

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:07 a.m. on February 14, 2002 in Room 521-S of the Capitol.

All members were present except: Rep. Jerry Aday - excused
Rep. John Ballou - excused
Rep. Rick Rehorn - excused

Committee staff present: Jerry Donaldson, Legislative Research
Bob Nugent, Revisor of Statutes
Renaë Jeffries, Revisor of Statutes
Ellie Luthye, Acting Secretary

Conferees appearing before the committee: Steve Rarrick, Deputy Attorney General
Doug Smith, Direct Marketing Association
Jim Youngers, Sedgwick County Farm Bureau
Don McNeeley, Kansas Automobile Dealers Association

Others attending: See attached list

Hearing on HB 2766 - Consumer protection, automatic renewal prohibition

Steve Rarrick, Deputy Attorney General for Consumer Protection, appeared on behalf of Attorney General Carla J. Stovall, as a proponent of the bill. The bill would address the problem of consumer contracts containing automatic renewal provisions for one year or more. Their office believes these provisions are unconscionable, but may require litigation if not clarified in the Kansas Consumer Protection Act. Bill contains a typo error - paragraph © - where it should read "act or practice." (Attachment 1) He answered questions following his testimony.

Doug Smith, Direct Marketing Association, opposes the bill as it is drafted. Businesses across the nation use automatic renewals in consumer transactions. They believe that the Attorney General already has broad authority to enforce the provisions under the current state laws. If the committee believes that there is sufficient evidence that additional statutory direction is needed, he has attached an amendment. (Attachment 2) He answered questions from the committee.

Jim Youngers, Sedgwick County Farm Bureau, suggested from the audience that they have the question at the end of their contract which reads "do you want automatic renewal."

Written testimony was received from Michael R. Murray, Sprint, in opposition to the bill. (Attachment 3)

Chairman Lane had planned to work **HB 2766** next week but will take it off the schedule. He said he hated to have final action on a bill where there was this much controversy and have the committee make the decision about what is right. He suggested Doug Smith and Steve Rarrick get together and try to reach some type of compromise.

No others were present to testify and Chairman Lane closed the hearing on **HB 2766**.

HEARING ON HB 2767 - Consumer protection, prohibition of engaging in acts or practices without the required license.

Steve Rarrick, Deputy Attorney General of Consumer Protection presented testimony on behalf of Attorney General Carla J. Stovall in favor of the bill. **House Bill 2767** would make the transaction of business without required federal, state, or local licences and permits an unconscionable act and practice under the Kansas Consumer Protection Act (KCPA). (Attachment 4) Note typo error - paragraph (b) where it should read "act or practice"

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, at 9:07 a.m. on February 14, 2002 in Room 521-S of the Capitol.

Chairman Lane wanted to know what an unconscionable act was - Steve - "must be conduct so unfair or oppressive that it shocks the conscious of the court," however, different judges have different opinions. Research showed where it is in Supp 50-627 which also states it is the question of the court.

Don McNeeley, Kansas Automobile Dealers Association, submitted testimony in support of the bill. It has been a very sore subject that for many years, individuals across the state have been allowed to sell used motor vehicles outside the licensing requirements of our state. (Attachment 5)

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **HB 2767**.

Chairman Lane adjourned the meeting at 9:50 a.m.

The next scheduled meeting will be Tuesday, February 19, 2002.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 14, 2002

NAME	REPRESENTING
Doug Smith	DMA
DON L. McNEELY	KS. AUTOMOBILE DEALERS ASSN.
WADE HARGOOD	SPRINT
Stacy Jeffress	Attorney General's Office
Ed Hays	Farm Bureau
Shel Ashman	Ks Farm Bureau
Kathryn Ashman	KS Farm Bureau
Donita Hayes	Kansas Farm Bureau
Nancy Lindberg	AG office
Melvin Casey	Gw Co Farm Bureau
Georgie Eggleston	Coffey Co Farm Bureau
Judy Jenkins	Attorney General's Office
Mike Zeeb	AT&T
Jimmie	MSTI
R.D. Hay	SKS Southern KS Spraying

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: Feb. 14, 2002

NAME	REPRESENTING
W. D. Lorenz	Farm Bureau
Carol Smith	" "
Janet Hay	Farm Bureau
Gayle Ross	Farm Bureau



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHONE: (785) 296-3751 FAX: (785) 291-3699

Steve Rarrick, Deputy Attorney General
Consumer Protection/Antitrust Division
Office of Attorney General Carla J. Stovall
Before the House Business, Commerce & Labor Committee
Re: House Bill 2766
February 14, 2002

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 House Bill 2766. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

House Bill 2766 would address the problem of consumer contracts containing automatic renewal provisions for one year or more. Automatic renewal provisions for one year or more are very similar to negative option tactics outlawed by the legislature in the 1999 Session, and should be specifically prohibited unless specified notice is provided to the consumer prior to the automatic renewal period. Our office believes these provisions are unconscionable, but may require litigation if not clarified in the Kansas Consumer Protection Act.

Automatic renewal provisions for one year or more are most prevalent in security system contracts. The provision is typically not discussed with the consumer when they originally sign the contract for the service, but is contained in the fine print of the contract. We have seen contracts that automatically renewed at the end of the term, with no notice to the consumers, for as long as five years terms. This happens automatically, unless the consumer knows of the provision and remembers to cancel during a thirty-day window at the end of the initial term of the contract.

Most of us, as consumers, do not have personal calendaring systems in place to remind us to cancel a contract at the end of one to five year terms. Unscrupulous companies rely upon this to guarantee they have consumers on the hook for an additional term. Scrupulous businesses, on the other hand, have these contracts revert to month-to-month terms at the end of the initial term, because they know this is what consumers had in mind when they initially signed up.

There is a typographical error that needs corrected in paragraph (c), where it should read "act or practice", not "act of practice."

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

House Business, Commerce & Labor Committee

2-14-2002

Attachment 1

Direct Marketing Association

**TESTIMONY
HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE**

HOUSE BILL NO. 2766

February 14, 2002

Chairman Lane and Members of the Committee:

Thank you for the opportunity to present the remarks of the Direct Marketing Association (DMA) on House Bill No. 2766. The Direct Marketing Association serves as a professional trade association for direct marketers, with over 4,700 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917.

We are opposed to the requirements of House Bill No. 2766 as drafted.

Businesses across the nation use automatic renewals in consumer transactions. Banks, credit card companies and magazine publishers use automatic renewals on a daily basis. It appears somewhat unreasonable to require personal service or the cost of certified mail for the renewal of a credit card membership or magazine subscription. Many people are already suspicious of the mail they receive and unwilling to accept delivery of certified mail. What does a company do then?

Clearly, consumers have already approved or authorized many of these transactions. If they have not, we believe that the Attorney General already has broad authority to enforce the provisions under the current state laws that deal with deceptive and unconscionable acts and practices. Specifically, K.S.A. 50-626(b)(2) which states that it is a violation of the Kansas Consumer Protection Act if a supplier fails to state, conceals, suppresses or omits a material fact. We would assume that non-disclosure of an automatic renewal in a consumer transaction would be violation of this statute and the Attorney General would be able to intervene in this instance.

However, if the Committee believes that there is sufficient evidence that additional statutory direction is needed to protect consumers we would request your consideration of the attached amendment. It is a reasonable solution without placing more costs on businesses already struggling to keep customers in the current economy.

Thank you for your time today and consideration.

Doug Smith

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3 **HOUSE BILL No. 2766**

4
5 By Committee on Business, Commerce and Labor

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7 2-5

8
9 AN ACT concerning consumer protection; relating to automatic
10 renewals.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) No supplier shall include any provision in a consumer
14 contract providing for the automatic renewal of such contract for an ad-
15 ditional period of one year or more unless the supplier gives written notice
16 by personal service or certified mail to the consumer at least 30 days but
17 not more than 60 days prior to the date the contract is scheduled for
18 renewal:

19 (b) Such written notice shall:

20 (1) Be separate from any billing or other regular mailing sent by the
21 supplier;

22 (2) Specifically reference the existence of the automatic renewal pro-
23 vision in the contract;

24 (3) Specify any action the consumer must take to effectively notify
25 the supplier of the consumer's intention not to renew; and

26 (4) Provide the correct mailing address and telephone number of the
27 supplier.

28 (c) Violation of this section is an unconscionable act of practice under
29 the Kansas consumer protection act.

30 (d) This section shall be part of and supplemental to the Kansas con-
31 sumer protection act.

32 Sec. 2. This act shall take effect and be in force from and after its
33 publication in the statute book.

2-2
sale
clear and conspicuous disclosure that the
sale includes automatic renewal.

(c)

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Michael R. Murray
Director - Governmental
and Public Affairs

Midwest Operations
800 SW Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

February 14, 2002

The Honorable Al Lane, Chairman
House Business Commerce and Labor Committee
State Capitol
Topeka, Kansas 66612

Dear Al:

With respect to HB 2766 which would prohibit automatic renewal of consumer contracts for a period of one year or more, Sprint wishes to express its opposition to passage of the bill.

While it is true today that Sprint's consumer business units in Long Distance, Local Telephone, and Sprint PCS do not have contracts which contain such automatic renewal provisions, Sprint does not wish to be precluded from having such contracts at some point in the future.

Notwithstanding our opposition to the entirety of the bill, the requirement on line 20 to notify customers in a separate mailing from their bill is onerous and costly, and is in our view, inappropriate.

I regret not being able to attend today's hearing, however, we wanted to be on record on opposition to the HB 2766.

Yours very truly,

Michael R. Murray

House Business, Commerce & Labor Committee
2-14-2002
Attachment 3



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

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CONSUMER HOTLINE
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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 House Bill 2767. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

House Bill 2767 would make the transaction of business without required federal, state, or local licences and permits an unconscionable act and practice under the Kansas Consumer Protection Act (KCPA). This would give our office authority to assist consumers who are the victims of suppliers who perform services or sell products without meeting the requirements of state and federal law and without the oversight by agencies created by state, federal and local legislative bodies to protect the public.

Licenses and permits are required by state, federal, and local legislative bodies for a variety of reasons, but in nearly every case it is at least in part to provide minimum qualifications, standards, and guidelines to protect the public. Many of the complaints we receive from consumers involve transactions with suppliers who are conducting business without licenses and permits required by law. Examples include:

- “Curbstoners,” individuals routinely selling automobiles but not licensed as dealers.
- Roofers and home improvement contractors who provide shoddy work and don’t obtain the required building permits, occupancy permits, and inspections.
- Traveler groups, formerly called gypsies, who perform tree trimming, driveway paving, and home repair without obtaining required permits and transient merchant licenses.
- Unlicensed exterminators who spray hazardous or flammable chemicals around houses, endangering the occupants, or charge exorbitant fees for sub-standard work. (One such individual sprayed the Anthony, Kansas SRS office with kerosene, sickening employees and necessitating evacuation of the building from June 17-30.)
- Diploma mills offering bogus degrees without the required authority from the Kansas Board of Regents.

House Business, Commerce & Labor Committee

2-14-2002

Attachment 4

For cases involving home repair and improvement, this bill would provide an important tool to protect Kansas consumers. Under current case law, ordinary shoddy workmanship does not constitute a violation of the KCPA. However, it has been our experience that the shoddiest workmanship is often perpetrated by unqualified, or marginally qualified, individuals who fail to procure required building permits, inspections and approvals. Some of the home repair complaints we receive are committed by travelers, or transient merchants, who have failed to obtain transient merchant licenses required by state and local laws. With this law in place, our office would be able to assist consumers with these complaints rather than having to refer them to private counsel to pursue private breach of contract and negligence claims, which is often cost prohibitive.

Interestingly, it is often the very fact these individuals are not licensed that deprives consumers of the protections the legislative bodies intended to provide by requiring licenses and permits. Bonding and insurance coverage is often required by license and permit laws, yet those who practice these trades and professions without licenses and permits do so without providing this umbrella of protection to consumers - unfairly competing with legitimate businesses who follow the requirements of the law. Regulatory entities are typically authorized to seek injunctions against unlicensed suppliers, but are unable to recover damages sustained by consumers victimized by those who ignore the licensing requirements. In contrast, House Bill 2767 would make performing consumer transactions without required licenses and permits a violation of the KCPA, giving the Attorney General, County and District Attorneys, and consumers the ability to recover damages caused by suppliers who ignore state, federal, and local licensing requirements.

There is a typographical error that needs corrected in paragraph (b), where it should read “act or practice”, not “act of practice.”

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.



KANSAS AUTOMOBILE DEALERS ASSOCIATION

TO: The Honorable Al Lane, Chairman
and Members of the
House Committee on Business, Commerce & Labor

FROM: Mr. Don McNeely, President
Kansas Automobile Dealers Association

RE: HB 2767 – An Act Concerning Consumer Protection; Related to
Prohibited Acts Regarding Licensure.

DATE: February 14, 2002

Good morning Chairman Lane and Members of the House Committee on Business, Commerce and Labor. My name is Don McNeely and I am the President of the Kansas Automobile Dealers Association, which represents the franchised new car and truck dealers in Kansas, as well as the franchised new motorcycle and recreational vehicle dealers. On behalf of KADA, I am pleased to present this written testimony in support of HB 2767, as introduced by the Office of the Kansas Attorney General.

This has been a very sore subject for the licensed motor vehicle dealers of Kansas for many years, as numerous individuals across the state have been allowed to sell used motor vehicles outside the licensing requirements of our state. These individuals set up their retail used car operations on vacant parking lots in many Kansas communities on the weekend and have been allowed to peddle their wares without paying state licensing fees, securing required insurance, furnishing a surety bond, passing a KBI background check and obviously, without an established place of business. Not to mention the fact that these vehicles are sold “as is” or “buyer beware”, outside the protections of the Kansas Consumer Protection Act and the implied warranty laws.

These individuals thumb their noses at the state licensing requirements of the Kansas Dealers and Manufacturers Licensing Act, which was enacted in part to protect the public interest in the purchase and trade of motor vehicles,

House Business, Commerce & Labor Committee

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2-14-2002
Attachment 5

so as to insure protection against irresponsible vendors and dishonest or fraudulent sales practices.

On behalf of the Kansas Automobile Dealers Association, I thank you for your consideration of our comments in support of HB 2767.