Approved 2-28-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Rep. John Solbach, Chairperson, at 3:30 ~~a.m.~~/p.m. on February 24, 1992 in room 313-S of the Capitol.

All members were present except:

Representatives Carmody, Gomez and Hochhauser who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

State Representative John McClure
Chester Richards, Kansas City, Ks
Ben Coats, Kansas Sentencing Commission
State Representative Anthony Hensley
Bob Harrison, Youth Center at Topeka
Stephen Hiebsch, Youth Center at Topeka
Levi Lee, Jr., Youth Center at Topeka
Richard Schodorf, 18th Judicial District
Pat Barnes, Kansas Motor Car Dealers Association
Harriet Lane, Kansas Association of Broadcasters
Jerry Palmer, Kansas Trial Lawyers Association
Lori Callahan, KaMMCO
Brad Smoot, Kansas Civil Law Forum
Tom Buchanan, Kansas Civil Law Forum

The Chairman called the meeting to order.

State Representative John McClure requested a bill be introduced concerning the Animal Dealers Act. Representative Douville moved to introduce requested bill. Rep. Pauls seconded the motion. Motion carried.

Representative O'Neal moved to introduce a bill concerning development districts. Rep. Pauls seconded the motion. Motion carried.

Rep. O'Neal moved to introduce legislation requested by Attorney General Robert Stephen concerning sports memorabilia. Rep. Pauls seconded the motion. Motion carried.

Rep. Macy moved to introduce legislation concerning grandparents visitation rights for adopted children. Rep. Lawrence seconded the motion. Motion carried.

Chester Richards, Kansas City, requested introduction of an informed jury bill. (Attachment #1) Rep. Lawrence moved to introduce this requested legislation. Rep. Snowbarger seconded the motion, and the motion carried.

Ben Coats, Kansas Sentencing Commission, requested introduction of ~~five~~ six bills concerning the Kansas Sentencing Commission. (Attachment #2) Rep. Douville moved to introduce requested bills. Rep. Scott seconded the motion. Motion carried.

Rep. Snowbarger moved to introduce legislation concerning the releasing of security on allowance of demand. Rep. Douville seconded the motion. Motion carried.

Rep. Parkinson moved to introduce legislation allowing county judges power to issue contempt warrants. Rep. Macy seconded the motion. Motion carried.

Hearings were opened on HB 2806, battery against Topeka youth center officers, and HB 2992, reports of suspected abuse at YCAT.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 xxm./p.m. on February 24, 1992.

State Representative Anthony Hensley testified in favor of HB 2806 and HB 2992. He would like to see battery against YCAT employees by residents upgraded from a Class B misdemeanor to a Class E felony. He said workers at YCAT are under much more pressure than they used to be under. He said that SRS stated HB 2806 would have limited fiscal impact. He said YCAT is currently understaffed. He thought HB 2992 would cut down on frivilous child abuse complaints.

Bob Harrison, employee of Youth Center at Topeka, said he had been a victim of assaults at YCAT, and he supported HB 2806 and HB 2992. He said he did not think an offender should be granted probation once they were in the adult system. He testified he was not given any legal help when frivilous child abuse charges were made against him.

Stephen Hiebsch, YCAT employee, supported both HB 2806 and HB 2992. He said he had also been a victim on assault at YCAT, and from 12/90 thru 11/91 there had been eight staff members attacked by residents at YCAT. He said he feels employees at YCAT are not adequately protected by law. The accused staff need legal protection. He said he felt HB 2992 would eliminate inconsistancies in current law and help minimize false accusations. He said accused employees should have rights of due process.

Levi Lee, Jr., YCAT employee, concurred with the remarks made by Harrison and Hiebsch. He asked the committee to pass HB 2806 and HB 2992.

Hearings on HB 2806 and HB 2992 were closed.

Continued hearing on HB 2792, Kansas advertised sales code was opened.

Richard Schodorf, Chief Attorney, Consumer Fraud & Economic Crime Division of the Office of the District Attorney, 18th Judicial District, testified in favor of HB 2792. (Attachment #3) He submitted substituted langauage in the bill and explained it to committee members.

Pat Barnes, Legislative counsel for Kansas Motor Car Dealers Association, testified in opposition to HB 2792. (Attachment #4)

Harriet Lange, Executive Director of Kansas Association of Broadcasters, testified in opposition to HB 2792. (Attachment #5) She answered committee members questions.

The hearing on HB 2792 was closed.

Hearing on HB 3044, relating to physician-patient privilege, was opened.

Jerry Palmer, Kansas Trial Lawyers Association, testified in favor of HB 3044. (Attachment #6) He said this bill would cover all physicians. He said the bill would control communication not admissable and applies only to rules of evidence.

Lori Callahan, General Counsel for KaMMCO, testified in opposition to HB 3044. (Attachment #7) She said KaMMCO's doctors do not want HB 3044. She felt this bill would add costs. She answered committee members questions.

Brad Smoot, Kansas Civil Law Forum, testified in opposition to HB 3044. (Attachment #8)

Tom Buchanan, Kansas Civil Law Forum, also testified against HB 3044. He said he thought Palmer wanted to restrict defense attorneys rights. This bill does not provide that both defense and plantiff attorneys can be present at all interviews. He said this bill would make defense attorneys incur cost of deposition. He gave examples of how he thought this bill would increase costs.

The meeting adjourned at 5:25 P.M.

3418 N. 71 ST.
KANSAS CITY, KANSAS 66109
FEB. 16, 1992

KANSAS STATE LEGISLATURE

SENATOR: B. D. KANAN

REPRESENTATIVE: TOM LOVE

SUBJECT:

INFORMED JURY AMENDMENT

PROPOSAL:

AMENDMENT LANGUAGE ATTACHED

BENEFITS DERIVED:

THIS BILL WOULD INFORM THE JURORS OF THEIR POWERS TO DETERMINE NOT ONLY GUILT OR INNOCENCE BUT WHETHER THE LAW SHOULD APPLY IN THE PARTICULAR INSTANCE BEING JUDGED. IN INSTANCES WHERE THE LAW HAS BEEN BADLY WRITTEN THEY MAY ALSO INVALIDATE THE LAW BEING APPLIED.

CASES IN POINT:

WHEN A FARMER IN KANSAS SHOT A TIRE, ON A VEHICLE THAT THIEVES WERE USING, TO KEEP THEM FROM LEAVING THE SCENE OF A CRIME. THE FARMER WAS GIVEN ONE YEAR IN PRISON BECAUSE THE STATE LAW REQUIRED ONE YEAR MINIMUM SENTENCE FOR THE USE OF A FIREARM IN THE COMMISSION OF A CRIME.

CONTACT PERSON

CHESTER RICHARDS
3418 N. 71 ST.
KANSAS CITY, KANSAS 66109
913-299-3744

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Attach #1
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PROPOSED LANGUAGE : A FULLY INFORMED JURY STATUTE

(1) IN ANY CRIMINAL TRIAL, THE COURT MUST INFORM THE JURORS OF THEIR RIGHT TO JUDGE BOTH LAW AND FACTS IN REACHING A VERDICT. THE COURT MUST ALSO INFORM CIVIL TRIAL JURORS OF THEIR RIGHT TO JUDGE THE LAW AS WELL AS THE FACTS WHENEVER GOVERNMENT, OR ANY AGENT OF THE GOVERNMENT, IS A PARTY TO THE TRIAL.

TRIAL JURORS MUST ACKNOWLEDGE BY OATH THAT THEY UNDERSTAND THIS RIGHT, AND NO PARTY TO THE TRIAL MAY BE PREVENTED FROM ENCOURAGING THEM TO EXERCISE IT. NO POTENTIAL JUROR MAY BE DISQUALIFIED FROM SERVING ON A JURY BECAUSE HE EXPRESSES A WILLINGNESS TO JUDGE THE LAW OR ITS APPLICATION, OR TO VOTE ACCORDING TO CONSCIENCE.

FAILURE TO SO INFORM THE JURY, OR ANY OTHER INFRACTION OF THESE RULES OF PROCEDURE, IS GROUNDS FOR MISTRIAL AND ANOTHER TRIAL BY JURY.

(2) BEFORE THE JURY HEARS A CASE, AND AGAIN BEFORE JURY DELIBERATION BEGINS, THE COURT SHALL INFORM THE JURORS OF THEIR RIGHTS IN THESE WORDS: "AS JURORS, YOUR FIRST RESPONSIBILITY IS TO DECIDE WHETHER THE DEFENDANT HAS BROKEN THE LAW. IF YOU DECIDE THAT HE HAS, BUT THAT YOU CANNOT IN GOOD CONSCIENCE SUPPORT A GUILTY VERDICT, YOU ARE NOT REQUIRED TO DO SO.

"TO REACH A VERDICT WHICH YOU BELIEVE IS JUST, EACH OF YOU HAS THE RIGHT TO CONSIDER THE MOTIVES OF THE DEFENDANT, AND THE EXTENT TO WHICH THE DEFENDANT'S ACTIONS HAVE ACTUALLY CAUSED HARM OR OTHERWISE VIOLATED YOUR SENSE OF RIGHT AND WRONG. IF YOU BELIEVE JUSTICE REQUIRES IT, YOU MAY ALSO JUDGE BOTH THE MERITS OF THE LAW UNDER WHICH HE HAS BEEN CHARGED AND THE WISDOM OF APPLYING THAT LAW TO THE DEFENDANT.

"ACCORDINGLY, FOR EACH CHARGE AGAINST THE DEFENDANT, EVEN IF REVIEW OF THE EVIDENCE STRICTLY IN TERMS OF THE LAW WOULD INDICATE A GUILTY VERDICT, YOU HAVE THE RIGHT TO FIND HIM NOT GUILTY. THE COURT CAUTIONS THAT WITH THE EXERCISE OF THIS RIGHT COMES FULL MORAL RESPONSIBILITY FOR THE VERDICT YOU BRING IN."

(3) WHENEVER STATE OR LOCAL GOVERNMENT IS ONE OF THE PARTIES IN ANY TRIAL BY JURY, THE COURT MUST ALSO INFORM THE JURORS THAT "IN ADDITION TO THEIR RESPONSIBILITY TO JUDGE THE FACTS OF THE CASE, THEY HAVE AN INHERENT RIGHT TO JUDGE THE LAW ITSELF".

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**New Section. Development of a Field Services Officer Training Program.**

The Department of Corrections Division of Community and Field Services Management shall consult with the Office of Judicial Administration and Community Corrections programs to establish a program of training for full-time field services (Court Services, Community Corrections and Parole) officers.

All Field Services (Court Services, Community Corrections and Parole) officers hired after January 1, 1993 shall satisfactorily complete a course of pre-service training of not less than 40 hours of instruction.

Beginning January 1, 1993, and the second year after completion of pre-service training, all Field Services (Court Services, Community Corrections and Parole) officers shall complete annually not less than 40 hours of education or training in subjects relating directly to field services work.

The Department of Corrections shall adopt and enforce such rules and regulations as are necessary for the establishment, and ongoing responsibilities of such program.

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**New Section. Development of a Uniform Offender Database.**

The judicial administrator of the courts shall confer and consult with the secretary of corrections in order to develop a common, uniform database of offender information by July 1, 1993. After July 1, 1993, the courts, community corrections and parole data shall adhere to the requirements of this new database. Data shall be collected on each offender placed in a non-incarcerative sanction. This information shall be stored at the Kansas Bureau of Investigation central repository. All field services officers shall have access to data contained at the central repository.

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2-0812

**New Section. Single supervision; definitions; staffing conferences; interagency transfers.**

(1) Field services agencies shall work together to achieve single supervision, thereby promoting efficient use of resources and staff. For the purposes of this section the following definitions apply:
(a) The list of "conditions" of probation or parole is a summary of recommended programs and stipulations appropriate for the supervision and management of the client. The conditions shall be written and submitted to the sentencing judge or parole authority for review and approval.
(b) The "individual supervision plan" is a detailed plan of supervision and management developed by the supervising field services officer and the client. This plan will identify the needs and determine the programs, resources and special services necessary to encourage rehabilitation of the offender. The plan shall outline a specific course of action geared to fulfill the conditions of probation or parole.
(c) "Placement" is the agency recommended for the supervision and management of the offender.
(d) A "receiving agency" is the agency that will receive the responsibility for a client by means of an interagency transfer.
(e) A "sending agency" is the agency having responsibility for a client prior to any interagency transfer.
(f) A "staffing conference" is a meeting among the representatives of Court Services and Community Corrections, and when appropriate, a representative of Parole.

(2) The judicial administrator of the courts and the secretary of corrections shall develop objective classification criteria.
(a) A single field services agency will supervise and manage each offender.
(b) A probation plan or parole plan shall be based upon the use of objective classification criteria in determining the program, or programs, necessary to encourage rehabilitation of the offender.
(c) A risk and needs assessment shall be used to determine the appropriate supervision level for the offender.
(d) The conditions recommended by members of the staffing conference shall be recorded in a report for review by the district court or parole authority.
(e) If joint confirmation is unattainable, each party shall submit recommendations to the sentencing judge or parole authority. Final placement and conditions of supervision will be at the discretion of the court or parole authority.
(f) Copies of the staffing conference report shall be available as provided by K.S.A. 21-4605.

(3) Whenever community placement is recommended in the pre-sentence investigation report as provided in subsection (1) of K.S.A. 21-4603 or K.S.A. 21-4604, a staffing conference shall be conducted to determine placement, conditions and the individual supervision plan that can best provide the level of supervision, programs and special services needed to encourage rehabilitation of the offender and meet the orders of the court and parole authority.

(4) Whenever a sentence is modified, as provided by subsections (4), (5), and (6) of K.S.A. 21-4603, and the court recommends community placement, a staffing conference shall be conducted to determine placement conditions and the individual supervision plan that can best provide the level of supervision, programs and special services needed to encourage rehabilitation of the offender and meet the orders of the court and parole authority.

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(5) Whenever modification of the conditions of probation is recommended as provided by K.S.A 21-4610, a staffing conference may be conducted.

(6) A staffing conference may be conducted in accordance with subsections (i) and (j) of K.S.A. 22-3717 or K.S.A. 22-3718 to determine placement, conditions and the individual supervision plan that can best provide the level of supervision, programs and special services needed to encourage rehabilitation of the offender and meet the orders of the court and parole authority.

(7) Whenever an offender is transferred to state parole services as part of an interstate compact agreement, a staffing conference may be conducted to determine placement, conditions and the individual supervision plan that can best provide the level of supervision, programs and special services needed to encourage rehabilitation of the offender and meet the orders of the court and parole authority.

(8) Whenever multiple supervision of a client is discovered, the agencies involved shall conduct a staffing conference to develop a comprehensive individual supervision plan based upon objective classification criteria and logistical considerations. The agencies shall utilize interagency transfer to obtain optimal supervision and maximize the use of programs and resources available to support the offender's rehabilitation and meet the orders of the court and/or parole authority.

(9) Whenever an offender paroled, on probation, assigned to community corrections or under suspended sentence is recommended for transfer to another judicial district, community corrections administrative unit, or parole region as provided by K.S.A. 21-4613, a staffing conference shall be conducted by the receiving field services agencies in cooperation with the sending field services agency.
(a) The members of the staffing conference shall develop a comprehensive individual supervision plan based upon programs and resources available in the receiving jurisdiction.

**New Section. Transfer of supervision; notification; journal entry.**

(1) Transfer of supervision from one field services agency to another shall be recorded. Transfer by mutual consent shall be recorded by written notification to the sentencing court or secretary of corrections.

(2) Unaccepted transfers between Court Services and Community Corrections shall be scheduled for court hearing. The result of such hearing shall be recorded by journal entry. The journal entry shall include the date of transfer, sending agency, receiving agency, sentencing court, any modification of probation or parole conditions and the period of probation or parole.

(3) The Secretary of Corrections retains the authority to refuse transfer of an offender to the Department of Corrections, Division of Field Services.

(4) Each Administrative Judge retains the authority to refuse the transfer of an offender to their respective jurisdiction.

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## Article 38. - COSTS IN CRIMINAL CASES

22-_____ **Purpose of act.** The purpose of this act is to improve the collection of fines, costs, fees, victim restitution and other amounts assessed by the court in criminal cases.

22-_____ **Criminal Costs and Restitution Trustee; appointment.** The court may provide by rule adopted by the judge or judges of each of the judicial districts of Kansas for the establishment of the office of Criminal Costs and Restitution Trustee for the judicial district. The Criminal Costs and Restitution Trustee shall be a person licensed to practice law in the state of Kansas and shall be appointed by and serve at the pleasure of the administrative judge of the judicial district.

22-_____ **Same; duties.** The Criminal Costs and Restitution Trustee shall have the responsibility for collection of any amounts assessed by the court as fines, costs, fees, victim restitution or other amounts assessed by the court in criminal cases. The Criminal Costs and Restitution Trustee shall be obligated to attempt collection of such amounts from those individuals who are on probation, community corrections or parole, who have had their sentence suspended, or who otherwise have unpaid fines, costs, fees, victim restitution and other amounts assessed by the court in criminal cases.

22-_____ **Same; powers.** (a) The Criminal Costs and Restitution Trustee shall be authorized and empowered to pursue all civil remedies which would be available to judgment creditors.

(b) The Criminal Costs and Restitution Trustee shall have the following additional powers and duties upon approval of the administrative judge and the judges of that district:

(1) To issue summonses, subpoenas and subpoenas duces tecum to judgment debtors and other witnesses who possess knowledge or books and records of the debtor's assets to appear in the office of the trustee or before the district court for examination;

(2) to administer oaths and take sworn testimony on the record or by affidavit;

(3) to appoint special process servers as required to carry out the criminal costs and restitution trustee's responsibilities under this section; and

(4) to enter into stipulations, acknowledgments, agreements and journal entries, subject to approval of the court.

22-_____ **Same; compensation.** In each judicial district which adopts a Criminal Costs and Restitution Trustee the court costs in all felony, misdemeanor, fish and game, traffic offenses (other than traffic infractions as defined by K.S.A. 8-   ) and municipal court appeal cases shall be increased by $25 for each year or any part thereof during which the costs remain due and unpaid. Any time of actual confinement in a state or local correctional facility shall not be included in determining how many $25 fee assessments are payable. The entirety of such increased fee shall be designated by the court to compensate the Criminal Costs and Restitution Trustee for such trustee's services. All sums of any kind collected by the Criminal Costs and Restitution Trustee shall be compensated by payment of the designated portion of court costs actually collected in the manner directed by the Administrative judge, with approval of the judges of that district, but shall be paid at least quarterly.

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## Article 62.--SETOFF AGAINST DEBTORS OF THE STATE

**75-6201. Statement of Policy.** The purpose of this act is to establish as policy that state agencies shall cooperate in identifying debtors who owe money to the state and that procedures be established for setting off against debtors the sum of any debt owed to the state.

**65-6202. Definitions.** As used in this act:

(a) "Debtor" means any person who:

(1) Owes a debt to the state of Kansas or any state agency; or

(2) owes support to an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. 651 *et seq.),* as amended***; or***

***(3) has unpaid fines, costs fees, victim restitution and other amounts assessed by the court in criminal cases under K.S.A. -----.***

(b) "Debt" means:

(1) Any liquidated sum due and owing to the state of Kansas or any state agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum; or

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. 651 *et seq.,),* as amended which amount shall be considered a debt due and owing the department of social and rehabilitation services for the purposes of this act***; or***

***(3) any unpaid fines, costs, fees, victim restitution and other amounts assessed by the court in criminal cases under K.S.A. -----.***

(c) "Refund" means any amount of Kansas income tax refund due to any person as a result of an overpayment of tax, and for this purpose, a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse's contribution to income, as the term "contribution to income" is defined by rules and regulation of the secretary of revenue.

(d) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's earnings, refund or other payment due from the state or any state agency minus any collection assistance fee charged by the director of accounts and reports of the department of administration.

(e) "State agency" means any state office, officer, department, board, commission, institution, bureau, agency or authority or any division or unit thereof.

(f) "Person" means an individual, proprietorship, partnership, limited partnership, association, trust, estate, business trust, corporation, other entity or a governmental agency, unit or subdivision.

(g) "Director" means the director of accounts and reports of the department of administration.

**75-6204. Authority to set off against debtors of the state.** Subject to the limitations provided in this act, if a debtor fails to pay to the state of Kansas or any state agency an amount owed, ***or fails to pay fines, costs, fees, victim restitution and other amounts assessed by the court in criminal cases,*** the director may set off such amount against any money held for, or any

money owed to such debtor by the state or any state agency.

**75-6206. Same; information to director of accounts and reports; notice to debtor; amounts subject to setoff withheld.** (a) A state agency ***or district court*** which request the director to assist in the collection of a debt due to the state agency by the utilization of setoff procedures under this act or which is required to certify debts under K.S.A. 75-6203 and amendments thereto, shall certify to the director in writing the identity of the debtor, the amount of the debt subject to setoff and other information as the director may require. The director shall cause such data to be matched to payroll, refund and other pending payment files to identify those instances where setoff procedures may be implemented. The director shall then make the following notification to the debtor in writing, either by personal delivery to the debtor or by mail. Such notification shall include:

(1) A demand for payment of the debt and a brief explanation of the legal basis of the debt;

(2) a statement of the state agency's intention to set off the debt due against the debtor's earnings, refund or other payment due to the debtor from the state of Kansas or any state agency;

(3) the right of the debtor to request in writing a hearing to contest the validity of the claim, if such request is made: (A) Within 15 days of the mailing of the notice, or (B) in cases where notice was not given by mail, within 15 days of personal delivery to the debtor;

(4) a statement that a hearing may be requested by making a written request therefor to the director of accounts and reports and the address of the director; and

(5) the fact that failure to request a hearing within the fifteen-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(b) A copy of the notice required by subsection (a) to be sent to the debtor shall be sent to each state agency involved. Subject to the provision of K.S.A. 75-6205, upon receipt of the copy of such notice the state agency shall withhold from the named debtor an amount equal to that claimed as the debt owed, and shall notify immediately the director of accounts and reports of any payments thereafter received form the named debtor or of any arrangements thereafter made for payment of the debt. Until the director of accounts and reports gives notice to a state agency as to the final determination to proceed or not proceed with the collection of a debt by setoff, the state agency shall continue to hold payments subject to setoff.

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**22-3801. Liability for costs.** (a) If the defendant in a criminal case is convicted. The court costs shall be taxed against the defendant. ~~and~~ ***Any fines, costs, fees, victim restitution and other amounts assessed by the court in criminal cases*** shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.

(b) Jury fees are not court costs and shall be paid by the county in all criminal cases.

(c) Whenever jury fees are paid by the county in a case in which the defendant was a person who had been committed to an institution under the control of the secretary of corrections and had not been finally discharged or released from the institution, the department of corrections shall reimburse the county for jury fees paid by the county. The reimbursement shall be paid from funds made available by the legislature for that purpose.

(d) The county shall not be reimbursed for the cost of employing a special prosecutor.

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**21-4603. Authorized dispositions.**

(1) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its finding and recommendations known to the court in the presentence report.

(2) Except as provided in subsection (3), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(b) impose the fine applicable to the offense;

(c) release the defendant ***for direct placement to a community correctional services program or a direct placement*** on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of probation ***or community corrections placement***;

(d) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence;

(e) ~~assign the defendant to a community correctional services program subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;~~

~~(f)~~ assign the defendant to a conservation camp for a period not to exceed 180 days;

~~(g)~~ *(f)* assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

~~(h)~~ *(g)* order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto; or

~~(i)~~ *(h)* impose any appropriate combination of (a), (b), (c), (d), (e), (f), *or* (g) ~~or (h)~~.

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

In imposing a fine the court may authorize the payment thereof in

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by this subsection shall be filed with the court.

(6) After such defendant has been assigned to a conservation camp but prior to the end of 180 days, the chief administrator of such camp shall file a performance report and recommendations with the court. The court shall enter an order based on such report and recommendations modifying the sentence, if appropriate, by sentencing the defendant to any of the authorized dispositions provided in subsection (2), except to reassign such person to a conservation camp as provided in subsection (2)*(e)*.

(7) Dispositions which do not involve commitment to the custody of the secretary of corrections and commitments which are revoked within 120 days shall not entail the loss by the defendant of any civil rights.

(8) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(9) An application for or acceptance of probation, suspended sentence or assignment to a community correctional services program shall not constitute an acquiescence in judgement for purposes of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(10) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1990 Supp. 21-4628, and amendments thereto, the provision of this section shall not apply.

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**75-52,105. ~~Quarterly~~ *Semi-annual* grant payments; certified expenditure statements by counties.** (a) Upon compliance by a county or group of counties with the requirements for receipt of the grants authorized by this act and approval of the comprehensive plan by the secretary of corrections, the secretary of corrections shall determine the amount of the annual grant to each such county and, commencing on the next ensuing calendar quarter after approval of the comprehensible plan, shall proceed to pay such grant in equal ~~quarterly~~ ***semi-annual*** payments in accordance with and subject to this act, applicable rules and regulation, and the provision of appropriations acts.

(b)Within ten (10) days after the end of each calendar quarter, each county receiving ~~quarterly~~ ***semi-annual*** grant payments under this act shall submit to the secretary of corrections certified statements detailing the amounts expended and costs incurred for the correctional services described in K.S.A. 75-5291. Upon receipt of such certified statements, the secretary of corrections shall determine whether each such county is in compliance with the expenditure and operation standards prescribed under this act for such services and shall determine the ~~quarterly~~ ***semi-annual*** payment amount each such county is entitled to receive after making any adjustments for reductions or charges as required by or in accordance with this act and applicable rules and regulations.

(c) ~~Quarterly~~ ***Semi-annual*** grant payments for counties entitled thereto under this act shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections or by a person or persons designated by the secretary of corrections to the county treasurers of such counties.

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**21-4610a. Probation or community correctional services fee.** (a) Each person placed under the probation supervision of a court services officer or other officer or employee of the judicial branch by a judge of the district court under K.S.A. 21-4610 and amendments thereto and each person assigned to a community correctional services program shall pay a probation or community correctional services fee. If the person was convicted of a misdemeanor, the amount of the probation services fee is ~~\$25~~ ***\$30 for each year of probation granted*** and if the person was convicted of a felony, the amount of the probation or community correctional services fee is ~~\$50~~ ***\$60 for each year of probation granted,*** except that in any case the amount of the probation or community correctional services fee specified by this section may be reduced or waived by the judge if the person is unable to pay that amount. ***Total fees shall be determined at the time probation or direct placement to a community correctional services program is granted and based upon the term of supervision imposed. If the term of supervision is extended, the person shall be assessed the amount for each year of extension. The person shall not have fees reduced due to early termination of supervision.***

(b) The probation or community correctional services fee imposed by this section shall be charged and collected by the district court. The clerk of the district court shall remit at least monthly all revenues received under this section from probation or community correctional services fees to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

(c) This section shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision.

**21-4611. Period of suspension of sentence, probation or assignment to community corrections; parole of misdemeanant.** (1) The period of suspension of sentence, probation of assignment to community corrections fixed by the court shall not exceed five years in ***class B*** felony cases; ***three years in class C, D, E and Unclassified felony cases;*** or two years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five years in ***class B*** felony cases, ***three years in class C, D, E and Unclassified felony cases,*** nor two years in misdemeanor cases. In no event shall the total period of probation suspension of sentence or assignment to community corrections for a felony exceed the greatest maximum term provided by law for the crime. ***The above limitations shall not apply to any crime or attempted crime set out in Article 35 of chapter 21 of the Kansas Statutes Annotated. For any crime or attempted crime set out in Article 35 of Chapter 21, the period of probation, suspension of sentence or assignment to community corrections shall not exceed five years in felony cases or two years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five years in felony cases not two years in misdemeanor cases.*** ~~except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues.~~ Probation suspension of sentence or assignment to community corrections may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation, suspension of sentence or assignment to community corrections, an order to this effect shall be entered by the court.

(2) The district court having jurisdiction of the offender may parole any misdemeanant sentenced to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

HJC 2-24-92 #2

TO: Chairperson and Representatives of the Kansas House 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: Substitute Bill to House Bill No. 2792 - An act creating a Kansas advertised sales code.

After appearing before this committee as a proponent of House Bill 2792, I have had an opportunity to discuss this legislation with a representative for the Kansas Automobile Dealers Association. This meeting resulted in the rewriting of House Bill 2792, streamlining the original proposal and adding comments to each section which would help explain the effect that the new statute would have on current law. It also became evident that I need to do a better job of explaining why both the business community and the consumers need this legislation and how unsatisfactory and unfair the current law operates.

I have attached to my statement a copy of the Kansas consumer protection act which is applicable to advertised sales (K.S.A. 50-626(b)(7)). This is a very general section which provides that it is unlawful to make a false or misleading representation concerning the facts surrounding a sale. The comments to subsection (b)(7) states that it "parallels the FTC pricing guides which proscribe former price comparisons, competitor price comparisons, and comparable value comparisons". So from this general Kansas law, we are referred to the FTC deceptive pricing guides, a copy of which is also attached to my statement. But rather than walk you through these guides, I would like to draw your attention to the comments after the sections in the revised legislation for I feel by reviewing these with you I can more clearly demonstrate the differences in current law with the proposed law and the need for such legislation.

The first comment states the general purpose for the advertising code.

COMMENT, SECTION 1: ***The purpose of the advertised sales code is to provide a statute which sets forth bright lines within which a merchant may comply in advertising sales while still being able to conduct customary business. The code replaces the former general language governing deceptive sales practices concerning price reductions, and price comparisons formally found in Subsection 626(b)(7) of the Kansas Consumer Protection Act. Additionally, the code sets forth requirements and limits on business termination.***
***The code generally parallels the Federal Trade Commission Guides Against Deceptive Pricing. However, specific definitions have been placed in the code to enable advertisers to have safe harbors in which to conduct advertised sales.***

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Attach #3
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I will reiterate something I said before--this is not necessarily a consumer bill. The purpose of this bill is primarily to allow businesses to fairly compete against one another in the market place. There is no doubt that the consumers will receive a benefit from this legislation because it will promote better competition in the market place which will provide for a more truthful and competitive market.

COMMENTS, SECTION 2: *Section 2 parallels the Federal Trade Commission Guides on former price comparisons, however, while the Federal Trade Commission Guides require the advertiser to offer the property at a regular price for a reasonably substantial period of time, section 2(a) of the code requires only that the property or services be offered for a majority of the time (51%). This allows the advertiser to clearly calculate when and how long property or services can be offered at "sale" prices.*

COMMENTS, SECTIONS 3 AND 4: *Sections 3 and 4 generally parallel the Federal Trade Commission Guide against deceptive pricing concerning retail price comparisons and comparable value comparisons. However, the Federal Trade Commission Guides require that the higher comparative price be one at which a substantial number of sales are currently being made in the trade area. The code allows the advertiser to claim a comparative savings if the high price is being offered by any competing retail outlet offering essentially the same type of customer service.*
*Section 4 of the code, like the Federal Trade Commission Guide, requires that when an advertiser claims savings by use of comparison pricing, the product or services being compared must be comparable in virtually all material aspects and any variations must be clearly disclosed by the advertiser.*

COMMENTS, SECTION 5: *This section of the code parallels the Federal Trade Commission Guide regarding the use of suggested manufacturer's retail price and similar claims. However, while the Federal Trade Commission Guide requires a substantial number of sales to be made in the trade area at the suggested manufacturer's retail price before the advertiser can lawfully use that price as a comparative price, the code merely requires that the manufacturer actually suggest the suggested retail or list price.*

It is important to understand exactly what this bill does and what it does not do. First, this bill does provide a level playing field on which businesses can fairly compete against one another for the consumer's dollar. This is a fundamental principle of our free market society. I challenge anyone to point out any provision in this bill that isn't built on the premise of honesty. Second, this bill does allow businesses to have safe harbors in conducting their advertising so that they may be able to reasonably conduct their sales without fear of prosecution. This bill does allow a business who is still struggling to offer property or services in a good faith manner not to be slam-dunked by a phoney going out of business sale. The current law is extremely ambiguous and leaves much room for prosecutorial and judicial interpretation. The standards may easily vary from one jurisdiction to another or one judge to another. This proposed legislation does not make it more difficult to conduct an honest sale. This legislation does not make it more costly to run an honest sale. This

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legislation does not affect national advertising because Kansas law will actually be more lenient in many areas.

To support this bill, someone simply needs to be in favor of clarity over confusion, safe harbors over the unknown, and real bargains instead of cheap gimmick sales.

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they are of another which differs materially from the representation; or

(E) the consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of benefit is contingent on an event occurring after the consumer enters into the transaction;

(2) the intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact;

(3) the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled;

(4) disparaging the property, services or business of another by making, knowingly or with reason to know, false or misleading representations of material facts;

(5) offering property or services without intent to sell them;

(6) offering property or services without intent to supply reasonable, expectable public demand, unless the offer discloses the limitation;

(7) making false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time;

(8) falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations;

(9) falsely stating, knowingly or with reason to know, that services, replacements or repairs are needed;

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

History: L. 1973, ch. 217, § 4; L. 1976, ch. 236, § 3; July 1.

### KANSAS COMMENT, 1973

1. Subsection (*a*) generally prohibits any deceptive practice in a consumer transaction. It is modeled after section 5 of the Federal Trade Commission Act and the old Kansas Buyer Protection Act. The acts and practices listed in subsection (*b*) are treated as *per se* deceptive, and are merely illustrative of the acts and practices which violate the act as set forth in the broadly worded subsection (*a*). The old Buyer Protection Act contained no list of *per se* deceptive practices, but relied on general language.

2. Subsection (*b*) (1) (A) forbids such conduct as misrepresenting the durability or components of a product, or the efficacy of a service.

Subsection (*b*) (1) (B) would, for example, preclude a seller from holding himself out as an authorized dealer, or having received a favorable rating from an organization like Underwriters' Laboratories, when such was not the case.

Subsection (*b*) (1) (C) forbids such conduct as misrepresenting that returned goods which were used by the original purchaser are unused. On the other hand, repossessed goods which were never used by the consumer might be represented as new.

Subsection (*b*) (1) (D) forbids such conduct as misrepresenting that a superseded style or model is the latest style or model of a product, or that a particular product, service, or intangible is the equivalent of another product, service, or intangible; misrepresenting that a two-ply tire is the equivalent of a four-ply tire would be an example.

Subsection (*b*) (1) (E) forbids referral commission arrangements in which a consumer is to receive future commissions based upon events which occur after the time at which he enters into a related consumer transaction. The old Buyer Protection Act outlawed only those referral sales involving a cash price in excess of $50; there is no dollar minimum under this subsection. Since this subsection includes cash referral sales as well as credit transactions, its scope is somewhat broader than the parallel provision in the Kansas Consumer Credit Code (K.S.A. 16a-3-309).

Subsection (*b*) (2) is intended to cover those cases where the supplier goes beyond innocent "puffing" expected by the consumer.

Subsection (*b*) (3) makes it clear that the act covers not only affirmative misrepresentation, but omissions of act as well.

Subsection (*b*) (4) is aimed at unfair trade practices flowing from competition among suppliers.

Subsections (*b*) (5) and (6) outlaw "bait and switch selling." This is a practice by which a supplier seeks to attract customers through advertising bargains which he does not intend to sell in more than nominal amounts. In order to induce acquisition of unadvertised items on which there is a greater mark-up, acquisition of the "bait" is discouraged through various artifices, including disparagement and exhaustion of an undisclosed miniscule stock. A supplier who is willing to sell all of the advertised items that he has in stock can avoid violating this subsection by disclosing that he has only "limited quantities" available. However, in the absence of such a willingness and disclosure, the existence of a violation should be determined on the basis of such objective factors as the representations made, and, in view of reasonably expectable public demand, the reasonableness of the quantity of the advertised goods, services, or intangibles available.

Subsection (*b*) (7) parallels the FTC Deceptive Pricing Guides which proscribe former price comparisons (former price must be actual, bona fide price at which article was offered on a regular basis for a reasonably substantial period of time in the recent, regular course of business), competitor price comparisons (advertised higher price must be price at which substantial sales are being made by other sellers in the same trade area),

and comparable value comparisons (other merchandise must be of essentially similar quality and obtainable in the area). However, general pricing claims or descriptions, such as "good prices," are not proscribed.

Subsection (*b*) (8) proscribes statements such as one asserting that an installment contract must be paid in full irrespective of a defense, or that a supplier can granish exempt wages.

Subsection (*b*) (9) forbids such conduct as misrepresenting that a television picture tube must be replaced or that a roof needs repair.

Subsection (*b*) (10) forbids conduct such as representations that a sale is for "seasonal clearance" or to facilitate "going out of business," when such is not the case.

**Law Review and Bar Journal References:**

"The New Kansas Consumer Legislation," Barkley Clark, 42 J.B.A.K. 147, 152, 189 (1973).

Consumer protection in Tenth Judicial District, William P. Coates, Jr., 44 J.B.A.K. 67, 71 (1975).

"A New Kansas Approach to an Old Fraud," consumer protection, Polly Higdon Wilhardt, 14 W.L.J. 623 (1975).

"Survey of Kansas Law: Consumer Law," John C. Maloney, 27 K.L.R. 197, 208, 211 (1979).

"The Kansas Tort Claims Act and School Districts," Susan C. Jacobson, 28 K.L.R. 619, 621 (1980).

"Survey of Kansas Law: Consumer Law," 29 K.L.R. 483, 484 (1981).

## CASE ANNOTATIONS

1. Violation of section; vehicle repaired and represented as new. Bell v. Kent-Brown Chevrolet Co., 1 K.A.2d 131, 132, 133, 561 P.2d 907.

2. Statement made in sale of new home held to be "puffing"; Consumer Protection Act did not apply. Baldwin v. Priem's Pride Motel, Inc., 224 K. 432, 580 P.2d 1326.

3. Cited; on counterclaim for damages under Consumer Protection Act for violations of the Residential Landlord and Tenant Act, held that the Residential Landlord and Tenant Act was specific and took precedence over the broader Consumer Protection Act. Chelsea Plaza Homes, Inc. v. Moore, 226 K. 430, 431, 432, 601 P.2d 1100.

4. Debt collection agency is "supplier" within meaning of Consumer Protection Act. State *ex rel.* Miller v. Midwest Service Bureau of Topeka, Inc., 229 K. 322, 323, 623 P.2d 1343.

5. Selling of feeder pigs was a consumer transaction under the Kansas Consumer Protection Act. Plaintiff failed to produce sufficient evidence to support claim. Musil v. Hendrich, 6 K.A.2d 196, 198, 200, 627 P.2d 367.

6. Delay of over three months in notifying plaintiff that order for a limited production car could not be filled held a deceptive practice. Willman v. Ewen, 6 K.A.2d 321, 325, 627 P.2d 1190.

7. Solicitation by a supplier may be sufficient to subject supplier to the act; act is not constitutionally impermissible for vagueness. Watkins v. Roach Cadillac, Inc., 7 K.A.2d 8, 9, 12, 15, 637 P.2d 458 (1982).

8. Decision in Willman v. Ewen, 6 K.A.2d 321, affirmed. Willman v. Ewen, 230 K. 262, 634 P.2d 1061 (1981).

9. Purpose and application of act considered; disputed material facts on issue of supplier's guilt of deceptive or unconscionable act not resolved. Stair v. Gaylord, 232 K. 765, 775, 776, 659 P.2d 178 (1983).

10. A deceptive act or practice is not a question of law for the court; right to jury trial. Waggener v. Seever Systems, Inc., 233 K. 517, 522, 524, 525, ___ P.2d ___ (1983).

**50-627. Unconscionable acts and practices.** (a) No supplier shall engage in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act whether it occurs before, during or after the transaction.

(b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to the following:

(1) That the supplier took advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;

(2) that, when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers;

(3) that, when the consumer transaction was entered into, the consumer was unable to receive a material benefit from the subject of the transaction;

(4) that, when the consumer transaction was entered into, there was no reasonable probability of payment of the obligation in full by the consumer;

(5) that the transaction the supplier induced the consumer to enter into was excessively onesided in favor of the supplier;

(6) that the supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment; and

(7) that the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties.

**History:** L. 1973, ch. 217, § 5; L. 1976, ch. 236, § 4; L. 1983, ch. 180, § 1; July 1.

## KANSAS COMMENT, 1973

1. Section 50-627 forbids unconscionable advertising techniques, unconscionable contract terms, and unconscionable debt collection practices. As under the

FEDERAL TRADE COMMISSION

Paul Rand Dixon, Chairman
Sigurd Anderson
Philip Elman
A. Everette MacIntyre*
A. Leon Higginbotham, Jr.

Joseph W. Shea, Secretary

* The statement of Commissioner MacIntyre's position on these Guides appears in the press release issued by the Commission at the time the Guides were released to the public.

FEDERAL TRADE COMMISSION
Washington

# GUIDES AGAINST DECEPTIVE PRICING *

## INTRODUCTION

These Guides are designed to highlight certain problems in the field of price advertising which experience has demonstrated to be especially troublesome to businessmen who in good faith desire to avoid deception of the consuming public. Since the Guides are not intended to serve as comprehensive or precise statements of law, but rather as practical aids to the honest businessman who seeks to conform his conduct to the requirements of fair and legitimate merchandising, they will be of no assistance to the unscrupulous few whose aim is to walk as close as possible to the line between legal and illegal conduct. They are to be considered as guides, and not as fixed rules of "do's" and "don'ts," or detailed statements of the Commission's enforcement policies. The fundamental spirit of the Guides will govern their application.

The basic objective of these Guides is to enable the businessman to advertise his goods honestly, and to avoid offering the consumer non-existent bargains or bargains that will be misunderstood. Price advertising is particularly effective because of the universal hope of consumers to find bargains. Truthful price advertising, offering real bargains, is a benefit to all. But the advertiser must shun sales "gimmicks" which lure consumers into a mistaken belief that they are getting more for their money than is the fact.

## GUIDE I - FORMER PRICE COMPARISONS.

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious--for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction--the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at

*/Inquiries concerning these Guides and requests for copies should be addressed to the Bureau of Industry Guidance, Federal Trade Commission, Washington, D. C. 20580.

which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith--and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, "Formerly sold at $ ______"), unless substantial sales at that price were actually made.

The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him $5 each. His usual markup is 50% over cost; that is, his regular retail price is $7.50. In order subsequently to offer an unusual "bargain," Doe begins offering Brand X at $10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he "cuts" the price to its usual level--$7.50--and advertises: "Terrific Bargain: X Pens, Were $10, Now Only $7.50!" This is obviously a false claim. The advertised "bargain" is not genuine.

Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as "Regularly," "Usually," "Formerly," etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, "Sale," the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been "Reduced to $9.99," when the former price was $10.00, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.

## GUIDE II - RETAIL PRICE COMPARISONS; COMPARABLE VALUE COMPARISONS.

Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser's trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, but in either case the advertised higher price must be based upon fact, and not be fictitious or misleading. Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial



sales of the article are being made in the area--that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving. Expressed another way, if a number of the principal retail outlets in the area are regularly selling Brand X fountain pens at $10, it is not dishonest for retailer Doe to advertise: "Brand X Pens, Price Elsewhere $10, Our Price $7.50."

The following example, however, illustrates a misleading use of this advertising technique. Retailer Doe advertises Brand X pens as having a "Retail Value $15.00, My Price $7.50," when the fact is that only a few small suburban outlets in the area charge $15. All of the larger outlets located in and around the main shopping areas charge $7.50, or slightly more or less. The advertisement here would be deceptive, since the price charged by the small suburban outlets would have no real significance to Doe's customers, to whom the advertisement of "Retail Value $15.00" would suggest a prevailing, and not merely an isolated and unrepresentative, price in the area in which they shop.

A closely related form of bargain advertising is to offer a reduction from the prices being charged either by the advertiser or by others in the advertiser's trade area for other merchandise of like grade and quality--in other words, comparable or competing merchandise--to that being advertised. Such advertising can serve a useful and legitimate purpose when it is made clear to the consumer that a comparison is being made with other merchandise and the other merchandise is, in fact, of essentially similar quality and obtainable in the area. The advertiser should, however, be reasonably certain, just as in the case of comparisons involving the same merchandise, that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area. For example, retailer Doe advertises Brand X pen as having "Comparable Value $15.00." Unless a reasonable number of the principal outlets in the area are offering Brand Y, an essentially similar pen, for that price, this advertisement would be deceptive.

## GUIDE III - ADVERTISING RETAIL PRICES WHICH HAVE BEEN ESTABLISHED OR SUGGESTED BY MANUFACTURERS (OR OTHER NON-RETAIL DISTRIBUTORS).

Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

There are many methods by which manufacturers' suggested retail or list prices are advertised: large scale (often nation-wide) mass-media advertising by the manufacturer himself; pre-ticketing by the manufacturer; direct mail advertising; distribution of promotional material or price lists designed for display to the public. The mechanics

used are not of the essence. These Guides are concerned with any means employed for placing such prices before the consuming public.

There would be little problem of deception in this area if all products were invariably sold at the retail price set by the manufacturer. However, the widespread failure to observe manufacturers' suggested or list prices, and the advent of retail discounting on a wide scale, have seriously undermined the dependability of list prices as indicators of the exact prices at which articles are in fact generally sold at retail. Changing competitive conditions have created a more acute problem of deception than may have existed previously. Today, only in the rare case are all sales of an article at the manufacturer's suggested retail or list price.

But this does not mean that all list prices are fictitious and all offers of reductions from list, therefore, deceptive. Typically, a list price is a price at which articles are sold, if not everywhere, then at least in the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.

This general principle applies whether the advertiser is a national or regional manufacturer (or other non-retail distributor), a mail-order or catalog distributor who deals directly with the consuming public, or a local retailer. But certain differences in the responsibility of these various types of businessmen should be noted. A retailer competing in a local area has at least a general knowledge of the prices being charged in his area. Therefore, before advertising a manufacturer's list price as a basis for comparison with his own lower price, the retailer should ascertain whether the list price is in fact the price regularly charged by principal outlets in his area.

In other words, a retailer who advertises a manufacturer's or distributor's suggested retail price should be careful to avoid creating a false impression that he is offering a reduction from the price at which the product is generally sold in his trade area. If a number of the principal retail outlets in the area are regularly engaged in making sales at the manufacturer's suggested price, that price may be used in advertising by one who is selling at a lower price. If, however, the list price is being followed only by, for example, small suburban stores, house-to-house canvassers, and credit houses, accounting for only an insubstantial volume of sales in the area, advertising of the list price would be deceptive.

On the other hand, a manufacturer or other distributor w[illegible] business on a large regional or national scale cannot be require[illegible] police or investigate in detail the prevailing prices of his articles throughout so large a trade area. If he advertises or disseminates a list or pre-ticketed price in good faith (i.e., as an honest estimate of the actual retail price) which does not appreciably exceed the highest



price at which substantial sales are made in his trade area, he will not be chargeable with having engaged in a deceptive practice. Consider the following example:

Manufacturer Roe, who makes Brand X pens and sells them throughout the United States, advertises his pen in a national magazine as having a "Suggested Retail Price $10," a price determined on the basis of a market survey. In a substantial number of representative communities, the principal retail outlets are selling the product at this price in the regular course of business and in substantial volume. Roe would not be considered to have advertised a fictitious "suggested retail price." If retailer Doe does business in one of these communities, he would not be guilty of a deceptive practice by advertising, "Brand X Pens, Manufacturer's Suggested Retail Price, $10.00, Our Price, $7.50."

It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions.

## GUIDE IV - BARGAIN OFFERS BASED UPON THE PURCHASE OF OTHER MERCHANDISE.

Frequently, advertisers choose to offer bargains in the form of additional merchandise to be given a customer on the condition that he purchase a particular article at the price usually offered by the advertiser. The forms which such offers may take are numerous and varied, yet all have essentially the same purpose and effect. Representative of the language frequently employed in such offers are "Free," "Buy One - Get One Free," "2-For-1 Sale," "Half Price Sale," "1¢ Sale," "50% Off," etc. Literally, of course, the seller is not offering anything "free" (i.e., an unconditional gift), or 1/2 free, or for only 1¢, when he makes such an offer, since the purchaser is required to purchase an article in order to receive the "free" or "1¢" item. It is important, therefore, that where such a form of offer is used, care be taken not to mislead the consumer.

Where the seller, in making such an offer, increases his regular price of the article required to be bought, or decreases the quantity and quality of that article, or otherwise attaches strings (other than the basic condition that the article be purchased in order for the purchaser to be entitled to the "free" or "1¢" additional merchandise) to the offer, the consumer may be deceived.

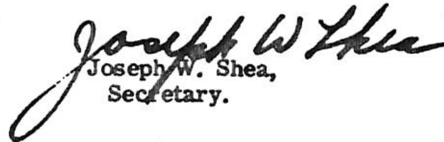
Accordingly, whenever a "free," "2-for-1," "half price sale," "1¢ sale," "50% off" or similar type of offer is made, all the terms and conditions of the offer should be made clear at the outset.

GUIDE V - MISCELLANEOUS PRICE COMPARISONS.

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a "wholesale" price. They should not represent that they are selling at "factory" prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or make a "limited" offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public.

These Guides supersede the Guides Against Deceptive Pricing adopted October 2, 1958.

Adopted: December 20, 1963.



Joseph W. Shea,
Secretary.

STATEMENT BEFORE THE HOUSE COMMITTEE

ON JUDICIARY

BY

THE KANSAS MOTOR CAR DEALERS ASSOCIATION

Monday, February 24, 1992

Re: Kansas Advertised Sales Code Creation and Proposed Substitute for Senate Bill No. 2792

Mr. Chairman and Members of the Committee, I am Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association. Our Association represents 321 new automobile and truck dealers in the state of Kansas.

This issue was last heard on February 11. At that time, we noted our opposition to Senate Bill No. 2792 for numerous reasons. Thereafter, it was suggested a clearer alternative to Senate Bill No. 2792 be explored with the inclusion of explanatory comments. It is my understanding this has been done and we have reviewed a proposed substitute bill which is a substantial improvement over the previous proposal, although it, too, contains a few areas which could use clarification which I have discussed witht he party requesting this legislation.

Unfortunately, we still find ourselves opposed to another layer of regulation for the following reasons:

1. Lack of Warning or Education.

We don't think the present bill has adequate provision for warning or education of the average business person whose interest is the free promotion of products. This could be accomplished with a warning requirement. In cases where the fear is fake going out of business sales or inventory dumping such warnings could be made at the time a promotion appears, or could be considered given if an ad-type violation under present law can be shown to have been made out prior to this law, for example, within the last five years. Swift action would be key, but it could be done.

2. Additional Regulation Stacked on Present Regulation.

The law does little to avoid stacking of already existing rules. Granted, it goes far, but despite the statutory rules of construction where the specific prevails over the general, we still see plenty of room for general action under the original Consumer Protection Act Provisions, especially were unconscionable

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acts and practices are concerned. The substitute bill should have § 14 amended to make it clear that actions and claims of unconscionable or deceptive acts factually based upon the conduct of advertisers be enforced only under this new law. Federal Trade Commission Rules are still in effect, too, and are not identical to these, though the rules in this bill are better.

3. Cooperative Regulation.

Our industry has worked to improve advertising practices. These have been addressed under current law and, most importantly, advertising guidelines have been developed through the attorney general's office.

4. Inadvertent Error.

We fear the risk and cost of inadvertent error in the construction of ads or application of grey areas which will occur.

5. Vague Areas and Comments.

Descriptions of market area and items misleading to consumers are still somewhat broad and nonspecific in several areas of the proposed substitute bill. Some of the one-line comments could provide more examples or explanation for guidance and the comments themselves should not actually be part of the black letter law itself, but do need to be included as advisory explanation of legislative intent.

6. Border State Problems.

Some national ads and neighboring states, especially Oklahoma, either do not have or do not enforce ad restrictions such that we will appear non-competitive in some areas simply by being more specific with the same ads which currently comply with the law.

7. The Factory Direct Sales.

Factory Direct Sales (§ 7 of the substitute bill) still require direct manufacturer advertising and sale under subsection a. Those of you with factory outlet malls inyour districts should watch this provision. From our point of view, we can arrange such sales and are essentially factory direct points and should be allowed to make such offers, subject to the true savings requirements of the section.

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8. Advertising Assistance Loss.

Possible loss or increased restrictions on nationally sponsored and paid advertising from the factory to our members is a perceived risk with this bill since such ads would have to be tailored to Kansas.

9. Enforcement Problems.

We don't see that the law is enforceable, however well intentioned it may be, particularly with the proliferation of multi-state, national and multi-media involvement, such as cable t.v.

10. Legislative Amendments.

With any broad law of this nature, we can also expect amendments with unanticipated results to be added as it makes its way through the legislative process. As such, no one can give business a guarantee that the end result will necessarily be a compromise bill everyone can live with.

The information we seem to be receiving from other business groups is not indicative of widespread support of further regulation of this nature. If this is going to be an addition to our law, then we would like the clarifications and features proposed, and consideration of others we see, none of which require major revisions. However, even so, our position overall will unfortunatley continue to be one of respectful opposition to this new law. I would be more than happy to answer any questions you may have.

Thank you for your work and consideration with respect to matters such as this. It is always deeply appreciated.

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Kansas Association Of
Broadcasters

800 SW Jackson #818, Topeka, KS 66612-1210

913/235-1307 FAX 913/233-3052

**PRESIDENT**
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KLWN/KLZR
Lawrence

**PRESIDENT-ELECT**
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KABI/KSAJ
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Goodland

Ed O'Donnell
WIBW AM/FM
Topeka

Colleen O'Neil
KZXL FM
Great Bend

Cliff Shank
KSKU FM
Hutchinson

Chet Tart
KRBB FM
Wichita

Testimony Before the House Judiciary Committee February 24, 1992

By Harriet Lange, Executive Director, Kansas Assn. of Broadcasters

RE: HB 2792 / Advertised Sales Code

Mr. Chairman, members of the committee, I am Harriet Lange, executive director of the Kansas Association of Broadcasters (KAB). The KAB represents a membership of radio and television stations in Kansas.

We appreciate the opportunity to appear and express our concerns with HB 2792. In our opinion, this legislation would not be of benefit to consumers and advertisers, and it would be detrimental to radio and television stations.

Consumers would not benefit because of its inflationary impact. We believe this legislation would have a chilling effect on sale/price advertising, thereby lessening price competition. And the increased cost to business in order to comply could proportionately reduce advertising budgets, or force higher prices to consumers for products and services.

The potential exists for placing Kansas businesses at a disadvantage with their competitors in other states, since Kansas' guidelines would appear to be more stringent in some cases, than in neighboring states or those required by the Federal Trade Commission.

Broadcasters, whose only source of revenue is advertising revenue, could lose a substantial portion of their regional or national advertising revenue from such companies as Sears, J.C. Penneys, Dillards, Jones Store Co., etc. Sale ads for these companies many times are created out-of-state and distributed for multi-state or national exposure. If Kansas' advertised sales code is more stringent than the FTC's guidelines, it will make it more difficult for these companies to advertise with Kansas media.

And because of the time-bound nature of radio and television commercials (10, 15, 20, 30, or 60 seconds in length), Kansas radio and television stations would be placed at a disadvantage with their newspaper competitors, if lengthy disclosures are required.

We urge you not to enact this legislation. It seems costly and counter-productive to further burden Kansas businesses with these additional requirements because a few advertisers who, according to Mr. Schodorf, are "unable to understand the complex web of federal, state, and municipal laws governing advertised sales practices." Rather than more legislation, perhaps more education on current guidelines would be in order.

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2-24-92
Attach #5

**TESTIMONY**

**of the**

**KANSAS TRIAL LAWYERS ASSOCIATION**

**before the**

**HOUSE JUDICIARY COMMITTEE**

**regarding HB 3044**

**February 24, 1992**

The Kansas Trial Lawyers Association requests favorable consideration of House Bill 3044 and offers the following information in support of the adoption of this bill.

EX PARTE COMMUNICATIONS

The problem addressed by the bill deals with a defense attorney talking privately with physicians and other health care providers who have rendered treatment to the plaintiff. These communications that take place outside of a deposition or trial and are unattended by either the plaintiff or by the plaintiff's attorney are the focus. Under the AMA's Principles of Medical Ethics IV "A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law."

Section 5.05 of the current opinions of the Judicial Council of the AMA (1984) states: "The information disclosed to a physician during the course of the relationship between physician and patient is confidential to the greatest possible degree . . . The physician should not reveal confidential communications or information without the express consent of the patient, unless required to do so by law." At common law there was no physician/patient privilege. The only statutory enactment dealing with the subject is K.S.A. 60-427. In the context of our Rules of Evidence it then states under subsection d: "There is no privilege under this section in the action in which the condition of the patient is an element or factor of the claim or defense of the patient. . ."

What has occurred is that defense attorneys have taken license with this rule and indicated that the evidentiary rule is broader than just proceedings where evidence is produced and that they have a right to speak with a physician <u>without any authorization from the patient</u> and without the presence of either the patient or the patient's attorneys.

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This becomes particularly problematic in medical malpractice cases where the attorney may not only represent a defendant in the malpractice action, but likewise may have or does represent the treating physician or represents the treating physician's insurance carrier. There are safeguards in judicial proceedings for the objection to irrelevant material. They are not present in an ex parte communication. There are irrelevancies that can be discussed which would promptly be excluded in an evidentiary proceeding (a discussion of a sexually transmitted disease, infidelity, drug or alcohol treatment, emotional problems, impotence) which could be disclosed. The problem is not only for the patient, but also for the doctor because the doctor without an appropriate authorization may release information which is covered by federal law such as those dealing with alcohol and drug abuse. There are even cases in other jurisdictions of civil actions which have been brought about by patients against doctors for the breach of confidence or complaints of an unethical act of releasing information without authorization or court order.

Kansas courts are split on the issue. There is a published United States District Court opinion and some district court rules approving of ex parte communications; there are district court decisions in Douglas, Shawnee, Ford and Osage Counties disapproving of the practice.

There are constitutional issues dealing with the rights of privacy. Most of the supreme courts of states that have considered the issue have ruled against the ex parte communication, but there are several states where it has been approved. Since the problem comes up because of interpretation of the evidentiary statute, we believe that the Legislature should take some action to clarify its intent in this area and that it should come down on the side of protecting the privileged communications between physicians and their patients unless either the physician has an authorization from the patient, or there is attendance at the conversation by either the patient or the patient's attorney, or the communication takes place in a formal setting such as a deposition or trial. In this way the privileged communication is only invaded to the necessary extent required for the purposes of the judicial proceeding and truly irrelevant information to that proceeding does not need to be released unless it has been subjected to scrutiny by a proper judicial officer.

## WHAT THE BILL WILL DO

What this bill does is that it still allows the production of medical records relevant to the issues in judicial proceedings, but does prohibit oral or written communications between a physician and an adverse party or that party's attorney, outside of the presence of the patient or the patient's attorney, without specific written authorization by the patient

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for such communication. This protects the doctor and it protects the patient. In the situation where the doctor, though, happens to be the defendant, subsection (g) will permit that doctor to discuss freely with his counsel everything about the patient.

THE CHANGE IS GOOD FOR PHYSICIANS AND PATIENTS

With respect to the doctors, the good thing about this change is that there is no question as to what authority they have. If they have an authorization from the patient then they can discuss the case. If they don't, then all they can do is produce their medical records. Other than that, the only time they will be asked questions about the patient is either in a deposition or at a court hearing. It specifically addresses a situation where the doctor is sued in a proceeding so that the doctor is free to discuss the matter with his lawyer, with other experts and anyone else that he needs to discuss the matter with in order to properly defend himself or herself.

This will cure the inconsistency between the rulings in courts. There is something sacred about the physician/patient relationship and there is a need for full disclosure in that relationship. The Legislature should recognize that public policy of protecting the confidentiality of those communications and only to the extent that it is necessary to invade that privilege for the purposes of litigation should the Legislature permit and encourage it.

Respectfully submitted,

JERRY R. PALMER
For the Kansas Association of Trial Lawyers

JRP/sd

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# KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

AND

KANSAS MEDICAL INSURANCE SERVICES CORPORATION


TO: House Judiciary Committee

FROM: Lori Callahan, General Counsel, KaMMCO

RE: H.B. 3044

DATE: February 24, 1992

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic, physician-owned, professional liability insurance company formed by the Kansas Medical Society pursuant to legislation enacted by the Kansas Legislature. KaMMCO currently insureds over 800 Kansas physicians.

KaMMCO opposes H.B. 3044. The physician-patient privilege is a creature of statute and did not exist at common law. In creating such a privilege, the Legislature felt it was important for there to be no privilege when the patient's condition was an element or factor of the claim. This decision of the Legislature has been consistently upheld by both Kansas State and Federal courts. H.B. 3044 would establish for the first time that the privilege extended to communication between any physician who saw the plaintiff and the defendant or defendant's attorney. It is KaMMCO's belief that such communication decreases litigation costs by allowing interviews with physicians, which are much easier to schedule and are less expensive than depositions, which therefore results in the elimination of non-essential witnesses; as well as the early evaluation and settlement of claims.

Additionally, the patient-physician relationship is already affected by the filing of a personal injury action which transforms the physician into an ordinary fact witness. Finally, it is unfair to preclude a defense attorney from meeting with a treating physician when the plaintiff's attorney has an unrestricted opportunity to do so.

KaMMCO's goals of early evaluation of claims and thereby reduced litigation costs would be severely affected by H.B. 3044. For these reasons we oppose this legislation.

HJC
2-24-92
Attach #7


P.O. BOX 2307 • TOPEKA, KANSAS 66601-2307
913-232-2224 • 800-232-2259

**KANSAS CIVIL LAW FORUM**
**A Coalition of Professionals and Businesses**
**Interested in the Kansas Court System**
Brad Smoot, Coordinator
1200 West Tenth
Topeka, Kansas 66604-1291
(913) 233-0016 FAX (913) 233-3518

**Testimony to the House Judiciary Committee**
**by Brad Smoot, Coordinator, Kansas Civil Law Forum**
**regarding House Bill 3044**

**February 24, 1992**

Chairman Solbach, Members of the Committee:

I am Brad Smoot, coordinator for the Kansas Civil Law Forum, a coalition of numerous businesses, professionals and trade associations interested in Kansas civil laws. We appear today in opposition to House Bill 3044.

House Bill 3044, as drafted, expands the physician-patient privilege to preclude defense attorneys from ex parte communications with plaintiffs' treating physicians. We oppose this measure for several reasons.

1. **There is No Physician/Patient privilege under Kansas Law where the Plaintiff's Condition is an Issue of the Case.** The Kansas Supreme Court in State v. Campbell, 210 Kan. 265 (1972), in which the condition of the patient is an element or factor of the claim or defense of the patient. The Court followed the clear language of K.S.A. 60-427 (d) which removes any physician-patient privilege once a lawsuit is filed and the condition of the patient is in issue.

2. **It Is Inequitable to Allow Only the Plaintiff's Counsel To Have Unrestricted Access To Medical Witnesses.** When a plaintiff places his medical condition in issue, the treating physician becomes a fact witness subject to examination by both parties. With a prohibition on ex parte communication proposed by HB 3044, plaintiff's attorney would have unrestricted access to medical witnesses while defense counsel would not.

3. **HB 3044 Would Hamstring Defense Counsel and Unnecessarily Increase Costs of Litigation.** Communication with the physician and other witnesses is an integral part of trial preparation and to deny informal communication would greatly hinder defense counsel's ability to properly and efficiently represent their clients. Because defense counsel will no longer be able to informally

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1 of 3

communicate with the treating physician, additional expense and time will be expended to formally obtain information regarding the plaintiff's medical condition. This additional expense will always be borne by defendants seeking the deposition, and not by the plaintiff.

In summary, we would call your attention to the case of Bryant v. Hilst, 136 F.R.D. 487 (D. Kan. 1991), where the Court concluded that the physician/patient privilege did not extend into litigation and, more importantly, elaborated on the public policy reasons for such a rule. The Court noted that it has an interest in "the just, speedy and inexpensive determination" of all cases and that informal discovery is "expedient" and "less expensive" for both witnesses and counsel. (See also, K.S.A. 60-102.) For these reasons, the KCLF opposes HB 3044.

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# KANSAS CIVIL LAW FORUM

**A Coalition of Professionals and Businesses Interested in the Kansas Court System**

Brad Smoot, Coordinator
1200 West Tenth
Topeka, Kansas 66604-1291
(913) 233-0016 FAX (913) 233-3518


## KCLF MEMBERSHIP LIST - 1992

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KPL Gas Service
Kansas Association of Defense Counsel
Kansas Association of Property & Casualty Insurers
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Upjohn
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