

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:04 a.m. on February 20, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused
Rep. Vaughn Flora - excused
Rep. Broderick Henderson - excused
Rep. Dale Swenson - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Rep. Michael O'Neal
Joan R. Brown, Kansas State Fair
C. Steven Rarrick, Deputy Attorney General
Alan Alderson, attorney for Western Retail Implement and Hardware Association
Jack Selzer, legal counsel for Western Retail Implement and Hardware Association

Others attending: See attached list

Introduction of House Concurrent Resolution:

Rep. Pauls made a motion to introduce a House Concurrent Resolution establishing a task force to study the issue of self-employed subcontractors and the workers compensation act and requiring a report back to the 1999 Kansas Legislature. It was seconded by Rep. Geringer. The motion passed. (See Attachment 1)

Hearing on: **HB 2745 - Consumer protection act concerning door-to-door sales would not apply to the annual Kansas state fair.**

Rep. Michael O'Neal addressed the committee in support of the bill. He introduced the bill at the request of the Kansas State Fair following complaints by authorized vendors with assigned space in the Fair's Commercial Building during the 1997 Kansas State Fair. Several vendors were told by representatives of the Attorney General's office that they were committing a deceptive act if they did not provide buyers with a "notice of cancellation" form allowing them to cancel a purchase of \$25 or more within 3 days. They were informed that this type of transaction was considered a "door-to-door" sale under the Kansas Consumer Protection Act because it was a sale "at a place other than the place of business of the supplier." **House Bill 2745** would make these sales at the state fair an exception to the law. Supporters of the bill consider these sales consumer-initiated transactions and are entirely different than "door-to-door" sales. (See Attachment 2) He concluded his testimony by answering questions from the committee.

Joan R. Brown, Operations Manager, Kansas State Fair, appeared in support of the bill. She believes that the application of K.S.A. 50-640, the Consumer Protection Act, at the state fair is not necessary. She is not clear that the definition of door-to-door vendors even fits the situation at the state fair. The consumer has freedom and chooses which, if any, booth to visit and make a purchase. She does believe that the law as applied to the state fair and other situations needs to be looked into. To expect the vendors to give an oral right to cancel in this situation is impractical and perhaps the law can be amended so that posting of the policy would be sufficient. (See Attachment 3)

C. Steven Rarrick, Deputy Attorney General, Consumer Protection Division, Attorney General's Office, appeared as an opponent of the bill. He explained that the cooling off statute is to protect consumers who purchase property or services from a supplier at a location other than the place of business of the supplier. Buyers in circumstances such as the state fair are often left with no recourse for disputes because they have no way of locating the vendor. The statute is modeled after the federal law which applies to sales nationwide, not just in Kansas. Letters were sent to the state fair by the Attorney General's office to be included in vendor packets as well as the "notice of cancellation" to help educate vendors on the cooling off statute. Representatives from the Attorney General's office also appeared at the vendor's meeting on the opening Friday of the State Fair to review the law with vendors and provide copies of sample notices which could be used by vendors that did not have preprinted forms. They chose to issue warnings to the vendors found in

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:04 a.m. on February 20, 1998.

violation of this law at the 1997 State Fair as opposed to formal enforcement action. (See Attachment 4) If **HB 2745** is passed, federal law would still apply. He ended his testimony by answering questions from the committee.

No others were present to testify for or against the bill and Chairman Lane closed the hearing.

Hearing on: **HB 2742 - Limitations on equipment dealership agreements.**

Alan Alderson, an attorney representing Western Retail Implement and Hardware Association, appeared as the person who introduced the bill in the Business, Commerce and Labor Committee, and because of limited time left, he introduced Jack Selzer to speak on the bill.

Jack Selzer, legal counsel to Western Retail Implement and Hardware Association, appeared to testify in support of the bill. The Kansas members of the association requested the legislation. When an implement dealer wants to transfer part or all of his ownership interest in his business, his dealership agreement with the manufacturing company requires this dealer to obtain written permission from the manufacturer before he can make such a transfer. Sometimes there is no response or the request is denied without any explanation. This bill would solve this problem. (See Attachment 5)

Chairman Lane adjourned the meeting at 9:57 a.m.

The next meeting is scheduled for Monday, February 23, 1998.

HOUSE CONCURRENT RESOLUTION NO. _____

By Committee on Business, Commerce and Labor

A CONCURRENT RESOLUTION establishing a task force concerning the status of self-employed subcontractors under the workers compensation act; designating its membership, authority and responsibilities; and requiring a report to the 1999 Kansas Legislature concerning the task force's findings and recommendations.

WHEREAS, Each year thousands of workers suffer injury or death due to occupational diseases or job-related accidents; and

WHEREAS, Workers compensation acts are designed to provide insurance coverage for such injuries and to distribute the social costs of such injuries without resort to civil litigation; and

WHEREAS, The issue of which workers should be covered by workers compensation has been the source of legislative deliberation world-wide since 1884 and in this state as early as 1917; and

WHEREAS, One of the most litigated and contentious issues within the workers compensation system is the question of whom shall be responsible for injuries to independent contractors and subcontractors; and

WHEREAS, Amendments contained in 1997 House Bill No. 2011 concerning self-employed subcontractors have created a renewed source for this controversy and have raised issues which defy legislative resolution in the limited amount of time to which the Legislature may devote to the problem: Now, therefore

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That there be a workers compensation task force established which will study and make recommendations to the 1999 Legislature concerning, but not limited to, the following:

- (a) A clear and concise definition of the terms

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Att. 1*

"subcontractor," "independent contractor" and "contracting";

(b) a determination of whether special treatment of contractors and subcontractors in the construction trades is warranted;

(c) whether corporate officers or self-employed persons generally should be able to exclude themselves from the workers compensation act;

(d) whether self-employed persons should be able to maintain other forms of insurance in lieu of workers compensation;

(e) any other legislative changes which may be appropriate concerning independent contractors relative to the workers compensation act; and

Be it further resolved: That the task force shall be composed of 16 voting members. Five members shall be members of the House of Representatives. Three members shall be appointed by the Speaker of the House of Representatives and two of the five members appointed shall be appointed by the Minority Leader of the House of Representatives. Three members shall be members of the Senate. Two members shall be appointed by the President of the Senate and one member shall be appointed by the Minority Leader of the Senate. The remaining eight members shall be appointed by the Legislative Coordinating Council, as follows:

(a) One member representing the Kansas AFL-CIO;

(b) one member representing the Kansas Chamber of Commerce and Industry;

(c) one member representing the insurance department;

(d) one member representing the division of workers compensation;

(e) a self-employed subcontractor;

(f) a general contractor;

(g) one member representing the insurance industry; and

(h) one attorney, specializing in representing claimants in workers compensation matters.

The Legislative Coordinating Council shall appoint the committee chair; and

Be it further resolved: That all members of the task force shall receive reimbursement for attending meetings of the task force as authorized by the Legislative Coordinating Council consistent with the provisions of K.S.A. 46-1209, and amendments thereto; and

Be it further resolved: That the Legislative Research Department and the Office of the Revisor of Statutes provide staff support as may be authorized by the Legislative Coordinating Council; and

Be it further resolved: That the task force prepare and submit to the Governor and Legislature a report and its recommendations prior to January 11, 1999.

H.B. 2745
Amendments to "Door-to-Door"
Provisions of the Consumer Protection Act
House Business, Commerce & Labor Committee
Feb. 20, 1998
Rep. Michael R. "Mike" O'Neal

Thank you, Chairman Lane, for the opportunity to address your committee in support of H.B. 2745, which I had introduced at the request of the Kansas State Fair following complaints by authorized vendors with assigned space in the Fair's Commercial Building during the 1997 Kansas State Fair. Those of you who have visited the State Fair in Hutchinson are well acquainted with the Commercial Building and its many vendors, who man booths within the Commercial Building. The Kansas State Fair is dedicated to allowing merchants and various organizations the opportunity to display their wares and services during the 10 days of the State Fair each year in an environment that allows fairgoers a convenient way to visit these vendors.

I would be surprised if many of you had not indulged in the annual stroll through the Commercial Building. As you visited the various booths you might have been sufficiently impressed with a particular product that you purchased it. In doing so, were you aware that the Kansas Attorney General's office considers the sale to be a "door-to-door" sale under the Kansas Consumer Protection Act" or that the vendor was committing a deceptive act if they did not provide you with a NOTICE OF CANCELLATION form allowing you to cancel the purchase within 3 days? Several vendors had this pointed out to them, rather rudely they say, by representatives of the Attorney General's office who were also guests of the Kansas State Fair occupying space in the Commercial Building.

What does this type of transaction have to do with a "door-to-door" sale, you ask? A look at page 3, line 24 of the bill reveals that the definition of

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"door-to-door sale includes a transaction, not at your doorstep, but rather, "at a place other than the place of business of the supplier". H.B. 2745 would add to the laundry list of exceptions sales that occur on the State Fairgrounds during the annual State Fair where the vendor has been authorized by the Fair to do business there.

The proposed legislation targets the situation at the State Fair, but the problem with the current law extends, arguably, to other situations as well. Perhaps this situation could be addressed instead with an amendment to the definition of "place of business" on page 4, line 21, to target what may be the real problem, vendors who are not otherwise authorized to do business soliciting business at an unregulated or unsupervised temporary location, or you might address the purchase price threshold of \$25 on page 3, line 25 by increasing it to a more realistic amount.

In whatever way the remedy to this situation is handled we need to keep in mind that it is never good public policy to over-regulate honest businesses in the name of consumer protection and in the absence of evidence that the consumer needs or even wants protected. True door-to-door sales are one thing; consumer-initiated transactions at the Fair are entirely different. Thank you for your favorable consideration of this legislation.

H.B. 2745 PUBLIC HEARING
Friday, February 20, 1998, Room 526S

On behalf of the Kansas State Fair Board and our nearly 700 exhibitors and concessionaires, we want to thank Representative O'Neal for introducing and the committee for their consideration of HB 2745.

K.S.A. 50-640 has been in effect since 1973. The intent of the statute is commendable in its efforts to protect the consumer from unscrupulous door-to-door vendors. We understand and appreciate the need for consumer protection.

However, application of this statute at quality trade show events like the Kansas State Fair, is not necessary. Enforcement of the law to the letter is not workable at a trade show environment. The consumer has freedom and chooses which, if any, booth to visit and make a purchase.

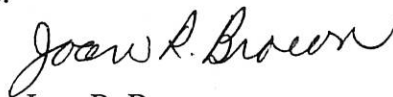
The Kansas State Fair checks references from other fairs, festivals, etc. on applicants before granting them space. Most of our exhibitors and concessionaires return year after year, some for more than 20 or 30 years. All exhibitors are required to sign a space contract and we maintain these addresses, along with phone numbers. In the unlikely event that a consumer has a problem with a product purchased at the fair, and they let the fair office know, we immediately get in contact with the vendor. Usually the problem is taken care of to the consumer's satisfaction within a short period of time. If the vendor does not take care of the problem, their space is canceled for the next year. The Kansas State Fair is well known as a visible sales opportunity and our exhibitors do very well. They are not going to jeopardize the privilege of returning the following year by allowing unsatisfied customers.

We feel like the definition of door-to-door vendor, as stated in the bill, needs to be looked at. It is not clear if the Kansas State Fair even fits the definition which states, "Door-to-door sale means a sale where.....the supplier or the supplier's representative personally solicits the sale." The customers at the fair choose whether to approach a booth. The definition also states, "the consumer's agreement or offer to purchase is made at a place other than the place of business of the supplier." For some of our exhibitors, the Kansas State Fair is the only place they make sales as they do not have another location.

Enforcing the law at the 1997 Kansas State Fair upset many concessionaires. It is impractical to expect the vendors to give an oral right to cancel in a situation such as a trade show or fair when making sales is their livelihood. The Fair Board had suggested that the law be amended such that posting the right to cancel policy in the booths where it is visible for all consumers to read be sufficient.

The exemption from the law for the annual Kansas State Fair, which HB 2745 addresses, would please our exhibitors and concessionaires and make for quicker, smoother sales of merchandise. It may not adequately address the larger public interest of other Kansas fairs and trade shows.

Thank you for the opportunity to address this issue.


Joan R. Brown
Operations Manager
Kansas State Fair

*House B, C & D.
Comm.
2/20/98
Att. 3*



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699 TTY: 291-3767

CONSUMER HOTLINE
1-800-432-2310

Testimony of

C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division

Office of Attorney General Carla J. Stovall
Before the House Business, Commerce & Labor Committee

RE: HB 2745

February 20, 1998

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to testify in opposition to House Bill 2745. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The intent of HB 2745 is to modify K.S.A. 50-640, the Kansas cooling off statute contained in the Kansas Consumer Protection Act (KCPA). This law gives consumers a three-day right to cancel purchases of \$25.00 or more "made at a place other than the place of business of the supplier." The bill seeks to exempt from this law all sales made by consumers during the Kansas State Fair by a vendor authorized by State Fair management to do business on the fairgrounds. The Attorney General opposes this bill for the reasons I will address below.

The purpose of the Kansas cooling off statute is to protect consumers who purchase property or services from a supplier at a location other than the place of business of the supplier. Consumers purchasing in these situations are often left with no recourse for disputes because they have no way of locating the vendor. The Kansas cooling off statute was initially enacted in 1973 and is a part of the KCPA. Our office is charged with enforcement of the KCPA generally and the Kansas cooling off statute specifically. Like most state cooling off statutes, our statute is modeled after the federal law which applies to sales nationwide, not just in Kansas.

The Federal Trade Commission "Cooling Off Rule" has been in effect for more than twenty (20) years. The FTC Cooling Off Rule contains the same language as our cooling off statute about sales "made at a place other than the place of business of the seller," but goes further to specifically include sales made at fairgrounds. Under the preemption provision of the FTC Cooling Off Rule, states are allowed to pass more restrictive cooling off laws, but cannot pass laws which are inconsistent with the FTC Rule. In other words, the proposed amendment to the Kansas cooling off statute contained in HB 2745 would be preempted by the FTC Cooling Off Rule. Vendors at the Kansas State Fair would still be required to provide notice of a three-day right to cancel under federal law.

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This particular amendment, I believe, stems from publicity surrounding the attempts of our office to educate vendors during the 1997 Kansas State Fair. Following the 1996 Kansas State Fair, Attorney General Stovall and I discussed the fact that many vendors at the Kansas State Fair were not complying with the Kansas cooling off statute, even though the State Fair Exhibitor Manual specifically advised vendors of the statute. The Attorney General and I agreed that the best way to deal with this situation was to provide as much advance education to vendors as possible, to enable them to come into compliance without undue hardship. On February 26, 1997, I initiated contact with Robert Gottschalk, General Manager of the Kansas State Fair, suggesting our agencies work together in educating vendors on the specific provisions of the KCPA in order to avoid problems with compliance. The next day, Joan Brown, Operations Manager of the Kansas State Fair, responded by letter (attached to my testimony), pointing out that the Exhibitor Manual contained a specific section on the cooling off statute, and stated the noncompliance indicated they needed to do more to educate vendors. She further stated:

"We feel a letter from your office, addressed to the vendors, would be beneficial. We would then include this with the vendor packets that are picked up prior to the opening of the fair. If you have a sample of the 'Notice of Cancellation' that we could include, it might be helpful as they could duplicate them."

In response to this request, I provided Ms. Brown a letter addressed to vendors (also attached to my testimony). It is my understanding that either this letter or a letter from Mr. Gottschalk was sent to vendors to remind them of the Kansas cooling off statute. In a final attempt to educate vendors, a representative of our office also appeared at the vendor meeting on the opening Friday of the State Fair to review the law with vendors and provide copies of sample notices which could be used by vendors that did not have preprinted forms.

Rather than prosecute vendors found in violation of this law at the 1997 State Fair, we chose instead to issue warnings because the Attorney General felt we should first concentrate on educating vendors as opposed to formal enforcement action. In fact, only six (6) warnings were issued to State Fair vendors found in violation of the cooling off statute. None of these vendors have been prosecuted.

The Attorney General believes Kansas consumers need the protections currently provided by the Kansas cooling off statute, especially since the changes sought by this bill would not eliminate the same requirements contained in the FTC Cooling Off Rule. On behalf of Attorney General Stovall, I urge you to vote against HB 2745.

20th Poplar • Hutchinson, Kansas 67502-5598
(316) 669-3600
Fax: (316) 669-3640



Starting the first Friday after Labor Day.

ROBERT A. GOTTSCHALK, *General Manager*
JOAN R. BROWN, *Operations Manager*
LARRY ANKERHOLZ, *Physical Plant Manager*

February 27, 1997

C. Steve Rarrick
Deputy Attorney General
Chief, Consumer Protection Division
302 SW 10th, Lower Level
Topeka, KS 66612-1597

Dear Steve:

We received your fax regarding the three-day right to cancel provisions required by K.S.A. 50-640 and the issue of illegal lotteries and raffles as pertains to the Kansas State Fair operation.

We have included a section on both issues in our Exhibitor Manual that last few years. I have included a copy of these sections for your review. All exhibitors and concessionaires receive a copy of the manual. However, the fact that there is some noncompliance indicates we need to do more.

We feel a letter from your office, addressed to the vendors, would be beneficial. ~~We would then include this with the vendor packets~~ that are picked up prior to the opening of the fair. If you have a sample of the "Notice of Cancellation" that we could include, it might be helpful as they could duplicate them.

Thank you for notifying in advance so we can educate our vendors on these two statutes.

Sincerely,

Joan R. Brown
Operations Manager

jb

Enc: Exhibitor Manual excerpts
pc: Camille Nohe, Assistant Attorney General
John Cassidy, Assistant Attorney General

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EXHIBITOR GUIDELINES

performances are scheduled for each. Exhibitor will be notified by the Space Sales Department if the request is approved.

Any approved entertainment must abide by the rules and regulations contained in this manual.

All arrangements for entertainers or attractions to gain access to the fairgrounds are the responsibility of the exhibitor.

EXHIBITOR/CONCESSIONAIRE MEETING:

This meeting is to help familiarize you with rules of the Kansas State Fair, and of the other representatives that will be at the meeting. This meeting will be held in the Encampment Building Auditorium on Friday, September 5 at 10 a.m.

The following representatives will be at the meeting.

- a. Highway Patrol
- b. Department of Revenue-Sales Tax Division
- c. Health & Environment
- d. State Fire Marshal's Office
- e. Building Managers
- f. Space Sales Department

EXHIBITOR CONDUCT:

The exhibitor's responsibility can be summed up very simply: "Be a good neighbor." All exhibitors are equal regardless of booth size and should be given an equal opportunity, within reason, to present their product to the public.

Exhibitor shall deal honorably, fairly, and practice no fraud or misrepresentation. Any violation of KSA 50-626, Deceptive Acts and Practices, will be immediate grounds for cancellation of a space contract.

The Exhibitor and all the Exhibitor's employees, shall be neat and clean in their dress at all times. The Exhibitor and/or any of the Exhibitor's representatives, shall not have in their possession, or sell any intoxicating liquors, controlled substances, obscene materials, or engage in obscene conduct, while operating from assigned booth space, or while on the fairgrounds proper. What constitutes obscene materials and obscene conduct will be determined by Fair Management.

State Fair shall be allowed access to any exhibit area or other premises, at any time for any reason. State Fair reserves the right to cancel this contract and/or have the property of the Exhibitor removed from the Fairgrounds for any violations of these Guidelines. In any such event, all payments previously made under this contract shall be forfeited, and retained by the State Fair. State Fair also reserves the right to require any representative of an Exhibitor to vacate a building and/or the fairgrounds if determined necessary.

Exhibitor is responsible for any wages or expenses of any employees of the Exhibitor and/or any debt incurred by the Exhibitor, in the fulfillment of this contract. State Fair will not be held liable for any obligation of the Exhibitor.

FINES/FEES DUE KANSAS STATE FAIR:

Any fines and/or fees assessed, as outlined in this contract will be paid within 15 days of the notification. Any fine and/or fee not paid is considered a violation of the contract. Violators will not be offered the option to renew their contract for the subsequent year and will be considered to have relinquished their particular space(s) and/or building(s) left on the grounds.

FIRE REGULATIONS:

The following are BASIC RULES pertaining to exhibits and exhibitors at the Kansas State Fair.

This brief outline does not, by any means, cover completely the rules and regulations contained in the Kansas Fire Prevention Code, but does provide basic rules governing exhibits in all buildings open to the public.

Of primary concern with structures, large or small, is maintenance of exits and exit passageways. The Kansas State Fair building managers are responsible for a variety of concerns within particular buildings. They are responsible for maintaining the exit capacity. Exhibitors shall make no attempt nor permit expanding of their exhibits and associated materials to obstruct, obscure, block, or complicate access to any exit location.

EXHIBITOR GUIDELINES

INSURANCE:

Exhibitor shall be responsible for the safety of any exhibit against fire, water, robbery, accident, or any cause whatsoever, and the Exhibitor must insure exhibit at own expense, in the limits outlined.

A Certificate of Insurance must be issued to the Kansas State Fair, showing that the exhibitor has coverage under Commercial General Liability, with minimum limits on Bodily Injury of \$1,000,000 and minimum limits on Property Damage of \$1,000,000, or Combined Limit of \$1,000,000.

The Kansas State Fair needs to be added to your policy as an "Additional Named Insured", and this needs to be stated somewhere on the Certificate of Insurance. Coverage must be at least for the Fair period.

- a. The Space Contract will not be considered valid, and issuance of parking tickets and admission tickets will not be completed until the Certificate of Insurance is received.
- b. No Exhibitor will be allowed to operate during the period of the Fair without proof of proper insurance coverage.
- c. The insurance requirement as stated above, does not apply to Federal Agencies and Agencies of the State of Kansas.
- d. The name on your Space Contract and Certificate of Insurance must be the same. If your insurance is under your personal name or another Company Name, then the certificate issued must show that you are "Doing Business As" (Company Name), as shown on the Space Contract.
- e. Any Exhibitor that has a building and/or equipment on the fairgrounds year-round, must maintain yearly coverage to include the Kansas State Fair as "Additional Named Insured."

f. A proper Certificate of Insurance must be received by the first Friday of the Fair, or exhibitor will be required to purchase the insurance offered through Haas-Wilkerson, before they set up.

g. Payment must be made to Haas-Wilkerson by money order or cashiers check before coverage will be bound. Someone in the Space Sales Department at the Administration Office can help you with this.

INTERPRETATION:

State Fair reserves the final right to interpret rules and regulations and to settle and determine all matters, questions, or differences in regard to the State Fair. State Fair also reserves the right to add to or amend these guidelines as needed.

KANSAS LAW K.S.A. 50-640:

Exhibitors must comply with this law. It states that Exhibitors who sell items with a purchase price of \$25 or more, must provide the buyer a notice of cancellation. This notice gives the buyer the right to cancel a transaction prior to 12 midnight of the third business day after the date of the transaction. In addition, sellers must provide the buyer a receipt, or copy of any contract pertaining to the sale, at the time of the sale.

LARGE VEHICLES/STORAGE UNITS:

Exhibitors with a storage truck or trailer which needs to be parked where it can be accessible should use Lot #11. This lot is located on the east side of the Fairgrounds, just off 19th and Plum. Parking is free in this lot. This lot assignment can be picked up at the Space Sales Department in the Administration Office. We solicit your cooperation in order to allow more regular vehicles to park in the on-grounds lots.

LATE FEE CHARGE:

If a payment is not received, or postmarked by the due date specified on the Space Contract, a late fee will be assessed. The late fee must be paid before your contract is considered complete. Your Pass Sack will not be mailed until this fee has been paid.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (913) 296-3751 FAX: 291-3699 TTY: 291-3767

March 21, 1997

CONSUMER HOTLINE
1-800-432-2310

RE: 1997 Kansas State Fair
Vendor Compliance with State Laws

Dear State Fair Vendor:

The Office of the Attorney General would like to take this opportunity to notify State Fair Vendors that it will expect compliance with the three-day right to cancel provisions required by K.S.A. 50-640 (Door-to-Door Sales; Kansas Consumer Protection Act), a copy of which is attached. Compliance with this statute is referenced in the Exhibitor Guidelines of the State Fair Exhibitor Manual.

A "door-to-door sale" is defined in the KCPA as a "...sale, lease or rental of consumer property or services with a purchase price of \$25 or more, whether under single or multiple consumer transactions, in which the supplier or the supplier's representative personally solicits the sale, including those in response to or following an invitation by the consumer, and the consumer's agreement or offer to purchase is made at a place other than the place of business of the supplier."

In the past couple of years, it has come to our attention that very few State Fair vendors comply with the three-day right to cancel requirements applicable to sales made at the Fair. The statute specifically requires both oral and written notice of the three-day right to cancel to the consumer and specifies language to be contained in the receipt or contract and Notice of Cancellation.

In addition, illegal lotteries and raffles were issues during both the 1995 and 1996 State Fairs. In Kansas, lotteries or raffles are illegal, both by statute and the Kansas Constitution. A lottery is defined as an enterprise in which a prize is awarded on the basis of chance for which consideration (usually money) is given. Thus, an individual or organization may not sell tickets for a drawing for a prize. Nor may an organization sell an item, such as a pen, and "give" a raffle ticket to those who purchase the pen. In either instance, the element of consideration is present.

Our office looks forward to a successful State Fair experience for all vendors and exhibitors. If you have any questions about complying with the above, you may want to confer with a private attorney.

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

A handwritten signature in cursive script, appearing to read "C. Steven Rarrick".

C. Steven Rarrick
Deputy Attorney General
Chief, Consumer Protection Division

Testimony of Jack Selzer in support of House Bill No. 2742

My name is Jack Selzer and I am here today on behalf of the Western Retail Implement and Hardware Association as their legal counsel to testify in support of House Bill No. 2742.

First, some background on the association. The association members consists of farm equipment dealers, outdoor power equipment dealers, lawn and garden equipment dealers and hardware dealers in the states of Missouri and Kansas. There are approximately 300 association members that do business throughout the State of Kansas.

Turning to house Bill No. 2742, I point out that our Kansas members requested this legislation. It is directed at this kind of situation -- an implement dealer wants to transfer part or all of his ownership interest in his business to his son for estate planning purposes; or the same dealer may want to sell his dealership to someone interested in purchasing dealership. His dealership agreement with the manufacturing company, such as John Deere or Case IH, requires this dealer to obtain written permission from the manufacturer before he can make such a transfer.

In the past, manufacturing companies have not promptly responded to these requests or have denied the request without any explanation. This legislation meets this problem by first requiring the dealer to submit to the manufacturer information concerning the transfer such as the financial background, the personal background, character references and work histories of the person the dealer intends to transfer his dealership to. The manufacturer then has 90 days in which to respond to this request with either an approval or denial. If the manufacturer denies the request, the manufacturer is required to give the dealer written notice of its determination with the stated reasons for the denial.

The association has furnished a copy of this legislation to the major manufacturers and we are not aware of any opposition by them. Moreover, John Deere Company supports it and so does FEMA--Farm Equipment Manufactures Association.

This legislation is similar to legislation that you already have in place for your Kansas automobile dealers.

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