

MINUTES OF THE Senate COMMITTEE ON Economic Development

The meeting was called to order by Senator Dave Kerr at  
Chairperson

8:00 a.m./~~p.m.~~ on March 27, 1990 in room 123-S of the Capitol.

All members were present except:

Senator Vidricksen

Committee staff present:

Bill Edds, Revisor of Statutes' Office  
Lynne Holt, Kansas Legislative Research Dept.  
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Chairman Kerr called the meeting to order and announced that the agenda was to work bills.

H.C.R. 5035

Lynne Holt of the Research Dept. explained H.C.R. 5035. She said that the resolution came from the Joint Economic Development Interim Committee. It endorses employee stock ownership plans. (ESOP) ESOPS are usually financed with leveraged buyouts. Attachment 1 is testimony presented by Secretary Harland Priddle. At the suggestion of Senator Karr, the committee decided to take no action on the resolution.

HOUSE BILL 2792

House Bill 2792 deals with regulation of invention development services. Art Weiss of the Attorney General's office explained the balloon of H.B. 2792. (Att. 2) (Attachment 3 is the balloon). He stated that even though the Attorney General's office had not been asked for a fiscal impact note, if a significant number of complaints were filed under the act, they would need the addition of at least one half-time attorney plus secretarial support. After explanation of changes contained in the balloon, the committee discussed the lack of confidentiality of an invention. Mr. Weiss stated that the bill was not an appropriate place to spell out confidentiality requirements. They are part of the Consumer Protection Act, and enforceable by the consumer separately. The balloon version makes reference to this Consumer Protection Act. (Att. 4 is a copy of correspondence from an inventor.)

Senator Salisbury made a motion to adopt amendments listed in the balloon. Amendment would also include effective date to be when printed in the Kansas Register. Senator Feleciano seconded. Motion carried. Senator Oleen made a motion to favorably pass H.B. 2792 as amended. Senator Salisbury seconded. Motion carried.

SENATE BILL 733

Senator Francisco explained that Senate Bill 733 amends law to prohibit a city from issuing revenue bonds to finance facilities located in unincorporated territory within three miles of the issuing city's limits.

(Att. 5 is a copy of balloon amendments presented to the committee at the hearing of S.B. 733 on 3-14-90) (Att. 6 is a fiscal note on S.B. 733).

Senator Francisco moved that amendments be adopted on S.B. 733. Senator Karr seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Economic Development,  
room 123-SStatehouse, at 8:00 a.m./~~pm~~ on March 27, 1990

Following committee discussion, Chairman Kerr asked that the Revisor meet with the committee members that requested another amendment so that he will be able to draft it before the next meeting.

Senator Karr made a motion to accept the minutes of the March 21, 22, and 23rd meetings. Senator Winter seconded. Motion carried. Meeting adjourned.

TESTIMONY ON H.C.R. 5035

presented by

Harland E. Priddle  
Secretary of Commerce

## TESTIMONY ON H.C.R. 5035

Thank you for the opportunity to appear before the committee in support of H.C.R. 5035 which endorses the concept of employee stock ownership plans (ESOPs).

The Kansas Department of Commerce supports the ESOP-type of business transaction and its use by Kansas businesses where appropriate. As the committee has heard, ESOPs can provide a number of benefits and advantages to a company, its management, and its employees.

The Department has provided a number of its staff with in-depth information on leveraged buyouts and ESOPs allowing them to recognize those companies which may be likely candidates for implementing an employee stock ownership plan. With the encouragement of the Department, the certified development companies have also explored this subject at a meeting of their statewide association. We have made efforts to promote ESOPs by educating Department staff and business assistance organizations which work closely with business financing alternatives.

Our staff will continue its efforts to identify possible candidates for an ESOP and work with authorities in this field in an attempt to successfully structure such a plan where it is in the best interest of the business and its employees.

Again, the Department of Commerce supports this resolution and its intent to encourage the use of ESOPs with the Kansas business community where appropriate.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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TESTIMONY OF  
DEPUTY ATTORNEY GENERAL ARTHUR R. WEISS  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT

RE: H.B. 2792

March 27, 1990

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan, let me express our concern for the inventors of Kansas. We want to protect their rights and encourage their continued work. As House Bill 2792 was presented to this Committee, it represented significant enforcement problems. We have undertaken considerable redrafting in any effort to give effect to the basic idea behind the act.

Let me first address formally one issue I mentioned last week to this Committee. Our office has not been asked for a fiscal impact note. If there are a significant number of complaints filed under this act, we would need the addition of at least another half-time attorney plus secretarial support.

I will address the changes by section number. The section numbers refer to our proposed draft.

Section 1. This Act should be made part of the Consumer Protection Act. This will give the Attorney General full enforcement and investigative authority. It will make it clear that the Attorney General can subpoena information, recover actual damages for consumers, recover civil penalties, recover investigative fees and enter consent judgments with defendants. None of those were included in the Act in its present form. It will provide a private right of action as well.

Section 2. The definition section has been shortened. If the Act becomes part of the Consumer Protection Act, no additional definition of consumer (customer) is needed. The \$500 limit has been eliminated. We have found through past experience that companies will merely adjust their fees if a lower fee exempts them from regulation.

The "fee" definition is also slightly changed. The language which excludes payments to the consumer as "fees" paid to the promoter is unnecessary.

In the definition for "Contract for invention promotion services", the phrase "device or process" has been deleted since that is already included in the "invention" definition.

The definition of "invention" has been changed by deleting "or a concept". The remaining language is directly from the federal patent statutes. By including "concept", this could be including books and ideas for catalogs as well as a number of other things besides "inventions."



"Invention promoter" should not include attorneys who are licensed patent attorneys. The new definition makes that clear. Other attorneys not so licensed and patent agents (non-attorneys who are authorized to prosecute patents) would be included and would have to give the disclosures required. The exclusion for governmental agencies is also cleared up. Due to the growing problems with charitable organizations, it may be unwise to exempt them.

Section 3. This section will include several portions of original Act. The original Act had several places where similar disclosures were required. It became ambiguous by the repetitions. Some of the disclosures required in the Act could be unenforceable. For example, the required disclosure of the number of customers and number of customers who have received money because of the promoter's efforts.

We have deleted the bond requirement. It is probably difficult if not impossible for a service of this sort to provide such a large bond.

We have deleted the treble damages, \$5,000 minimum recovery and \$25,000 civil penalty provisions. There is no showing that inventors are entitled to any protection which is so far beyond that available to any other consumer injured in a consumer transaction. As part of the Consumer Protection Act, the Act would allow the usual recovery of actual damages and \$2,000 civil penalty per violation. The consumer would, of course, be free to pursue a private remedy.

This bill is not the appropriate place to spell out confidentiality requirements. Or, if they are spelled out, they should not become part of the Consumer Protection Act, but rather an action enforceable by the consumer separately.

JHB2792.TST

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HOUSE BILL No. 2792

By Representative Mead

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AN ACT concerning regulation of invention development promotion services.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Contract for invention development promotion services" means a contract by which an invention developer promoter undertakes to develop or promote an invention ~~device or process~~ for a ~~customer~~ consumer

(b) ~~"Customer" means any person who is solicited by, inquires about, seeks the services of or enters into a contract with an invention developer promoter for invention development promotion services.~~

~~(c) "Invention" means a process, machine, manufacture, composition of matter, an improvement upon any of the foregoing for a concept.~~ or

~~(d) "Fee" means any payment made by a customer to an invention developer promoter, including reimbursements for expenditures made or costs incurred, but does not include a payment made from a portion of the income received by a customer by virtue of invention development promotion services performed by the invention developer promoter.~~ (c) consumer

~~(e) "Invention developer promoter" means any person, and the agents, employees or representatives of the person, that develops or promotes or offers to develop or promote an invention of a customer in order that the customer's invention may be patented, licensed, or sold for manufacture or manufactured in large quantities, except the term does not include:~~ (d) who for

- consumer. The following are not invention promoters for purposes of this act
- (1) A person licensed by a state or the United States to render advice concerning patents, or a partnership or corporation when all of its partners, stockholders or members are so licensed;
  - (2) a department or agency of federal, state or local government;
  - (3) a charitable, scientific, educational, religious or other organization, qualified under section 501(c)(3) or described in section
- to practice before the United States patent and trademark office as a patent attorney
- or

170(b)(1)(A) of the Internal Revenue Code of 1986, as amended;

~~[(4)] a person who does not charge a fee in excess of \$200 \$500 for invention development promotion services;~~

~~[(5)] a person who accepts technology from institutions of higher education or other state or federal research institutions for evaluation and the providing of marketing services.~~

~~[(4)] "Invention development promotion services" means acts to be performed or promised to be performed, or both, by an invention developer promoter for a customer.~~

~~[(g)] "Person" means an individual, partnership, corporation or other legal entity.~~

~~Sec. 2. (a) Every invention developer promoter who charges a fee or requires any consideration for invention development promotion services shall clearly and conspicuously disclose such fact in every advertisement of such services.~~

~~(b) In the first oral communication with a customer or in the first written response to an inquiry by a customer, other than an oral communication or written response to arrange an appointment with an invention developer promoter for presentation of invention development promotion services, the invention developer promoter shall disclose the following:~~

~~(1) The fee to be charged or a statement of the approximate range of fees to be charged.~~

~~(2) If the invention developer promoter seeks to obtain more than one contract with a customer, to cover different phases of development, the invention developer promoter shall provide to the customer a statement describing the practice, with a summary of the normal terms of each contract and the fee to be charged under each contract.~~

~~(3) The services which the invention developer promoter intends to provide under the initial contract and each succeeding contract with the customer.~~

~~(4) Whether the invention developer's promoter's services are limited to mailing notices to a list of potentially interested parties and then awaiting their response.~~

~~(5) That this act requires the invention developer promoter to keep confidential and not use for its benefit or for the benefit of others, all information disclosed by the customer except as provided in subsection (a) of section 10. If the invention developer promoter intends to disclose any of such confidential information to others, there must be included a statement as to the nature of the information to be so disclosed, including the fact that the customer will be required to waive such confidentiality to the extent necessary to~~

(e)

(f)

Such term does not include a department or agency of any governmental unit.

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1 permit such disclosure.

2 (6) A statement setting forth: (A) The total number of customers  
3 who have contracted with the invention developer promoter and  
4 (B) the number of those customers who have received, by virtue of  
5 the invention developer's promoter's services, an amount of money  
6 in excess of the total fee paid by these customers to the invention  
7 developer promoter. The customers counted in such statement need  
8 not include those who have first contacted or contracted with the  
9 invention developer promoter prior to the effective date of this act.

10 (7) A statement which contains one of the following:

11 (A) That the invention developer promoter does not evaluate:

12 (i) The commercial feasibility, or  
13 (ii) the technical feasibility of inventions submitted to the inven-  
14 tion developer promoter, therefore, the customer is at substantial  
15 risk that the idea or invention may not be commercially or technically  
16 feasible.

17 (B) That the invention developer promoter does evaluate either  
18 the commercial potential or the technical feasibility of inventions  
19 submitted to the invention developer promoter.

20 (8) A statement in substantially the following form:

21 "Any contract for invention development promotion services be-  
22 tween you and ourselves is regulated by law. We are not qualified  
23 or permitted to advise you whether protection of your invention is  
24 available under the patent laws of the United States, any other nation  
25 or any other laws. We are not qualified to advise you whether your  
26 invention is patentable, or infringes on existing valid patent. Your  
27 failure to inquire into these matters may affect your rights to your  
28 invention or make you liable to others for patent infringement. Fur-  
29 thermore, disclosure of your invention to others on a nonconfidential  
30 basis may also adversely affect your rights. You are urged to seek  
31 the counsel of an attorney or agent registered to practice before the  
32 United States patent and trademark office."

33 Sec. 3. Every contract for invention development promotion  
34 services shall set forth in at least 10-point boldface type, or equivalent  
35 size if handwritten, all of the following:

36 (a) A full detailed description of the services that the invention  
37 developer promoter undertakes to perform for the customer. To  
38 the extent that the description of services grants the invention de-  
39 veloper promoter discretion to decide what services are to be per-  
40 formed by the invention developer promoter, the invention  
developer promoter shall exercise that discretion to promote the  
best interests of the customer;

41 (b) a statement whether the invention developer promoter un-

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1 ~~undertakes to construct one or more prototypes, models or devices~~  
2 ~~embodying the customer's invention;~~

3 ~~(c) a statement whether the invention ~~developer promoter un-~~~~  
4 ~~dertakes to sell or distribute one or more prototypes, models or~~  
5 ~~devices embodying the customer's invention;~~

6 ~~(d) the name and address of the person contracted to perform~~  
7 ~~the invention ~~development promotion services,~~ the name and ad-~~  
8 ~~dress under which such person is doing business as an invention~~  
9 ~~~~developer promoter,~~ and the name and address of any parent,~~  
10 ~~subsidiary or affiliated company that may engage in performing the~~  
11 ~~invention ~~development promotion services;~~~~

12 ~~(e) the invention ~~developer's promoter's~~ principal business ad-~~  
13 ~~dress and the name and address of such invention ~~developer's~~~~  
14 ~~~~promoter's~~ agent in the state of Kansas authorized to receive service~~  
15 ~~of process;~~

16 ~~(f) the business form of the invention ~~developer promoter,~~~~  
17 ~~whether corporate, partnership or otherwise;~~

18 ~~(g) if an oral or written estimate of projections of sales, profits,~~  
19 ~~earnings or royalties is made by the invention ~~developer promoter~~~~  
20 ~~regarding the customer's invention, the contract shall state the es-~~  
21 ~~timate and the data upon which it is based;~~

22 ~~(h) the name and address of the custodian of all records and~~  
23 ~~correspondence relating to the performance of the invention ~~de-~~~~  
24 ~~~~velopment promotion services;~~~~

25 ~~(i) the expected date of completion of the invention ~~develop-~~~~  
26 ~~~~ment promotion services,~~ whether or not time is of the essence,~~  
27 ~~and whether or not the terms include provisions in case of delay~~  
28 ~~beyond the expected date of completion;~~

29 ~~(j) the terms and conditions of payment and contract termination~~  
30 ~~rights as set forth in section 5; and~~

31 ~~(k) the extent to which the contract will effectuate or make pos-~~  
32 ~~sible the acquisition by the invention ~~developer promoter~~ of an~~  
33 ~~interest in the title to the customer's invention.~~

34 ~~Sec. 4. (a) A contract for invention ~~development promotion~~~~  
35 ~~services shall have a conspicuous and legible cover sheet attached.~~  
36 ~~The cover sheet shall set forth:~~

37 ~~(1) The name, home address, office address and local address of~~  
38 ~~the invention ~~developer promoter;~~ and~~

39 ~~(2) the following notice printed in boldface type of not less than~~  
40 ~~10-point size:~~

41 ~~"THIS CONTRACT BETWEEN YOU AND THE INVENTION~~  
42 ~~DEVELOPER PROMOTER IS REGULATED BY *(here give stat-*~~  
43 ~~*tutory citation)*. YOU ARE NOT PERMITTED OR REQUIRED TO~~

~~MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL SEVEN WORKING DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.~~

~~YOU CAN TERMINATE THIS CONTRACT AT ANY TIME BEFORE YOU MAKE PAYMENT. YOU CAN TERMINATE THIS CONTRACT SIMPLY BY NOT SUBMITTING PAYMENT.~~

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER PROMOTER, THE INVENTION DEVELOPER PROMOTER MAY HAVE THE RIGHT TO ASSIGN OR LICENSE ITS INTEREST IN THE INVENTION, OR MAKE, USE, AND SELL THE INVENTION, WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

~~THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THIS INVENTION DEVELOPER PROMOTER SINCE \_\_\_\_\_ IS \_\_\_\_\_. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER PROMOTER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PROMOTER'S PERFORMANCE, AND AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER PROMOTER IS \_\_\_\_\_.~~

YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

THE PERFORMANCE OF THE SERVICES DETAILED IN THE CONTRACT PROVIDES NO GUARANTEE OR PROMISE OF PROFITS, OR THAT YOUR INVENTION OR IDEA WILL BE PURCHASED BY A MANUFACTURER. ~~ONLY A VERY SMALL PERCENTAGE OF INVENTIONS HAVE A CHANCE AT RECEIVING ANY PROFITS.~~

THIS CONTRACT DOES NOT PROVIDE ANY PATENT, COPYRIGHT OR TRADEMARK PROTECTION FOR YOUR IDEA OR INVENTION.

YOUR POTENTIAL PATENT RIGHTS MAY BE ADVERSELY AFFECTED BY ANY ATTEMPT TO COMMERCIALIZE YOUR IDEA OR INVENTION BEFORE A PATENT APPLICATION COVERING IT IS FILED. NONCONFIDENTIAL DISCLOSURES OF YOUR IDEA OR INVENTION MAY ALSO TRIGGER CERTAIN STATUTORY DEADLINES FOR FILING A PATENT APPLICATION IN THE UNITED STATES AND WOULD PREVENT

Sec. 2. An invention promoter shall make the following disclosures:

(a) In any solicitation, whether a fee is charged for invention promotion services.

(b) In any contract between an invention promoter and consumer for invention promotion services:

(1) The fee to be charged and the specific services to be provided including:

(A) Whether the promoter will contract one or more prototypes, models or devices embodying the consumer's invention;

(B) whether the promoter undertakes to sell or distribute one or more prototypes, models or devices embodying the consumer's invention;

(C) the expected completion date of services; and

(D) the extent to which the invention promoter will acquire an interest in the title to the consumer's invention.

(2) Whichever of the following statements is applicable:

(A) That the invention promoter does not evaluate either:

(i) The commercial feasibility of inventions submitted to the invention promoter; or

(ii) the technical feasibility of inventions submitted to the invention promoter; or

(B) that the invention promoter does evaluate either:

(i) The commercial feasibility of inventions submitted to the invention promoter; or

(ii) the technical feasibility of inventions submitted to the invention promoter.

(3) That without an evaluation of commercial or technical feasibility, the consumer is at substantial risk that the invention may not be commercially or technically feasible.

(4) The following statement in 10 point boldface type:

**THE PATENT OFFICE DISCLOSURE PROGRAM IS NOT A PATENT APPLICATION PROCEEDING.**

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THE PATENT OFFICE DISCLOSURE PROGRAM IS NOT A PATENT APPLICATION PROCEEDING. SEE COMM.

1 YOU FROM OBTAINING VALID PATENT RIGHTS IN COUN-  
2 TRIES WHOSE LAWS PROVIDE THE PATENT APPLICATIONS THAT  
3 MUST BE FILED BEFORE ANY PUBLIC DISCLOSURE."

4 ~~(b) The invention developer promoter shall complete the cover~~  
5 ~~sheet with the proper information to be provided in the blank lines.~~  
6 ~~In the first blank line the invention developer promoter shall enter~~  
7 ~~the date the invention developer promoter began business, or the~~  
8 ~~effective date of this act, whichever is later. The numbers entered~~  
9 ~~in the last two blank lines need not include those who have con-~~  
10 ~~tracted with the invention developer promoter during the 30 days~~  
11 ~~immediately preceding the date of the contract. If the number to~~  
12 ~~be inserted in the third blank line is zero, it must be so stated.~~

13 (c) The cover sheet may not contain anything in addition to the  
14 information required in subsection (a).

15 Sec. 5. Until payment for invention development promotion  
16 services is made, the parties to a contract for invention development  
17 promotion services have the option to terminate the contract. The  
18 customer may exercise the option by refraining from making payment  
19 to the invention developer promoter. The invention developer  
20 promoter may exercise the option to terminate by giving to the  
21 customer a written notice of cancellation. The written notice becomes  
22 effective upon receipt by the customer. Notwithstanding any con-  
23 tractual provisions to the contrary, payment for invention devel-  
24 opment promotion services may not be required, made, or received,  
25 before the seventh day after the day on which the customer receives  
26 a fully executed copy of the contract.

27 Sec. 6. (a) Every invention developer promoter rendering or  
28 offering to render invention development promotion services in this  
29 state shall maintain a bond issued by a surety company authorized  
30 to do business in this state. The principal sum of the bond shall be  
31 20% of the invention developer's promoter's gross income from the  
32 invention development promotion business in this state during the  
33 invention developer's last fiscal year, but not less than \$100,000,  
34 whichever is greater. A copy of such bond shall be filed with the  
35 secretary of state prior to the time the invention developer promoter  
36 commences business in this state. The invention developer pro-  
37 moter shall have 30 days after the end of each fiscal year within  
38 which to change the bond as may be necessary to comply with the  
39 requirements of this section.

40 (b) Instead of furnishing the bond authorized by subsection (a),  
41 the invention developer promoter may deposit with the secretary  
42 of state a cash deposit in the like amount. This cash deposit may  
43 be satisfied by any of the following:

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(1) Certificates of deposit payable to the secretary of state issued by banks or savings and loan associations doing business in this state and insured by the federal deposit insurance corporation.

(2) Cash deposited with the secretary of state.  
Sec. 7. (a) For purposes of subsection (b), "successful" means any customer who has received in payment at least \$1 more than the total fees paid to the invention developer promoter.

(b) Each invention developer promoter shall provide to the secretary of state once each quarter, a list of names and addresses of customers within the state that have had successful transactions with the invention developer promoter.

Sec. 8. (a) In connection with a contract for invention development promotion services, the invention developer promoter shall not accept from a customer a negotiable instrument other than a check as evidence of the obligation of the customer. A holder is not a holder in due course if the holder accepts a negotiable instrument accepted from a customer in violation of this section.

(b) No contract for invention development promotion services shall require the execution of any note or series of notes by the customer which, when separately negotiated, will cut off as to third parties any right of action or defense which the customer may have against the invention developer promoter.

Sec. 9. (a) Every invention developer promoter shall maintain records and correspondence relating to performance of each invention development promotion service contract for a period of three years after expiration of the term of each such contract. The records and correspondence required to be maintained by this section shall be made available to the customer or the customer's representative for review and copying at the customer's expense on the invention developer's promoter's premises during normal business hours upon seven days' written notice, such time period to begin from the date the notice is placed in the United States mail properly addressed first-class postage prepaid.

Sec. 10. (a) Any contract for invention development promotion services that does not comply with the applicable provisions of this act is unenforceable against the customer and such contract is contrary to public policy. No contract is unenforceable if the invention developer promoter proves that noncompliance was unintentional and resulted from a bona fide error in spite of the developer's invention promoter's use of reasonable procedures adopted to avoid any such errors, and if the developer invention promoter makes an appropriate correction.

(b) Any contract for invention development promotion services



1 entered into by a customer with an invention developer promoter  
2 who has used fraud, false pretense, false promise, misrepresentation,  
3 misleading statement or deceptive practice, in respect to that cus-  
4 tomer with the intent that the customer rely thereon, whether or  
5 not the customer was in fact misled, deceived or damaged, is unen-  
6 forceable against the customer.

7 (c) Any waiver by the customer of the provisions of this act is  
8 contrary to public policy and is void and unenforceable.

9 (d) Any person who has been injured by a violation of this act  
10 by an invention developer promoter, by any false or fraudulent  
11 statement, representation, or omission of material fact by any in-  
12 vention developer promoter, or by failure of an invention devel-  
13 opeer promoter to make all the disclosures required by this act, may  
14 bring a civil action against the invention developer promoter for  
15 three times the amount of actual damages sustained by such person  
16 together with costs and disbursements, including reasonable attorney  
17 fees. For purposes of this subsection, the amount of damages shall  
18 be presumed to be at least the amount of all moneys paid to the  
19 invention developer promoter by such person. In no event shall  
20 the amount of recovery be less than \$5,000, exclusive of costs and  
21 reasonable attorney fees.

22 (e) Failure to make the disclosures required by this act renders  
23 any contract subsequently entered into between the customer and  
24 the invention developer promoter voidable by the customer.

25 (f) The attorney general shall enforce this act and may recover  
26 a civil penalty not to exceed \$25,000 for each violation of this act  
27 and may seek equitable relief to restrain the violation of this act.

28 Sec. 11. (a) An invention developer promoter shall maintain as  
29 confidential and not use for its own benefit or for the benefit of  
30 others all disclosures made to such invention developer promoter  
31 by a customer seeking invention development promotion services,  
32 whether or not the customer actually retains the invention devel-  
33 opeer's promoter's services. This duty of confidentiality applies to  
34 all such information except:

35 (1) Information which at the time of disclosure is in the public  
36 domain;

37 (2) information which, after disclosure, becomes part of the public  
38 domain by publication or otherwise, independently of any any act  
39 or omission by the invention developer promoter;

40 (3) information which the invention developer promoter can es-  
41 tablish by competent proof was in the invention developer's pro-  
42 moter's possession at the time of disclosure by the customer, and  
43 was not acquired, directly or indirectly from the customer; and

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(4) information received by the invention ~~developer promoter~~ from a third party without restriction on disclosure or use, if such information was not obtained by such third party with restriction on disclosure or use, directly or indirectly, from the customer.

(b) The duty of confidentiality includes the taking of reasonable steps by the invention ~~developer promoter~~ to prevent disclosure of confidential information to third parties. This confidential relationship cannot be waived by a customer without an express written waiver by the customer of the invention ~~developer's promoter's~~ obligation of confidentiality, and no waiver shall be entered into until after the disclosures set forth in section 2 have been made to the customer.

Sec. 12. Any assignee of the invention ~~developer's promoter's~~ rights is subject to all equities of defenses of the customer against the invention ~~developer promoter~~ existing in favor of the customer at the time of assignment.

Sec. 13. For each contract for invention ~~development promotion~~ services, the invention ~~developer promoter~~, at least once each calendar quarter during the term of the contract, shall deliver to the customer at the address specified in the contract, or any subsequent address furnished to the invention ~~developer promoter~~ by the customer, a written report that identifies the contract and that sets forth:

(a) A full, clear and concise description of the services performed to the date of the report and of the services to be performed;

(b) the name and address of each person, firm, or corporation including the name of the person contacted in such corporation to whom the subject matter of the contract has been disclosed, the reason for each disclosure and copies of all responses received as a result of those disclosures.

Sec. 14. The provisions of this act are not exclusive and do not relieve the parties or the contract subject thereto from compliance with all other applicable provisions of law.

~~Sec. 15.~~ This act shall take effect and be in force from and after its publication in the statute book.

Sec. 3. This act shall be a part of and shall be supplemental to the Kansas consumer protection act.  
Sec. 4.

TESTIMONY

TO"-----MEMBER OF HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT  
FROM"----DALE A. RUSSELL  
DATE"----FEBRUARY 13, 1990

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*Inventor's Bill*  
*Committee on Economic Development*  
*House*

Honorable Chairperson Baker, Member of Committee and Staff. Good afternoon. I am Dale Russell.

In the fall of 1988 while watching television late one night, a television commercial came over the screen which caught my interest immediately. Over the course of the evening, the same commercial was aired many times. It was a dream come true, or so I thought, that someone out there knew that people such as myself, needed help to fulfill their dreams. You see, I had an invention and had spent many sleepless nights trying to figure out what to do to get it on the market. I knew that if I just had help, I would make it and here was a man on television that knew exactly what to do!

The next day, I made the first telephone call (800 number), excited that I could just pick up the phone, at no cost, and ask for a free sample kit and advise on how to get started on the road to success. I was talking to a representative of American Patent Research and Development. This person told me that "they" knew that the road the inventor takes is a long and discouraging one and that "they" were in Washington, D.C. by the patent office thus they knew everything about such. This person then said that for no charge whatsoever, they would send me a sample kit with all of the information that I would ever need on patenting, manufacturing, etc..

I recieved the kit and immediately became excited and just knew that I had a marketable product. I started receiving calls daily from John W. Thomas, a consultant from American Patent Research and Development. We talked extensively about what is involved in the invention road. He then

began interrogating me concerning exactly what I had done thus far with my invention and exactly what it was. Over the course of a few weeks, we talked almost daily about such and the more we talked, the more excited I became. It was a dream come true! You need to understand that the inventor's role is not like that of changing jobs or careers, it is your dream and your invention is like that of your "baby". You are very vulnerable and are in fact willing to do anything possible to make that dream reality. I say this hoping that you understand why I and many others have been vulnerable enough to "fall under the spell" of these unethical companies and their practices. I now know that they are thieves and scoundrels that literally prey on your emotions. To explain these facts and my reason for knowing so, let me tell of what happened with American Patent Research and Development.

Over the course of my conversing with Mr. Thomas and my telling him of my invention, he would use such tactics as talking to me for an hour, then after hanging up, he would call me right back to talk more and to tell me how excited HE was, that he just knew that I had a unique product. He told me that what I needed was to have a product strategy report done on my invention. He said that if I would send him all of my notes, reports, drawings etc., that his company could do the product strategy report for me for only \$800.00, which would save me months of work and thousands of dollars. He hyped this up and tried to pressure me to do so, saying that time was of the essence, that we needed to get everything done as soon as possible for patenting reasons. I told him that I would have to discuss doing so with my wife and explain it to her. I and my wife decided to check with the Washington, D.C. Better Business Bureau. They had nothing bad to say about the company, thus we decided to go ahead and invest the \$800.00.

The next day, Mr. Thomas called and I told him that I had decided to send the money and all of my information that I had compiled, which I did.

In a few weeks, I received the product strategy report. It seemed impressive, but all that it was, in fact, was a regurgitation of my own words, drawings, and my own marketing strategy. They had just moved and reworded.

Mr. Thomas continued to call and encourage me to take the next step. I told him that I was concerned because of the fact that the product strategy report consisted of my own words and ideas. He praised me saying that I had layed down such wonderful information for them to use, that it just seemed to be that way. He told me that they were prepared to patent, manufacture and market my invention. That was my dream! Someone other than myself believed in my invention, my baby! Mr. Thomas explained that there were three courses that I could take. I could use step A (which would cost me \$3,000.00), step B (which would cost me \$5,000.00) or step C (which would cost me \$4,500.00). My dream shattered. I did not have that kind of money. I explained this to Mr. Thomas, he asked if I could borrow it from family and friends, explaining that banks do not loan people money for things like this. I said that I would see what I could do. He continued to call me practically every day, assuring me that by taking one of the steps, that I would be on the road to success. To be honest with the committee, I began stalling Mr. Thomas in order to either save the money to send them to be able to continue or to persue other avenues.

Thankfully, this is when I heard of and found KAI and learned of the organization. I talked to Mr. Clayton Williamson and told him of American Patent Research and Development. He told me that he was familiar with them and that they were very unethical and had no proven track record. He said that he would give me the names of other individuals that had been taken by them. I was advised that in order to retrieve my money that I

had given them, that I needed to file a complaint with the Kansas Attorney Generals Office. I immediately did so. In a few days, many people from American Patent Research and Development began calling me to inquire as to what the problem was. Telling them that they had charged me \$800.00 for my own information, I demanded my money back. They offered my half (\$400) to which I said no. In a matter of a week, they contacted me and said that if I would withdraw my complaint with the Attorney Generals Office, that they would give me a full refund. Point proven!

Another example of such is a large U.S. corporation with an individual based in Wichita that has misrepresented me as well as others. This particular individual or corporation, of which I won't mention names at this time, has literally lied, assumed, etc. in relation to my attempts to license and market my invention. Fortunately, thanks to Clayton Wil-Manson of KAI as well as Clyde Engert of KTEC, we are in the process of obtaining answers as to why this was done. I, as an individual as well as a member of KAI and persons mentioned, are very anxious for these questions to be answered very soon.

I have joined KAI and through my membership the last year and a half, I am now back on the road to success.

I would strongly urge and sincerely hope that this committee will be of assistance as to not allow this type of unethical practice to continue to take place in the State of Kansas. Doing so could as well serve as a role model for other states to follow suit and not let these scoundrels take advantage of peoples hopes and dreams.

Respectfully Submitted

*Dale A. Russell*

Dale A. Russell



# SENATE BILL No. 733

By Committee on Economic Development

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AN ACT concerning the issuance of revenue bonds for economic development purposes; amending K.S.A. 12-1741a and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 12-1741a is hereby amended to read as follows: 12-1741a. (a) No city shall issue revenue bonds authorized herein to finance facilities located in unincorporated territory situated more than three miles beyond the nearest point of outside the issuing city's limits without such city having first received approval of the board of county commissioners of the county in which such facility is to be located. No city shall issue revenue bonds authorized herein to finance facilities located in unincorporated territory lying within three miles of its corporate limits but within the county or counties in which any portion of such city is located, without such city having first notified the board of county commissioners of the county or counties of the proposed issuance. No city shall issue revenue bonds authorized herein to finance facilities located within the corporate limits of another city without the issuing city first having received approval of the governing body of the city in which the facility is to be located.

(b) No city shall issue revenue bonds authorized herein to finance a facility located outside the county or counties in which any portion of such city is located without such city having first received approval for the issuance of [such bonds] from the board of county commissioners of the county in which the facility is to be located.

(c) No city or county shall issue revenue bonds for facilities to be located on property which is owned by another city or county, without the issuing city or county first having received approval of the governing body of the city or county which owns the property.

Sec. 2 K.S.A. 12-1741a is hereby repealed.

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

and K.S.A. 1989 Supp. 12-1741b

sections

the issuance of a letter of intent to issue such bonds from

the issuance of a letter of intent to issue such bonds from

a letter of intent to issue such bonds

a letter of intent to issue such bonds from

(d) The issuance of a letter of intent shall be deemed to have received the approval of a city or county for purposes of this section unless such city or county provides the city or county proposing such issuance with a written notification specifically disapproving the issuance within seven business days after the next regular meeting of the governing body of the city or county having such approval authority that follows receipt of a request for approval.

(e) The provisions of this section requiring approval of a letter of intent as a condition to issuance of revenue bonds shall not be applicable with respect to the issuance of any revenue bonds for which a city or county has issued a letter of intent prior to the effective date of this act.

Insert Sec. 2.

and K.S.A. 1989 Supp. 12-1741b are

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Sec. 2. K.S.A. 1989 Supp. 12-1741b is hereby amended to read as follows: 12-1741b. (a) Subject to the provisions of K.S.A. 12-1744a and 12-1744b, as amended, any county shall have power to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling of facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes. Any county shall also have the power to enter into leases or lease-purchase agreements by resolution with any person, firm or corporation for the facilities. Except as otherwise provided in subsection (b) of this section, the facilities may be constructed within the county or its environs without limitation as to distance, providing the board of county commissioners declares that the facility, if in being, would promote the welfare of the county.

(b) No county shall issue revenue bonds authorized herein to finance facilities located within the corporate limits of a city or within three miles of the corporate limits of a city or within another county without the issuing county having first received approval of the issuance of a letter of intent to issue such bonds from the governing body of the city or county in which the facility is to be located. Approval of a city governing body shall not be required to finance the construction of facilities located on real estate, the title to which is in the county issuing the revenue bonds. The use of such real estate shall be subject to all zoning regulations, subdivision regulations and building code regulations of the city.

(c) The issuance of a letter of intent shall be deemed to have received the approval of a city or county for purposes of this section unless such city or county provides the county proposing such issuance with a written notification specifically disapproving the issuance within seven business days after the next regular meeting of the governing body of the city or county having such approval authority that follows receipt of a request for approval.

(d) The provisions of this section requiring approval of a letter of intent as a condition to issuance of revenue bonds shall not be applicable with respect to the issuance of any revenue bonds for which a county has issued a letter of intent prior to the effective date of this act.

STATE OF KANSAS



DIVISION OF THE BUDGET

MIKE HAYDEN,  
Governor  
MICHAEL F. O'KEEFE  
Director of the Budget

130-5  
Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1575  
(913) 296-2436

March 23, 1990

The Honorable Dave Kerr, Chairperson  
Senate Committee on Economic Development  
Senate Chamber  
Third Floor, Statehouse


Dear Senator Kerr:

SUBJECT: Fiscal Note for SB 733 by Committee on Economic Development

In accordance with KSA 75-3715a, the following fiscal note concerning SB 733 is respectfully submitted to your committee.

SB 733 would amend KSA 12-1741a to prohibit cities from issuing revenue bonds to finance facilities located outside the city limits without first receiving the approval of the Board of County Commissioners.

This act has no state or local fiscal impact.

  
Michael F. O'Keefe  
Director of the Budget

cc: Wayne Zimmerman, Department of Commerce  
Allen Bell, Kansas Development Finance Authority

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