

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on February 9, 2000 in Room 521-S of the Capitol.

All members were present except: Rep. Jerry Henry - excused
 Rep. Rick Rehorn - excused
 Rep. Gwen Welshimer - excused

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

Conferees appearing before the committee: Steve Rarrick, Deputy Attorney General
 Hal Hudson, NFIB
 Terry Humphrey, Kansas Trial Lawyers

Others attending: See attached list

The minutes of February 2 were passed out. They will be approved at the next meeting.

Rep. Grant made a motion to accept the minutes of January 25, 26, and 27 as written. Rep. Ruff seconded the motion. The motion passed and the minutes were approved as written.

Hearing on: HB 2682 - Consumer protection, definition of consumer

The proponent of the bill did not appear and as there were no other proponents, the hearing was cancelled.

Hearing on: HB 2741 - Consumer protection act; redefining the term consumer and expanding available remedies.

Steve Rarrick, Deputy Attorney General, Chief, Consumer Protection Division, appeared as a proponent of the bill on behalf of Attorney General Carla Stovall. The bill would amend the Kansas Consumer Protection Act (KCPA) in two areas 1) the definition of consumer to include husband and wife purchases, whether made as a husband and wife proprietor for business purposes, or simply as a married couple for family purposes and 2) an amendment in the sequestration section of the KCPA to clarify the procedural requirements for sequestering assets and to explicitly create a prejudgment lien in the property sequestered to be applied to any judgment ultimately obtained against the supplier. (See Attachment 1)

Mr. Rarrick concluded his testimony by answering questions from the committee.

Hal Hudson, National Federation of Independent Business, appeared to offer support for **HB 2741**. He believes that the bill would ensure and clarify that small family owned businesses would enjoy protection from those that would seek to commit fraud. (See Attachment 2)

Terry Humphrey, Executive Director, Kansas Trial Lawyers Association (KTL), spoke in support of the bill. KTL is pleased to support the bill which in part expands the definition of "consumer" to include husband and wife business operations. (See Attachment 3)

No others were present to testify for or against the bill and Rep. Ruff closed the hearing on **HB 2741**.

The meeting was adjourned at 9:32 a.m. The next scheduled meeting is February 10, 2000.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 9, 2000

NAME	REPRESENTING
STEVE KARRICK	ATTORNEY GENERAL
Nancy Lindberg	AG
Gail Bright	AG
Ernest C. Fogge	CCTF-AARP
Hal Hudson	NFIB/KS
SEAN CASH	WIBA
TERRY LEATHERMAN	KCCI
Terry Humphrey	KTLA



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General
CONSUMER PROTECTION/ANTITRUST DIVISION

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Business, Commerce & Labor Committee
RE: HB 2741
February 9, 2000

CONSUMER HOTLINE
1-800-432-2310

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of HB 2741. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

In HB 2741, Attorney General Stovall seeks to amend the Kansas Consumer Protection Act (KCPA) in two areas. First, the bill would amend the definition of consumer to include husband and wife purchases, whether made as a husband and wife proprietor for business purposes, or simply as a married couple for family purposes. Second, the bill would amend the sequestration section of the KCPA to clarify the procedural requirements for sequestering assets and to explicitly create a pre-judgment lien in the property sequestered to be applied to any judgment ultimately obtained against the supplier.

The Attorney General's authority to recover damages for victims under the Kansas Consumer Protection Act (KCPA) is limited by the definition of "consumer" contained in the Act. The KCPA currently defines consumer as "an individual or sole proprietor."

The Attorney General seeks this amendment not to expand her jurisdiction, but to clarify what we believe the legislature originally intended when the KCPA was passed, and to avoid an injustice which we believed occurred in a 1998 trial involving some business opportunity schemes in Johnson County. In that case, we successfully shut down three Johnson County toy and cigar business opportunity companies (Parade of Toys, Wonderful World of Toys, and Bandero Cigar Company) and their principals (Robert Bouckhout, Patsy Bouckhout, and Dennis Vaughn) who defrauded hundreds of consumers in Kansas and across the country of millions of dollars. After shutting these businesses down with preliminary injunctions, we obtained a jury verdict for over twelve (12) million dollars in consumer restitution and the court imposed over fifteen (15) million dollars in civil penalties. To date, we have recovered only \$450,000 to be applied to those losses.

HOUSE BUSINESS, COMMERCE & LABOR

2-9-00

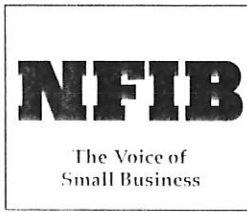
Attachment 1

We are very proud of shutting these businesses down and obtaining these judgments, but our sense of accomplishment is tempered by the unfortunate fact that over eighty (80) consumer claims were excluded from this judgment. The reason they were excluded was because the court held these couples, who purchased the toy and cigar distributorships as husband and wife proprietors, were not consumers as defined by the KCPA (an individual or "sole" proprietor). Attorney General Stovall believes husband and wife proprietors are small family businesses indistinguishable from a sole proprietor, and should receive protection under the KCPA. We ask you to ensure that husband and wife purchases, whether for business or family purposes, receive protection under the KCPA by amending the definition of "consumer" as requested.

The amendments to the sequestration provisions at page 3 of the bill achieve two necessary results. First, they clarify the procedural requirements for sequestration to ensure that they comport with the requirements of due process by explicitly requiring a motion accompanied by affidavit. Since the enactment of the KCPA and the sequestration provisions in 1973, the United States Supreme Court has concluded that to satisfy due process requirements, statutes providing for *ex parte* sequestration of assets must provide for judicial determination based on facts set forth by affidavit, must provide notice to the defendant that his or her property has been sequestered, and must provide the defendant an opportunity to challenge the sequestration in court promptly after sequestration is ordered. Our statute needs updated to avoid constitutional challenges.

Second, the sentence contained at page 3, lines 16-17, creates a pre-judgment lien in the property sequestered to be applied to any judgment ultimately obtained against the supplier. Another obstacle we encountered in the Johnson County business opportunity case was that other creditors claimed liens in the property we sequestered at the time we filed suit and shut the businesses down. We spent substantial time litigating these issues because our statute doesn't explicitly create a pre-judgment lien, and no Kansas case law existed to support our position that a lien is created. In cases filed since that time, we have had to file duplicate motions, one for sequestration, and one for a pre-judgment lien, to ensure we obtained a lien on the property we were trying to preserve to satisfy consumer losses. This amendment would avoid that duplicative effort.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably. I would be happy to answer questions of the Chair or any member of the Committee.



NFIB Kansas

**Statement by
Hal Hudson, State Director
Kansas Chapter, National Federation of Independent Business
Before the Kansas House Business, Commerce & Labor Committee
On House Bill 2741**

Wednesday, February 9, 2000

Mister Chairman and Members of the Committee:

My Name is Hal Hudson, and I am the State Director for the 7,000-member Kansas Chapter of the National Federation of Independent Business.

I am here today to offer qualified support of H.B. 2741. We are pleased to see on line 25, page 1, that the word "proprietor" remains in this bill, and we have no objection to the inclusion of "or husband and wife" in the definition of consumer.

My qualified acceptance of the new language in section (4), beginning with line 8 and following on page 3, is based on the assumption that many of the small business that I represent are consumers. It appears that this new language provides some expansion of remedies available to them as consumers.

To the extent that small businesses also may be involved as suppliers in consumer transactions, this new language may not benefit them. However, if a supplier is acting in violation of consumer protection laws of the State, they can expect to suffer the consequences of their actions.

Therefore, unless I totally misunderstand the intent of this bill, and that is the basis of my "qualified" endorsement, I would urge you to recommend it favorably, and support its enactment.

Thank you.

HOUSE BUSINESS, COMMERCE & LABOR

2-9-00

Attachment 2



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Business, Commerce and Labor Committee

FROM: Terry Humphrey, Executive Director
Kansas Trial Lawyers Association

RE: HB 2741

DATE: February 8, 2000

Mr. Chairman and members of the House Business, Commerce and Labor Committee, thank you for the opportunity to comment on our support to HB 2741. I speak today on behalf of the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers Association is pleased to support House Bill No. 2741 which in part expands the definition of “**consumer**” to include husband and wife business operations.

The modern Kansas Consumer Protection Act was passed in 1973 with the purpose of protecting consumers from deception or misrepresentation in connection with the sale of merchandise. A frequent target of such unscrupulous business practices are “mom and pop” small businesses. House Bill No. 2741 would ensure and clarify that these small family owned businesses would enjoy protection from those that would seek to commit fraud and deception.

In closing, I respectfully request your support of HB 2741 and thank you for the opportunity to comment.

HOUSE BUSINESS, COMMERCE & LABOR

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Attachment 3

LETTER - TH1

Terry Humphrey, Executive Director

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