request of the executive director to the chairman.
17. A member requested Mr. Simpson investigate and provide information on the amount of time invested by the commission in travel to other states for educational purposes regarding lottery operations.
18. Mr. Simpson commented on the difference of the lottery from a state agency which receives appropriations. The lottery is a business. Expenditures are improved but based on anticipated revenues which fluctuate monthly. He expressed hope that at year's end the legislature would recognize the lottery's need to retain sufficient cash balances for operations at the beginning of the next fiscal year.
19. re: The increased administrative costs pp. 12-13 of the audit - Mr. Simpson explained that would be for advertising necessary to stimulate sales. Increased sales is the key to the success of the lottery.

Rick Kready requested the committee introduce a bill on the death penalty.  
Representative Cates moved to introduce the bill, seconded by Representative King. The motion was adopted.

Representative Long moved to introduce a bill concerning gun control, specifically as it relates to access by a minor. Representative Sebelius seconded the motion which was then adopted.

Leo Hafner was present to answer questions from the committee.

Committee discussion:

1. Mr. Hafner explained the post audit report may seem negative partially as a matter of the function of post audit and partially due to the nature of the report.
2. Post audit would expect that cash ticket sales and the accrual basis to reconcile monthly to verify the numbers. The lottery had not been using such a tracking system routinely. It has computer systems that track cash ticket sales, on-line ticket sales and one for internal operational data. The systems are not integrated.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,  
room 526-S, Statehouse, at 1:35 ~~xxx~~/p.m. on February 13, 1990

3. Mr. Hafner noted the concern of the current lottery administration and its control. He explained some of the inflated administrative costs were partially due to a contract with the on-line vendor negotiated for 12.7% of on-line ticket sales, which he attributed to the lottery being new. He stated that was not the fault of lottery administration or necessarily indicative of poor management.

HB 2844

Jim Edwards supported the bill but questioned whether the four year provision was too short to encourage the lowest vendor prices between the lottery and its vendors, Attachment No. 1.

Committee discussion:

1. KCCI has not made a decision on polling its members on their participation in the lottery.
2. Mr. Simpson explained the only contract which extends beyond four years is the G-Tech contract for on-line ticket sales which runs until 1995. The only contract which could be affected is the one for leased facilities which are on a three year basis with two year renewal options.

Reverend Taylor opposed the bill contending it may legalize casino gambling without a vote of the people and called it an inefficient form of taxation, Attachment No. 2.

Committee discussion:

1. Staff advised the term lottery, as used in the Constitution, is very broad and it is conceivable that at some future date the legislature could authorize casino gambling as long as it is state owned and operated. To narrow the definition would require a constitutional amendment.
2. There was brief discussion on the merits of having a sunset provision. Reverend Taylor contended the people should vote on the sunset rather than the legislature.

Frances Wood opposed the bill saying it meant more gambling in order to increase sales, Attachment No. 3.

HB 2737

Art Weiss explained the bill was requested by the attorney general to protect those in a position to be financially devastated, Attachment No. 4.

Committee discussion:

1. There was considerable discussion regarding the 60 years of age qualification. Various members of the committee felt that age alone was not adequate reason to qualify as necessary for protected status.

Mr. Weiss noted the age group is generally on a fixed income, targeted by scam artists and, therefore, least able to recoup financial losses.

2. In response to a member's question, Mr. Weiss was of the opinion that only scam artists could raise the question of constitutionality and were not likely to do so.
3. The bill would permit increased penalties which would be a civil rather than a criminal action. The current ceiling is \$2,000.00 but the bill would permit the attorney general to file suit. After restitution, any excess monies would go to the Department on Aging for consumer education.
4. In reference to protection for the legitimate businessman and the three day waiting period, Mr. Weiss explained charges could be filed only if there was fraud according to a judge at which time the increased penalty would apply.
5. Mr. Weiss responded to a member that a higher penalty or changing classes for the penalty would not benefit the victim as an individual consumer.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,  
room 526-S, Statehouse, at 1:35 ~~xxx~~ p.m. on February 13, 1990

6. re: page 4, Section 3 - The amount of penalty and the number of counts is determined by the judge if there is a trial with a consent judgment which requires the judge's approval of a journal entry. In a consent judgment the attorney general would determine the amount then presented to the judge for approval.

7. Anything properly targeted will fit the test of affecting the targeted group(s).

Secretary Wolf supported the bill and noted the shortage of consumer education for the mature population, Attachment No. 5.

Committee discussion:

Gypsies committing fraud would be covered under this bill.

Ray Petty expressed concern with the specificity of age as a qualification for a special group and supported consumer education training.

Attachment No. 6 is a submitted statement from Kevin Allen, Executive Vice President and Pat Barnes, Legislative Counsel, Kansas Motor Car Dealers Association in opposition to the bill.

Attachment No. 7 is a submitted statement from Jacque Oakes, representing Kansas Independent Automobile Dealers Association, opposing the bill.

Representative Jones requested a letter received from Jerry Simpson, Executive Director of the Kansas Lottery, reflecting minority employment at the lottery to be 4.3%, be included in the committee minutes, Attachment No. 8. During the January 30, 1990, meeting of the committee, the estimated percentage of minority employment was given to be 7-8%.

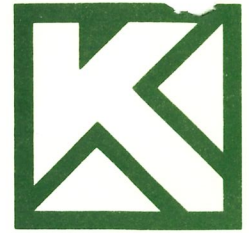
Representative Jones moved to approve minutes of the January 30, 1990; January 31, 1990; February 6, 1990; and February 8, 1990, meetings of the committee. Representative Ensminger seconded the motion which was then adopted.

The meeting adjourned at 3:22 p.m. The next meeting of the committee is scheduled for February 14, 1990, 1:30 p.m. in Room 526-S.



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry



500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

HB 2844

February 8, 1990

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Federal and State Affairs Committee

by  
Jim Edwards  
Director of Chamber and Association Relations

Madam Chairperson and members of the Committee:

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

We appear in front of you today in support of HB 2844, which would provide for a sunset for the Kansas Lottery.

We appeared in front of this committee about a week ago urging your support for the continuation of the Kansas Lottery. If the Legislature deems it necessary to have a

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 1  
February 13, 1990

sunset provision, we would support this move. We had no problem with the original sunset clause and therefore would have no problem with the addition of one now.

The only question that we would raise would be whether the four-year sunset is long enough to provide for the lowest contract prices between the Kansas Lottery and vendors. This is a question which we feel can be addressed by the Kansas Lottery.

We appreciate your time and the consideration that you will give our position. I would be pleased to answer questions you might have.

February 13, 1990  
Hearing on House Bill 2844  
House Federal & State Affairs Committee

Lottery sunset legislation  
Rev. Richard Taylor  
KANSANS FOR LIFE AT ITS BEST!

A casual reading of this bill by a person who loves Kansas and hates suffering caused by gambling would cause that person to think this is a good piece of legislation. THE KANSAS LOTTERY AND OFFICE OF DIRECTOR SHALL BE AND HEREBY ARE ABOLISHED ON JULY 1, 1994. Uninformed persons would believe the legislature was exercising wise judgment and making a sound decision for the good of Kansas.

Persons opposed to gambling because of the message it sends to youth - DON'T BE CONCERNED ABOUT A GOOD EDUCATION AND WORKING HARD, JUST KEEP BUYING LOTTERY TICKETS UNTIL YOU STRIKE IT RICH - would rejoice if they did not realize what this measure may do.

Gambling promoters were defeated time and time again until during the 1986 session they were victorious by including a sunset provision in the constitutional amendment. Gambling promoters want to be victorious this session. Including a sunset provision in lottery legislation may help them again.

What will change between now and 1994? The lottery is gambling today. It would be gambling in 1994. Nothing will change. Why would lawmakers have any more reason to sunset the lottery in 1994 than now?

Gambling is a criminal activity today, except where legalized. Gambling will be a criminal activity in 1994, except where legalized. If HCR 5038 is victorious this session, the legislature may have legalized state owned and operated casino gambling by 1994, without a vote of the people. By that time Kansas would be a Las Vegas and Atlantic City in the HEARTLAND, and legislators would never want to sunset all that revenue!

The lottery is a very inefficient form of taxation today, with gambling promoters pocketing one dollar for every additional dollar revenue the state receives. By 1994 the lottery might do a little better, but it would still be the most inefficient form of taxation ever devised. Nothing will change. Why would lawmakers have any reason to sunset the lottery in 1994 than today?

Lawmakers today who are opposed to state owned and operated gambling say they will vote to continue the lottery because the state needs the revenue. They refuse to acknowledge that an equal amount of revenue produced by any legitimate tax would make the home town public richer with millions and millions of additional consumer dollars to spend on things other than gambling tickets. But lawmakers today refuse to consider the lottery on its merits. Why would they consider it on its merits in 1994?

Lawmakers today take a survey of their districts but refuse to ask the correct question. They should ask the people back home:

1. Is the lottery doing what you thought it would do?
2. Should the lottery be continued OR should we raise an equal amount of revenue and at the same time leave \$120 million additional consumer dollars in the pockets of home town public? Would lawmakers in 1994 ask the correct question?

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 2  
February 13, 1990



The integrity of the legislature is being exposed. A sunset provision requires lawmakers to consider an issue on its merits. Lawmakers are to justify continuing the activity. Does lottery gambling improve the quality of life in Kansas?

The lottery gambling constitutional amendment was killed by the legislature time and time again, year after year. Finally in 1986, gambling promoters agreed to a sunset provision in order to win 84 House votes. When the amendment came to the House floor, for the third or fourth time, it still did not have enough green lights for approval. House members were held in their seats for an hour or two with a phony call of the House. A member who was promoting the lottery conveniently disappeared and could not be found.

This gave powerful gambling promoters in high places all the time they needed to get on the phone. House members with red lights were intimidated and coerced until 84 green lights came on. That was a sad day for the democratic process in Kansas.

When they needed the votes a sunset provision could bring, gambling promoters promised lawmakers the legislature in 1990 would take a hard look at the lottery and vote to continue or end it on its merits. Now they are telling lawmakers the sunset provision is meaningless. Would 1994 be different?

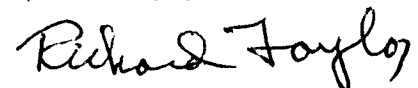
If you sunset the lottery this session, it will require a 2/3rds vote of both houses and a majority vote of the people to put Kansas in the gambling business again.

If 5038 and 2844 are approved this session, and if the legislature would sunset the lottery in 1994, the constitution would still permit state owned and operated gambling and the legislature could bring it to life at any session without a vote of the people.

Lawmakers of integrity who honestly believe Kansas should be in the gambling business will say so and vote YES on HCR 5038. Lawmakers who claim to be opposed to state owned and operated gambling but vote YES because "it carried in my district" or "because we need the revenue" are unfaithful to the requirements of a sunset provision. If that is true today, it will be just as true in 1994. Concerned citizens are saddened and disappointed to see the legislature performing in this way.

Will SB 2844 help win votes so Kansas will continue raising revenue the way organized crime has always raised revenue? Let it die.

Respectfully yours,



Rev. Richard E. Taylor, Jr.

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Madam Chairwoman, Legislators;

I am Frances Wood, Topeka, President Capital City WCTU.

I am speaking in opposition to HB 2844.

I am probably the only person to speak to you whose profession or job is not related to this issue. I am speaking entirely out of concern. Those concerns were addressed in my remarks to you several weeks ago.

Please do not put off until 1994 what should be done this session. Mr. Simpson said, "Everything is geared off of sales." That means more and more people will have to gamble more and more dollars for his sales projections to be fulfilled. Is that what you want? More and more gambling in the state of Kansas?

There was talk about the lottery bringing us into the 20th. century. Does gambling do that? I'm looking to the 21st century in which we have a great clean state to live in that is free from gambling. Let's get rid of the lottery now and be a leader for the 21st. century.

\* \* \* \* \*

Not included in my remarks because I didn't think it addressed the bill, but I am disturbed that the state budget was made with the idea that it was a fore-gone conclusion that the lottery would continue. The budget should have been made with that being on a contingency basis at the very least.

a memo from  
**FRANCES WOOD**

*Dejeu,  
Thanks for being concerned  
about the time element &  
giving me a chance to speak -*

*Fiw*

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 3  
February 13, 1990



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  
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TESTIMONY OF  
DEPUTY ATTORNEY GENERAL ARTHUR R. WEISS  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

RE: H.B. 2737

February 13, 1990

Madam Chairperson and Members of the Committee:

Attorney General Stephan requested the introduction of House Bill 2737 to address the alarming problem of fraud committed against those who are in a position where fraud may be financially devastating. Those persons are the state's handicapped and senior citizens. In many cases, the handicapped or senior citizen is relying on a substantially limited income. They may be forced to live on their savings, government assistance or assistance from family or friends. They are the targets of unscrupulous telemarketers, door-to-door sales people, and other rip-off artists.

The Attorney General's Consumer Protection Division has heard of senior citizens who were sold thousands of dollars in home improvements which were never received; sold tens of thousands of dollars in gold coins which may never be seen; and sold thousands of dollars worth of dancing lessons which may never be used.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 4  
February 13, 1990

House Bill 2737 seeks to single out for increased punishment those who would take advantage of our handicapped and senior citizens. This bill provides that any person who engages in any conduct prohibited by the Kansas Consumer Protection Act against a senior citizen or handicapped person could be liable for an additional civil penalty of up to \$10,000 for each violation. Such penalties would either be assessed by a judge upon a finding of a violation, or set forth in a settlement agreement between the Attorney General and the violator subject to approval by the court.

The factors to be considered by the court in approving such a penalty are found in the bill beginning at page 3 line 40 and continuing through page 4 line 18. I would like to point out that such increased penalties would come only after restitution has been provided to affected consumers and the imposition of any civil penalty designated to go to the state has been received.

The additional penalty received after restitution and the usual civil penalty, would go to a fund created for the expressed purpose of allowing the State Department on Aging to prepare and distribute educational materials. These materials would inform senior citizens, the handicapped and the public as to our consumer protection laws and their rights thereunder. Educational seminars and projects for the benefit of senior citizens and the handicapped could also be developed. We have spoken with the Department on Aging and they indicated their support for this program.

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We feel the two-pronged approach of increasing the penalty and using that money for further education not only puts on notice those who would deceive our citizens but also makes them pay for programs to education their potential victims.

Attorney General Stephan thanks you for your attention to the bill and strongly urges its favorable consideration.

H.B. 2737

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Testimony on H.B. 2737

By Esther Valladolid Wolf,

Secretary of the Kansas Department on Aging

(February 13, 1990)

Madame Chairman and members of the committee, thank you for this opportunity to comment on HB 2737. As Secretary of the Department on Aging, which is charged with the advocating for the interests of our state's 412,000 seniors, I wholeheartedly endorse this provision for creating a consumer protection fund to educate senior citizens and handicapped persons.

As you may know, nearly two in every ten Kansans are aged 60 or over. They are a large consumer segment and represent considerable economic clout. The median net worth of household with a head aged 65 or over is nearly double the median net worth of all households, according to the Aging America study prepared by the U.S. Senate. Nearly 75 percent of older persons own their own home. In 1984, households with a person 65 to 74 years of age spent an average of \$15,873 annually. Moreover, the per capita expenditures of seniors for certain purchases, such as health care, drugs and funeral expenses, greatly exceeds the amount that younger consumers spend for these items.

At the same time, older citizens are the most vulnerable to consumer fraud. Studies performed by the American Association of Retired Persons show that older people are the least likely to recognize when they have been cheated in a business transaction. What's more, they are the least likely to complain when they believe that they have been victimized.

Because of these factors -- spending power and vulnerability -- the elderly often become the target of unscrupulous business practices.

In the past, seniors have been especially susceptible to fraudulent sales practices involving health care, insurance, home repair and improvement, telemarketing, vacation timesharing and other areas.

H.B. 2737 would create a special consumer education fund for the elderly and the handicapped to be financed through civil penalties assessed against those who engage in fraudulent sales schemes aimed at this population group. The funds would then be used by the Department on Aging to prepare and distribute educational materials, conduct educational seminars and other consumer oriented programs for the elderly and handicapped. It is fitting that those who prey on the old and infirm should be required to support consumer education of those they have victimized.

The Department on Aging has long been involved in assisting older Kansans in the consumer arena. For example, we publish a popular 60-page Senior Legal Guide and have prepared literature advising families how to select a nursing home. Our field nutritionists operate programs that teach shopping skills. These efforts notwithstanding, I believe the funds generated by this bill will help us to expand our commitment to the elderly and handicapped consumer.

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KANSAS MOTOR CAR DEALERS ASSOCIATION  
 800 Jackson, Suite 808 • Topeka, Kansas 66612 • (913) 233-6456 • (800) 825-0169 (KS only) • FAX (913) 233-1462

Statement To The  
 HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
 By The  
 KANSAS MOTOR CAR DEALERS ASSOCIATION  
 Monday February 19, 1990

Re: HB 2737 Senior Citizens Fraud

Last Tuesday February 13, 1990 the House Federal and State Affairs Committee received testimony regarding HB 2737. This is a bill which would broaden consumer protection Act violations to include acts involving, specifically, incidents where certain handicapped individuals and those over age 60 are financially affected by a consumer Protection Act violation. Representatives of the Kansas Motor Car Dealers Association were unable to appear and testify regarding the bill because of competing hearings on another mater in the Senate Governmental Organization Committee.

KMCDA and its 330 members are strongly opposed to HB 2737, a bill of questionable constitutionality. We believe present law fully addresses and protects the elderly and handicapped with its current broad stroke definitions of unconscionable acts and practices and deceptive acts and practices. The present law also allows the greater of actual damages or a civil penalty of up to \$2,000. Attorney fees in pursuing such matters may also be granted. Common law fraud and conversion theories could also allow unlimited punitive damage in appropriate cases.

More alarming, however, is the exposure the bill presents to retailers who deal with those over age 60, or the handicapped. You see, not all violations of the Consumer protection Act are willful or knowing violations. A violation can also occur even when the consumer knew the conduct was prohibited or was not misled, and nevertheless entered the transaction. This law exposes one to a \$10,000 civil penalty, in addition to any other penalty or damages, if the transaction involved someone older than 60 or a handicapped person - all without sufficient consideration of their mental capacity or ability to protect themselves.

What needs to also be considered is that many cases settle or are not litigated to just ends by defendants due to the expense of litigation or loss exposure itself. Plaintiffs do not have this threat under the Act as they can recover attorney fees if successful and many lawyers will take cases upon that contingency at no cost to a consumer. This proposal would cause settlements in cases where justice would not suggest any sums are due. This is particularly true where several claims are made.

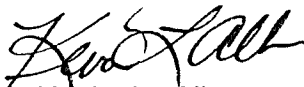


Under this bill we feel a disgruntled senior or handicapped citizen, perhaps without a solid claim, could force unjust transactions or settlements upon retailers - even in the face of improper conduct of their own. Because of this statutory threat retailers would have no choice, but to submit to such injustice.

Some may argue that new Section 3(b) provides safe guards, but we disagree. All that section requires is the consideration of certain factors. Spending one's disability or social security check on a product could qualify under the section and most people can tell by looking at a person whether they are elderly or handicapped. The section also implies the ability to discern facts about a person which may be hard to estimate - such as mental capacity.

Current theories of the law such as fraud and the present consumer protection act are more than sufficient to provide the remedies sought here. All those theories require to be relied upon is effort and facts provided by investigation. If the violations are grievous - such as selling articles, but not delivering the goods - then criminal penalties such as theft by deception are much better methods to pursue and address such practices. We don't need more law to address this problem and this proposed bill would subject retailers to unjust and unpredictable liabilities.

Respectfully,



Kevin L. Allen  
Executive Vice President



Pat Barnes  
Legislative Counsel

# KANSAS INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

1115 WESTPORT SUITE E • MANHATTAN, KANSAS 66502 • 913-776-0044



DATE: FEBRUARY 16, 1990

TO: HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

SUBJECT: HOUSE BILL 2737

Madam Chairperson and Members of the Committee

Please accept our written testimony on HB 2737 due to the fact that we were appearing at another hearing at the same time. I am Jacque Oakes representing KIADA.

We believe that this bill is worded in such generalities that almost anything could be called "fraud."

People 60 years of age in these health conscious times are becoming most capable of carrying on business activities. We would say this is a rather broad definition.

On line 16 a "handicapped person means a person who has an impairment of physical or mental function or emotional status that limits instrumental activities of daily living." Physical impairment usually becomes readily apparent. But mental or emotional are hard to translate or define especially when you add "budgeting and shopping." We know normal people who have trouble balancing and controlling their check book. We now have a disease whereby a person cannot stop himself from buying. When you try to get a handle on all of these definitions, we are not sure who really needs protection, the buyer or the seller.

After trying to define "instrumental activities of daily living," you then add "an additional civil penalty not to exceed \$10,000 for each violation." Does this mean \$10,000 for each transaction? Could a \$100 fraud draw a \$10,000 violation?

Our concern is that this will be an excuse for individuals in the broad definition to avoid valid transactions and perpetuate unnecessary punitive penalties that are undeserved. Those who fall victim may be the business community if a bill of this general terminology becomes law.

Thank you for your time.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 7  
February 13, 1990

*Individually we struggle to be heard—Collectively we cannot be ignored.*



## Kansas Lottery

CREATING JOBS FOR KANSAS

**Mike Hayden**  
Governor

**Gerald F. Simpson**  
Executive Director

February 12, 1990

Rep. Sherman J. Jones  
273 W. Statehouse  
Topeka, Kansas

Dear Representative Jones:

I am responding to your concerns regarding the Lottery's utilization of protected group members in the workforce.

I assure you that affirmative action is an issue that we are very conscious of. The Lottery files an annual Affirmative Action report as required by the State Department of Administration. When we fill vacancies, we consider our established affirmative action goals and make every attempt to provide opportunities to qualified protected group individuals. I have attached a copy of the Lottery's affirmative action policy for your review.

At the present time, 4.3% of the Lottery workforce consists of minority employees, 3.5 % disabled and 41.7 are over 40 years of age.

Should you have further questions, please do not hesitate to contact me.

Sincerely,

Gerald F. Simpson  
Executive Director

GS:pm

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 8  
February 13, 1990