

Approved: 4-2-99  
Date

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 22, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative Candy Ruff - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Roger Walter, General Counsel, Office of Securities Commissioner  
Melissa Wangemann, Legal Counsel, Secretary of State

Hearings on **SB 81 - relating to rules of evidence certification of lack of records**, were opened.

Roger Walter, General Counsel, Office of Securities Commissioner, appeared before the committee as a proponent of the bill. He stated that this was simply a clean up bill. The 1998 Legislature passed legislation that amended K.S.A. 60-465, but left out the reference to 60-466 & 60-465. (Attachment 1)

Hearings were on **SB 81** were closed.

Hearings on **SB 130 - enacting the revised Kansas Trademark Act**, were opened.

Melissa Wangemann, Legal Counsel, Secretary of State, appeared before the committee as a proponent of the bill. The Model State Trademark Bill has been updated and that this proposal would mirror 1/3rd of that bill. (Attachment 2)

Hearings on **SB 130** were closed.

### **SB 81 - civil procedure; relating to rules of evidence certification of lack of record**

Representative Carmody made the motion to report SB 81 favorably for passage. Representative Long seconded the motion. The motion carried.

### **SB 143 - Roth IRA exempt from claims of creditors**

Representative Carmody made the motion to report SB 143 favorably for passage. Representative Lightner seconded the motion. The motion carried.

### **SB 181 - rating of assault convictions and adjudications in determining criminal history classifications**

Representative Carmody made the motion to report SB 181 favorably for passage. Representative Lightner seconded the motion.

Representative Haley made the substitute motion to amend in the provision of HB 2474 - increasing penalty of cruelty to animals in certain circumstances to a felony. Representative Flaharty seconded the motion. The motion carried 10-7.

Representative Klein made the motion to insert "intentional" on line 27 and reinsert the stricken language on page 2, line 4 regarding farm animals. Representative Pauls seconded the motion.

Representative Haley requested that the motion be divided. Part A - insert "intentional" - the motion carried. Part B - reinsert the stricken language on page 2, line 4 regarding farm animals- the motion carried.

Representative Edmonds made the motion to amend in that "The person convicted shall not be eligible for

release on probation suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provision of this subsection shall not apply to any person where such application would result in a manifest injustice. Also to add that the imprisonment "shall not be served in the custody of the Department of Corrections. Representative Pauls seconded the motion. The motion failed.

Representative Edmonds made the motion to amend the bill so the imprisonment "shall not be served in the custody of the Department of Corrections". Representative Haley seconded the motion. The motion carried.

Representative Edmonds made the motion to amend in the provision of **HB 2356 - four prior adult nonperson felonies rated as one adult person felony for offender's criminal history classifications.** Representative Lloyd seconded the motion. The motion carried.

Representative Klein made the motion to include the decay factor with regards to A & B. Representative Pauls seconded the motion.

Representative Powell made the substitute motion to report **SB 181** favorably for passage, as amended. Representative Edmonds seconded the motion. The motion carried 11-6.

### **SB 205 - denial of licensure for practice of healing arts for persons convicted of certain crimes**

Representative Carmody made the motion to report **SB 205** favorably for passage. Representative Edmonds seconded the motion.

Representative Carmody made the substitute motion to adopt the balloon amendment which would strike on page 1, line 18 & 19, lines 26-37 and add new subsection (dd). (Attachment 3) Representative Edmonds seconded the motion. The motion carried.

Representative Carmody made the motion to report **SB 205** favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

### **SB 206 - search incident to lawful arrest includes evidence of any crime**

Representative Carmody made the motion to reinsert existing law, and strike in line 21 and insert the word "a" in its place. Representative Loyd seconded the motion.

Representative Swenson made the motion to table **SB 206**. Representative Klein seconded the motion. The motion carried 9-7.

### **SB 207 - background checks conducted by the KBI for appointees of the governor**

Representative Carmody made the motion to report **SB 207** favorably for passage. Representative Long seconded the motion.

Representative Carmody made the substitute motion to amend section (d), lines 29 - 33 to read "The bureau shall conduct background investigations of gubernatorial appointees who are subject to confirmation by the senate of the state of Kansas." Representative Long seconded the motion. The motion carried.

Representative Carmody made the motion to report **SB 207** favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

### **SB 220 - incendiary or explosive materials, molotov cocktails**

Representative Carmody made the motion to report **SB 220** favorably for passage. Representative Gregory seconded the motion. The motion carried.

### **SB 97 - corporate representation by officer or agent in small claims procedure**

Representative Powell made the motion to adopt the balloon with option A. (Attachment 4) Representative Gregory seconded the motion.

Representative Carmody made the substitute motion to adopt the balloon amendment with option B. Representative Swenson seconded the motion. The motion carried.

Representative Loyd made the motion to amend line 36 by inserting "Limited Liability Corporations" to the laundry list of "persons". Representative Powell seconded the motion. The motion carried.

Representative Powell made the motion to report **SB 97** favorably for passage, as amended. Representative Howell seconded the motion. The motion carried. Representatives Crow & Klein requested that they be recorded as voting no.

The committee meeting adjourned at 6:00 p.m. The next meeting is scheduled for March 23, 1999.



# KANSAS

Bill Graves  
*Governor*

OFFICE OF THE SECURITIES COMMISSIONER

David Brant  
*Commissioner*

## TESTIMONY IN SUPPORT OF SENATE BILL NO. 81

### HOUSE JUDICIARY COMMITTEE

March 22, 1999

#### **Roger N. Walter**

General Counsel to the Kansas Securities Commissioner

Mr. Chairman and Members of the Committee:

I am Roger Walter, General Counsel to the Kansas Securities Commissioner. I am testifying in support of Senate Bill No. 81.

In 1998, the Legislature approved house Bill No. 2854 (1998 Session Laws, Chapter 103) which amended K.S.A. 60-465 which sets forth the requirements for the authentication of governmental records as a condition to their admission into evidence.

The 1998 legislation simplifies the procedure required for the admission of records of the federal or a state government to simply require certification by the custodian. Kansas law now conforms to a less cumbersome, modern practice, consistent with the Federal Rules of Evidence and the rules of evidence in a number of states, including Colorado and Oklahoma.

However, the 1998 legislation failed to also amend K.S.A. 60-466 which references provisions of 60-465 which were re-written and re-numbered. Introduction of Senate Bill No. 81 was sought by the Office of the Kansas Securities Commissioner to conform an obsolete cross-reference in K.S.A. 60-466 as a result of the 1998 amendment. The existing reference to clause (3) or (4) of K.S.A. 60-465 is no longer current since the clauses were renumbered and there is presently no clause (4). The previous reference is now encompassed by clauses (1), (2), and (3). This is simply a technical, conforming amendment.

Ron Thornburgh  
Secretary of State



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STATE OF KANSAS  
TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE  
ON THE REVISED MODEL STATE TRADEMARK BILL, SB 130  
MARCH 22, 1999

Mister Chairman and Members of the Committee:

My name is Melissa Wangemann and I serve as Legal Counsel to the Secretary of State. I am pleased to appear before the committee today in support of SB 130, which would enact the Revised Model State Trademark Act. The 1949 Model State Trademark Act promulgated by the International Trademark Association was adopted by Kansas in 1951. The International Trademark Association has since updated the model act to address the current needs of commerce and recent changes in federal trademark law. The result is the Revised Model State Trademark Bill. The Secretary of State supports the revised act and believes it will benefit Kansas consumers as well as our office.

**BACKGROUND INFORMATION**

The Model State Trademark Bill originated in 1949 as an attempt at uniformity among state trademark statutes. The model bill was adopted by 46 states as a basis for their trademark statutes, including the state of Kansas.

The 1949 Model State Trademark Bill was based on the Lanham Trademark Act of 1946, the federal statute governing trademarks. The federal act was substantially amended in 1989. In 1992, the International Trademark Association board of directors proposed updating the Model State Trademark Bill to address the current needs of commerce and the recent changes in the

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Lanham Act. The result was the *Revised* Model State Trademark Bill. Provisions patterned after the Federal Trademark Dilution Act of 1995 were added to the model bill in 1996.

The revised act has been adopted by 21 states and has received the recognition of the International Association of Corporate Administrators (IACA) and the National Association of Secretaries of State (NASS).

### **BENEFITS OF THE REVISED ACT**

The revised model would be beneficial to Kansas consumers and the filing officer, the Kansas Secretary of State. The following list summarizes the effects of the revised model trademark bill:

1. A trademark that does not meet the statutory criteria for registration (e.g., primarily a surname, merely descriptive of goods) can nevertheless be registered if it becomes distinctive. Proof of continuous use in the state for five years is evidence of distinctiveness.
2. Definition of 'abandonment' and "dilution" are added. A trademark can be deemed abandoned, releasing the right to use the mark to others. Dilution is the weakening of a famous mark's ability to identify and distinguish goods and services, caused by the unauthorized use of the mark by third parties. Civil liability and recovery for dilution are added, modeled after the Federal Trademark Dilution Act of 1995. The owner of a famous mark that has been diluted may seek an injunction from district court. The willful intent to dilute the mark or trade on the owner's reputation allows for monetary damages.
3. The definition of "use" is revised to clearly refer to intrastate use and to allow usage on documents if the nature of the good makes placement of the mark on the good impractical (e.g. petroleum products).

4. Additional remedies for state trademark owners are added for cases of trademark infringement. Current law allows for injunctive relief and monetary damages. The Revised Act specifically authorizes treble damages if the infringement was committed with knowledge or in bad faith.

5. The registration period is reduced from ten years to five years, eliminating from the Secretary of State's records any abandoned or unused trademarks, making the record more accurate and reducing the likelihood of rejection of trademark applications that conflict with other registered trademarks. The registrant may renew the filing every five years.

6. Individuals may record evidence of licenses or interests they have acquired in registered trademarks with the Secretary of State, making these interests known to the public.

7. Trademark registrants may amend their trademark applications or file a name change, options not available under current law.

8. The applicant whose trademark application is refused by the Secretary of State may file a writ of mandamus to compel registration.

9. The district court can cancel a mark that has become generic, allowing the general public to use the term (e.g., "thermos," "escalator," "aspirin" were all trademarked terms until they became generic terms commonly used by the public).

10. The Secretary of State may inquire on the application whether the trademark has been filed with the U.S. Patent and Trademark Office. This information helps the Secretary of State determine whether the mark should be registered, and also gives notice to the public that the mark is registered at both the federal and state level.

11. The Secretary of State is authorized to adopt regulations for a classification system of goods and services. Current Kansas law incorporates the old U.S. classification system. Our



office plans to adopt the International Classification System, which is used by the U.S. Patent and Trademark Office, other states, and most foreign countries. The Secretary of State is also authorized to set fees by regulation, allowing for more flexibility in setting fees.

The Secretary of State would appreciate the committee's support of this bill. I would be happy to address any questions or concerns.

Melissa Wangemann, Legal Counsel  
Deputy Assistant Secretary of State



**TESTIMONY OF THE INTERNATIONAL TRADEMARK ASSOCIATION  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 130**

**REVISED KANSAS TRADEMARK ACT**

**March 22, 1999**

Members of the House Judiciary Committee, the International Trademark Association (INTA), appreciates the opportunity to submit a statement in support of legislation that would revise the Kansas state trademark statutes. This legislation is based on INTA's Model State Trademark Bill (hereafter referred to as the "Model Bill"). INTA believes that this legislation will improve the functioning of the state trademark system, enhance the quality of trademark searches undertaken by the Secretary of State, and allow owners of marks in this state to better defend against infringement. We would like to offer our thanks to the committee for hearing the bill.

My name is Liz Buckingham, and I am a partner with Dorsey & Whitney, an international law firm headquartered in Minneapolis, Minnesota. I presently serve as Chair of INTA's Model State Trademark Bill Subcommittee. Like all the officers, board members, committee chairpersons, and committee members of INTA, I serve on a voluntary basis.

INTA is a 120-year old not-for-profit membership organization. Since its founding in 1878, its membership has grown from twelve manufacturers to over 3,700 members that are drawn from across the United States, and from 120 countries. INTA has members in Kansas including The Coleman Company, Inc. and Payless ShoeSource.

Membership in INTA is open to trademark owners and to those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms. INTA's membership crosses all industry lines, spanning a broad range of manufacturing, retail and service operations. Members include both small and large businesses who have been both plaintiffs and defendants in disputes involving trademark rights, and all sizes of general practice and intellectual property law firms. What this diverse group has in common is a shared interest in trademarks, and a recognition of the importance of trademarks to their owners and to consumers.

INTA has five principal goals:

- To support and advance trademarks as an essential element of effective commerce throughout the world;
- To protect the interests of the public in the use of trademarks;
- To educate business, the press and the public to the importance of trademarks;

- To play an active role in matters of public policy concerning trademarks; and
- To provide a comprehensive range of services to its members, including keeping them well informed of current trademark developments and in touch with professional colleagues.

### **HISTORY OF THE MODEL BILL**

Originally promulgated by INTA (formerly The United States Trademark Association) in 1949, the Model Bill fostered uniformity among existing state trademark statutes and addressed proposals mandating compulsory registration statutes. Since its inception, the provisions of the Model Bill have been adopted in 46 states as the foundation for their trademark statutes.

In 1964, the Model Bill was amended to include conditions for registration of service marks, an anti-dilution clause, a new definition for “trade name” and a requirement for a statement of use for renewal. In 1992, INTA revised the Model Bill to reflect revisions in the Lanham Act, the federal trademark law, which had been made by the Trademark Law Revision Act of 1988. As part of that revision process, INTA consulted with and incorporated suggestions made by the International Association of Corporate Administrators and the National Association of Secretaries of State. In 1996, the Model Bill was further amended to reflect the changes to the Lanham Act brought about by the Federal Trademark Dilution Act of 1995.

Since 1992, twenty-one states have adopted all or a majority of the provisions of the latest revised Model Bill: Alaska, Arizona, Arkansas, Connecticut, Idaho, Illinois, Iowa, Kentucky, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, and Wyoming. In addition to Kansas, other states which are considering introduction of the Model Bill in 1999 include: Alabama, Colorado, Hawaii, Massachusetts, Michigan, and Nebraska.

Kansas adopted the original model state trademark bill in 1951, and last revised its trademark statute in 1963.

### **VALUE OF TRADEMARKS**

Trademarks are the names or symbols, sometimes referred to as brands, by which we come to know products and services, and identify them in the marketplace. They are a basic mode of communication, a means for a company to convey a message of quality, consistency, safety, and predictability to the consumer in an easy-to-understand form. It is usually one of the most significant property assets of a company. Equally important, trademarks generate an economic ripple effect that starts even before a consumer buys a branded product. First, trademarks benefit the suppliers of raw materials and equipment needed to make the product. Then trademarks stimulate advertising oriented to the brand. Finally, when the consumer purchases the trademarked product, the manufacturer, distributor and retailer benefit – as do their

employees and shareholders. The consumer benefits by easily being able to recognize and select the particular products or services they desire.

### **MAJOR PROVISIONS OF THE KANSAS BILL**

Of particular note are the following provisions of SB 130:

**DEFINITIONS.** In Section 2, the word “use” has been revised according to the stringent standards of the federal trademark statute (see 15 U.S.C. §1127). The requirement of intrastate use eliminates possible ambiguities created by alternate references to “use” or “use in this state” throughout the existing Model Bill.

“Abandonment” has been added in recognition of its occurrence on the state level and use sufficient to avoid abandonment must be use within the state (see 15 U.S.C. §1127).

“Dilution” has been added to allay any outstanding questions regarding its meaning (see 15 U.S.C. § 1127).

**APPLICATION FOR REGISTRATION.** In Section 4, revised subparagraph (a)(4) requires the applicant to state that to the applicant’s knowledge, no other person has previously registered a confusingly similar mark, federally or in the state. Furthermore, an applicant must state whether an application to register the mark has been filed with the federal trademark office by the applicant or a predecessor and, if registration was refused, to provide full particulars with respect thereto. This change is in direct response to comments of state trademark administrators who had expressed a desire to benefit from any prior federal examinations of a mark.

**DURATION AND RENEWAL.** In Section 7, the duration of regular registration is halved from ten to five years in order to reduce the number of “deadwood” registrations. “Deadwood” refers to marks which have not been used in commerce for an extended period of time. This provision corresponds to the federal duration period which was halved from twenty to ten years in 1988 (see 15 U.S.C. §1059).

**ASSIGNMENTS, CHANGES OF NAME.** Under current Kansas law, assignments of trademark registrations and applications are recordable. Section 8 of this bill will also permit the recordation of name changes as well as licenses, security interests, and mortgages.

**CANCELLATION.** In their decisions, courts had refrained from using “common descriptive” and were using the term “generic”. The 1988 revisions to the federal trademark statute (15 U.S.C. §1064) replaced the words “common descriptive” with the more contemporary term “generic”. A registration issued under the Lanham Act may be canceled if it becomes generic.

Section 10 amends Kansas law to provide that a registration may be canceled if the mark has become the generic name for the goods or services for which it has been registered.

**CLASSIFICATION.** For easier searching of records, trademarks are grouped according to a classification system. Kansas' current system is based on the old U.S. classification system and is set forth in the statute. Section 11 of the bill permits the Secretary of State to issue regulations adopting a classification system and encourages adoption of the International classification system used by the U.S. Patent and Trademark Office, many states, and most foreign countries. We understand that the Secretary of State plans to follow the International system. Such adoption will make it easier to compare Kansas registrations with registrations from other states and countries and will give the Secretary of State greater flexibility in updating the classification system.

**INJURY TO BUSINESS REPUTATION; DILUTION.** Sections 2 and 14 provide a new remedy for owners of famous trademarks to prevent the dilution or weakening of their marks by unauthorized third party usage of the marks on dissimilar products. The injury connected with dilution occurs over an extended period of time, gradually "chipping away" at a famous mark's foundation. Section 2 defines the term "dilution." Section 14 establishes eight criteria to assist the courts in determining whether a mark is famous and sets forth three defenses to dilution, namely, comparative advertising, noncommercial use, and news reporting. This section also permits courts to order remedies beyond injunctive relief in cases where willful intent is proven. This conformity to federal law will permit Kansas courts to rely upon the rapidly developing body of federal dilution case law when deciding lawsuits based on the Kansas dilution provision.

While adding a federal dilution provision, the 1996 Lanham Act revisions did not preempt state dilution statutes. Thus, Kansas' dilution law would still apply in cases involving locally famous or distinctive marks. (See, e.g., Wedgewood Homes, Inc. v. Lund, 58 Or.App. 240 (1982)). INTA notes that unlike patent and copyright laws, federal trademark law presently coexists with state trademark law, and it is to be expected that a federal dilution statute should similarly coexist with state dilution statutes.

**REMEDIES.** Section 15 of this bill provides additional remedies to state trademark owners for cases involving infringement. Specifically, the bill provides for the payment of up to three times the amount of damages or profits if the infringement was committed with knowledge or in bad faith.

This provision is similar to the one contained in the federal trademark law (see 15 U.S.C. § 1114).

**FEES.** In the current Kansas law, fees payable to the Secretary of State are directly set forth in the statute. Any changes to the fee structure requires legislative action. In order to provide greater flexibility, Section 18 will allow the Secretary of State to set fees payable under

the Model Bill by regulation. This change is analogous to the language in the federal trademark law (15 U.S.C. §1113).

State applicants have erroneously claimed they were entitled to a refund of the trademark application fee if the state eventually did not grant the registration. Provisions in this section resolves any ambiguities by explicitly mentioning that the state is not required to refund any fees.

***INTENT OF ACT.*** The Model Bill was patterned after the Lanham Act and it is appropriate for a court to interpret the Bill in accordance with federal decisions under the Lanham Act. Thus, Section 20 provides that “the construction given the federal Act should be examined as persuasive authority for interpreting and construing this Act.” Such a provision will give Kansas a large and well-established body of case law to use when deciding lawsuits based on the Kansas trademark statute.

## **CONCLUSION**

INTA believes that the legislation before you today is consistent with this Committee’s efforts to protect the rights of both consumers and trademark owners. This legislation will greatly improve the manner in which Kansas protects trademarks and the consumers who use trademarks as an easy-to-understand mode of communication between themselves and the companies which produce the branded product. I would also like to thank the Office of the Secretary of State, in particular Melissa Wangemann, for her assistance in preparing this bill for introduction.

INTA urges the Committee to report the bill out as promptly as possible. The Association looks forward to continuing to work with the members of the panel and its staff in assuring passage of the measure.

## **ADDITIONAL REFERENCES**

Members of the Kansas State Legislature are encouraged to consult the following documents for additional information on the revised Model Bill and on the importance of state trademark registration:

- (1) Goldstein, A., Bringing the Model State Trademark Bill Into the 90s and Beyond., 83 Trademark Reporter 226 (1993).
- (2) McCarthy, T., State Protection and Registration of Marks, 3 Trademarks and Unfair Competition, Chapter 22 (4<sup>th</sup> ed. 1998).



SENATE BILL No. 205

By Committee on Judiciary

House Judiciary  
3-22-99  
Attachment 3

10 AN ACT concerning healing arts; relating to licensure; convictions of  
11 certain crimes; amending K.S.A. 1998 Supp. 65-2836 and repealing  
12 the existing section.

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

15 Section 1. K.S.A. 1998 Supp. 65-2836 is hereby amended to read as  
16 follows: 65-2836. A licensee's license may be revoked, suspended or lim-  
17 ited, or the licensee may be publicly or privately censured, or an appli-  
18 cation for a license, **except in subsection (c)(1) where a person's applica-**  
19 **tion for a license shall be denied**, or for reinstatement of a license may be  
20 denied upon a finding of the existence of any of the following grounds:

21 (a) The licensee has committed fraud or misrepresentation in apply-  
22 ing for or securing an original, renewal or reinstated license.

23 (b) The licensee has committed an act of unprofessional or dishon-  
24 orable conduct or professional incompetency.

25 (c) The licensee has been convicted of a felony or class A misde-  
26 meanor, whether or not related to the practice of the healing arts; *subject*  
27 *to the following:* (1) *In the case of a person with a felony conviction*  
28 *described in K.S.A. 21-3401, subsection (a) of 21-3402, 21-3438, subsec-*  
29 *tion (a)(1), (a)(3) or (a)(4) of 21-3502, 21-3503, 21-3504, 21-3505, 21-*  
30 *3506, 21-3510, 21-3511, 21-3518 or 21-3600 and amendments thereto, an*  
31 *application for original licensure on or after July 1, 1999, shall not be*  
32 *granted;* (2) *in the case of a person with a felony conviction contained in*  
33 *subsection (a)(1) who applies for renewal or reinstatement of a license*  
34 *first granted prior to July 1, 1999, a license may be granted only pursuant*  
35 *to the provisions of subsections (3)(A) and (3)(B);* (3) *in the case of a*  
36 *person with any other felony conviction described in articles 34, 35 or 36*  
37 *of chapter 21 of the Kansas Statutes Annotated and amendments thereto,*  
38 *who applies for renewal, reinstatement or original licensure, a license may*  
39 *not be granted unless:* (A) *The board determines by clear and convinc-*  
40 *ing evidence that such person will not pose a threat to the public in such*  
41 *person's capacity as a licensee and that such person has been sufficiently*  
42 *rehabilitated to warrant the public trust; and (B) such person's applica-*  
43 *tion is approved by a two-thirds majority of the board members present*

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1 professional staff or in any professional association or society while under  
2 investigation for acts or conduct similar to acts or conduct which would  
3 constitute grounds for disciplinary action under this section.

4 (w) The licensee has an adverse judgment, award or settlement  
5 against the licensee resulting from a medical liability claim related to acts  
6 or conduct similar to acts or conduct which would constitute grounds for  
7 disciplinary action under this section.

8 (x) The licensee has failed to report to the board any adverse judg-  
9 ment, settlement or award against the licensee resulting from a medical  
10 malpractice liability claim related to acts or conduct similar to acts or  
11 conduct which would constitute grounds for disciplinary action under this  
12 section.

13 (y) The licensee has failed to maintain a policy of professional liability  
14 insurance as required by K.S.A. 40-3402 or 40-3403a and amendments  
15 thereto.

16 (z) The licensee has failed to pay the annual premium surcharge as  
17 required by K.S.A. 40-3404 and amendments thereto.

18 (aa) The licensee has knowingly submitted any misleading, deceptive,  
19 untrue or fraudulent representation on a claim form, bill or statement.

20 (bb) The licensee as the responsible physician for a physician's assist-  
21 ant has failed to adequately direct and supervise the physician's assistant  
22 in accordance with K.S.A. 65-2896 to 65-2897a, inclusive, and amend-  
23 ments thereto, or rules and regulations adopted under such statutes.

24 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406  
25 as established by any of the following:

26 (A) (1) A copy of the record of criminal conviction or plea of guilty  
27 for a felony in violation of K.S.A. 21-3406 and amendments thereto.

28 (B) (2) A copy of the record of a judgment of contempt of court for  
29 violating an injunction issued under K.S.A. 1998 Supp. 60-4404 and  
30 amendments thereto.

31 (C) (3) A copy of the record of a judgment assessing damages under  
32 K.S.A. 1998 Supp. 60-4405 and amendments thereto.

33 ~~Sec. 2. K.S.A. 1998 Supp. 65-2836 is hereby repealed.~~

34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the statute book.

(dd) The licensee has failed to make a report as required pursuant to K.S.A. 38-1522, and amendments thereto.



SENATE BILL No. 97

By Committee on Judiciary

1-21

House Judiciary  
3-22-99  
Attachment 4

12 AN ACT concerning small claims procedure; relating to corporate rep-  
13 resentation; amending K.S.A. ~~61-2703~~ ~~and~~ ~~61-2707~~ and repealing  
14 the existing section ~~sections~~. and 61-2714

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

17 [Section 1. K.S.A. 61-2703 is hereby amended to read as fol-  
18 lows: 61-2703. As used in this act:

19 [(a) "Small claim" means a claim for the recovery of money or  
20 personal property, where the amount claimed or the value of the  
21 property sought does not exceed \$1,800, exclusive of interest, costs  
22 and any damages awarded pursuant to K.S.A. 60-2610 and amend-  
23 ments thereto. In actions of replevin, the verified petition fixing the  
24 value of the property shall be determinative of the value of the prop-  
25 erty for jurisdictional purposes. A small claim shall not include:

- 26 [(1) An assigned claim;
- 27 (2) a claim based on an obligation or indebtedness allegedly
- 28 owed to a person other than the person filing the claim, where the
- 29 person filing the claim is not a full-time, salaried employee ~~president~~
- 30 or treasurer of a corporation as permitted in K.S.A. 61-2707 and amend-
- 31 ments thereto, or, if the person bringing the claim is not a corporation
- 32 but is not an individual, is not an equivalent officer in title and function
- 33 ~~to the president or treasurer] of the person to whom the obligation or~~
- 34 ~~indebtedness is allegedly owed; or~~

35 [(3) a claim obtained through subrogation.

36 [(b) "Person" means an individual, partnership, corporation, fi-  
37 duciary, joint venture, society, organization or other association of  
38 persons.]

39 Section 2. [Sec. 2.] K.S.A. 61-2707 is hereby amended to read as  
40 follows: 61-2707. (a) The trial of all actions shall be ~~by~~ the court, and no  
41 party in any such action shall be represented by an attorney prior to  
42 judgment. ~~[A corporation may be represented by an officer the president~~  
43 ~~or chief executive officer or the treasurer of the corporation or by an~~

full-time employee or officer  
to  
except as provided in K.S.A. 61-2714, and amendments thereto,

1 ~~Agent designated by corporate resolution, except that such president or~~  
 2 ~~chief executive officer or treasurer shall not represent the corpo-~~  
 3 ~~ration if such president or chief executive officer or treasurer is an~~  
 4 ~~attorney.~~ Discovery methods or proceedings shall not be allowed nor  
 5 shall the taking of depositions for any purpose be permitted. No order of  
 6 attachment or garnishment shall be issued in any action commenced un-  
 7 der this act prior to judgment in such action.

8 (b) When entering judgment in the action, the judge shall include as  
 9 a part of the judgment form or order a requirement that, unless the  
 10 judgment has been paid, the judgment debtor shall submit to the clerk  
 11 of the district court, within 30 days after receipt of the form therefor, a  
 12 verified statement describing the location and nature of property and  
 13 assets which the person owns, including the person's place of employ-  
 14 ment, account numbers and names of financial institutions holding assets  
 15 of such person and a description of real property owned by such person.  
 16 The office of judicial administration shall develop the form to be used in  
 17 submitting information to the clerk under this subsection. The court shall  
 18 also include as a part of the judgment form or order a requirement that,  
 19 within 15 days of the date judgment is entered, unless judgment has been  
 20 paid, the judgment creditor shall mail a copy of the judgment form or  
 21 order to the judgment debtor, together with the form for providing the  
 22 information required to be submitted under this subsection, and that the  
 23 judgment creditor shall file with the court proof of the mailing thereof.  
 24 When the form containing the required information is submitted to the  
 25 clerk as required by this subsection, the clerk shall note in the record of  
 26 the proceeding that it was received and then shall mail the form to the  
 27 judgment creditor. No copy of such form shall be retained in the court  
 28 records nor shall it be made available to other persons. Upon motion of  
 29 the judgment creditor, the court may punish for contempt any person  
 30 failing to submit information as required by this subsection.

31 (c) Any judgment entered under this act on a claim which is not a  
 32 small claim, as defined in K.S.A. 61-2703 and amendments thereto, or  
 33 which has been filed with the court in contravention of the limitation  
 34 prescribed by K.S.A. 61-2704 and amendments thereto on the number  
 35 of claims which may be filed by any person, shall be void and  
 36 unenforceable.

37 Sec. 2 [3]. K.S.A. [61-2703 ~~and~~] 61-2707 [is [are] hereby repealed.

38 Sec. 3 [4]. This act shall take effect and be in force from and after  
 39 its publication in the statute book.

4-2  
 A party other than an individual, may appear by a full-time  
 employee or officer and such appearance shall not  
 be construed as the unauthorized practice of law.  
 (Option a)

A party other than an individual, may appear by a full-time  
 employee or officer. (Option b)

and 61-2714

Sec. 3. K.S.A. 61-2714 is hereby amended to read as follows:  
61-2714. (a) Notwithstanding any other provision of the small claims procedure act, if any party other than an individual, in small claims litigation: (1) Uses any person in a representative capacity if such person representing the party is an attorney or was formerly an attorney; or (2) is an individual who is an attorney representing the attorney's self in a small claims action, all other parties to such litigation shall be entitled to have an attorney appear on their behalf in such action.

(b) When appropriate, the court shall advise all parties of this right to hire counsel pursuant to this section and shall, if requested by any party, grant one reasonable continuance in such matter to afford a party an opportunity to secure representation of an attorney.

(c) The filing of a small claims action is a certification by the plaintiff that such plaintiff is complying with the provisions of the small claims procedures act, specifically with the provisions of K.S.A. 61-2704, and amendments thereto, relating to the limited number of claims a person may file in the same court during any calendar year.

(d) Any defendant may raise as a defense to a small claims action that the plaintiff has filed or caused to be filed more claims than allowed by the small claims act. When such defense is raised, if the court finds the plaintiff to have filed more claims than allowed by law, the court shall dismiss the action with prejudice and such a finding shall be considered a violation of the unconscionable acts and practices section of the Kansas consumer protection act. The defendant may file a collateral action under the Kansas consumer protection act.

(e) As used in this section, "attorney" means persons licensed to practice law in Kansas or in any other state whether on active or inactive status, or persons otherwise qualified to take the Kansas bar examination and acting under the supervisory authority of a licensed attorney.