

Approved: Feb. 4, 1999
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 a.m. on January 28, 1999 in Room 123-S of the Capitol.

All members were present except: Senator Pugh(excused)
Senator Bond (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation
Jerry Slaughter, Kansas Medical Society
Mike Hutfles, Social Rehabilitation Services
Jim Yonally, Kansas Society of Land Surveyors
Liz Buckingham, International Trademark Association

Others attending: see attached list

Conferee Smith requested introduction of two bills. The first bill is a technical cleanup of KSA 75-712 dealing with background checks conducted by the KBI to bring it into compliance with Federal Law 92-544. (attachment 1) Senator Goodwin moved to introduce the bill, Senator Oleen seconded. Carried. The second bill clarifies language in KSA 22-2501 so that searches incident to lawful arrest are not dependent on looking for evidence of that particular arrest, but may occur after any arrest. (attachment 2) Senator Vratil moved to introduce the bill, Senator Gilstrap seconded. Carried.

Conferee Slaughter requested introduction of a bill that adds language to KSA 65-2836(c) regarding the renewal or reinstatement of a license of a physician who has been convicted of a felony. (attachment 3) Senator Vratil moved to introduce the bill, Senator Goodwin seconded. Carried.

Conferee Hutfles requested introduction of: "clean-up" legislation to HB 2820 passed by the 1998 Kansas Legislature that brought Kansas into compliance with the Federal Adoption and Safe Families Act. This is a policy clarification that requires the court to specify the date upon which the child is to return home once reintegration is determined to be a viable option; and legislation requested by SRS Transition Oversight Committee to insure that those responsible to diagnose, treat care for or protect a CINC child are able to share information as necessary to carry out their lawful responsibilities. The bill would also further clarify the relationship between SRS and its contractors. (attachment 4) Senator Oleen moved to introduce the bills, Senator Vratil seconded. Carried.

Conferee Yonally stated "our folks are under the impression that there is no statute of limitations covering our services so we would like to request a bill be introduced that would limit liability."(no attachment) Senator Vratil moved to introduce the bill, Senator Goodwin seconded. Carried.

The Chair stated that "presently when a judge overturns a conviction in a criminal case after the jury has rendered that conviction, that order is not appealable under Kansas law." He requested introduction of a bill which would make the order appealable. (no attachment) Senator Goodwin moved to introduce the bill, Senator Donovan seconded. Carried.

Senator Goodwin requested introduction of a bill that would clarify the intent of KSA 21-3408 regarding adult convictions or juvenile adjudications of assault. She also requested introduction of the 1998 SB 550 which is the repeal of the death penalty. She further requested a bill that would regulate private Child Support Enforcement collection agencies. (attachment 5) Senator Goodwin moved to introduce the bills, Senator Vratil seconded. Carried.

SB 130 - an act enacting the revised Kansas trademark act

Conferee Buckingham, a proponent of **SB 130**, presented an overview of the International Trademark Association (INTA) defining its structure and function as well as its five principal goals. She discussed the history of the Model Bill and detailed the major provisions of the Kansas Bill including its intent. She stated in her conclusion, "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." (attachment 6) Discussion followed regarding changes particular to Kansas and fiscal matters. Senator Goodwin moved to pass the bill out favorably, Senator Vratil seconded. Carried.

The meeting adjourned at 10:53 a.m. The next scheduled meeting is Tuesday, February 2, 1999.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 28, 1999

NAME	REPRESENTING
Elizabeth Buckingham	International Trademark Association
Melissa Wangermann	Sec. of State
Fariba Pouranyan	Sec. of state
Janet Chubb	SOS
Barbara Holzman	National Council of Jewish Women
Kathy Ponte	OJA
Wendi Agunwale	AJB
Meg Draper	KS Medical Society
Jerry Langston	"
Jim Youally	KSLS (K. Soc. Land Surveyors)
Sheila Kostus	CHPPKM
John Smith	KBI
Ken Callahan	KOMMCO
Bill Henry	KS Governmentally
James Clark	KCOAA
Mike Hiffles	SLS
Jean Parke	KADC
Debra M. Seibel	KILH
Jerry Sloan	OJA
Rich McNeelley	Washburn

DAILY AGENDA

JANUARY 28, 1999

Introduction of Bills:

Mike Hutfles - SRS

Kyle Smith - KBI

Jerry Slaughter - KMS

Senator Goodwin - 3 bills

Jim Gonnally, Ks Society of Land Surveyors

Hearing and possible action on:

SB 130 - An act enacting the revised Kansas trademark act.

Conferee

SB 130 Melissa Wangemann to introduce Liz Buckingham, International Trademark Association



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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

BILL REQUEST
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
JANUARY 28, 1999

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General for the Kansas Bureau of Investigation. I appear today to request legislation amending KSA 75-712 dealing with backgrounds conducted by the Kansas Bureau of Investigation. This is a technical cleanup to bring our statute into compliance with Federal Law 92-544 for access to FBI criminal history record information. Specifically, the FBI requires particular language that mandates record checks be done before they will allow access to their databases for gubernatorial backgrounds.

The language that we are proposing has been approved by both the Governor's Office and the FBI, and should facilitate conducting background investigations for the Governor's Office.

Sen Jud
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75-712. (a) It is the duty of the members of the bureau to make full and complete investigations at the direction of the attorney general. Each member of the bureau shall possess all powers and privileges which are now or may be hereafter given to the sheriffs of Kansas.

(b) The bureau shall acquire, collect, classify and preserve criminal identification and other crime records, and may exchange such criminal identification records with the duly authorized officials of governmental agencies, of states, cities and penal institutions.

(c) For purposes of carrying out the powers and duties of the bureau, the director may request and accept grants or donations from any person, firm, association or corporation or from the federal government or any federal agency and may enter into contracts or other transactions with any federal agency in connection therewith.

(d) Members of the bureau, at the direction of the director, ~~may~~ **shall** conduct background investigations of gubernatorial appointees ***subject to Senate confirmation and all judicial appointments*** ~~at the request of the governor, subject to the appointee's approval~~. The bureau shall require the appointee to be fingerprinted. The fingerprints shall be submitted to the bureau and to the federal bureau of investigation for the identification of the appointee and to obtain criminal history record information, including arrest and nonconviction data. Background reports may include criminal intelligence information and information relating to criminal and background investigations. Information received pursuant to this subsection shall be confidential and shall not be disclosed except to the governor or members of the governor's staff as necessary to determine the appointee's qualifications.

(e) Reports of all investigations made by the members of the bureau shall be made to the attorney general of Kansas.



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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

BILL REQUEST
BEFORE THE SENATE JUDICIARY COMMITTEE
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
JANUARY 28, 1999

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General for the Kansas Bureau of Investigation requesting a one word change to the statute dealing with search incident to lawful arrest.

The Kansas Supreme Court, based on the statutory language, not the Constitution, has created an officer safety problem by restricting the scope by which officers can pat down and search the area immediately around an arrested criminal.

This interpretation of the statutory language creates a different standard in Kansas than in the other 49 states and federal government. We would request amending KSA 22-2501 to clarify that searches incident to lawful arrest are not dependent on looking for evidence of that particular arrest, but may occur after any arrest. It makes little difference to the officer who is shot or killed in the line of duty if an individual was arrested for a DUI, burglary or murder. In any event, any weapons at the scene need to be secured immediately.

I would be happy to answer any questions.

Sen Jud
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Search incident to a lawful arrest.

22-2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of

- (a) Protecting the officer from attack;
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits, instrumentalities, or evidence of ~~the~~ *a* crime.

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Kansas Medical Society
Proposed amendment to K.S.A. 65-2836
January 28, 1999

65-2836. Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts.

, subject to the following: (1) In the case of a person with a felony conviction described in K.S.A. 21-3401, 21-3402(a), 21-3438 21-3502(a)(1), (a)(3) or (a)(4), 21-3503, 21-3504, 21-3505, 21-3506, 21-3510, 21-3511, 21-3518, or 21-3609 and amendments thereto, an application for original licensure on or after July 1, 1999 may not be granted; (2) In the case of a person with a felony conviction contained in subsection (1) of this section who applies for renewal or reinstatement of a license first granted prior to July 1, 1999, a license may only be granted pursuant to the provisions of subsections (3)(A) and (3)(B) of this section; (3) In the case of a person with any other felony conviction described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto who applies for renewal, reinstatement or original licensure, a license may not be granted unless (A) the board determines that such person will not pose a threat to the public in his or her capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust, and (B) such person's application is approved by a two-thirds majority of the board members present and voting on such application.

Felonies included in the absolute prohibition:

- K.S.A. 65-3401 First degree murder
- K.S.A. 65-3402 Second degree murder (intentional)
- K.S.A. 65-3438 Stalking
- K.S.A. 65-3502 Rape (excluding subsection (a)(2), statutory rape)
- K.S.A. 65-3503 Indecent liberties with a child
- K.S.A. 65-3504 Aggravated indecent liberties with a child
- K.S.A. 65-3505 Criminal sodomy
- K.S.A. 65-3506 Aggravated criminal sodomy
- K.S.A. 65-3510 Indecent solicitation of a child
- K.S.A. 65-3511 Aggravated indecent solicitation of a child
- K.S.A. 65-3518 Aggravated sexual battery
- K.S.A. 65-3609 Abuse of a child

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**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy
Secretary



For additional information, contact:

SRS Office of the Secretary

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915 SW Harrison Street, Sixth Floor
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☎785.296.6218 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office

Diane Duffy, CFO
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Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676

**Senate Judiciary
January 28, 1999**

Testimony: Bill Introductions

**Office of the Secretary
Mike Hutfles, Special Assistant to the Secretary
785.296.6218**

Sen. Judd
1-28-99
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Kansas Department of Social and Rehabilitation Service
Rochelle Chronister, Secretary

Senate Judiciary
Bill Introductions

January 28, 1999

Mister Chairman, members of the Committee, I am here before you today to request the introduction of the following legislation. Both are changes in K.S.A Chapter 38, Article 15 of the Child in Need of Care (CINC) code. I will refer to them by their Revisor Number.

- 1) 9rs0066 - This is 'clean up' legislation to HB 2820 passed by the 1998 Kansas Legislature that brought Kansas into compliance with the Federal Adoption and Safe Families Act. There is one policy clarification that requires the court to specify the date upon which the child is to return home once reintegration is determined to be a viable option.
- 2) 9rs0168 - This legislation is in response to a request from the SRS Transition Oversight Committee. It will insure that those persons responsible to diagnose, treat, care for or protect a CINC kid are able to share information as necessary to carry out their lawful responsibilities. This bill would also further clarify the relationship between SRS and its contractors.

Thank you for your time. I will attempt to answer any questions that you may have.

S. Jud
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INTRODUCTION OF BILLS

By Senator Greta Goodwin

Introduce the 1998 Senate Bill No. 550

Repeal of K.S.A. 21-3439 - Death Penalty

Bill to amend legislation passed last year which determined an offender's criminal history classification as contained in the presumptive sentencing guidelines grid for nondrug crimes and the presumptive sentencing guidelines grid for drug crimes.

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The legislation states "Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408 and amendments thereto occurring within a period of three years shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes."

This has caused some courts problems as to what was the intent of the legislation. I believe the intent of this committee last session was that "Every three priorwithin a period commencing three years prior to the date of conviction for the current crime or conviction.....shall be rated as one adult....."

This bill would be a clarification of intent.

The third bill I request introduction is one which deals with the bond or guarantee of a private Child Support Enforcement collection agency be regulated or have safeguards in place to protect individuals from having their support payments improperly diverted or lost by such organization.

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

REVISED KANSAS TRADEMARK ACT

January 28, 1999

Members of the Senate 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 introducing 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;

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- 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 1996.

Since 1992, twenty states have adopted all or a majority of the provisions of the latest revised Model Bill: Alaska, Arizona, Arkansas, Connecticut, Idaho, Illinois, Iowa, 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 (4th ed. 1998).