PROBATE AND CIVIL PROCEDURE SUBCOMMITTEE

Senator Richard Rock, Chairman

March 23, 1990 - Room 521-S - 10:00 a.m.

HB 2439 - civil procedure for limited actions.

PROPONENTS

Matt Lynch, Kansas Judicial Council (ATTACHMENT 1)
Walter Scott, Associated Credit Bureaus of Kansas

It was noted that the Kansas Bar Association does support the bill.

OPPONENTS

None appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2689 - limitation of actions on latent diseases.

PROPONENTS

Jim DeHoff, Kansas AFL-CIO (ATTACHMENT 2)
Jerry Palmer, Kansas Trial Lawyers Association (ATTACHMENT3)
plus addendum (ATTACHMENT 3-a, received 4-24-90)
John Campbell, Deputy Attorney General (ATTACHMENT 4)
Chip Wheelen, Kansas Medical Society (ATTACHMENT 5)

OPPONENTS

None appeared.

Subcommittee recommendation: to adopt the amendment offered by KTLA (attachment 3); and to recommend favorable for passage as amended.

HB 3054 - additional authority of judge pro tems.

PROPONENTS

Representative Arthur Douville (ATTACHMENT 6)

OPPONENTS

None appeared

Subcommittee recommendation: to recommend favorable and be placed on the Consent calendar.

HB 2019 - home equity protection act.

PROPONENTS

Matt Lynch, Kansas Judicial Council (ATTACHMENT 7)

OPPONENTS

None appeared.

Subcommittee recommendation: to adopt the amendment offered by Mr. Lynch (attachment 7); and to recommend favorable for passage as amended.

The Subcommittee concluded its business for the day.

REPORT OF THE CIVIL CODE COMMITTEE OF THE JUDICIAL COUNCIL
ON A STUDY OF THE PROVISIONS OF CHAPTER 61 OF THE KANSAS STATUTES
IN LIGHT OF COURT UNIFICATION
(As amended and approved by Judicial Council, 2/3/89)

In May of 1988, the Legislative Coordinating Council requested the Judicial Council study the provisions of chapter 61 of the Kansas Statutes Annotated in light of court unification. In December of 1987, the Legislative Coordinating Council had received a letter from the legislative chairman of the Kansas Bar Association requesting approval of such a study. The letter from the Bar Association was accompanied by a list of proposed issues for the study of chapter 61. (Copies of the letters from the Coordinating Council and the Bar Association are attached to this report.)

Pursuant to assignment of the Judicial Council, the Civil Code Advisory Committee undertook the requested study of chapter 61 commencing in June of 1988. Throughout its study the committee was privileged to have the services and consultation of Judge Thomas Regan and Walter Scott, both of Topeka, who served as special members of the Civil Code Committee for the purposes of this project. In addition, Ronald D. Garrison of Kansas City, Kansas, provided invaluable assistance to the committee in the course of its study.

Consolidation With Chapter 60

Consideration was given as to whether chapter 61 and chapter 60 should be combined for use in all cases. This idea was rejected on the basis that chapter 61 is designed basically as a fast, simple and easy system to use in debt-collection and other relatively, small-dollar cases. If chapter 61 was consolidated with chapter 60, it would be necessary to make distinctions in such a consolidated chapter to retain the advantages of a streamlined procedure for certain types of cases. The committee saw no advantage in such a consolidated chapter with internal distinctions over a separate chapter for limited actions.

Expanded Scope for Chapter 61

The Civil Code Committee recommends the amendment of K.S.A. 61-1603 to expand the scope of actions which may be brought under chapter 61. (All proposed amendments are attached to this report.) The recommended amendments would (1) allow actions for the collection of an unsecured debt to be brought under chapter 61 without regard to dollar amount involved and (2) raise the dollar limitation for other permitted civil actions from $5000 to $10,000. The committee does not recommend any change in subsection (b) of 61-1603 which prohibits the use of chapter 61 for the types of civil actions enumerated therein.

Attachment 1
P+CR Subcommittee - Judiciary
3-23-90

It is the opinion of the committee that the dollar amount involved in the collection of an unsecured debt does not alter the basic nature, complexity or procedural requirements for such actions. As to the raising of the jurisdictional amount to $10,000 in other permitted civil actions, the committee believes there are a number of cases within this dollar range which would be amenable to the streamlined procedures of chapter 61.

In light of the recommendation to increase the scope of chapter 61, the committee recommends amendment of K.S.A. 20-302b to make the jurisdiction of district magistrate judges coextensive with the scope of actions authorized under chapter 61.

The committee recommends the amendment of K.S.A. 61-2501 to require a $55 docket fee in chapter 61 cases where the amount in controversy exceeds $5000. This would be the same docket fee as would be required if the case was filed under chapter 60 and would avoid any fiscal impact to the state from raising the dollar amount in cases which can be brought under chapter 61. (A conforming amendment to K.S.A. 20-362, relating to remittance of docket fees, would also be needed.) The committee does not view a higher docket fee for cases exceeding $5000 as presenting any hardship or disincentive to the use of chapter 61 in such cases.

Pretrial Conference

The committee recommends amending K.S.A. 61-1714 to state "Before setting a case for trial, the court may conduct a conference to clarify the issues for trial and explore possibilities for settlement." Pretrial conferences are provided for in chapter 60 cases by K.S.A. 60-216 and Supreme Court Rule 140. These provisions are more formal and elaborate than is necessary for chapter 61 proceedings. The conference recommended by the committee is intended to be a quick and efficient method to discover, formulate and narrow the issues prior to trial.

Transfer to Chapter 60; Consolidation of Actions

In light of the recommendation for an expanded jurisdictional amount in chapter 61, the committee considered whether a party should have some ability as a matter of right to transfer a case filed under chapter 61 for disposition under chapter 60 where greater discovery can be obtained. The committee rejected any transfer to chapter 60 as a matter of right on the basis that the chapter 61 procedure is designed to be fast, simple and easy and transfer to chapter 60 would necessarily impose greater delay in the proceedings.

Rather than a transfer to chapter 60 as a matter of right, the committee recommends the adoption of a new section (possibly designated as K.S.A. 61-1717a) under which a case could be transferred to chapter 60 upon order of the court for good cause shown. If a case is transferred, the moving party would be required to pay the additional docket fee required under chapter 60.

Presently, a chapter 61 action can be moved to chapter 60 under either K.S.A. 61-1717 or 61-1720. If a defendant in a chapter 61 action asserts a counterclaim or cross-claim beyond the scope of chapter 61, the case is reassigned for hearing pursuant to chapter 60 and the increased docket fee is assessed to the defendant. [K.S.A. 61-1720(b)] The committee recommends no change in this provision. Under 61-1717, if one of the parties to a chapter 61 action commences an action under chapter 60 involving a question of law or fact in common with the chapter 61 action, the judge in the chapter 60 action may direct that the 61 action be transferred and consolidated with the 60 action for further proceedings under chapter 60. This is true regardless of whether or not the action filed under chapter 60 is within the scope of actions authorized under chapter 61. The committee recommends the amendment of this section to provide that the chapter 60 judge, on the court's own motion or upon application of a party, may direct that the actions be consolidated and if the consolidated action falls within the jurisdiction of chapter 61, the judge shall direct whether the provisions of chapter 60 or 61 shall apply.

A somewhat related issue considered by the committee is whether or not a party should have some ability to secure the transfer of a chapter 61 case from a district magistrate to a district judge. For example, such a transfer might be desirable where a jury trial has been requested. The committee recommends that a new subsection (d) be added to K.S.A. 20-302b to the effect "Upon motion of a party, the administrative judge may reassign an action from a district magistrate judge to a district judge." The administrative judge undoubtedly has such authority under Supreme Court Rule 107. However, the addition of such a provision would indicate to parties that there is the possibility, and a procedure, for requesting such a transfer.

Appeals

In chapter 61 cases presently, the notice of appeal must be filed within 10 days after the entry of judgment, except that a defendant in a forcible detainer action who appeals a judgment granting restitution of the premises must file the notice of appeal within 5 days. [61-2102(a)] An appeal from a district magistrate judge is taken to a district judge and an appeal from a district judge is taken to the Court of Appeals. [61-2102(c)] Under chapter 60, an appeal from a district court to an appellate court must be taken within 30 days. [60-2103(a)] An appeal from a district magistrate judge must be taken within 10 days. [60-2103a(a)] It is the consensus of the committee that appeal times should be as consistent as possible. The committee recommends that in both chapters 60 and 61, appeals from district magistrates be filed within 10 days and appeals from the district court to the appellate courts be filed within 30 days. The committee would retain the 5-day appeal time in forcible detainer cases where restitution of the premises has been granted due to the nature of such cases.

The committee considered whether the time for filing the notice of appeal should be suspended pending a ruling on one of the motions enumerated under K.S.A. 60-2103(a) (motion for judgment notwithstanding the verdict, motion to amend or make additional findings of fact, motion to alter or amend the judgment, motion for new trial). Although chapter 61 is silent on this issue, the Supreme Court has ruled that, in an appeal to an appellate court under chapter 61, the running of the time for filing a notice of appeal is suspended by the filing of a timely motion for a new trial. Nolan v. Auto Transporters, 226 Kan. 176 (1979). The committee recommends that chapter 61 be amended to be consistent with K.S.A. 60-2103(a).

Counterclaims

K.S.A. 61-1709 addresses counterclaims and cross-claims in chapter 61 actions. The last sentence of the section makes reference to subsections (a) and (j) of K.S.A. 60-213. Since the adoption of 61-1709, a new subsection (g) has been added to 60-213. Consequently, the last sentence of 61-1709 should be amended to make reference to subsections (a) and (k) of 60-213. Counterclaims are compulsory under chapter 61 in accordance with the first sentence of 61-1709 to the effect, "Upon timely application of the plaintiff and in the discretion of the court, a defendant may be required to plead any counterclaim which such party has against the plaintiff, if it arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim . . . ." However, the comparative negligence statute is applicable to actions pursuant to chapter 61. [K.S.A. 60-258a(e)] Accordingly, the committee recommends amendment of 61-1709 to reflect the compulsory nature of counterclaims where the plaintiff's claim is governed by 60-258a.

Unlike 61-1709 which makes the filing of some counterclaims discretionary, counterclaims which arise out of the transaction or occurrence that is the subject matter of the plaintiff's claim in a small claims action are deemed compulsory. (K.S.A. 61-2705) In Banister v. Carnes, 9 Kan.App.2d 133 (1983), a patient's malpractice action was held to be barred when it was not pleaded as a counterclaim to the small claims action brought by the dentist for the recovery of his fee. To relieve that harsh result, the committee recommends that K.S.A. 61-2705 be amended to provide that in small claims actions such counterclaims are mandatory only where they do not exceed the jurisdictional amount ($1,000) in small claims cases. The forms contained in 61-2713 should be amended to be consistent with this recommendation.

Other Issues

The committee considered the list of issues for the chapter 61 study as itemized by the KBA committee and which was forwarded by the Legislative Coordinating Council in its request. Each of the issues was discussed and considered by the committee and is either incorporated in the amendments as recommended by the committee or is rejected by the committee. For instance the

committee, although it expanded the jurisdictional amount in chapter 61 cases, determined that discovery should not be extended as a matter of right to the scope and amount of discovery which is permitted under chapter 60 cases.

The committee also rejected the idea of the right of a party to convert any chapter 61 case to a chapter 60 case by merely paying the additional filing fee and further rejected the concept that no jury trials be had in chapter 61 cases.

The committee further considered that judgments in chapter 61 cases should become liens on real estate only by following the procedure for filing the judgment under chapter 60 and paying the filing fee. The committee rejected the concept that judgments in chapter 61 cases should become liens upon the automobile of the judgment debtor.

The committee considered, but did not change, the methods of service as are provided in chapter 61 cases. The committee, however, is continuing its study of service of process generally arising from its study of 1988 S.B. 608 and Substitute for S.B. 608. (The Civil Code Committee is considering the subject of service of process generally in considering some methods whereby the sheriffs' offices of Kansas might be relieved of the burdens of serving process.)

State of Kansas

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VICE-CHAIRPERSON
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PRESIDENT OF THE SENATE

OFFICE OF THE SECRETARY
ROOM 322-S, STATEHOUSE
TOPEKA, KANSAS 66612-1565
PHONE: (913) 296-2321

Legislative Coordinating Council

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SPEAKER PRO TEM
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May 31, 1988

The Honorable Robert H. Miller
Chairperson, Kansas Judicial Council
Kansas Judicial Center

Dear Justice Miller:

At the last meeting of the Legislative Coordinating Council a letter was presented from Thomas E. Wright, Legislative Chairman of the Kansas Bar Association, asking that a request be made to the Judicial Council for a study of the provisions of Chapter 61 of the Kansas statutes in light of the 1977 court unification. The Legislative Coordinating Council approved the making of such request and asked that I inform you of their action.

I am attaching a copy of the letter from Mr. Wright setting forth the issues that he recommended which was the basis of the action of the LCC.

If I can be of further assistance, please let me know.

Very truly yours,

Arden K. Ensley, Secretary
Legislative Coordinating Council

Enc.

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KANSAS BAR ASSOCIATION

December 7, 1987

The Hon. Robert V. Talkington
President of the Senate
20 W. Buchanan
Iola, KS 66749

Dear Bob,

Walt Scott, Johnson County District Judge Phil Woodworth, Elwaine Pomeroy, Bob Alderson and Shawnee County District Judge Tom Regan are part of a KBA group working on a project designed to rethink and make major amendments to some Chapter 61 provisions in light of 1977 court unification and some ideas to make Chapter 61 practice less expensive for all those involved, including lower costs of litigation for Kansans using Chapter 61.

It is not anticipated that such legislation would be ready for introduction to the 1988 session. In recent discussions with Senator Bob Frey, rather than a 1988 interim committee, he suggested the approach of having the Legislative Coordinating Council request a study by the Judicial Council on this topic, that such study begin as soon as possible, and a report back to the L.C.C. be requested prior to the 1989 session. A list of proposed issues for the study are attached. On behalf of KBA, we would urge that request be made of the Judicial Council. Thank you.

Cordially,

Thomas E. Wright, Esq.
Legislative Chairman

cc: Members, Legislative Coordinating Council
Hon. Art Douville, Esq.
Hon. Bob Frey, Esq.
Hon. Nancy Parrish, Esq.
Hon. Jeanne Hoferer
Hon. Bob Wunsch, Esq.
Hon. Mike O'Neal, Esq.
Hon. John Solbach, Esq.
Christel Marquardt, Esq.
Dale Pohl, Esq.
Walt Scott, Esq.
Hon. Tom Regan
Hon. Phil Woodworth
Bob Alderson, Esq.
Elwaine Pomeroy, Esq.
Stan Lind, Esq.
Ron Smith, KBA

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Issues for Chapter 61 study

The focus of the study is that Chapter 61 should be a fast, simple, and easy system to use to basically collect debts. If discovery or jury trials are needed and the jurisdictional amount is $5000 or less, then the system ought to kick the claim up to Chapter 60 and allow those rules of civil procedure to govern subsequent conduct, discovery and trial.

1. Whether a district judge, when hearing Chapter 61 matters for the first time, should sit as a magistrate judge.

2. A court reporter should not be required nor should findings of fact or conclusions of law. We may want to consider the old system of "bench notes" being the judgment, since either pay may appeal denovo.

3. If there is an appeal of the Chapter 61 trial, it is denovo, but done pursuant to Chapter 60.

4. Discovery in Chapter 61 is eliminated or severely curtailed (by order or the court only).

5. A short pretrial is allowed in contested Chapter 61 matters to determine and narrow issues.

6. A general denial is retained, but it must be fully explained at pretrial.

7. Either party should have the right to convert the proceeding to a Chapter 60 merely by filing the $55 filing fee.

8. No jury trial of Chapter 61. To get jury, must either appeal, or remove to Chapter 60.

9. Filing fees in '61 are kept modest.

10. The economy of time and expense should be maintained to facilitate commercial collections on pre-existing debts, and the J.C. should discuss feasibility of collection matters on bad checks as whether that creates pre-existing debt.

11. Judgments in '61 should be real estate liens if they pay the additional $15 after judgment and the lien is filed in Chapter 60. Becomes lien on autos, too.

12. Methods of service should be limited.

13. Dollar jurisdictional amount should be limited, unless by agreement, parties exceed the jurisdictional amount.

14. Jurisdictional subject matter should be limited. (No real estate, domestic relations, etc.)

15. Third party practice is prohibited.

16. Affirmative defenses and counterclaims should be focused at pretrial in '61 case, otherwise kicked up to '60.

17. No mandatory counterclaim requirements in '61.

18. Possibly judgments should be entered by judgment form or docket entry rather than journal entry. Consideration of computerized docket streamlining for attorney modem tie-in for filing and case status or review.

19. Possibly there should be a trial de novo appeal within the district court system with a provision for the allowance of attorney fees in the event of an appeal, similar to that under small claims procedure. Alternative would simply be to remove attorney fee sanction, and impose current court sanctions under KSA 60-211 if a litigant is using '61 procedures to stall and ultimately get into '60.

20. Appeals of '61 judgments go to the appellate system, the time factors should mirror those in Chapter 60.

21. Consolidate pretrials for attorneys with multiple cases, and incorporate use of telephone pretrial conferences in '61 cases.

22. review and possibly consolidate local rules concerning whether out-of-judicial-district attorneys must physically attend first docket calls.

20-302a. District magistrate judges; jurisdiction, powers and duties; appeals. (a) A district magistrate judge shall have the jurisdiction, power and duty, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions or misdemeanor charges and the preliminary examination of felony charges. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action in which the amount in controversy, exclusive of interests and costs, exceeds $5,000, except that in actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction; nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code or to issue support orders as provided by subsection (a)(6);

, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money,

$10,000

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in article 23 of chapter 61 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto; and nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto;

(6) actions for divorce, separate maintenance or custody of minor children, except that nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to (A) hear any action pursuant to the Kansas code for care of children or the Kansas juvenile offenders code; (B) establish, modify or enforce orders of support pursuant to the Kansas parentage act, K.S.A. 23-451 *et seq.*, 39-718a, 39-755 or 60-1610 or K.S.A. 1985 Supp. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 38-1542, 38-1543 or 38-1563, and amendments thereto; or (C) enforce orders granting a parent visitation rights to the parent's child;

(7) habeas corpus;

(8) receiverships;

(9) change of name;

(10) declaratory judgments;

(11) mandamus and quo warranto;

(12) injunctions;

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class actions;
(14) rights of majority; and
(15) actions pursuant to the protection from abuse act.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge, a district magistrate judge may:

(1) Grant a restraining order, as provided in K.S.A. 60-902 and amendments thereto;

(2) appoint a receiver, as provided in K.S.A. 60-1301 and amendments thereto;

(3) make any order authorized by K.S.A. 60-1607 and amendments thereto; and

(4) grant any order authorized by the protection from abuse act.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge.

(d) Upon motion of a party, the administrative judge may reassign an action from a district magistrate judge to a district judge.

History: L. 1976, ch. 146, § 13; L. 1977, ch. 112, § 2; L. 1979, ch. 92, § 12; L. 1979, ch. 80, § 2; L. 1983, ch. 140, § 3; L. 1984, ch. 39, § 31; L. 1985, ch. 115, § 30; L. 1986, ch. 115, § 32; L. 1986, ch. 137, § 1; L. 1986, ch. 137, § 2; Jan. 12, 1987.

20-362. Disposition of docket fees. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to $10 for each docket fee paid pursuant to K.S.A. 60-2001 and amendments thereto, during the preceding calendar month;

(2) a sum equal to $10 for each $30 docket fee paid pursuant to K.S.A. 61-2501 and amendments thereto; and

or $55

(3) a sum equal to $5 for each $10 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170 and amendments thereto during the preceding calendar month for cases filed in the county.

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(d) he state treasurer, for deposit in the st easury and credit to the indigents' defense services fund, a sum equal to $.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to $5 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto during the preceding calendar month.

(f) To the state treasurer, for deposit in the state treasury and credit to the crime victims reparations fund, a sum equal to $2 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto during the preceding calendar month.

(g) To the state treasurer, for deposit in the state treasury and credit to the state general fund, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d), (e) and (f).

History: L. 1978, ch. 108, § 3; L. 1982, ch. 116, § 3; L. 1985, ch. 106, § 1; L. 1986, ch. 146, § 2; L. 1987, ch. 134, § 2; July 1.

61-1603. Application of code. (a) Except as provided by subsection (b), this act and the act of which this section is amendatory may be used to govern the procedure for civil actions in the district court where the amount in controversy or otherwise claimed as damages, excluding costs and interest, does not exceed $5,000. In actions of replevin, the affidavit in replevin or the verified petition, fixing the value of the property shall determine the amount in controversy.

(1) seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money or (2)

$10,000

(b) The code of civil procedure for limited actions shall not govern any of the following actions:

(1) Actions against any officers of the state, or any subdivisions thereof, for misconduct in office, except as authorized by the Kansas tort claims act;

(2) actions for specific performance of contracts for real estate;

(3) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in article 23 of this chapter;

(4) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto;

(5) actions for divorce, separate maintenance or custody of minor children;

(6) habeas corpus;

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(7) receiverships;
(8) change of name;
(9) declaratory judgments;
(10) mandamus and quo warranto;
(11) injunctions;
(12) class actions;
(13) rights of majority; and
(14) any appeal from an order or ruling of an administrative officer or body.

History: L. 1969, ch. 290, § 61-1603; L. 1973, ch. 134, § 50; L. 1976, ch. 258, § 2; L. 1979, ch. 80, § 1; L. 1981, ch. 238, § 1; July 1.

61-1709. Counterclaims and cross-claims. Upon timely application of the plaintiff and in the discretion of the court, a defendant may be required to plead any counterclaim which such party has against the plaintiff, if it arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that the defendant shall not be required to plead any such claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the plaintiff brought suit upon his or her claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the defendant is not pleading any other counterclaim. A defendant shall not be estopped from asserting in a subsequent action any claim which he or she may have against the plaintiff, if said defendant is not required to plead such claim pursuant to this section. Except for subsections (a) and (j), the provisions of K.S.A. 60-213, relating to counterclaims and cross-claims, shall apply to proceedings pursuant to this chapter, subject to the provisions of K.S.A. 61-1720.

History: L. 1969, ch. 290, § 61-1709; L. 1975, ch. 306, § 3; L. 1976, ch. 258, § 10; Jan. 10, 1977.

(a)

(k)

(b) Notwithstanding the provisions of subsection (a), in an action involving a claim governed by K.S.A. 60-258a and amendments thereto, a party shall state as a counterclaim any claim that party has against any opposing party arising out of the transaction or occurrence that is the subject matter of the claim governed by K.S.A. 60-258a and amendments thereto.

61-17 Placement of actions on trial calendar. those actions where trial is necessary, the court shall provide by rule for the placing of actions upon the trial calendar. The court may, on its own motion or for good cause shown by any party, adjourn or continue an action at any stage of the proceedings for such period of time and upon such terms as may be just.

History: L. 1969, ch. 290, § 61-1714; Jan. 1, 1970.

Before setting a case for trial, the court may conduct a conference to clarify the issues for trial and explore possibilities for settlement.

61-1717. Transfer and consolidation of certain actions. If one of the parties to an action commenced pursuant to this chapter commences, in a district court of this state, an action pursuant to chapter 60 of the Kansas Statutes Annotated involving a question of law or fact in common with the action pursuant to this chapter, the judge in the action pursuant to chapter 60 of the Kansas Statutes Annotated may on his or her own motion, or upon application of any party to the action pursuant to this chapter, direct that such action be transferred to said judge. Any action so transferred may be consolidated with the action pending before said judge in accordance with the provisions of K.S.A. 60-242.

History: L. 1969, ch. 290, § 61-1717; L. 1976, ch. 258, § 13; Jan. 10, 1977.

actions be consolidated. If the consolidated action is within the scope of actions authorized by K.S.A. 61-1603, the judge shall direct whether the provisions of chapter 60 or 61 shall apply to the consolidated action.

New Section _____ (61-1717a). Transfer to chapter 60 of claim within the scope of actions authorized by 61-1603. An action filed under this chapter may upon motion of a party and order of the court for good cause shown, be thereafter governed by the provisions of chapter 60 of the Kansas Statutes Annotated. The party obtaining an order under this section shall pay any additional docket fee required had the action been filed under chapter 60.

61-2102. Notice; docket fee; jurisdiction; security for costs; perfection of appeal. (a) All appeals from actions pursuant to this chapter shall be by notice of appeal specifying the order, ruling, decision or judgment complained of, and shall be filed with the clerk of the court from which the appeal is taken within 10 days after the entry of such order, ruling, decision, or judgment, except that if judgment has been rendered in an action for forcible detainer and the defendant desires to appeal from that portion of the judgment granting restitution of the premises, notice of appeal shall be filed within five days after entry of judgment. The notice of appeal shall specify the party or parties taking the appeal; the order, ruling, decision or judgment appealed from; and the court to which the appeal is taken.

(b) The provisions of K.S.A. 60-2001 and amendments thereto shall apply to appeals pursuant to this section.

(c) An appeal from an action heard by a district magistrate judge shall be taken to a district judge of the county. An appeal from an action heard by a district judge shall be taken to the court of appeals.

(d) The appealing party shall cause notice of the appeal to be served upon all other parties to the action in accordance with the provisions of K.S.A. 60-205 and amendments thereto. Upon filing the notice of appeal and such security for costs as may be required, the appeal shall be deemed perfected.

History: L. 1969, ch. 290, § 61-2102; L. 1976, ch. 258, § 37; L. 1986, ch. 115, § 99; L. 1986, ch. 221, § 1; L. 1986, ch. 133, § 3; Jan. 12, 1987.

All appeals from orders, rulings, decisions or judgments of district magistrate judges under this chapter shall be taken in the manner provided in subsection (a) of K.S.A. 60-2103a and amendments thereto. All appeals from orders, rulings, decisions, or judgments of district judges under this chapter shall be taken in the manner provided in subsections (a) and (b) of K.S.A. 60-2103 and amendments thereto. Notwithstanding the foregoing provisions of this subsection,

61-2501. Court fees; poverty affidavit. (a) *Docket fee.* No case shall be filed or docketed pursuant to this chapter without the payment of a docket fee in the amount of $10, if the amount in controversy or claimed does not exceed $500, or $30, if the amount in controversy or claimed exceeds $500. If judgment is rendered for the plaintiff, the court also may enter judgment for the plaintiff for the amount of the docket fee paid by the plaintiff.

(b) *Poverty affidavit; additional court costs.* The provisions of subsections (b), (c) and (d) of K.S.A. 60-2001 and amendments thereto shall be applicable to actions pursuant to this chapter.

History: L. 1969, ch. 290, § 61-2501; L. 1976, ch. 258, § 53; L. 1982, ch. 116, § 10; July 1.

but does not exceed $5000, or $55, if the amount in controversy or claimed exceeds $5000.

1-15/18

61-2705. Pleadings. It is the purpose of this act to provide and maintain simplicity of pleading, and the court shall supply the forms prescribed by this act to assist the parties in preparing their pleadings. The only pleading required in an action commenced under this act shall be the statement of plaintiff's claim, which shall be on the form prescribed by this act and be denominated a petition, except that a defendant who has a claim against the plaintiff, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, shall file a statement of his or her claim on the form prescribed by this act. The court shall not have any jurisdiction under this act to hear or determine any claim by a defendant which does not arise out of the transaction or occurrence which is the subject matter of plaintiff's claim.

No pleadings other than those provided for herein shall be allowed. It shall be sufficient that each pleading set forth a short and plain statement of the claim, showing that the pleader is entitled to relief, and contain a demand for judgment for the relief to which the pleader deems himself or herself entitled.

if the claim does not exceed the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto. If the defendant's claim exceeds the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto, the defendant may file a statement of the defendant's claim on the form prescribed by this act.

61-2713. Forms. (a) The petition shall be in substantially the following form:

In the District Court of _____ County, Kansas.

_____
Plaintiff

vs. No. _____

_____
Defendant

PETITION PURSUANT TO CHAPTER 61 OF THE KANSAS STATUTES ANNOTATED

Statement of claim:

I, _____, having read the instruction below, hereby assert the following claim against _____, defendant:

Demand for judgment:

Based on the claim stated above, judgment is demanded against defendant as follows:

1. Payment of $_____, plus interest, costs and any damages awarded under K.S.A. 1986 Supp. 60-2610.

2. Recovery of the following described personal property, plus costs: _____. This property has an estimated value of $_____.

Instructions to plaintiff:

1. State the claim you have against the defendant in the space provided. Be clear and concise.

2. Your total claim against defendant may not exceed $1,000, not including interest, costs and any damages awarded under K.S.A. 1986 Supp. 60-2610. If you are seeking the recovery of personal property, the value of that property shall be based on your estimate of its value under oath.

3. You must be present in person at the hearing in order to avoid default judgment against you on any claim defendant may have which arises out of the transaction or occurrence which is the subject to your claim against the defendant.

4. You must make demand for judgment in one or both of the spaces provided above.

5. Neither you nor the defendant is permitted to appear with an attorney at the hearing.

6. You may not file more than 10 small claims under the small claims procedure act in this court during any calendar year.

7. After completing this form, you must subscribe to the following oath:

I, _____, hereby swear that, to the best of my knowledge and belief, the foregoing claim asserted against the defendant (including the estimate of value of any property sought to be recovered) is a just and true statement, exclusive of any valid claim or defense which defendant may have.

[Signature] _____
Plaintiff

Subscribed and sworn to before me this _____day of _____, 19___.

[Signature] _____
Judge (clerk or notary)

(b) The summons shall be in substantially the following form:

In the District Court of _____ County, Kansas.

_____
Plaintiff

vs. No. _____

_____
Defendant

SUMMONS
(Small Claims Procedure)

To the above-named defendant:

You are hereby notified that the above-named plaintiff has filed a claim against you under the small claims procedure of this court. The statement of plaintiff's claim and demand for judgment against you are set forth in the petition which is served upon you with this summons.

A trial will be held on this matter at _____o'clock ___.m., on the _____day of _____, 19___, at

_____.
(Place of hearing and address)

You must be present in person at the trial or a judgment by default will be entered against you. Neither you nor the plaintiff is permitted to appear with an attorney.

If your defense is supported by witnesses, books, receipts or other papers, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the judge or clerk of the court at once for assistance.

If you admit the claim, but desire additional time to satisfy plaintiff's demands, you must be present at the trial and explain the circumstances to the court.

If you have a claim against the plaintiff, which arises out of the transaction or occurrence which is the subject of plaintiff's claim, you must complete the form for "Defendant's Claim," which accompanies this summons, and return it to the judge or clerk of the court on or before the time set for the trial.

and your claim does not exceed $1,000

If your claim against plaintiff exceeds $1,000, you may complete and return the form for "Defendant's Claim" on or before the time set for trial.

RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons:

(1) *Personal service.* By delivering a copy of the summons and a copy of the petition to each of the following defendants on the dates indicated:

_____, 19_____ _____, 19___

(2) *Residence service.* By leaving a copy of the summons and a copy of the petition at the usual place of residence of each of the following defendants on the dates indicated:

_____, 19_____ _____, 19___

1-17/18

(3) *No service.* The following defendants were not found in this county:
Dated: _____.

_____
(Signature and Title of Officer)

(c) The defendant's claim shall be in substantially the following form:

In the District Court of _____ County, Kansas.

_____
Plaintiff

vs. No. _____

_____
Defendant

DEFENDANT'S CLAIM

Instructions:

1. As stated in the summons, if you have a claim against the plaintiff which arises out of the transaction or occurrence which is the subject of plaintiff's claim, you must state your claim in the space provided below.
2. Be clear and concise in stating your claim.
3. If the value of your claim exceeds $1,000 (not including interest, costs and any damages awarded under K.S.A. 1986 Supp. 60-2610, but including the value of any personal property sought to be recovered, as determined by your estimate of its value under oath), the court must decide whether you may pursue your entire claim or only that portion not exceeding $1,000.
4. If your claim exceeds $1,000 and the court determines that you may not pursue the entire claim at the hearing, you have three alternatives: (1) Make no demand for judgment and reserve the right to pursue your entire claim in a court of competent jurisdiction; (2) make demand for judgment of that portion of your claim which does not exceed $1,000 and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or (3) make demand for judgment of that portion of your claim which does not exceed $1,000 and waive your right to recover any excess.
5. When completed, this form must be filed with the judge or the clerk of the court on or before the time stated in the summons for the trial.

Statement of claim:

I, _____, having read the instructions above, assert the following claim against _____, plaintiff:

Demand for judgment:

Based on the claim stated above, judgment is demanded against plaintiff as follows:

1. Payment of $_____, plus interest, costs and any damages awarded under K.S.A. 1986 Supp. 60-2610.
2. Recovery of the following described personal property, plus costs:

This property has an estimated value of $_____

I, _____, hereby swear that, to the best of my knowledge and belief, the above claim asserted against the plaintiff (including the estimate of value of any property sought to be recovered) is a just and true statement.

[Signature] _____
Plaintiff

Subscribed and sworn to before me this _____ day of _____, 19__.

[Signature] _____
Judge (clerk or notary)

History: L. 1973, ch. 239, § 13; L. 1979, ch. 187, § 4; L. 1986, ch. 223, § 4; L. 1986, ch. 222, § 4; L. 1986, ch. 224, § 3; July 1.

and your claim does not exceed $1,000

If your claim against the plaintiff exceeds $1,000, you may state your claim in the space provided below. In determining whether or not your claim against the plaintiff exceeds $1,000, do not include interest, costs and any damages under K.S.A. 1988 Supp. 60-2610, but do include the value of any personal property sought to be recovered as determined by your estimate of its value under oath.

1-18/18

Senate Judiciary Sub Committee

Mr. Chairman and Committee members. I am Jim DeHoff representing the Kansas AFL CIO. We urge your support of House Bill 2689. House Bill 2689 would alleviate a very serious problem that some of our members are experiencing with the ten year latent disease limitation.

In I989, the Kansas Supreme Court ruled that the ten year limitation of KSA 60-5I3B applies to claims based on latent disease. The problem with this ruling is that some latent diseases, such as asbestosis, do not show up for a period of 25 to 30 years after exposure. The worker who suffers from this disease has no recourse under present law even though they could not possibly know they had been afflicted prior to the ten year time limit.

By allowing House Bill 2689 to become law, you will be

Attachment 2
P&CP Subcommittee - Judiciary
3-23-90

correcting an injustice to workers who have had the misfortune of being directed to work around hazardous materials and are suffering from serious and normally fatal health problems as a result.

We urge favorable passage of House Bill 2689.

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before
HOUSE JUDICIARY COMMITTEE
March 23, 1990

HB 2689 - LIMITATION OF ACTIONS FOR LATENT DISEASE

The Kansas Trial Lawyers Association has nearly 1000 members in all parts of the state and its members represent injured persons who claim that others are responsible for their damages. Of great concern to injured persons is whether they can present their claims in court to seek compensation for their damages against those who have wrongfully injured them. Limitations of actions (statutes of limitation) arbitrarily restrict access to the courts based solely on a consideration of time. The underlying public policy for such limitations is that persons should not sit on their rights and present stale claims and that after a certain point in time, even just claims should expire. The question with victims of latent diseases is when their injuries are discovered and the statute of limitations should commence.

A brief history of K.S.A. 60-513 is necessary to put this issue in perspective. In 1963 this statute of limitation limited the discovery period in tort actions to 10 years. The Supreme Court of Kansas in the case of Ruthraff, Administrator v. Kensinger, 214 Kan. 185, 519 P.2d 661 in 1974 interpreted the language to mean that the period of limitation did not begin to run until the date on which substantial injuries resulted and the 10-year provision referred only to injuries which were not reasonably ascertainable until some time after the initial act. In the case of traumatic torts, such as when a machine amputates a person's limb, the two-year statute of limitation did not start to run until the time of the amputation, even if it was 15 or 20 years after the manufacture of the product.

Two significant things have occurred within the last two years which impact this issue. First in 1987, language overcoming the effect of the Ruthraff decision was adopted pursuant to HB 2386 (1987). More significantly in the context of an asbestos-related claim the Supreme Court of Kansas considered the case of Tomlinson v. Celotex Corp., 224 Kan. 474, 770 P.2d 825 delivering its opinion on March 3, 1989. The Court ruled that the 10-year limitation applies to claims based on latent diseases and that such statute was constitutional, thus barring any recovery from an exposure to a disease where the exposure had taken place more than 10 years before.

Attachment 3
P&CP Subcommittee - Judiciary
3-23-90

2. The Products Liability Act and "useful safe life".

The Kansas Legislature from 1978 until 1981 debated the application of the statute of limitations as it applied to products and adopted K.S.A. 60-3303 dealing with the "useful safe life" of a product and a presumption that after ten years a product had exceeded its useful safe life, but that the presumption could be overcome by clear and convincing evidence. There are also evidentiary criteria by which useful safe life issues could be resolved. That statute was in no way to impinge upon the operation of K.S.A. 60-513(b), which at that point was being interpreted under the Ruthraff decision.

3. The Tomlinson case.

Two significant things occurred within the last two years. First in 1987, language overcoming the effect of the Ruthraff decision was adopted pursuant to HB 2386 (1987). More significantly in the context of an asbestos-related claim the Supreme Court of Kansas considered the case of Tomlinson v. Celotex Corp., 224 Kan. 474, 770 P.2d 825 delivering its opinion on March 3, 1989. The Court ruled that the 10-year limitation applies to claims based on latent diseases and that such statute was constitutional, thus barring any recovery from an exposure to a disease where the exposure had taken place more than 10 years before.

The Court concluded that the 10-year limitation period commenced at the latest upon the last exposure of the plaintiff to the asbestos. The Court recognized that many asbestos-related injuries will not manifest themselves until more than 10 years after the last exposure to the produce. They were also cognizant of the harsh effect this application had in the instant case, but felt constrained to find that the statute barred the claim.

The result of the interpretation in Tomlinson is that Kansas arguably stands alone in barring latent disease cases. Other states do not have a similar period of repose or, if they do, exempt latent disease. Other courts have read latent disease out of the ambit of their statute of limitations, such as in North Carolina.

4. The 1987 amendment.

The 1987 amendment was proposed and hardly debated (HB 2386, 1987) when it was brought on by some representatives of the building industry. The only thing appearing in the legislative history is a letter from Mr. Crockett, an attorney in Wichita, declaring the unfairness of contractors being responsible for buildings for more than 10 years. He cited as an example a case he personally handled (no recovery by the plaintiff) and a hypothecated case of liability for a building that was on the

National Historic Register. The claim was made that the Ruthraff decision was terribly unfair. However, these were the only examples of "horrible imaginables" that were presented, even though there had been 14 years of experience with the Ruthraff decision. If contractors or improvers of real estate are to be specially treated, then perhaps something along the concept of the useful safe life of their product could be engrafted from the Products Liability Act.

WHY THE LEGISLATURE SHOULD ADOPT THIS BILL:

1. Asbestos as an example of why we need this legislation.

The problem of asbestos victims and the wrongdoing of the industry make an excellent example of the basic unfairness of an arbitrary 10-year limit. There are people who are going to die of cancer from a product that was manufactured and distributed after the manufacturer well knew (but the public did not know) of its potential for harm. Motivated by profit, the industry went on releasing and selling this product, knowing that people would be injured and die from exposure to the product, but nevertheless did not warn these people. However, the nature of a disease-process related to the inhaling of the fibers is such that the disease does not show up within a 10-year period in the ordinary case. The period of latency is much longer and only because the people have not discovered their fatal disease is the wrongdoer released from the consequences of his act.

Asbestos fibers, though, are just one example of environmental hazards which are arbitrarily eliminated by an inflexible application of a 10-year statute of limitations. The use of toxic materials and their relationship to disease emerges with more scientific information each year. It is only then that the questions are asked as to what knowledge the industry might have had and whether or not they were negligent in releasing their products and the degree of willfulness or recklessness that might have been involved in the distribution of the product. Thus, the Kansas law bars a claim before victims could even be aware they had a claim.

HB 2689 tries to comprehend not just asbestos (to protect its constitutionality from being special legislation or being an arbitrary classification), but extends to the class of latent diseases and to make use of science and epidemiology. This preserves the basic purpose of a statute of limitations to discourage people from sitting on their rights when they knew or should have known they should be in court. The bill tries to strike a balance, so that just claims can be filed when they are ripe (and not before) and likewise that after a person has a fair opportunity to file the suit, the statute would then expire.

A more extreme measure would simply be to delete the whole reference to the 10-year statute. However, we believe the legislature still wants to deal with the problem of stale claims and thus the bill takes into account the complexity of the scientific issues and fairness to prospective defendant.

The requirements are as follows:

(a) Requires a scientific determination of the fact of the injury -- in the case of asbestos, that would be the determination that a person had a disease such as mesothelioma;

(b) "Identify the fact ... of relationship" -- in the case of asbestos, the hallmark is the finding that asbestos fibers are in fact in the lung. In some cases this requires electronmicroscopy after the tissue has been removed from the person's body. Since there are other causes of lung cancer, you would not want people filing lung cancer suits based on a diagnosis of the disease alone without being able to relate it to the defendant's product.

(c) Relation to adverse party's conduct -- some products and their relationship to disease simply have not been established by science. It is not fair having injured people suing defendants at a time before the scientific evidence is accumulated that establishes a relationship between a product and a disease. It is also unfair to plaintiffs who are ignorant of the relationship. Because of the arbitrary statute of limitations, though, a suit must be filed or be lost by time if the legislature does not accommodate the process of scientific inquiry.

2. The Products Liability Act should not be dead-letter-law.

The Products Liability Act balanced the equities between injured persons and manufacturers of products in such a way that a presumptive safe life was established with specified types of information described to overcome the presumption. With the 1987 Amendment this language lost all of its meaning and victims of product-related injures (including latent diseases) lost their rights that have been preserved in the Products Liability Act. That Act now has no force or effect on "repose."

CONCLUSION:

The combination of the 1987 Amendment which gutted the Products Liability Act's concepts of "useful safe life" and the Supreme Court's harsh interpretation of our statute of limitations as to latent diseases, commands the attention of the legislature to revise the period within which to discover wrongful conduct and seek a remedy for injuries caused by that conduct. The awful tale of asbestos and the disadvantages experienced by Kansans demands an immediate remedy for those Kansans who have been exposed to

asbestos and who will die from its consequences without a lawful remedy solely because they are residents of Kansas and exposed in Kansas.

The legislature in 1963, when it considered this Act, could not have foreseen what the science of 1990 would tell us about latent diseases. The 10-year period which may have appeared reasonable then, clearly is unreasonable now. Our courts have their hands tied in trying to give relief to victims because of the strict construction of K.S.A. 60-513(b). The wording of the legislature works inequities never intended by the legislature. The 1987 Amendment does further harm to those asbestos victims and other victims of latent diseases, as well as gutting the Products Liability Act. This legislation did not stand exposed to all the policy arguments which are advanced today and the decision needs to be reconsidered in the light of this new information.

The work that went into the Products Liability Act should not be overcome by what appeared to be an uncontroversial bill a few years ago. It's time for the legislature to re-visit the issue. HB 2689 strikes a fair balance between victims and wrongdoers and preserves basic policies underpinning limitations on personal injury actions.

On behalf of the Kansas Trial Lawyers Association, I respectfully encourage you to act favorably on this bill.

AMENDMENT TO HB 2689

Strike all of lines 31 through 34 and add a new subsection to read as follows:

(e) Upon the effective date of this act through July 1, 1991, any person whose claim for latent disease accrued on or after March 3, 1987 or had filed a claim prior to March 3, 1989, in any court alleging an action for a latent disease, the provisions of this bill shall revive such cause of action. The intent of this section is to revive causes of action for latent diseases barred by interpretation of the statute in effect prior to this enactment.

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

April 23, 1990

rec'd 4-24-90

Judy Crasper
c/o Sen. Wint Winter, Jr.
State Capitol
Topeka, KS 66612

RE: HB 2689

Dear Judy:

Since the formal hearings on HB 2689 we have corresponded twice with Rep. O'Neal. A copy of these two letters is attached.

I would like to ask that you add these letters as a supplement to the written testimony we have previously submitted regarding HB 2689. Thank you very much.

Sincerely,

Richard H. Mason
Executive Director

encl.
sjs

Attachment 3-a
P&CP Subcommittee - Judiciary
1/10

PALMER & MARQUARDT

ATTORNEYS AT LAW

COLUMBIAN BUILDING
112 W. SIXTH, SUITE 102
TOPEKA, KANSAS 66603-3862
(913) 233-1836

JERRY R. PALMER*
CHRISTEL E. MARQUARDT
KIRK LOWRY

*CERTIFIED CIVIL TRIAL ADVOCATE
BY THE
NATIONAL BOARD OF TRIAL ADVOCACY

April 2, 1990

The Honorable Mike O'Neal
STATE CAPITOL
Topeka, KS 66612

Re: HB 2689

Dear Mike:

I have reviewed the Senate version of the Bill. I have talked with Richard and he indicated you still had concern about Home Builders. The Senate version, though, needs to be fine-tuned some more if it's going to carry out the mutual intent of all the parties. I understand the mutual intent to include three things:

1. To exempt latent diseases from the 10-year repose.

2. To restore other product liability cases to limitations controlled by 60-3303 rather than the flat 10 years.

3. To revive latent disease cases barred by the Celotex decision.

This Bill probably accomplishes the first and third but does not accomplish the second.

I would suggest that paragraph C then of 3303 be revised to read as follows:

> The provisions of this statute supersede the application of K.S.A. 60-513, and amendments thereto.

Subsection c when it was initially enacted was intended to apply 60-513 as interpreted by the supreme court in the Ruthraff decision. The 1987 amendment therefore turned that section on its head. Even KDCI suggested language for 60-513 which would have permitted the useful safe life issue to control the limitations. Product manufacturers were unintended beneficiaries of the 1987 amendment.

FAX (913) 233-3703

3a - 2/10

My only other suggestion would be in paragraph D to change the word "manufacturer" to "seller" and then strike the words "produced by such manufacturer." Seller is the broader concept. I still don't think it includes Home Builders as the definition specifically include manufacturers, wholesalers, distributors and retailers.

The Products Liability Act has provisions then to exempt the various sellers if you can reach people on up the line. If you want to be more neutral about it you could just delete the words "in a product liability claim against the manufacturer," capitalize the "t" on "the" and then delete the words "produced by such manufacturer."

I really don't think there is any problem for Home Builders by leaving the Bill in the form that it came out of the Senate Judiciary Committee amending 60-513. I do believe amending 60-513 is the better approach since that is where people look for limitations. It is possible that lawyers will misadvise clients about liability claims by a straight reference to 60-513 and the interpretations of that statute. Thus, your professional liability insurers should have some real concerns as the toughest cases to defend in a legal malpractice case is a missed statute of limitations. I can certainly envision the lawyer reading 60-513 and telling someone that they have lost their cause of action because they failed to look at 60-3303, the unusual place to find a limitation. That error then becomes a legal malpractice claim affecting Kansas legal malpractice rates rather than a culpable foreign manufacturer's rates.

I would urge you to reconsider your decision about which statute to amend but if you are married to this idea of amending 3303, please do carry out the intent by amending subparagraph C.

Yours truly,

JERRY R. PALMER

JRP/sd

3a-3/10

delivery was not discoverable by a reasonably prudent person until more than 10 years after the time of delivery, or if the harm caused within 10 years after the time of delivery, did not manifest itself until after that time.

(c) ~~Nothing~~ Except as provided in subsection (d), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto. This statute supersedes the

(d) In a product liability claim against the ~~manufacturer~~ seller, the ten-year limitation, as defined in K.S.A. 60-513, and amendments thereto, shall not apply to the time to discover a disease which is latent caused by exposure to a harmful material ~~produced by such manufacturer,~~ in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.";

On page 3, in line 1, by striking "1989 Supp. 60-513" and inserting "60-3303";

On page 1, in the title, in line 14, by striking "1989 Supp. 60-513" and inserting "60-3303"

Senator _____

3a- 4/10

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

April 17, 1990

Rep. Mike O'Neal
2605 Heather Pkwy
Hutchinson, KS 67502

Dear Mike:

There are plenty of major, controversial issues on the agenda for the veto session. If at all possible, I'd much prefer that HB 2689 not be on the "controversial" list. To that end, I am writing to re-state KTLA's position in the hopes an "agreed to" bill can be developed as quickly as possible.

As you will recall from Jerry Palmer's letter to you dated April 2, we understand the mutual intent of HB 2689 to be:

1. To exempt latent diseases from the 10 year statute repose.

2. To restore other product liability cases to limitations controlled by 60-3303, rather than the flat 10 years.

3. To revive latent disease cases barred by the Celotex decision.

In its present form, HB 2689 does not adequately address the second goal. We suggest lines 9 and 10 of page 4 be amended to read as follows: "The provisions of this statute supersede the application of K.S.A. 60-513, and amendments thereto."

You will note the other suggested changes we have made on page 4 of the attached balloon. These are being recommended because the term "seller", as defined in the product liability act is a much broader concept than "manufacturer". At the same time, we do not believe it is so broad as to include home builders.

Obviously, our balloon contemplates a modification in the Senate version of the bill. As you know, we still believe the version passed by the Senate Judiciary Committee is a more preferable vehicle.

First, we simply do not feel the Senate Committee language creates problems for the home builders.

3a- 5/10

Second, K.S.A. 60-513 is considered by most practitioners to be the primary statute of limitations law. With the change in latent disease cases being proposed in this bill, it is paramount that it be clearly understood and implemented promptly. We think addressing the issue in "513" would facilitate that process.

Additionally, Jerry has made our arguments that using the K.S.A. 60-513 statute very well may preclude some avoidable legal malpractice cases in the future.

Mike, if there's further information we can provide, please let me know. Otherwise, see you April 25.

Sincerely,

Richard H. Mason
Executive Director

cc: Jerry Palmer
encl.
sjs

3a- 6/10

[As Amended by Senate on Final Action]

As Amended by Senate Committee

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1990

HOUSE BILL No. 2689

By Committee on Judiciary

1-23

AN ACT concerning civil procedure; relating to limitation of actions; amending K.S.A. ~~1989 Supp.~~ ~~60-513~~ *[60-3303]* and repealing the existing section.

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

~~Section 1.~~ ~~K.S.A. 1989 Supp. 60-513 is hereby amended to read as follows: 60-513. (a) The following actions shall be brought within two years:~~

~~(1) An action for trespass upon real property.~~

~~(2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.~~

~~(3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.~~

~~(4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.~~

~~(5) An action for wrongful death.~~

~~(6) An action to recover for an ionizing radiation injury as provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.~~

~~(7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract.~~

~~(b) Except as provided in subsection (c), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in~~

7/10
3a-

~~no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action or requires a scientific determination to identify the fact of the injury or its relationship to another person's wrongful conduct, then the period of limitation shall not commence until the injured party knew or should have known of the fact of the injury and its relation to the adverse party's conduct. until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action. The 10-year limitation shall not apply to:~~

~~(1) After the time to bring a product liability claim, as defined by K.S.A. 60-3302, and amendments thereto, and as procedurally prescribed in K.S.A. 60-3303, and amendments thereto; or~~

~~(2) the time to discover a disease which is latent caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.~~

~~(c) A cause of action arising out of the rendering of or the failure to render professional services by a health care provider shall be deemed to have accrued at the time of the occurrence of the act giving rise to the cause of action, unless the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than four years beyond the time of the act giving rise to the cause of action.~~

~~(d) The provisions of this section as it was constituted prior to July 1, 1987, shall continue in force and effect for a period of two years from that date with respect to any act giving rise to a cause of action occurring prior to that date.~~

[Section 1. K.S.A. 60-3303 is hereby amended to read as follows: 60-3303. (a) (1) Except as provided in paragraph (2) of subsection (a) of this section, a product seller shall not be subject to liability in a product liability claim if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired. "Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored

3a-8/10

in a safe manner. For the purposes of this section, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

[Examples of evidence that is especially probative in determining whether a product's useful safe life had expired include:

[(A) The amount of wear and tear to which the product had been subject;

[(B) the effect of deterioration from natural causes, and from climate and other conditions under which the product was used or stored;

[(C) the normal practices of the user, similar users and the product seller with respect to the circumstances, frequency and purposes of the product's use, and with respect to repairs, renewals and replacements;

[(D) any representations, instructions or warnings made by the product seller concerning proper maintenance, storage and use of the product or the expected useful safe life of the product; and

[(E) any modification or alteration of the product by a user or third party.

[(2) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life to the extent that the product seller has expressly warranted the product for a longer period.

[(b) (1) In claims that involve harm caused more than 10 years after time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by clear and convincing evidence.

[(2) (A) If a product seller expressly warrants that its product can be utilized safely for a period longer than 10 years, the period of repose, after which the presumption created in paragraph (1) of this subsection arises, shall be extended according to that warranty or promise.

[(B) The ten-year period of repose established in paragraph (1) of this subsection does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm.

[(C) Nothing contained in this subsection shall affect the right of any person liable under a product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the product liability claim.

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3-9 10/10

[(D) The ten-year period of repose established in paragraph (1) of this subsection shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by a reasonably prudent person until more than 10 years after the time of delivery, or if the harm caused within 10 years after the time of delivery, did not manifest itself until after that time.

~~*[(c) Nothing Except as provided in subsection (d), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto.*~~ The provisions of this statute supersede

[(d) In a product liability claim against the ~~manufacturer~~ seller, the ten-year limitation, as defined in K.S.A. 60-513, and amendments thereto, shall not apply to the time to discover a disease which is latent caused by exposure to a harmful material ~~produced by such manufacturer~~, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.]

~~(e) Upon the effective date of this act through December 31, 1990, the provisions of subsection (c)(2) [(b)(2)] shall apply to an action based upon a cause of action arising thereunder and accruing on or after March 3, 1987 and before the effective date of this act.~~

(e) Upon the effective date of this act through July 1, 1991, any person whose claim for latent disease accrued on or after March 3, 1987, or who had filed a claim prior to March 3, 1989, in any court alleging an action for a latent disease, the provisions of this section shall revive such cause of action. The intent of this section is to revive causes of action for latent diseases barred by interpretation of ~~the statute~~ in effect prior to this enactment. K.S.A. 60-513

Sec. 2. K.S.A. ~~1989~~ ~~Supp.~~ ~~60-513~~ *[60-3303]* is hereby repealed.

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

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

SENATE JUDICIAL SUB-COMMITTEE ON

PROBATE AND CIVIL PROCEDURE

TESTIMONY IN SUPPORT OF

HOUSE BILL 2689

By

John W. Campbell

Deputy Attorney General

March 23, 1990

Mr. Chairman, Members of the Committee:

My name is John Campbell. I am a Deputy Attorney General for the State of Kansas. Attorney General Robert T. Stephan has asked me to testify in support of House Bill 2689.

HB 2689 would amend the Kansas statute of limitations. It would allow victims of latent diseases caused by an exposure to harmful materials a realistic opportunity to seek a court remedy against those whose negligence or wrongdoing caused their disease. Such an

Attachment 4
P&CP Subcommittee - Judiciary
3-23-90

amendment is needed. It is especially needed for those persons who are exposed to hazardous, toxic or radioactive materials in the work place.

Workers are exposed to chemicals and minerals which can cause diseases. Exposure to some of these materials can result in immediate harm. The law provides remedies in such cases. However, other materials such as asbestos, do not result in immediate harm, but can cause diseases which manifest themselves 10, 15, even 25 years after exposure.

Under current Kansas law, if one was exposed to asbestos and developed asbestosis and/or a cancer 10 years and one day after his last exposure, our courts could not provide him with a remedy. This is true even though there was no way for this person to know that his exposure would result in disease. By the adoption of HB 2689, Kansas would join the states who have adopted the discovery rule on latent diseases caused by exposure to harmful materials. This rule states that one must seek judicial remedies for a disease caused by the negligence or wrongdoing of another, within two years of the time the victim knew or should have known that he had, in fact, developed a disease. Courts have upheld this discovery rule in Louisiana, Maryland, Massachusetts, Michigan, South Carolina, Texas, Colorado, California, Delaware, Florida, Georgia, Illinois, New Jersey, North Carolina, Ohio,

Oklahoma, Pennsylvania, Tennessee, West Virginia, Wisconsin, Connecticut, and New York.

A worker denied access to the courts faces financial ruin. He is totally dependent on his own resources and whatever public assistance he can obtain. HB 2689 would provide the opportunity to distribute the financial burdens associated with the devastating diseases caused by asbestos and other hazardous materials found in the work place.

The Attorney General requests the sub-committee adopt HB 2689 and correct this situation.

4-3/3

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 23, 1990

TO: Senate Judiciary Committee

FROM: Kansas Medical Society Chip Wheelen

SUBJECT: House Bill 2689; Statute of Limitations - Latent Diseases

Thank you for this opportunity to offer neutral testimony on the subject of HB 2689. We wish to express our preference for the provisions of HB 2689 by contrast to SB 689. This is because the wording of SB 689 is not sufficiently precise to preclude an action brought against a health care provider for failure to diagnose a latent disease which, by its nature, is not possible to diagnose at the time of exposure.

If SB 689 receives a hearing in the House Judiciary Committee, we will express our opposition. We do not, however, have any objections to the provisions of HB 2689. Thank you for considering our concerns.

CW:lg

Attachment 5
P&CP Subcommittee - Judiciary
3-23-90

1/1

STATE OF KANSAS

ARTHUR DOUVILLE
REPRESENTATIVE, TWENTIETH DISTRICT
JOHNSON COUNTY
9600 WOODSON
OVERLAND PARK, KANSAS 66207-2844

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: LABOR AND INDUSTRY
MEMBER: FEDERAL AND STATE AFFAIRS
JUDICIARY
INTERSTATE COOPERATION

TO: Judiciary Subcommittee on Probate and Civil Procedures

FROM: Representative Arthur Douville

RE: HB 3054

DATE: March 23, 1990

Pro tem judges appointed pursuant to KSA 20-310a have the full authority and power of a district judge.

If a pro tem judge is appointed pursuant to subsection (d) or (e) of KSA 20-310, the pro tem judge is limited in jurisdiction to hear the original trial of actions filed pursuant to small claims procedure.

What this bill does is extend the authority of pro tem judges appointed pursuant to subsection (d) and (e) of KSA 20-310 to include actions within the jurisdiction of the district magistrate judge.

Appeals would be heard by a district judge de novo according to either the statutory small claims procedure or the statute controlling an appeal from a district magistrate judge, respectively.

There is no fiscal note to the state. It is still subject to the budget limitations of the district court. It would be helpful to all administrative law judges in handling their docket in periods of overload.

The supplementary note on HB 3054 may be somewhat misleading in that under present law, judges appointed under subsections (d) and (e) do presently handle small claims.

AWD/kj

Attachment 6
P&CP Subcommittee - Judiciary
3-23-90

1/1

Testimony of Judge G. Joseph Pierron concerning HB 2019
delivered January 23, 1989

HB 2019 attempts to provide some protection for homeowners from abuses that sometime occur from what is commonly referred to as "equity skimming."

Kansas provides homeowners with numerous rights during mortgage foreclosure procedures. One of the most important of these rights is the redemption period homeowners have after a foreclosure is entered which allows them to remain in the residence and perhaps catch the payments up. Depending on how much of the mortgage has been paid, the redemption period can be as long as twelve months.

Homeowners may sell their rights of redemption. They are sometimes purchased by persons who specialize in such transactions who are commonly referred to as "equity skimmers" or "equiteers." The purchaser of the redemption rights usually rent the residence out during the redemption period or sometimes redeems the property.

There is nothing wrong with converting the redemption rights into cash. Unfortunately, the situation can lead to the homeowner being defrauded of rights. Too often the homeowner, who is facing the loss of the home and is probably in bad financial shape, can be cheated.

Unscrupulous equity skimmers - not all of them to be sure - may tell the homeowners that they will try to help get the payments caught up or wish to redeem the property themselves. Instead, the skimmers will rent the property out during the period of redemption, pocket the rents and let the residence go back to the mortgage holder. The skimmers, who are mainly interested in squeezing quick money out of the house, will not be careful to whom they rent it. The homeowner may then find he has a worthless promise from the skimmer, the redemption period gone and the house trashed by transient renters. To add insult to injury, due to the waste of the redemption period and the damage to the house, the homeowmer may also have a deficiency judgment against him.

HB 2019 is not a panacea, but it does introduce a "truth in labeling" philosophy to purchases of homeowners' equity. The bill requires the homeowner be informed of the significance of the sale of home equity in writing in the form provided by the bill. It also requires the homeowner be informed that any promises concerning the transaction must be in writing and allows a right of recission within five days after the signing of the agreement.

While not foolproof and certainly not a substitute for common sense, the act will probably help protect persons under stress from being deprived of what the legislature of this state has sought to safeguard - the equity in their homes.

Attachment 7
P&CP Subcommittee - Judiciary
3-23-90

CHAMBERS OF
G. JOSEPH PIERRON
DISTRICT JUDGE
COURT NO. 3

DISTRICT COURT OF KANSAS
TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

OFFICERS:

MARILYN ZELLER
ADMINISTRATIVE ASSISTANT

GLENDA C. READ, C.S.R.
OFFICIAL COURT REPORTER

(913) 782-5000, EXT. 472

April 4, 1989

Mr. Marvin E. Thompson
Thompson, Arthur & Davidson
525 Main Street
Russell, Kansas 67665

In re: HB-2019 - Home Equity Protection

Dear Mr. Thompson:

Thank you very much for your quick response to my letter of March 28.

Concerning your inquiry as to how widespread the practice of equity skimming is, attorneys representing mortgage holding institutions in this area indicate it is quite widespread. Of course, the better educated and economically well off the home owner, the less likely he is to be victimized. Unfortunately, those who need their equity rights the most are oftentimes the ones who are fast talked out of them by equity skimmers who approach them with cash and quit claim deeds.

I am enclosing a copy of the testimony I gave in support of the bill this year which generally sets out Judge Anderson's and my concerns.

Although our main focus is on the wrongs done to homeowners, unscrupulous equiteers also gum up the foreclosure process with obstructionist tactics which increase the cost of foreclosure proceedings and benefit only the equiteer.

As I said in my testimony, all equiteers are not unscrupulous and those providing legitimate services and conducting their businesses fairly would not be penalized with a "truth in lending" type approach.

Some attorneys in this area who represent mortgage holders indicated they would be glad to give input on this

subject if it would be helpful. They all have their own horror stories.

We would stress that the purpose of our legislative recommendation is to help protect the homeowner, as opposed to the mortgage holding institutions who have a much greater ability to take care of themselves.

Please feel free to contact us if we can be of further assistance. Judge Anderson and I believe that some form of home equity protection legislation is needed in Kansas and might prove to be a model, or at least a starting place, for other states wishing to protect their homeowners.

Sincerely,

G. Joseph Pierron

GJP:mz
Enclosure

cc: Honorable John Anderson III

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1989

[] indicate deletions
Approved by Judicial Council
12/1/89

7-4

HOUSE BILL No. 2019

By Representative Vancrum

1-9

AN ACT concerning home equity protection.

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

Section 1. Any assignment or transfer of the rights of the defendant owner in relation to real property which is the subject of a pending action to foreclose one or more mortgages and which is the [domicile] of the owner is subject to the following requirements unless such transfer or assignment is made [to] the mortgagee or its wholly owned subsidiary [or] to a party who then [immediately] resides in and uses the property as the party's [domicile]:

residence

unless the defendant owner or a member of the defendant owner's immediate family continues to reside in the property or

residence

(a) All such transfers or assignments shall be in writing. All terms, conditions and agreements in consideration for the transfer or assignment shall be set out in detail in a written agreement, dated, and signed by all parties to the agreement. Copies of both the agreement and disclosure statement shall be provided to the transferor or assignor by the transferee or assignee.

(b) All such transfers or assignments, as described in subsection (a), are subject to recission by the defendant owner within five ~~calendar~~ ~~days~~ [business days, as defined by K.S.A. 45-217, and amendments thereto,] of the date of the defendant owner's execution of the agreement. Such recission, if made, shall be in writing, signed by the defendant owner, or by any one of the defendant owners if there be more than one, and mailed to the buyer by certified mail. This right of recission may not be waived, sold or abrogated in any way.

(c) All such agreements, as described in subsection (a), to be effective, must contain a disclosure statement which shall be signed

by all parties to the agreement and which shall be substantially in the following form:

NOTICE. READ ALL OF THIS DISCLOSURE STATEMENT CAREFULLY BEFORE SIGNING IT. YOU HAVE A RIGHT TO CONSULT WITH AN ATTORNEY OR ANOTHER PERSON BEFORE SIGNING IT. YOU ARE SELLING OR GIVING UP IMPORTANT RIGHTS.

I, (owner's name), as the owner of (legal description of the property being foreclosed) commonly known as (address of such property), enter into an agreement with (buyer's name) for the sale of the above-mentioned property which is my home. I realize I have the following rights:

(1) Should this property be in foreclosure on any mortgage, I ~~may be entitled to~~ a period of redemption following the end of foreclosure proceedings during which time I might be able to redeem the residence. This period could be from six months to 12 months, depending on the amount of the mortgage and value of the house.

(2) During the period of redemption I have the right to remain in my residence or, if allowed by local ordinance, to make other uses of it, such as renting it to others.

(3) I have the right to sell my rights to the house. Following the signing of the agreement to sell, the buyer has the obligation to provide me with a copy of the sales agreement and this disclosure statement.

(5) (4) I ALSO HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITH THE BUYER WITHIN FIVE ~~DAYS~~ [BUSINESS DAYS, AS DEFINED BY K.S.A. 45-217, AND AMENDMENTS THERETO,] AFTER THE SIGNING OF THE AGREEMENT. I CANNOT AGREE TO GIVE UP OR SELL THIS RIGHT IN ANY WAY.

(6) (5) Everything that is being promised to me or given to me for the purchase of my rights must be in the agreement signed by us. This includes the amount being paid me and any agreement concerning what efforts will be made by the buyer to bring the mortgage payments up to date and any promises concerning what will be done with any proceeds from the renting or selling of the property. Anything not in the written agreement ~~is not~~ might not be enforceable.

(7) (6) IF I SELL MY RIGHTS AND THE HOUSE IS FORECLOSED UPON, I MAY STILL BE RESPONSIBLE FOR ANY AMOUNTS STILL OWED ON THE HOUSE IF ITS SALE DOES NOT RAISE ENOUGH TO COVER THE ENTIRE MORTGAGE AND THE FORECLOSURE COSTS. IF THE HOUSE IS FORECLOSED UPON, IT IS LIKELY THAT THIS WILL BE REPORTED TO THOSE WHO KEEP CREDIT HISTORIES AND THIS MIGHT INJURE MY CREDIT RATING.

(8) (7) I realize this is a serious matter and that I may wish to consult with an attorney to make sure my important rights in my home are being protected before signing any agreement.

(9) (8) This provision is not intended to deprive the homeowner of any other right under the law.

_____
OWNER-SELLER

_____
OWNER-SELLER

I ACKNOWLEDGE THAT THE OWNER-SELLER'S RECISSION OF THE AGREEMENT IF MADE PURSUANT TO PARAGRAPH (4) ABOVE, MAY BE MAILED TO ME BY CERTIFIED MAIL AT THE FOLLOWING ADDRESS:
(BUYER'S ADDRESS)

_____
BUYER

(d) Failure to comply with the pertinent provisions of this section shall render

have entered
residence
am
sale in
period
have the right
, the unpaid balance thereof
rent
my residence
ANY SALES
OR DEED

(4) If I have paid mortgage insurance premiums, I have ~~the right~~ ~~to the application of the mortgage insurance coverage to any deficiency arising from sale for less than the amount of the judgment~~.

may
other rights
guaranty

under the terms of the insurance agreement or under applicable state or federal law

7- 5/6

the transfer or assignment voidable at the election of the transferor.

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