Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach
Chairperson at

3:30 ~~a.m.~~/p.m. on March 26, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Macy, Douville and Sebelius, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research

Jill Wolters, Office of Revisor of Statutes

Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Representative Eugene L. Shore
Senator August Bogina
Gregory J. Stuckey, Wichita, representing Southwest Kansas Royalty Owners Assoc.
Jonathan Small, Attorney and lobbyist for Koch Industries
Donald P. Schnacke, representing Kansas Independent Oil and Gas Assoc. (KIOGA)
Bill Fuller, representing Kansas Farm Bureau
Chip Gill, representing ARCO Oil and Gas Company
Richard Schodorf, Chief Attorney, Consumer Fraud and Economic Crime Division, Sedgwick County, Office of the District Attorney
Eugene Kordall, representing National Telemarketing, Inc. and Blue Valley Telemarketing, Inc.
John Peterson, representing Kansas Cemetery Association
Whitney Damron, in lieu of Steve Kearney, for Pete McGill and Associates, Governmental Relations Counsel for State Independent Telephone Association (SIIA)
Rob Hodges, President, Kansas Telecommunications Association
Walter N. Scott, Jr. representing Associated Credit Bureau of Kansas
Mike Stewart, Vice President/General Manager,Trans Union Corporation-Wichita Division
Jim Holderman, Wichita Division, Trans Union Corporation
Jerry Palmer, representing Kansas Trial Lawyers Association
Janet Stubbs, Executive Director for Home Builders Association of Kansas
Trudy Aaron, Executive Director of the American Institute of Architects
Chip Wheelen, Kansas Medical Society
Gerald Green, Legislative Chairman for Kansas Association of Defense Counsel
James S. Maag, representing The Kansas Bankers Association
Carolyn A. Adams, Vice President and General Counsel, Bank IV, Topeka, N.A.
Ron Smith, representing Kansas Bar Association

The Chairman called for hearings on SB 12, security interests in oil and gas production Re: Proposal No. 8; and SB 13, interest on proceeds from oil and gas production Re: Proposal No. 8.

Representative Eugene L. Shore appeared in support of SB's 12 and 13. (See Attachment # 1).

There were no committee questions.

The Chairman requested that the hearings on SB 12 and 13 be suspended for several minutes so that Senator Bogina, a conferee on SB 75, might testify and return to his Senate seat. The conferees on SB's 12 and 13 agreed.

The Chairman called for hearing on SB 75, regulation of unsolicited telephone calls.

Senator Bogina, appeared in support of SB 75. (See Attachment # 2).

Committee questions followed.

The Chairman suspended the hearing on SB 75 to be resumed at the close of the hearings on SB 12 and SB 13.

Gregory J. Stuckey, Wichita, Kansas, testified on behalf of the Southwest Kansas Royalty Owners Association, in support of SB's 12 and 13. (See Attachments #3 and #4).

Committee questions followed.

Jonathan Small, Attorney and Lobbyist for Koch Industries, appeared in support of SB's 12 and 13. (See Attachments # 5 and 6).

There were no committee questions.

Donald P. Schnacke, representing the Kansas Independent Oil and Gas Association (KIOGA) appeared in support of SB's 12 and 13. (See Attachments # 7 and #8).

There were no committee questions.

Bill Fuller, representing Kansas Farm Bureau, appeared in support of SB's 12 and 13. (See Attachment # 9).

There were no committee questions.

Chip Gill, representing ARCO Oil and Gas Company, appeared in general support of SB 13 but noted concerns. (See Attachment # 10).

Committee questions followed.

There being no further conferees, the hearing on SB's 12 and 13 were closed.

The Chairman called for action on SB's 12 and 13.

Representative Smith made a motion that SB's 12 and 13 be passed. Representative Rock seconded the motion. The motion carried.

The Chairman called for hearings on SB 75 and SB 133, telemarketing fraud included in consumer protection act, to be resumed.

Richard Schodorf, City Attorney, Consumer Fraud and Economic Crime Division, Sedgwick County, Office of the District Attorney, appeared and explained that SB's 75, 133 and 134 (by Federal and State Affairs) are companion bills. Mr. Schodorf recommended that SB's 75 and SB 134 be put into the Kansas Consumer Protection Act and said he supports the intent of SB 75. Mr. Schodorf explained that SB 133 provides the consumer a cooling-off period. (See Attachment # 11).

Eugene Kordall, representing National Telemarketing, Incorporated, and Blue Valley Tele-marketing Incorporated, appeared in opposition to SB 75, and recommended changes in language of SB 133. (See Attachments # 12 and #13.)

The Chairman requested Mr. Kordall to prepare balloon bills setting out proposed changes to SB's 75 and 133, which could be sent to a sub-committee along with prepared testimony.

John Peterson, representing the Kansas Cemetery Association, submitted a balloon amendment to SB 75 for the committee's consideration; which would make the three requirements of SB 75 apply to all telephone solicitations. (See Attachment # 14).

Whitney Damron appeared in lieu of Steve Kearney, for Pete McGill and Associates, Governmental Relations Counsel for State Independent Telephone Association (SITA). Mr. Damron said his organization supports Eugene Kordahl's testimony in connection with SB's 75 and 133.

Rob Hodges, President, Kansas Telecommunications Association, submitted written testimony, in general support of SB 75, but expressing one concern. (See Attachment # 15).

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 a.m./p.m. on March 26, 1991

There being no further conferees, the hearings were closed on SB's 75 and 133.

The Chairman called for continuation of hearing on SB 181, procedures for correcting inaccuracies in consumer credit reports; also previously heard on 3/20/91.

Walter N. Scott, Jr., representing the Associated Credit Bureaus of Kansas, appeared in opposition to SB 181. (See Attachment # 16).

Mike Stewart, Vice President/General Manager, Trans Union Corporation-Wichita Division, appeared to testify in opposition to SB 181. Mr. Stewart said SB 181 appears to be unnecessary, that existing problems can be addressed by current law. (See Attachment # 17).

Committee questions followed.

Mr. Jim Holderman, Wichita Division, Trans Union Corporation, noted that current procedures are adequate.

There being no further conferees, the hearing on SB 181 was closed.

The Chairman called for hearing on SB 103, statute of limitations provision regarding 10-year limitation does not affect product liability claim.

Jerry Palmer, representing the Kansas Trial Lawyers Association appeared in support of SB 103. (See Attachment # 18).

Committee questions followed.

Janet Stubbs, Executive Director for the Home Builders Association of Kansas, appeared in opposition to SB 103. (See Attachment # 19).

Trudy Aaron, Executive Director of the American Institute of Architects, appeared in opposition to SB 103. (See Attachment # 20).

Committee questions followed.

The Chairman asked Ms. Aaron to check with her counsel to see if the intent of the Senate language is clearly defined then would the concerns be alleviated.

Chip Wheelen, Kansas Medical Society, appeared in opposition to SB 103. (See Attachment # 21). Mr. Wheelen offered a balloon amendment for SB 103.

Committee questions followed.

Gerald Green, Legislative Chairman for the Kansas Association of Defense Counsel submitted written testimony in opposition to SB 103. (See Attachment # 22).

There being no further conferees, the hearing on SB 103 was closed.

The Chairman called for hearing on SB 49, financial institutions to receive fee for garnishment.

James S. Maag, representing The Kansas Bankers Association, appeared to testify in support of SB 49. (See Attachment # 23).

Committee questions followed.

Carolyn A. Adams, Vice President and General Counsel, Bank IV, Topeka, N.A., appeared to express her support for SB 49, but noted the bill needs further amendment and an interim study might be desirable. (See Attachment # 24).

The Chairman invited Ms. Adams to submit a balloon amendment to the committee for consideration.

Ron Smith, representing the Kansas Bar Association, appeared to comment for clarification that KBA supports SB 49 as it is currently drafted.

There being no further conferees, the hearing on SB 49 was closed.

The Chairman appointed a sub-committee to study HB's 2098, 2248, and 2398, which had been referred to exempt committees. Sub-committee members are Representative Smith, Chairman; Representative Gregory, Representative Carmody and Representative Vancrum.

Representative Smith presented a verbal sub-committee report on SB 292, creating the crime involving the laundering of money. Representative Smith said the sub-committee would re-insert language deleted by the Senate in Lines 17 through 25, and recommended a substitute bill be passed.

Representative Smith made a motion that the sub-committee report be adopted. Representative Lawrence seconded the motion. The motion carried.

Representative Smith made a motion that a substitute bill for SB 292 be passed. Representative Hamilton seconded the motion. The motion carried.

The meeting adjourned at 5:20 P.M. The next meeting is scheduled for March 26, 1991, 3:30 P.M. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/26/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Walt Scott	Topeka	Assoc Credit Bureaus
Mike Stevens	Wichita, Ks	Trans Union
Scottie Shafer	~~Kansas City, Mo.~~ Kansas City, Mo. Inc.	CSC Credit Svs
TRUDY ARCOLA	Topeka	Comm Dept of Corrections
Joe Kisner + Richard L. Schodorf	Wichita	Office of District Attorney
Whitney Damron	Topeka	SITA
Eugene Hardalal	Home, Ks	Blue Valley Tel
Jim Caplinger	Topeka	SITA
Jack Glaves	Wichita	Penbroke Eastern
Kathy Taylor	Topeka	Ks Bankers Assn
Carolyn A. Adams	Topeka	BANK IV
Chuck Stones	"	KBA
Chip Wheelen	Topeka	Ks Medical Soc.
Bill Henry	Topeka	Ks Engineering Soc.
Kathy Peterson	" " "	Ks Hemophilia Soc. Dealers
Dave Pikos	Topeka	SWBT
Barb Lombardo	Topeka	AG
Boyd Grant	"	KCCI
D. WAYNE ZIMMERMAN	OLATHE, KS	SELF

STATE OF KANSAS

EUGENE L. SHORE
REPRESENTATIVE, 124TH DISTRICT
GRANT, W. HASKELL, MORTON,
STANTON AND STEVENS COUNTY
ROUTE 2
JOHNSON, KANSAS 67855
(316) 492-2449

ROOM 446-N, CAPITOL BLDG.
TOPEKA, KANSAS 66612-1586
(913) 296-7677

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT
TAXATION
TRANSPORTATION

Testimony on SB 12 and SB 13 **Representative Eugene L. Shore**
House Judiciary Committee
March 26, 1991
3:30 p.m. - Room 313S

Senate bills 12 and 13 are bills requested by the Southwest Kansas Royalty Owners Association. Similar bills passed the House 119 to 6 and 123 to 1 last year. The interest bill was heard in the Energy Committee and the lien bill in Judiciary. Since there was disagreement as to the effect of the bills, they were sent to interim committee for all parties to work out their differences and come up with compromise bills.

All interested parties were invited to several meetings in Wichita where agreement was reached on the compromise bills. The interim committee then approved both bills in the agreed to form. The Senate held hearings on both bills and approved both bills without amendments 40-0.

Senate bill 12 provides a security interest in favor of interest owners including the royalty owners. Such legislation would make the royalty owner a secured creditor in case a producer company files for bankruptcy. Senate bill 13 provides for interest to be paid on royalty which is not paid in a timely manner. It doesn't force payment of royalty by a certain time but says if not paid in a timely manner, interest is owed in addition to the royalty. Such interest can be paid at an established rate or the funds can be placed in an interest bearing account. These bills are similar to Texas law which seems to be working very well.

To this Point we have had total agreement between the parties. I understand there may be some questions from parties which chose not to be involved in the compromise developed over the past year. This has been a carefully crafted agreement with give and take on each side. I urge you to pass the bill unamended.

Mr. Greg Stucky will explain the bills.

HJUD
Attachment # 1
3-26-91

STATE OF KANSAS

AUGUST BOGINA, JR., P.E.
SENATOR, TENTH DISTRICT
JOHNSON COUNTY
5747 RICHARDS CIRCLE
SHAWNEE, KS 66216

TOPEKA

SENATE CHAMBER
STATE CAPITOL
TOPEKA, KANSAS 66612
(913) 296-7362

COMMITTEE ASSIGNMENTS
CHAIRMAN WAYS AND MEANS
CHAIRMAN LEGISLATIVE POST AUDIT
VICE CHAIR GOVERNMENTAL ORGANIZATION
MEMBER FINANCE COUNCIL

Mr. Chairman and Members of the Committee:

Senate Bill 75 attempts to address a problem many of us have with telephone solicitors. The prime mover of this bill is a friend who has a bed-ridden invalid wife who pays for a separate private unlisted line and phone for her use in case of emergency. Unfortunately telephone solicitors in person and via electronic recording make calls to that phone against his wishes and desires. Furthermore, often times the recorded call does not disconnect in a timely manner when the phone is supposedly disconnected. This latter event can be a danger in case an emergency does arise and the phone is needed. In this real case, this issue is above and beyond mere nuisance to the recipient of those calls.

I believe a letter from Mary Fulco (attached) probably expresses a most valid opinion. "I feel, I pay for my phone & no one is allowed to tap in on my electric line or gas lines, nor interrupt by cable TV. Why should <u>just anyone</u> be able to use my phone line?" I agree with that attitude. I understand that I can hang up the phone and not listen to the sales pitch, but at that point I have already been inconvenienced and interrupted by an unnecessary and unwanted telephone call.

I have a tape from a friend's answering machine whereon an electronic machine "talks" to the recorder for a full five minutes about a solicitation and in the process leaves a "900" number to respond to the sales pitch. The "900" number calls are charged to the person making the call. Therefore, the unsuspecting potential "pigeon" will pay for the call if they respond to the solicitation.

All of you probably have been disturbed by these calls. If so, this is your opportunity to attempt to eliminate that unwanted intrusion. I am aware of some friendly amendments proposed by Southwestern Bell Telephone and Kansas Telecommunications Association that could enhance the qualities of the bill. I would ask that you be wary of other proposed amendments that might weaken the desirable features. One important feature in the bill is the disconnect time found on page 2, lines 17 through 20. That time must be reasonable, but not excessive. As an indication, the next time you receive a computer call, hang up, pick up the phone after a few seconds, and you will probably find the computer still trying to sell you

HJUD
Attachment #2
3-26-91

some unwanted merchandise. Do this with different computer calls, you would probably be surprised how long your line is "tied up" by the calling machine.

Mr. Chairman and members of the committee, I believe this is a consumer measure. Your constituents will appreciate the passage of the bill. The solicitors will not like you, especially those that might be penalized for violating this Act.

I respectfully request that you recommend the bill favorable for passage.

Thank you. I will be pleased to attempt to answer any questions the members may have.

Respectfully submitted,

Senator Gus Bogina
Senator, Tenth District

Attachment

Mary Zulco
8404 W. 111 Terr.
O. P. Ks. 66210

Feb 12, 1990

Senator Gus Bogina,

I am so elated about your legislature regarding telemarketing. I have written to my State & National congressmen. I have written twice to Telephone Preference Service, asking my number be removed from their lists. I have even changed my phone number. Nothing has helped.

I have gotten out of the bathtub, burned my dinner & been bothered in my sickbed by these calls. Just yesterday my baby grandson was awakened by a call from a siding company (I have an all stucco house).

I feel, I pay for my phone & no one is allowed to tap in on my electric line or gas lines, nor interrupt my cable TV. Why should just anyone be able to use my phone line?

Thank you
Thank you
Thank you ——
Mary Zulco

STATEMENT OF GREGORY J. STUCKY
IN SUPPORT OF SENATE BILL NO. 12
BEFORE THE JUDICIARY COMMITTEE
OF THE KANSAS HOUSE OF REPRESENTATIVES

My name is Gregory J. Stucky, from Wichita, Kansas. I am testifying on behalf of the Southwest Kansas Royalty Owners Association, a non-profit association comprised of over 2,000 owners of royalty interest under oil and gas leases in a ten (10) county region in southwest Kansas within the confines of the Hugoton field. I am a lawyer with the law firm of Fleeson, Gooing, Coulson & Kitch, in Wichita, and the primary emphasis of my practice has been in oil and gas law. I am the past President of the Oil and Gas Section of the Kansas Bar Association.

LEGISLATIVE HISTORY OF SENATE BILL NO. 12

The predecessor of Senate Bill No. 12 was introduced by Representatives Shore and Holmes in 1989. It was our understanding that the bill would be placed for interim study in 1989 but the proposed study fell by the wayside.

The bill was reintroduced in the House by Representative Shore and introduced in the Senate by Senator Hayden in 1990. After hearings in committees of both houses, an amended version was passed by the House by a vote of 119 to 6. The amended bill was likewise passed by the Senate Judiciary Committee but the Senate never voted on the bill. Instead it was placed for interim study. After that action members of the oil and gas industry representing its many factions, including the Southwest Kansas Royalty Owners Association, Koch Industries and the Kansas Independent Oil and Gas Association, met to discuss the bill and

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made changes to the bill so that a compromise could be achieved. That compromise bill was then presented to the Special Committee on Assessment and Taxation, which passed the compromise bill what is now before you in the form of Senate Bill No. 12. The Senate has recently passed the compromise bill by a vote of 40 to 0.

DISCUSSION OF SENATE BILL NO. 12

Since the early 1980's the oil and gas industry in Kansas has experienced hard times. The financial woes of the oil and gas operator have been commonplace. An operator's financial distress is seldom confined to his own financial statement, but rather clearly impacts the financial welfare of others. In many instances, the law in Kansas provides some level of protection for those affected. For example, if an operator fails to pay a drilling contractor or the supplier of pipes for his well, those suppliers of materials and services can acquire a lien on the oil and gas leasehold estate of the nonpaying operator. Those lien rights are provided in K.S.A. 55-207, et seq.

It is not, however, only the supplier who feels the operator's financial strain. An operator who cannot pay his supplier will most likely fail to pay the royalty owner and other working interest owners who are entitled to proceeds from the production of oil and gas. There is, however, no Kansas statute to protect their rights, as in the case of a supplier. If an operator files for bankruptcy, these interest owners are mere unsecured creditors who generally receive nothing for their

unsecured claims in a bankruptcy. Senate Bill No. 12 is designed to correct that problem.

Senate Bill 12 provides a security interest to both royalty and working interest owners, as secured parties, in oil and gas production, as defined in the Bill, and the proceeds therefrom, to secure the obligations of the first purchaser. Both Oklahoma and Texas have adopted similar legislation, and, in fact, Senate Bill No. 12 is patterned after the Texas statute.

The Bill's approach is simple.

A signed division order, agreement to purchase oil or gas production or other writing recognizing the interest owners' interest is sufficient to serve as security agreement between the interest owner and the first purchaser and automatically perfects the interest owners' interest. (Section 1). If the interest is evidenced by a recorded deed, mineral deed, reservation in either, oil or gas lease, assignment or other writing, that writing serves as a filed financing statement. The writings, whether recorded or not, serve to create a security interest in oil and gas production, as well as any proceeds therefrom. No other filing is required, simplifying the manner in which the interest is obtained and detected. (Sections 2 and 3).

The security interest created serves to protect the interest owner in the event of a bankruptcy filing, by elevating the status of the interest owner to that of a secured creditor - a position that those unfamiliar with bankruptcy law might have assumed the interest owner already occupied.

The relative priorities of the various interest owners among themselves and with respect to other creditors are also set forth in the Bill (Sections 7 and Sections 6 and 8, respectively).

If a dispute arises among the interest owners and the first purchaser, the Bill provides for the manner in which the dispute can be resolved, which protects both the interest owner and the first purchaser. (Sections 11 and 12).

Likewise, the rights of buyer in the ordinary course of business will find that his rights have not been impaired by the Bill. (Sections 5 and 13). He retains his ability to buy oil and gas production free and clear of any liens. The Bill, to the extent possible, protects the rights of those who, until now, were long forgotten, while at the same time leaving essentially undisturbed the sale of oil and gas to others.

Members of the oil and gas industry, including representatives of the Southwest Roayalty Owners Association, Koch Industries, Inc., and the Kansas Independent Oil and Gas Association met to discuss the issues relating to the Bill. In those meetings, numerous aspects of the Bill were discussed and negotiated. Senate Bill No. 12 has met with the approval of those participating in the discussions.

On behalf of the Southwest Kansas Royalty Owners Association, I urge that the Legislature of the State of Kansas to enact Senate Bill No. 12.

STATEMENT OF GREGORY J. STUCKY
IN SUPPORT OF SENATE BILL NO. 13
BEFORE THE JUDICIARY COMMITTEE
OF THE KANSAS HOUSE OF REPRESENTATIVES

My name is Gregory J. Stucky, from Wichita, Kansas. I am testifying on behalf of the Southwest Kansas Royalty Owners Association, a non-profit association comprised of over 2,000 owners of royalty interest under oil and gas leases in a ten (10) county region in southwest Kansas within the confines of the Hugoton field. I am a lawyer with the law firm of Fleeson, Gooing, Coulson & Kitch, in Wichita, and the primary emphasis of my practice has been in oil and gas law. I am the past President of the Oil and Gas Section of the Kansas Bar Association.

LEGISLATIVE HISTORY OF SENATE BILL NO. 13

The predecessor to Senate Bill No. 13 was the 1989 House Bill 2958. That bill was sponsored by Representative Shore. Last Year the House Committee on Energy and National Resources conducted hearings on that bill, and a substitute bill was adopted by the Committee. The House of Representatives passed the substitute bill by a vote of 123 to 1, and it was assigned to the Senate Energy and Natural Resources Committee. Hearings were conducted before that Committee but no action was taken on the bill. Instead, Senator Doyan, Chairman of the Senate Energy and Natural Resources Committee, stated he would request an interim study on this bill.

This bill was assigned for interim study to the Special Committee on Assessment and Taxation. Between the close of the 1989 Legislative Session and that interim study, members of the

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oil and gas industry, including representatives of the Southwest Kansas Royalty Owners Association, Koch Industries Inc., and the Kansas Independent Oil and Gas Association, met to discuss issues relating to certain provisions of the bill. In those conferences, the participants negotiated numerous aspects of the bill, primarily the rate of interest required to be paid under the terms of the bill, and finally agreed to a compromise bill. That bill was then proposed to the Special Committee on Assessment and Taxation for its interim study. Hearings were subsequently held on that compromise proposal. That compromise proposal, endorsed by the interim study, has now become Senate Bill No. 13. The Senate has recently passed this compromise Bill by a vote of 40 to 0.

DISCUSSION OF SENATE BILL NO. 13

Senate Bill No. 13 in general requires the payment of interest by a party holding money attributable to production from a Kansas oil or gas well if that holding party does not disburse money within the time frame provided in the Bill.

Kansas royalty owners would be one group who will benefit from this legislature. The protection afforded by this Bill, however, is not confined to royalty owners. Other parties who receive production payments, such as working interest owners and overriding royalty interest owners, would also be entitled to interest in the event that the party holding funds does not make timely payments. Because there are representative of other parts of oil and gas industry here, I will only address the need for this bill from the point of view of a royalty owner.

A royalty owner would, for example, be a farmer in western Kansas who owned his land and executed an oil and gas lease. Timely payment of royalties has always been a matter of utmost concern to that farmer and other royalty owners in Kansas. Royalty owners generally are paid monthly under the terms of the oil and gas lease. For a variety of reasons, some of which are admittedly valid, those royalties are on ocassion suspended. For example, on the death of a royalty owner or another occasion which the royalty payments would be transferred to another party, those royalty payments are suspended until satisfactory documentation is obtained. When the operators of a well change, royalty payments are also suspended during the transition. When there is a change in the purchaser of the production, royalty payments are also often suspended, pending the receipt by the purchaser of a new division order from the royalty owners. There are endless other reasons why royalty owners do not see their regular monthly checks.

Senate Bill No. 13 does not attempt to classify, as justified or unjustified, each of the endless number of reasons why royalty payments should be suspended. Its approach is much simplier. It is based upon fundamental equitable considerations. This Bill merely provides that if royalty payments are suspended for any reason, interest should be paid by the suspending party. It is the suspending party who has the use of the royalty owner's funds during the period of suspension, and under the terms of the bill it is that party who pays interest to the royalty owners for the use of those funds.

The interest required to be paid is modest. If the suspending party places the suspended payments in an interest bearing escrow account, that party only needs to pay the amount of interest accrued on that escrow account. If the suspending party, however, decides not to place the money in an escrow account, that suspended money draws interest at 1 1/2 percentage points above the New York Federal Reserve discount rate. Today that interest rate required to be paid under the Bill is about 7.5%.

This compromise Bill addresses an inequitable situation. In the past, parties could suspend payment from production of oil and gas for significant periods of time and escape from payment of interest on those suspended amounts. With the passage of Senate Bill No. 13, that inequity would no longer exist. On behalf of the Southwest Kansas Royalty Owners Association, I urge that the Legislature of the State of Kansas enact Senate Bill No. 13.

JONATHAN P. SMALL, CHARTERED
Attorney and Counselor at Law
Suite 304, Capitol Tower
400 West Eighth Street
Topeka, Kansas 66603
913/234-3686

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

1991 SENATE BILL 12

I am Jonathan P. Small, attorney and lobbyist for Koch Industries and I appear today on behalf of Koch industries and their position regarding Senate Bill 12.

Koch Oil Company, as a purchaser of oil in Kansas, is in favor of this bill. Passage of this bill would benefit oil and gas interest owners throughout the state. It provides all interest owners, working and royalty, with a security interest either in the production they own or, when sold, upon the proceeds of that sale. The language used in this bill is quite similar to legislation that has been in effect in Texas for some time. In the state of Texas this legislation has been effective in protecting the rights of oil and gas interest owners. A significant feature of this bill is that it allows protection of the owners' interest without disrupting the sale of oil and gas or acting to cloud title of other owners in a lease. An additional benefit is that the security interest of these owners is perfected without the necessary of additional legal action by the owners.

Koch believes that these changes would be a logical extension of UCC concepts. It is understood that the legislature might have concerns about amending a "uniform" law, however these changes are relatively minor in comparison to the overall scheme of the UCC. The amendments would not alter other aspects of the UCC and would not be of interest to those states which do not have oil or gas production. It is important that the laws of Kansas reflect the concerns and needs of its citizens.

Koch urges the passage of this bill. It is an important piece of legislation for all entities in the oil and gas business. It allows protection to royalty and working interest owners without adversely impacting the normal course of business.

Your favorable consideration is very much appreciated.

Respectfully submitted,

Jonathan P. Small
Attorney/Lobbyist

AS0325T2

HJUD
Attachment #5
3-26-91

JONATHAN P. SMALL, CHARTERED
Attorney and Counselor at Law
Suite 304, Capitol Tower
400 West Eighth Street
Topeka, Kansas 66603
913/234-3686

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

1991 SENATE BILL 13

I am Jonathan P. Small, attorney and lobbyist for Koch Industries and I appear today on behalf of Koch industries and their position regarding Senate Bill 13.

Koch Oil Company is in favor of this bill. It is understood by all parties that this legislation protects the right of oil and gas companies to seek an executed division order while providing owners a fair rate of interest on their proceeds. The bill in its present form is the result of a compromise reached as a result of several meetings of various members of the oil and gas industry. All parties involved, including Koch, made compromises concerning what they felt should be contained in this legislation. These compromises were worked out during a one-year period of time during which numerous meetings and discussions amongst all parts of our industry were held. This bill, and the concept behind it, have been thoroughly and completely thought out by all parties.

The bill merely provides that when oil or gas proceeds are held in suspense by the dispenser of the proceeds, interest shall accrue. This bill clearly implies the right of a party obligated to pay interest on proceeds that were not held by such party, to be made whole by seeking such interest from the party that did hold the proceeds. The concept is quite simple and provides a benefit to all oil and gas interest owners. Koch believes this approach to interest in oil and gas proceeds is very important. The issue of interest is not clouded with questions such as when it is proper for proceeds to be held in suspense. In our experience, other states that have not taken this type of approach end up with expensive and antagonistic litigation for all parties concerned.

Koch urges the committee to pass this bill as presented.

Your favorable consideration is very much appreciated.

Respectfully submitted,

Jonathan P. Small
Attorney/Lobbyist

AS0325T2

HJUD
Attachment #6
3-26-91

KIOGA

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202
(316) 263-7297 • FAX (316) 263-3021
1400 MERCHANTS NATIONAL BANK BLDG. • TOPEKA, KANSAS 66612
(913) 232-7772 • FAX (913) 232-0917

March 26, 1991

TO: House Judiciary Committee

Re: SB 12 - Security Interest in Oil and Gas Production

This bill now has a three session history. SB 2353 (1989), SB 510 (1990), and now, SB 12 (1991). It became clear to us last year that SB 510 would not pass and in the interest of keeping the legislation alive we recommended an interim study. SB 12 arises from Proposal No. 8 of last summer's interim study.

There was a concerted effort to reach agreement among many individuals and groups with interest in this subject.

SB 12, in effect, follows Texas law and would amend the uniform commercial code and provide for a statutory security interest and a lien on oil and gas production in favor of interest holders, including royalty and working interests. The security interest would be perfected automatically without filing of record. It would set up a priority of claim in the event of default or judgement.

The statutory lien would secure the obligations of first purchasers of oil and gas production to pay the purchase price to all interests. In effect, it would protect interest holders in the event of financial failure or bankruptcy of a first purchaser of crude oil or natural gas.

When we completed our work last summer before it was presented to the interim committee, we did say that although we were satisfied with the terms of the proposal, we recognized that there might be others that did not participate who may want to contribute to the design of this new law. There was no testimony in opposition to the legislation during the interim committee hearing.

We are pledged to recommend passage of the legislation, but we would reserve the right to look closely and speak further regarding any amendments that might be proposed. This is complex legislation, not easily understood, and legislation that can be easily fouled with additional amendments. This statute follows current Texas law which has had, to date, no legal contests or reported difficulty.

We recommend passage of SB 12.

Donald P. Schnacke

HJUD
Attachment #7
3-26-91

KANSAS INDEPENDENT OIL & GAS ASSOCIATION
105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202
(316) 263-7297 • FAX (316) 263-3021
1400 MERCHANTS NATIONAL BANK BLDG. • TOPEKA, KANSAS 66612
(913) 232-7772 • FAX (913) 232-0917

March 26, 1991

TO: House Judiciary Committee

Re: SB 13 - Payment of Interest on Proceeds from Oil and Gas Production

SB 13 has a legislative history in that the subject matter was cited as Subs. HB 2985 (1990). Like SB 12, it became clear to us that there was so much confusion in the development of this bill that we asked that it be studied during the summer so we could build a consensus among all the industry interests. This bill was studied under Proposal No. 8 and has arisen from an agreed upon compromise consensus proposal. We are committed to its passage in its present form.

SB 13 would require the payment of reasonable interest after a period of time on money held by a first purchaser.

We consider SB 13 a compromise bill, but probably as close to reality as we will get without offending the purchasers or the interest holders.

Again, as in SB 12, not all potential interested parties participated in the summer-long sessions and it is possible that there might be opposition. As I recall, there was no opposition expressed at the summer interim committee meeting.

We recommend passage of SB 13 in its present form.

Donald P. Schnacke

HJUD
Attachment #8
3-26-91

PUBLIC POLICY STATEMENT

HOUSE JUDICIARY COMMITTEE

Subcommittee in Civil Procedure

RE: S.B. 12 - Security Interests in Oil and Gas Production
S.B. 13 - Interest on Proceeds from Oil and Gas Production

March 26, 1991
Topeka, Kansas

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Solbach and Members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to express support for both S.B. 12 and S.B. 13 on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Our support is based upon a new section in Farm Bureau policy adopted in 1990 and reaffirmed by the 439 Voting Delegates at the 72nd Annual Meeting of Kansas Farm Bureau for 1991:

Mineral Interests

We believe legislation should provide for an orderly divestiture of mineral interests held by the Farm Credit System. These mineral interests should be appraised and sold to the owners of overlying surface property.

We support legislation to reduce from 20 years to 10 years the time required for unused mineral interests to be returned to the owner of the overlying surface land.

We support legislation which would result in renegotiation of mineral leases involving infill drilling.

HJUD
Attachment #9
3-26-91

We support legislation to give a royalty owner a lien to ensure royalty payment - or an improved, secured, credit position in the case of a mineral producer bankruptcy.

We believe legislation is needed to protect a landowner and royalty owner from division orders which modify or amend the terms of an original lease to the disadvantage of a royalty owner or landowner. **We support legislation to require the payment of interest on suspended royalties.**

S.B. 12 would provide for a security interest for oil and gas interest owners as a part of the Uniform Commercial Code. S.B. 13 would require the first purchaser of oil and gas production after 60 days to pay interest.

We believe S.B. 12 and S.B. 13 will provide protection to interest owners and encourage prompt payments from oil and gas production. We certainly appreciate the preliminary work during the 1990 Session, study and introduction of this legislation by the 1990 Interim Committee on Assessment and Taxation and the cooperation among the various parties in resolving this important issue. We urge passage of S.B. 12 and S.B. 13. Thank you!

ARCO Oil and Gas Company
1601 Bryan Street
Dallas, Texas 75201
Telephone 214 880 4512

G. C. Gill
Director
State Government Relations

TESTIMONY ON SENATE BILL 13
BY
CHIP GILL, DIRECTOR, STATE GOVERNMENT RELATIONS
ARCO OIL AND GAS COMPANY AND ARCO PIPELINE COMPANY
MARCH 26, 1991

To the Honorable Members of the Kansas House Committee on Judiciary:

My name is Chip Gill, Director, State Government Relations for ARCO Oil and Gas Company and ARCO Pipeline Company. ARCO Pipeline Company employs 225 people at its national headquarters in Independence, Kansas, and ARCO Oil and Gas Company operates numerous oil and gas wells in southwestern Kansas.

SB 13 would provide for the payment of interest when royalties are paid late. It would allow a 60 day "grace period" before interest would begin to accrue on ongoing production and a 120 day "grace period" on new production.

ARCO does not feel that we nor the oil and gas industry should have free use of anyone else's money, and therefore support the concept of interest payments on late royalties. In our ongoing experience disbursing payments of royalties from gas wells to payees, we find that, in an appreciable percentage of the time, we do not receive

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disbursement of payments ourselves until near the end of the 60 day "grace period". This is a result of the complexity of the marketing arrangements we enter into in an attempt to realize the highest price possible, and of the very nature of accounting for gas sales back to the well head. This does not allow us the opportunity to disburse payments to the payees prior to the accrual of interest. In this case, we are advised by those who negotiated and drafted SB 13 it is the intent of this bill that we can look back to those parties who did hold payment for reimbursement of interest owed to payees. This has the potential of creating an administrative nightmare, but in the spirit of supporting the concept of interest on late royalty payments, and in the spirit of cooperation with the Southwest Kansas Royalty Owners Association, we will not offer any amendments to this bill.

I will be happy to address any questions the committee might have.

TO: Chairperson and Senators of the Kansas Senate Judiciary Committee

BY: Richard L. Schodorf, Chief Attorney Consumer Fraud and Economic Crime Division of the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas.

RE: Senate Bill No. 133-An Act concerning Consumer Protection; relating to Telemarketing Fraud.

Problem: Telemarketing fraud has been labelled as the crime of the 1990's. Fraudulent telemarketers are using 21st century marketing techniques and we are fighting fraud with 1950's approaches according to the nation's top consumer protection officials. Although no one knows exactly how much money is lost in telemarketing scams, the North American Securities Administrators Association estimates that telemarketing fraud costs American consumers ten billion dollars a year. Common ploys include deceptive sales pitches for real estate timeshares; bogus investments in stocks, rare coins, or natural resources; overblown charges for magazine subscriptions and vitamins; and worthless environmental protection devices, such as do-it-yourself radon detectors, useless water filters, etc.

Kansas currently has laws which protect consumers against abusive door-to-door selling practices, by allowing consumers a three day cooling off period in which to cancel the transaction. Telemarketing sales initiated by the supplier should be placed in the same classification. Many consumers allow themselves to be high-pressured into turning over their credit card numbers or orally agreeing to purchases and then regretting the transaction immediately after hanging up the phone. It is also interesting to note that the telemarketer calling you may know more about you than you know yourself. Lists are commonly bought, sold and massaged which will provide the telemarketer with information on your buying practices which allows said telemarketer to develop a strategy of sale designed to pressure you into a purchase.

Solution: Senate Bill No. 133 provides for the above-mentioned cooling off period. The proposed statute not only covers telemarketing sales pitches initiated by the supplier, called cold calls, but also there are situations where a postcard or other written notice is sent through the mail which entices the consumer to call under the guidance of a free gift in order to a telephone solicitation.

The proposed statute provides that any verbal agreement made a consumer to purchase goods or services from a telemarketer shall not be considered valid and legally binding unless the telemarketer receives from the consumer a signed contract that discloses the full terms of the sale is agreed upon. The proposed statute exempts out transactions that:

1. Have been made in accordance with prior negotiations with a consumer;
2. In which the business establishment making the solicitation has made a prior sale to the consumer or has a pre-existing business relationship with the consumer;
3. In which the consumer purchases goods or services pursuant to an examination of a television, radio or print advertise-

Attachment # 11

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ment, or a sample, brochure, catalog or other media material of a marketer.

The type of statute as represented in Senate Bill No. 133 has been enacted in a number of states including Maryland and Florida and officials from those states have reported that the statute has gone a long way in convincing fraudulent telemarketers to operate in other jurisdictions.

The cooling off period allowed under the statute would allow individuals who have been high pressured into purchasing merchandise over the phone an opportunity to discuss the transaction with someone they trust such as a son, daughter, spouse, or good friend before being legally bound under such purchase. This is particularly advantageous for older adults who are often targets of fraudulent telemarketing scams.

We feel that the language in Senate Bill No. 133 will provide Kansas consumers with far more protection than would be afforded under bills which require telemarketers to adhere to a particular standard of conduct and to hang up when the consumer expresses a lack of interest. The problem with the so-called "Polite Bills" is that the good telemarketers already comply with these requirements and bad telemarketers will ignore them.

Our office has been in contact with local business people and they have expressed concern that the net cast by the statute might also inhibit legitimate telemarketing practices. In the conversations which have taken place three exemptions have been suggested to provide for more flexibility within the statute. The exemptions can be generally listed as follows:

1. An exemption for services which are cancellable at any time and refunds paid on a prorated basis. Also, goods would be exempted if they are returnable for a full refund upon reasonable examination. These rights would need to be thoroughly explained in any telephone sale.
2. Transactions would be exempted where in the consumer was notified at the time of sale that said consumer possessed a three day right to cancel the transaction. The seller should be put on strict proof regarding the fact that said notice was given to the consumer. This should not be a difficult problem as most telemarketers record the entire sales process.
3. Exemption for contracts wherein the sale, lease or rental of consumer property or services contains a purchase price of $50.00 or less, whether in single or multiple contracts.

Our office is presenting these exemptions in an effort to bring as much information as possible before the committee.

NATIONAL TELEMARKETING, INC.
Rt. 1, Box 82A, Home, Kansas 66438
913/799-3500 •800/882-0803 •FAX: 913/744-320

SENATE BILL #75
TUESDAY, MARCH 26, 1991
3:30 P.M. IN ROOM 313-S

COMMENTS ON SENATE BILL #75

I make the following comments on behalf of my company, National Telemarketing, Inc., and Blue Valley Tele-Marketing, Inc.

As an acknowledged authority on the subject of Telemarketing, having testified before Federal, State and Foreign governments on the subject of telemarketing, I oppose Senate Bill #75.

1. Senate Bill #75 will restrict freedom of enterprise by not allowing retail merchants from calling prospects gleaned from telephone directories, membership lists, newspaper ads, and articles that would have genuine need for such services or products.

   This Bill deprives the total consumer population of the State of Kansas of the freedom and right to hear and be informed of products and services that they might have use for.

   In a recent report by the well-known Cahner's Advertising Research Report (CARR), four-thousand (4,000) consumers from ten (10) Cahner's publications were surveyed. The survey concluded that "Most often, readers use the telephone for immediate needs and readers service cards for non immediate needs." This survey substantiates the importance of the consumers freedom to use the telephone to be informed quickly and completely regarding products and services they are interested in. The reason is simple, direct mail is a one-way communication-from the consumer to the merchant or vice versa. The telephone is inherently superior because it is a dialogue with information being freely exchanged between the two.

HJUD
Attachment #12
3-26-91

Consumers are comfortable with and rely upon the telemarketing channel which allows them to use the telephone rather than mail to order goods and services. In its indepth annual study of the telemarketing industry the 9th Annual Guide To Telemarketing of Randolph, New Jersey and Lincolnshire, Illinois has reported that the value of the average consumer sale nationally has risen from $19.95 in 1980 to $104.00 in 1989. This increase further confirms the need of the consumer to be informed based on the increase of the value of the average sale over the years. The freedom of receiving commercial information in consumer's home should not be restricted or denied.

2. The Annual Guide To Telemarketing also reports that in 1989, sales of all goods and services by mail order totalled $3.5 billion. In the same time period, in-bound telephone sales of goods and services from consumers totalled $26 billion (7.4 times the total of mail order) and that out-bound sales to consumers homes totalled $135 billion (or 38.6 times the total of mail order). Obviously, the American consumer is depending upon and using <u>without restriction</u> the freedom of choice in regards to purchasing by telephone specially when called in their own home.

3. This Bill requires the telephoning party to review specific names being called within current telephone directories. In actual practice even with the use of computers, this is too time consuming and costly to be reasonably expected from any merchant attempting to use telemarketing, either in their own business with their own personnel or through a third party telemarketing service bureau such as our firm.

4. While specifically the cemetary and time-sharing industries are mentioned as specific violators of something underlined in the Bill, Bill #75 as written could be applied inconsistently and with possible sinister implications.

5. It is most curious that the Bill on page 1 line 33-36 allows a publisher to call the consumers at home to solicit subscriptions for newspapers. It is even more curious that the number one (#1) offender in disturbing people at home during their supper hour is the newspaper industry. The practice is so pervasive that it is not

unusual for consumers to receive calls from the newspaper of their choice, that they already subscribe to, asking them to subscribe to that paper once again.

6. We suggest that the consumer that wishes to be removed from telemarketing calls at home use the Telephone Preference Service of the Direct Marketing Association in New York, New York.

7. The implications of enactment of Senate Bill #75 will force a greater portion of the newly emerging telemarketing industry in Kansas to seriously consider relocating to an adjacent State to avoid the capricious elements of this Bill. Firms representing "in-house" telemarketing operations and firms offering third party services such as National Telemarketing/Blue Valley Tele-Marketing are among those capital investors that might be forced to consider the possible suspension of telemarketing services and the resultant loss of over 8,000 jobs in the newly emerging telemarketing industry here in Kansas.

   There are four (4) new telemarketing service bureaus currently starting up in the State of Kansas; they are: Rural Telephone Company, Hays, Kansas, Southern Telephone Company, Wichita, Kansas, Blue Valley Telephone Company, Home, Kansas, and Pro-Tel Marketing Incorporated, Topeka, Kansas. While I cannot speak for the other companies I am sure that information of this Bill seriously undermines any faith that the capital investors have had in the State of Kansas up until now.

8. Two firms in particular, National Telemarketing, Inc. and a Chicago based firm that are currently investing considerable capital into the construction of new Kansas telemarketing facilities are being forced by this bill to revaluate the economic climate for telemarketing here in Kansas. We both enjoy the type of labor pool available and believe that Kansas has the opportunity to become a leader in the field of telemarketing; providing restrictive and punitive laws are not passed simply based on a few observations by consumers regarding some unprofessional behavior of other firms.

As recently as September, 1990, the telemarketing atmosphere as touted by the State Department of Commerce, was "very user friendly." A number of firms have seriously begun to invest in Kansas based on those words. We seemed to have been mislead in our ideas of finding a home to grow our telemarketing business. Instead, once we have financially and physically committed to moving to Kansas, the first thing that happens is that restricted Bills, such as Senate Bill #75, are entertained as a way of controlling a professional industry based on the few instances experienced by a very small group of dissatisfied consumers. With the best of intentions but very little knowledge of our industry, this Bill and some others have been introduced and presented to the House and Senate without consulting with the professional telemarketers in our own State. This is most confusing in view of the State's desire to increase the employment picture by inviting professional telemarketers, such as ourselves, to come to Kansas.

9. The regulation of unsolicited telephone calls as laid out on page 2, lines 21-41, have been proven in similar legislation in the State of Florida to be impractical and unenforceable. The suggestions made are simply inconvenient and ineffective for both the consumer and the telemarketer alike. The State of Florida has amended its legislation on this subject because it was unenforceable.

   National Telemarketing, Incorporated believes that the Bill as written will severely curtail the freedom of speech and commercial enterprise far beyond its intent.

Thank you for this opportunity to testify.

Eugene B. Kordahl
General Manager

NATIONAL TELEMARKETING, INC.
Rt. 1, Box 82A, Home, Kansas 66438
913/799-3500 ■800/882-0803 FAX: 913/744-3204

SENATE BILL #133
TO BE HEARD BEFORE THE HOUSE JUDICIARY COMMITTEE
TUESDAY, MARCH 26, 1991
3:30 P.M. IN ROOM 13-S

My name is Eugene B. Kordahl. I am the General Manager of a Kansas Telemarketing Service Bureau in Home City, Kansas. I have been in the field of telemarketing since 1956, and my career to date has included being the co-founder of the foremost telemarketing professional organization in the United States, the American Telemarketing Association (ATA). I have been President of the ATA organization for two-terms. I have written several books on the subject of Professional Telemarketing published by Printess Hall and other publishers. My written works have been used as test books in a number of university courses in the field of professional telemarketing, and according to the Library of Congress in Testimony before the Federal Trade Commission, I've been published in over 300 magazines and periodicals on the subject of professional telemarketing.

With that background I would like to strongly urge the wording of the Senate Bill #133 to include some changes so that all professional telemarketers can live within the restrictions implanted by this Bill.

The word" "Telemarketer" is unfortunately, misused throughout this entire Bill. A Telemarketer is a professional manager of a telemarketing operation. A "Telesales Person" is the person who initiates and actually negotiates by telephone, the sale of goods and services to consumers. Therefore I would recommend that the word "telemarketer" be replaced by the term "telesales person" except where it is meant to be a management responsibility. Then the word telemarketer should be used.

HJUD
Attachment # 13
3-26-91

On line 20 and 21 of page 1, there is extremely negative connotation that suggest that all telemarketers "offers gifts or prizes with the intent to sell". In many jurisdictions, the offering of gifts or prizes with the actual intent to sale is known in legal parlance as "bait and switch" type schemes which are illegal in most of these jurisdictions. I would suggest that we remove that type of connotation from this Bill in due respect to the professional telemarketing industry.

Section 2. (c), line 12 on page 2 gives the overall impression when one reads this Bill that you cannot take a credit card number without written consent and this is not true in view of the new revision on page 3 Sec. 3. (d). This statement while protecting the consumer in the final analysis is confusing being that it is placed so late in the Bill.

I would suggest strongly that this revision be moved to the front of the Bill so that the reader knows early-on that this Bill is <u>not</u> aimed at the professional telemarketer but rather at the boilerroom or telemarketing firm working outside the law.

As read, Section 2. will defeat fast efficient services to the customer by retailers that sell by catalog, indeed by T.V. or even direct mail.

An immediate affect of Senate Bill #75 is that it would quickly impact and confuse all Kansas consumers. This is graphically displayed by considering the negative impact on the Home Shopping Channel on T.V. and on airline ticket sales where credit cards are extensively used. The immediate confusion of the Bill will curtail the use of these consumer services to the point that business will be lost and consumers will be inconvenienced and confused.

Further on page 2 Section 2. (c) line 12, restricting any charge to a consumer credit card account until a telemarketer has received from the consumer an original copy of a contract signed by the consumer, forces the consumer to resort to mail order and defeats the very reason for the popularity of telemarketing which is of course the ease of ordering.

Last but not least, I seriously doubt that the terms of Section 4. found on page 3 can be enforced. Other States have tried this and have been unsuccessful.

One other thing I would like to address is that this Bill has been put together with attention to detail and with the best of intentions, however, it is obvious that a professional telemarketer has not been consulted in the preparation of this Bill. I would strongly suggest that the State contact the Professional Telemarketing Community when drafting any future legislation. Our firm for one would be happy to assist in clarification, industry practices, and other pertinent information that the legislators would need.

Thank you for this opportunity.

Sincerely yours.

Eugene B. Kordahl
General Manager

TESTIMONY OF
JOHN C. PETERSON
KANSAS CEMETERY ASSOCIATION

HOUSE JUDICIARY COMMITTEE
SENATE BILL 75
March 26, 1990

Mr. Chairman and members of the Committee, my name is John Peterson and I am appearing on behalf of the Kansas Cemetery Association.

Senate Bill 75, after it was amended in the Senate requires three things:

first, it requires any telephone solicitor to identify themselves and the business on whose behalf they are calling;

second, within 30 seconds after beginning the conversation they must inquire whether a person being solicited is interested into listening to a sales presentation; and

third, if the person being called discontinues the telephone call, the telephone solicitor must hang up the phone or if they are using automatic dialing equipment, the equipment must disconnect within 25 seconds of the termination of the call.

HJUD
Attachment #14
3-26-91

The Kansas Cemetery Association has no problems with any of these three requirements.

I would propose for your consideration the attached balloon amendment. Because of the definition in Senate Bill 75 of "consumer goods or services" solicitations for most services would not be covered. It simply does not make sense to us why someone calling to offer a travel promotion should not also identify themselves. Or why someone wanting to sell land in Florida should not be prohibited from tying up your line after you have hung up. But the way the bill is currently written, it would not apply to solicitations for the sale of real estate, insurance, financial services or stocks or bonds, charitable solicitations, or newspaper subscriptions. The attached amendment would simply have these three requirements apply to all telephone solicitations which are made "for the purpose of soliciting a sale or contribution".

I would be glad to stand for any questions.

[As Amended by Senate on Final Action]

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 75

By Senator Bogina

1-29

AN ACT relating to telephone solicitation; concerning unsolicited telephone calls; regulation thereof.

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

Section 1. (a) As used in this section:

(1) "Consumer telephone call" means a call made by a telephone solicitor for the purpose of soliciting a sale ~~of any consumer goods or services~~ to the person called, or for the purpose of ~~soliciting~~ an extension of ~~credit~~ for consumer goods or ~~services~~ to the person called, or for the purpose of ~~obtaining~~ information that will or may be used for the ~~direct~~ solicitation of a sale of ~~consumer~~ goods or services ~~to the~~ person called or an extension of credit for ~~such purposes~~;

~~(2) "consumer goods or services" means any tangible personal~~ property which is ~~normally~~ used for personal, ~~family or~~ household purposes, including, ~~without limitation, any~~ such property intended to be attached to or ~~installed~~ in any ~~real~~ property without regard to whether ~~it is~~ so attached or installed, as well as ~~cemetery~~ lots ~~and time share estates, and any services related to such property;~~

~~(3)~~ "unsolicited consumer telephone call" means a consumer telephone call other than a call made:

(A) In response to an express request of the person called;

(B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;

(C) to any person with whom the telephone solicitor has an existing business relationship; or

~~(D) by a newspaper publisher or such publisher's agent or employee in connection with such publisher's business~~

~~(4)~~ "commission" means the state corporation commission;

~~(5)~~ "telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited

or Contribution

3

4

John C. Peterson

Kansas Cemetery Association

March 26, 1991

14-3

to, calls made by use of automatic dialing-announcing device;

~~(6)~~ "automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

(1) Identify themselves and the business on whose behalf such person is soliciting ***[and the purpose of the call]*** immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

(2) within 30 seconds after beginning the conversation, inquire whether the person being solicited is interested in listening to a sales presentation and immediately discontinue the solicitation if the person being solicited gives a negative response; and

(3) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within ~~15~~ ***25*** seconds of the termination of the call by the person being called.

~~(c) Any residential telephone subscriber desiring a directory listing indicating that the subscriber does not wish to receive unsolicited consumer telephone calls may notify the serving local telephone exchange company and order an extra line listing effective with the next telephone directory issue. Such extra line listing shall appear directly beneath the primary listing and shall read "No Sales Solicitation Calls." The charge for such extra line listing shall be the tariffed rates as approved by the commission for additional or extra line listings.~~

~~(d) No telephone solicitor shall make or cause to be made any unsolicited consumer telephone call to any residential telephone number if the number for that telephone appears in the then-current directory published by the telephone company and such listing indicates that the subscriber does not wish to receive unsolicited consumer telephone calls.~~

~~(e) No telephone solicitor shall attempt to contact by telephone any person whose residential telephone number is not included in the most recently published telephone directory as the result of a request for an unpublished telephone number,~~

~~unless the person making such solicitation has had previous business experience with the person solicited.~~

~~(f)~~ *(c)* The commission shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the commission finds that there has been a violation of this section, it may bring an action to impose a civil penalty and to seek such other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed $10,000 per violation and shall be deposited in the state general fund.

~~(g)~~ *(d)* Telephone companies shall not be responsible for the enforcement of the provisions of this section and shall not be liable for any error or omission in the listings made pursuant hereto.

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

KANSAS TELECOMMUNICATIONS ASSOCIATION

700 S.W. Jackson, Suite 704
Topeka, Kansas 66603-3731
VOICE/TDD 913-234-0307
FAX 913-234-2304

Testimony before the
House Committee on the Judiciary

SB 75 March 26, 1991

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of 27 telephone operating companies plus other firms and individuals who provide service to and support for the telecommunications industry in Kansas.

Regarding SB 75 as amended, KTA member companies generally support the bill, but have one concern:

> On page 3, from line 3 through line 10, the Kansas Corporation Commission would be given authority to investigate complaints for alleged violations of the law and pursue an action seeking civil penalties. Any penalty received from such an action would go to the state general fund.
>
> The KCC is financed with money received from assessments paid by utilities and other firms it regulates. The costs of investigation and legal action incurred by the KCC in carrying out its responsibilities according to SB 75 will increase the assessments paid by utilities and their customers. The KTA suggests that the KCC be given authority to recover from violators its investigation and legal costs. It seems fair that those who violate this law, not utility customers, pay for the costs of investigation and legal action.

Mr. Chairman, members of the committee, the KTA acknowledges and appreciates the efforts of the author of the bill and the Senate to recognize that telephone companies are not responsible for the actions of telephone solicitors. Our concerns with the bill in its present form are financial rather than procedural.

Thank you for your time, I will attempt to answer your questions.

HJUD
Attachment #15
3-26-91

WALTER N. SCOTT, JR.
ATTORNEY AT LAW
420 WEST 33rd STREET
TOPEKA, KANSAS 66611
(913) 266-4220

March 26, 1991

Representative John Solbach
Chairman, Judiciary Committee
Members of the Committee
State House - Room 313
Topeka, KS

IN RE: Senate Bill 181
Procedures Concerning Consumer Credit Reports

Dear Chairman Solbach and Members of the Committee:

I represent the Associated Credit Bureaus of Kansas and appreciate the opportunity to appear before your committee concerning the amendments to the Fair Credit Reporting Act.

Associated Credit Bureaus of Kansas are the suppliers of credit information concerning the consumers of this state. These Credit Bureaus work with and are affiliated with National consumer reporting systems. It is the aim and purpose of these organizations to furnish accurate and up-to-date information to the many financial institutions and businesses that rely on them for the extension of credit.

To entertain the provisions contained in Senate Bill 181 could create hardships for the Consumer and credit reporting agency. It is our feeling there are more than adequate protections already provided under the Fair Credit Reporting Act under the Federal and State laws.

Mike Stewart, Vice President and General Manager of the Wichita division of Trans Union is present and will present testimony and will stand for questions thereafter. Also present are Mr. Jim Holderman, Wichita Division, Bill Shaw, President of Credit Bureau of Topeka, and Scottie Shafar, General Manager, Greater Kansas City Credit Bureau.

Again, my appreciation for your allowing us to appear before your committee to present our testimony. If there should be any questions at any time, do not hesitate to call.

Very sincerely,

Walter N. Scott, Jr.

WNS:cg

HJUD
Attachment # 16
3-26-91

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 26, 1991

Mike Stewart
Vice President/General Manager
Trans Union Corporation - Wichita Division

Mr. Chairman and Members of the House Judiciary Committee,

We appear today to ask this committee to review Senate Bill 181, which is intended to amend the Fair Credit Reporting Act.

It is our contention that the current Fair Credit Reporting Act works to the benefit of the consumer and in fact, worked to the benefit of the consumer that addressed the Senate Committee.

Section KSA 50-710 of Kansas statutes (attachment A) and Section 611 of Federal statutes, titled Fair Credit Reporting Act, specifically address procedures to be followed when an item of information is disputed by the consumer.

If, as a result of the requested investigation by the consumer, the credit grantor verifies that the reported information is accurate and is to remain a part of the record, the consumer may request a statement to be entered into said record explaining that he or she disputes this information. If this investigation results in a change to the information that

HJUD
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was contained in the record, the consumer currently has the right to request that the amended credit record be sent to any party who received the information during the past two years for employment purposes, and the past six months for any other purpose. On these occasions, a notation accompanies these updated records explaining that a change occurred due to an investigation requested by the consumer.

The proposed legislation, made with the best intentions, may confuse these issues. By entering statements into the credit record referring to items that have been updated or removed would more likely confuse future credit grantors. This confusion may result in a delay in the granting of credit.

We believe that the correct procedure for dealing with the legitimate concern of this consumer is through our communication with and education of the consumer, and not through additional legislation.

In addition, it is the industry's opinion that Senate Bill 181 is in conflict with KSA 50-710 and Section 611(a) of the Federal Fair Credit Reporting Act, which states that any information that is found to be <u>inaccurate or can no longer be verified</u>, the consumer reporting agency shall promptly delete such information. (Making reference to deleted information is redundant and in violation of the charge to delete it.)

Members of the Committee, the Fair Credit Reporting Act, as authored in Kansas and Federal statutes, has protected the consumer while at the same time served the credit granting community for over two decades.

The proposed change by Senate Bill 181 does not appear to add any benefit to the consumer beyond the current statute.

able identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in K.S.A. 50-715 and 50-716, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to K.S.A. 50-708, 50-709 or 50-714, except as to false information furnished with malice or willful intent to injure such consumer.

History: L. 1973, ch. 85, § 144; Jan. 1, 1974.

50-710. Procedure in case of disputed accuracy. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

History: L. 1973, ch. 85, § 145; Jan. 1, 1974.

50-711. Charges for certain disclosures. A consumer reporting agency shall make all disclosures pursuant to K.S.A. 50-708 and furnish all consumer reports pursuant to K.S.A. 50-710(d) without charge to the consumer if, within thirty (30) days after receipt by such consumer of a notification pursuant to K.S.A. 50-714 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under K.S.A. 50-708 or 50-710(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to K.S.A. 50-708, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to persons designated by the consumer pursuant to K.S.A. 50-710(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting

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History: L. 197
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History: L. 19
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50-713. Resti
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History: L. 1
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50-714. Req

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"(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information agains any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer.

"§ 611. Procedure in case of disputed accuracy

"(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

"(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

"(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irreveiant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

"(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspiciously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

"§ 612. Charges for certain disclosures

"A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely

KANSAS
TRIAL LAWYERS ASSOCIATION
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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE JUDICIARY COMMITTEE

March 26, 1991

SB 103 - Statutes of Repose for Products Liability Action

The Kansas Trial Lawyers Association appreciates the opportunity to present its testimony in support of SB 103.

Substantive History: In 1987 K.S.A. 60-513 was amended. 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 to contractors of being responsible for buildings built more than ten years. He cited as an example a case he personally defended (no recovery by the plaintiff) as 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 as it applied to the builders. These, though, were the only examples cited, even though the Ruthraff case had been on the books for some 14 years. What was not considered before any legislative committee or discussed by any conferee was the impact this would have on product liability cases.

K.S.A. 60-3303 which included a detailed approach to repose in product liability cases was enacted in 1981 and went through a period of legislative gestation of approximately four years. A similar bill had been vetoed by Goveror Carlin in the 1980 session, and the 1981 bill was the product of a great deal of discussion and compromise between the various interested parties. The effect, though, of the 1987 amendment to K.S.A. 60-513 was to nullify all of that work and make K.S.A. 60-3303 dead-letter law. Rather than the rather sophisticated analysis used in K.S.A. 60-3303, K.S.A. 60-513 simply cut off all liability for acts more than ten years old.

An absolute ten-year cut off with respect to products claims would never have been agreed upon in 1981 and was not part of the discussion in 1987. Everyone recognizes that there are products in use for more than ten years which can be defective in their design or in their warnings and there are situations which make it fair for manufacturers to be responsible for those products after ten years. Certainly no one can bring an action before they are injured, but under Kansas law now, if they are not injured within ten years from the date of the manufacture of the product, then they will never have a claim, even though they may have a serious disabling injury. It is easy to conceive of products that are manufactured and expected to be used for more than ten years when we think of air frames and machinery designed for amortization over a more than ten year period, and in some cases, which carry warranties that exceed ten years.

Therefore, there is need to amend to K.S.A. 60-513 to restore the vitality of K.S.A. 60-3303 since it is the more specific statute and had substantial input from all interested parties at the time of its passage.

Procedural History: In the 1989 session, HB 2689 was requested to be introduced and this modification to K.S.A. 60-513 was part of that and the other part dealt with latent diseases such as asbestos and a revivor of claims which had been barred by the decision in Tomlinson v. Celotex. That bill which contained a clause having the same effect as SB 103 passed the House 121 to 3. It was approved by a special subcommittee, chaired by Senator Rock, which specifically considered this issue, and passed the Senate Judiciary Committee. On the floor of the Senate, Representative O'Neal requested that a different approach be used to affect the same outcome and delivered text that transferred the amendments from K.S.A. 60-513 to being amendments to K.S.A. 60-3303. This was accepted by the Senate in good faith as doing the same thing, but without having any unintended consequence for the home builders of repealing that for which they had successfully lobbied in 1987.

(Unfortunately the concept embodied in SB 103 was not part of that amendment nor could it have been.)

The friendly amended HB 2689 passed the Senate 40 to 0. Because of the dropping of the concept contained in this bill, the House nonconcurred and the matter went to a conference committee. The senators on the conference committee agreed that the concept of SB 103 should be restored but Representative O'Neal would not agree to that revision. Impasse was reached on the point and HB 2689 was enacted without this important concept.

Senate Amendments: The Senate in considering this bill added two significant amendments and one set of insignificant amendments.

A. The first significant amendment is on Page 2, Lines 38 to 43. This modified amendment still would leave liable after ten years the manufacturers of fixtures or installed equipment but not the contractor or builder who installed it.

B. The second significant amendment is the ultimate repose on all products claims at 20 years on Page 3, Lines 23 through 26.

C. Some choice of words amendments were made at KACI request and do not appear to change any meanings (Page 2, Lines 1 and 3).

We do not like the 20-year period and mildly object to the modifications of the language on fixtures and installed equipment. But, if there are no further amendments, we would request this bill be passed in its current form. If there are any amendments, we would urge restoration of the original text as it went to the Senate.

Conclusion: It is fair that the Product Liability Act with its statute of repose requiring the balancing of many interests which was the product of compromise and several years of legislative attention should be restored to control this specific area rather than being excluded unintentionally by a quite broad amendment enacted in 1987 where the issue of the impact on products liability was never considered in any legislative hearing or debate.

HOUSE JUDICIARY COMMITTEE

SB 103

MARCH 26, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director for the Home Builders Association of Kansas, appearing in opposition to SB 103 as amended by the Senate Committee of the Whole.

During the 1987 Session, HBAK strongly supported the remedial legislation which is now K.S.A. 60-513(b).

The reason this remedial legislation was then so important and remains important today is the decision of the Supreme Court of Kansas in Ruthrauff, Admistratrix v. Kensinger, 214 Kan. 185, 519 P.2d 661 (1974). The effect of Ruthrauff was to strip builders of any statute of limitations protection which meant a claimant could sue a builder for 50, 75 or more years after the work is completed, as long as the claimant did so within two years of the date of any injury.

The complexity of this issue is exceeded only by its importance to the many individuals and groups who will be impacted by your decision. HBAK questions the need for any change in current law. However, if the Legislature determines that a change must be made in the product liability law of Kansas, HBAK requests and amendment which would exclude construction claims from the definition of product liability. This was the intent of the Senate Judiciary Committee with their amendment.

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SB 103 provides that the current 10 year limitation will not apply to a product liability claim. Unfortunately, the Kansas Product Liability Act does not contain a definition of "product". It does contain a definition of "manufacturer", and that definition includes one who "constructs" the product in question. It is highly probable that enactment of the bill will deprive home builders of the protection of the 10 year limitation, since a claimant could defeat the 10 year limitation by claiming that his or her suit is a product liability claim.

Attached to my testimony is a letter from Wichita attorney David Crockett, analyzing the language contained in SB 103 as amended by the Senate Committee of the Whole. I ask that you direct your attention to page 2 of Mr. Crockett's letter to me which expresses the concern of our Association.

HBAK is concerned that too little time is being given to consideration of this extremely complex issue and the far reaching effect of the language being proposed. How will this legislation affect all "manufacturers" in the State of Kansas?

If this Committee must take action on this issue without further consideration of the matter, we request an amendment which will remove the language adopted by the Senate Committee of the Whole which, in our opinion, would suject our membership to product liability suits, and adopt language which specifically places a 10 year statute of limitation on construction.

CROCKETT, KEELEY & GILHOUSEN
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING
A PROFESSIONAL ASSOCIATION:
DAVID G. CROCKETT, P.A.
EDWARD L. KEELEY
JAMES R. GILHOUSEN

THE AMIDON HOUSE
1005 N. MARKET
WICHITA, KANSAS 67214-2971
(316) 263-9662

FAX: (316) 263-7220

March 25, 1991

Ms. Janet Stubbs
Home Builders Association of Kansas
Merchants National Bank Building
Suite 803
Topeka, Kansas 66612

Via Fax No. (913) 233-9876

Dear Janet:

At your request, I have analyzed Senate Bill 103 from the perspective of the Kansas home builders.

As you know, the Bill provides that the 10 year limitation will not apply to a product liability claim.

Unfortunately, the Kansas Product Liability Act contains no definition of "product." It does contain a definition of "manufacturer," and that definition includes one who "constructs" the product in question. It is highly probable that enactment of the Bill will deprive home builders of the protection of the 10 year limitation, since a claimant could defeat the 10 year limitation by claiming that his or her suit is a product liability claim.

For this reason, we recommended an amendment to the definition of "product liability claim" which would clearly exclude home builders. The Senate adopted the following language:

> "It [a product liability claim] does not include any claim or action relating to the improvement of real property or of any fixtures affixed thereto, except that it does include any claim or action brought for harm caused by the manufacture, production, making or design of the relevant product which is affixed to the real property."

This language does not solve the problem, because it specifically includes as a product liability claim any claim relating to the manufacture or design of a product which is affixed to real property. As mentioned above, "manufacturer" includes one who constructs. "Design" could encompass architectural drawings, as well as floor plans and elevations prepared by lay persons. A "product which is affixed to the real property" must include a house, garage, and storage shed.

Therefore this language makes any lawsuit against a home builder a potential product liability claim. The result is that the home builder will no longer be protected by the 10 year statute of limitations. Enactment of this Bill would signal a return to the pre-1987 era in which home builders were exposed to liability claims indefinitely.

If I may furnish any further information, please do not hesitate to contact me.

Very truly yours,

David G. Crockett

DGC/cd

SUMMARY OF Ruthrauff, Administratrix v. Kensinger, 214 Kan. 185, 519 P.2d 661 (1974)

This lawsuit arose from a gas explosion and fire. The plaintiff sought damages from the defendant construction company and others, claiming that the construction company had negligently constructed the property thereby allowing the explosion to occur. The important dates are as follows:

1. May, 1959; all work completed by defendant
2. May, 1960; defendant sold property to Hall
3. December, 1969; Hall sold property to Smith
4. September 17, 1970; explosion
5. September 15, 1972, suit filed

The trial court concluded that the plaintiff's claim was barred by the same language which then appeared as K.S.A. 60-513(b), because the suit was filed more than thirteen years after the alleged negligent act.

The Supreme Court, however, after seven pages of reasoning, reversed the trial court and held that:

1. The period of limitation does not begin to run until the date on which substantial injuries result; and
2. The ten-year provision refers only to injuries which are not reasonably ascertainable until some time after the initial act.

In other words, the Supreme Court concluded that the 10 year limitation did not apply to sudden and immediately ascertainable injuries such as those caused by the gas explosion. Such claims were not barred if a suit were filed within two years of the date of the injury, regardless when the injury occurred. Therefore the plaintiff in Ruthrauff was permitted to proceed, even though the plaintiff was seeking damages for an act which had occurred more than thirteen years before the lawsuit was filed.

AIA Kansas

A Chapter of The American Institute of Architects

March 26, 1991

TO: Representative Solbach and Members of the House Judiciary Committee

FROM: Trudy Aron

RE: Opposition to SB 103

Mr. Chairman and Members of the Committee, I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas). Thank you for this opportunity to testify in opposition to SB 103.

We believe that as SB 103 is written, it may extend the statute of limitations for architects and others in the design and construction industry beyond the current ten-year statute.

Architects and others in the building industry are not the designer, manufacturer and/or constructor of products. However, architects do specify the products which make up the component parts of a building project.

The language in SB 103 is unclear as to the status of the designer and/or builder as it relates to improvements to real property. A building has never been construed to be a "product". In addition, the designer and/or builder of the project have never been construed to be liable as the seller, designer, manufacturer or constructor of the individual products. We are concerned that the language in this bill could be interpreted to impose an extension to the current ten-year statute of limitation. We oppose any extension of the present law.

We, further, agree with the Home Builders Association of Kansas. If the Committee is interested in the extension of the statute of limitations on product liability claims, a study should be undertaken to determine the need for changes and any potential harm these changes may have to those in the building industry.

We ask that you do not pass this bill. If you have questions, I'll be happy to answer them.

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Fascimile: 913-357-6450

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

March 26, 1991

TO: House Judiciary Committee

FROM: Kansas Medical Society Chip Wheelen

SUBJECT: Senate Bill 103; Statute of Limitations

Although we recognize that the purpose of the Senate in passing SB 103 is to deal specifically with product liability claims based on latent defects, we must oppose SB 103 in its current form. You will note that on page 4 at lines 21-23 the exemption from product liability claims in K.S.A. 60-513 is repealed. That is the law which establishes the statute of limitations in professional liability actions against health care providers. Obviously, this causes us significant concern.

The amendments to the product liability law contained in SB 103 would mean that a surgeon or other physician who implants or otherwise installs state of the art medical technology could be defined as a "product seller" and could, therefore, be subject to product liability actions for as long as 20 years after the medical procedure was performed. We believe that this is a significant departure from long-established public policy which has withstood the constitutional test of Supreme Court scrutiny. Furthermore, we do not believe it was ever the intent of the Senate to subject health care providers to a new 20-year statute of limitations.

For these reasons, we respectfully request that SB 103 be amended in a fashion that would retain the longstanding statute of limitations for medical malpractice actions. Attached to this statement is a draft amendment to SB 103 which would re-insert a reference to K.S.A. 60-513 in a fashion that would exclude health care providers from the prolonged statute of limitations in product liability cases. We believe that this language would be consistent with the intent of the Kansas Senate.

Thank you for considering our concerns. We urge you to adopt our amendment or reject SB 103 entirely.

CW/cb

Attachment

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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.

(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.

~~Except as provided in subsections (d) and (e), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto.~~ *Except for actions described in subsections (d) and (e), no action pursuant to this section shall be commenced more than 20 years beyond the time of the act giving rise to the cause of action.*

(c)

Nothing contained in this section shall modify the application of subsection (c) of K.S.A. 1990 Supp. 60-513 and except

(d) (1) In a product liability claim against the product 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, 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.

(2) The term "harmful material" means any chemical substances commonly known as asbestos, dioxins, or polychlorinated biphenyls, whether alone or as part of any product, or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal toxic substances control act, 15 U.S.C. § 2601 et seq., or the state of Kansas, and because of such risk is regulated by the state or the environmental protection agency.

(e) Upon the effective date of this act through July 1, 1991, the

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KADC

Testimony Before the
House Judiciary Committee
March 26, 1991

Mr. Chairman, members of the committee, I am Gerald Green. I regret not being able to personally present my testimony before you today but I am submitting this written testimony on behalf of the Kansas Association of Defense Counsel.

The Kansas Association of Defense Counsel opposes the changes in our code of civil procedure proposed by SB 103.

As amended by the Senate Judiciary Committee SB 103 extends the 10 year limitation on product liability action to 20 years. Product manufacturers would be subject to liability for 10 years and thereafter for another 10 years pursuant to the statute of repose. At the termination of 20 years all product liability would end.

The Kansas Association of Defense Counsel believes there is nothing defective with the current law, K.S.A. 60-513. In the Senate testimony on SB 103 the Kansas Trial Lawyers Association did not portray any case of someone who was denied his or her day in court as a result of the ten-year statute of repose.

Indeed the only class of people who might suffer from the current statute of repose is those who suffer from latent diseases.

However, as the members of this committee who were here in 1990 know the legislature amended K.S.A. 60-3303 to remedy any injustice done to that class of people. SB 103 does not affect the latent disease statutes enacted in 1990.

Secondly, as all lawyers realize, the greater the time distance grows from the time of manufacture the greater the difficulty in obtaining records, documents, and even finding witnesses who possess the relevant knowledge of the product or who remember its purpose, its design, or manufacture.

SB 103 increases this time period and decreases the protection that Kansas businesses now have facing litigation on old products after witnesses move away, information is lost, and memories fade.

The Kansas Association of Defense Counsel does support the ten-year limitation on tort action granted to the home builders and wishes it could be continued for other members of the Kansas manufacturing community.

Gerald Green
Attorney at Law
Legislative Chairman for the Kansas
Association of Defense Counsel

Attachment #22

HJUD
ATTACH #22

3-26-91

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 26, 1991

TO: House Judiciary Committee
RE: SB 49 - An act concerning garnishments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 49** which clarifies K.S.A. 60-726 as to who is responsible for making a "good faith" effort to find out if the institution being served with the garnishment order has any assets of the judgment debtor.

KBA was disappointed that the Senate removed from this bill what we considered to be the most important provision - a fee to be assessed on each garnishment order. Not only would such a fee have been beneficial to banks in helping them cover the costs of processing garnishment orders, but it have also served as a deterrent against "shotgun" or "blanket" filings.

I have attached to this testimony the comments which Bill Nichols, Senior Vice President and General Counsel for Commerce Bank of Topeka, presented to the Senate Financial Institutions and Insurance Committee. In his testimony, Mr. Nichols presented statistical information which shows that garnishments are a continuing and growing problem in Shawnee County and pose an ever-increasing cost to financial institutions. I am sure similar statistics could be provided for other counties throughout the state.

Since the Senate has rejected a floor amendment which would have established a $10 garnishment fee we are not going to ask this committee to revisit the fee issue, but we did want to make the committee aware that we continue to believe it is unfair to expect the banks to shoulder all of the costs of processing the orders and we also believe such a fee would be a deterrent to "shotgun" filings. As Carolyn Adams, Vice-President and General Counsel for Bank IV Topeka, will note in her comments there are other changes in the garnishment law which should be addressed and we would strongly urge the Legislature to consider an interim study on these and other matters relating to garnishments.

In the meantime, we would respectfully request that the committee report **SB 49** favorably.

James S. Maag
Senior Vice President

HJUD
Attachment #23
3-26-91

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
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Commerce
Bank and Trust

February 11, 1991

Members of the Senate Committee on Financial Institution and Insurance

I am Senior Vice-President and General Counsel to Commerce Bank and Trust, Topeka, Kansas. I submit this written testimony in support of Senate Bill No. 49. During the three years I have been General Counsel, I have observed a dramatic increase in the number of non-wage garnishments served on Commerce Bank. In early 1990 at my direction, Commerce Bank began compiling data to substantiate the number of garnishments being served on us, as well as data to substantiate the number of garnishment answers we made showing no account. A group of attorneys representing financial institutions (most in-house counsel) meet monthly. I asked the members of this group to begin gathering the same data concerning the extent of garnishments served on their clients. Each of the financial institutions represented, these being, Bank IV Topeka, Merchants National Bank, Fidelity State Bank, and Capital Federal Savings, joined Commerce Bank in compiling data concerning garnishments. The remaining banks, savings associations, and the credit unions in Topeka are not represented by a member of our group and did not gather data.

Certain of the statistics mentioned below are annualized figures as some financial institutions did not gather data for the entire calendar year. I feel, however, these statistics, as set forth below, are reasonably close to the actual figures for each institution during the calendar year 1990.

NAME OF INSTITUTION	# GARNISHMENTS (NON-WAGE)	# ANSWERED "NO ACCOUNT"	PERCENT
Commerce Bank and Trust	508	195	38.4%
Bank IV Topeka	236	152	64.4%
Merchants National Bank	125	83	66.4%
Fidelity State Bank	31	18	58.1%
Capital Federal Savings	351	214	60.1%

Each financial institution anticipates being served with even greater numbers of garnishment orders during 1991.

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I feel this expectation of these financial institutions is valid and is supported by the statistics contained in the reports attached to these written comments. The attached sheets are copies of computer generated reports from the Limited Actions Division of the Shawnee County District Court. These reports contained yearly figures for 1988, 1989, and 1990, and for January, 1991. These reports show the total number of civil cases filed and total number of garnishments issued during these three calendar years and for the month of January, 1991. The number of civil cases for these three years has progressively increased as follows:

1988 - 7,177 1989 - 9,625 1990 - 11,758

In January, 1991, the number of civil cases filed was 1,084, which on an annualized basis would be 13,000 filed in 1991. The number of garnishments filed for these same three years has progressively increased as follows:

1988 - 11,691 1989 - 13,497 1990 - 14,978

In January, 1991, the number of garnishments filed was 1,578, which on an annualized basis would be 18,936 garnishments filed in 1991.

The Clerk's office feels that approximately 30% of all garnishments filed are non-wage garnishments. This being the case, approximately 5,600 non-wage garnishments will be issued by the Limited Actions Division in 1991. Each of these garnishment orders has to be handled and processed by a person at the financial institution at lease once, and when funds are held by the institution, at least twice.

I believe the amount of time spent in handling and processing a garnishment at Commerce Bank will range from 10 minutes to 30 minutes, depending upon the following factors:

(1) if we withhold funds or do not withhold,
(2) number of defendants in the lawsuit,
(3) number of names on accounts at bank,
(4) number of accounts at bank in name of defendant(s),
(5) clarity of information concerning defendant as shown on garnishment order, and
(6) extent on contact from our customer or garnishing attorney about the garnishment order.

Respectfully submitted,

William T. Nichols
Senior Vice President and
General Counsel
Commerce Bank and Trust

1988 Limited Actions, Traffic Caseload Statistics

	Civil	SC	Traffic	F & G	DWI	HV	YTD
Jan	542	70	485	1	30	3	1131
Feb	578	80	678	1	30	18	1385
March	665	99	821	3	24	28	1640
April	539	88	955	5	37	19	1643
May	621	77	784	6	31	9	1528
June	600	83	743	2	21	0	1449
July	588	69	832	8	43	24	1564
Aug	567	109	728	0	28	12	1444
Sept	648	91	682	8	5	1	1435
Oct	616	104	866	7	30	0	1623
Nov	740	85	687	0	7	0	1519
Dec	473	92	946	9	20	0	1540
Totals	7177	1047	9207	50	306	114	
Total	17901						

1988 Limited Actions Document Caseload

	Citations	Garn	Aids	Warrants	Summons	Alias Sum	YTD
Jan	161	830	705	47			1743
Feb	247	726	630	40			1643
March	275	836	552	53			1716
April	259	820	557	72			1708
May	197	876	440	77			1590
June	264	856	519	66			1705
July	183	840	648	83	684	170	2608
Aug	256	1198	745	82	883	232	3396
Sept	220	1155	429	91	996	230	3121
Oct	205	1241	735	72	888	242	3383
Nov	179	1078	513	65	887	181	2903
Dec	236	1235	527	50	913	208	3169
Totals	2682	11691	7000	798	5251	1263	
Total	28685						

1989 Limited Actions Document Caseload

	Citations	Garn	Aids	Warrants	Summons	Alias Sum	YTD
Jan	242	1273	478	131	759	231	3114
Feb	179	1067	662	66	926	218	3118
March	237	1313	632	85	1203	199	3669
April	235	1114	592	52	664	248	2905
May	321	1185	480	61	868	244	3159
June	308	1241	737	70	1473	240	4069
July	372	1140	488	53	888	264	3205
Aug	436	1242	864	46	1446	489	4523
Sept	477	895	658	48	1273	355	3706
Oct	502	1079	677	48	945	366	3617
Nov	505	903	698	73	1237	377	3793
Dec	501	1045	790	34	928	697	3995
Totals	4315	13497	7756	767	12610	3928	
Total	42873						

1989 Limited Actions, Traffic Caseload Statistics

	LA	SC	Traffic	F & G	DWI	HV	YTD
Jan	688	78	944	3	42	0	1755
Feb	599	66	524	0	27	0	1216
March	819	80	1031	4	25	0	1959
April	509	74	724	1	15	0	1323
May	798	116	1114	11	41	0	2080
June	994	85	893	7	39	0	2018
July	932	79	872	8	33	0	1924
Aug	831	114	867	6	26	91	1935
Sept	853	86	737	5	14	9	1704
Oct	963	106	981	1	54	22	2127
Nov	855	84	915	2	23	11	1890
Dec	844	91	481	5	20	0	1441
Total	9685	1059	10083	53	359	133	

1990 Limited Actions Document Caseload

	Cit	Garn	Aids	Warnt	Sumn	A/S	G/E	W/R	Subp	YTD
Jan	315	1,051	839	63	1,465	809	43	20	15	4,620
Feb	899	1,166	737	63	1,258	603	13	35	5	4,779
March	690	1,164	910	121	1,432	547	21	53	10	4,948
April	676	1,171	917	98	1,242	438	17	27	12	4,598
May	723	1,312	908	142	1,355	431	9	38	15	4,933
June	708	1,096	942	92	1,540	405	14	12	16	4,825
July	588	1,292	890	97	1,086	409	14	41	38	4,455
Aug	1,088	1,559	829	79	1,751	456	11	31	32	5,836
Sept	791	1,223	863	101	894	377	6	28	9	4,292
Oct	883	1,462	983	87	1,914	432	19	28	22	5,830
Nov	593	1,234	803	47	1,242	458	37	24	15	4,453
Dec	701	1,248	842	74	1,294	448	29	20	11	4,667
Total	8,655	14,978	10,463	1,064	16,473	5,813	233	357	200	58,236

1990 Limited Actions, Traffic Caseload Statistics

	LA	SC	TR	F&G	DU	HV	YTD
Jan	840	106	934	0	37	27	1,944
Feb	631	81	1,108	4	37	14	1,875
March	1,082	82	998	9	25	31	2,227
April	1,067	79	964	17	26	25	2,178
May	898	104	752	10	38	6	1,808
June	1,198	74	882	5	39	21	2,219
July	962	93	1,022	2	22	8	2,109
Aug	1,091	121	1,136	0	26	10	2,384
Sept	815	92	872	1	32	13	1,825
Oct	1,242	106	1,072	0	30	12	2,462
Nov	1,121	107	1,083	2	25	2	2,340
Dec	811	89	805	2	23	46	1,776
Total	11,758	1,134	11,628	52	360	215	25,147

1990 Traffic Document Caseload

	Exec	Subp	Sumn	Susp	Wrnts	Total
Jan	30	133	75	247	87	572
Feb	24	58	118	187	61	448
March	16	216	75	208	56	571
April	21	29	65	104	100	319
May	46	200	42	343	150	781
June	7	129	142	232	44	554
July	35	135	35	345	108	658
Aug	36	166	73	394	114	783
Sept	24	123	77	203	77	504
Oct	50	118	70	279	105	622
Nov	22	178	56	63	71	390
Dec						0
Total	311	1,485	828	2,605	973	6,202

1991 Limited Actions Document Caseload

	Cit	Garn	Aids	Warnt	Sumn	A/S	G/E	W/R	Subp	YTD
Jan	1,003	1,578	1,103	103	1,634	684	86	28	20	6,239
Feb										0
March										0
April										0
May										0
June										0
July										0
Aug										0
Sept										0
Oct										0
Nov										0
Dec										0
Total	1,003	1,578	1,103	103	1,634	684	86	28	20	6,239

1991 Limited Actions, Traffic Caseload Statistics

	LA	SC	TR	F&G	DU	HV	YTD
Jan	1,084	83	849	4	25	21	2,066
Feb							0
March							0
April							0
May							0
June							0
July							0
Aug							0
Sept							0
Oct							0
Nov							0
Dec							0
Total	1,084	83	849	4	25	21	2,066

1991 Traffic Document Caseload

	Exec	Subp	Sumn	Susp	Wrnts	Total
Jan	42	154	115	162	65	538
Feb						0
March						0
April						0
May						0
June						0
July						0
Aug						0
Sept						0
Oct						0
Nov						0
Dec						0
Total	42	154	115	162	65	538

TESTIMONY
HOUSE COMMITTEE ON JUDICIARY

Mr. Chairman and members of the Committee, my name is Carolyn A. Adams, Vice President and General Counsel, BANK IV Topeka, N.A. I very much appreciate the opportunity to discuss the issue of garnishments served on financial institutions addressed in Senate Bill 49.

BANK IV Topeka, N.A. is a $635MM bank which has nearly 29,000 deposit accounts and over 40,000 certificates of deposit. The bank receives approximately 30 non-wage garnishments a month. In 1990 no account was found for approximately 65% of these.

Problem. Handling a garnishment costs a financial institution many dollars. Each garnishment is handled by at least five people who complete fifteen initial steps. For example:

1. Person served (officer).
2. Person forwarding to operations (secretary).
3. Person in Deposit Services (supervisor).
   a. Looks for accounts.
   b. Memo posts account if funds found.
   c. Contacts account officer.
   d. Makes entry in general ledger suspense account.
   e. Makes entry in customers' accounts.
   f. Memo to proof.
   g. Enters on log.
   h. Fills in letter for officer to sign.
   i. Sends to word processing.
4. Word processor prepares letter.
5. Deposit services forwards letter to account officer.
6. Officer signs and sends letter to customer.
7. Follow-up record (secretary of officer served).

Almost all of these five bank employees and the same 15 steps are involved again when the order from the court is received to release or pay in funds.

Cost. I don't know how much these 30 steps cost, but if each step averaged 4 minutes, it adds up to about 2 hours. Approximately one-third of this time is officer involvement. In addition, if there are any questions about ownership of accounts, attorneys are consulted which adds further to the expense.

BANK IV Topeka has about 30 garnishments per month, which equals 60 hours of time. Roughly, this equals 1 week of a full time staff employee, plus ½ week of an officer's time. In addition, each month approximately 2 hours of an attorney's time is used.

Comment. I seriously doubt if this amended bill (without the fee) would have much impact on current garnishment activity.

Other suggestions. SB 49 doesn't address several situations which I believe could be eliminated without a substantial impact on the plaintiffs or their attorneys. These are:

1. Garnishments for less than $50.
2. Ordering in funds less than $25.
3. Inadequate identifying information.
4. Lack of expiration date.
5. Failure to distinguish whether trust assets are included.

H.JUD
Attachment #24
3-26-91

LT4/415

Low $. If the first two were prohibited by statute, it would have avoided the time BANK IV was ordered to pay in 13¢.

Inadequate information. If addresses or social security numbers were required, it would help distinguish whether the garnishment is on John Jones, Jr., or John Jones, Sr., (or even the III).

No expiration. If there was an expiration date (60 or 90 days), a bank could release the funds in situations when neither an order to pay nor a release is received. BANK IV occasionally has held funds more than two years, because there was no official word how to handle it, even though the bank contacted the Court and the attorneys.

Corporate Trustee. If the bank is garnished as trustee, the trust records need to be searched for assets. However, trust assets are not listed in the computer records normally checked (deposit accounts). Researching every garnishment for trust assets would double the steps, time and expense described above for response to garnishments.

Trust department have the additional burden of the need to distinguish beneficiaries of spendthrift trust created by other parties, from those that the grantor and benificiary are the same.

Summary. A reasonable fee paid to the financial institution seems fair. An alternative would be a reasonable fee paid to the court which might help reduce the number of "fishing" garnishments.

Note. I believe a number of other changes such as I've just suggested could reduce the burden of garnishments on financial institutions.

Thank you very much for the opportunity to speak to you. I would be happy to try to answer any questions.

* * *

LT4/415