

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on January 25, 1994 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Bradley - Excused
Representative Joan Wagnon - Excused
Representative Elaine Wells - Excused

Committee staff present:

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

Conferees appearing before the committee:

Representative Denise Everhart
Representative Betty Jo Charlton
Bill Mitchell, General Council, Kansas Land & Title Association
Representative David Adkins
Kathy Greenlee, Assistant Attorney General
George Barbee, Kansas Association of Financial Services
John Smith, Department of Revenue, Division of Vehicles

Others attending: See attached list

Chairman O'Neal announced that the Committee would take up request for bill introductions.

Representative Betty Jo Charlton appeared before the Committee with two bill requests. The first would amend the Landlord Tenant Act, K.S.A. 2018, so that any person that enters and remains in a dwelling without the landlords agreement and knowledge would be subject to prosecution. The second request would amend the Child Support Act, K.S.A. 2015, to include a new sub-section 2 which would provide for the establishment of a trust account, in which both parents pay, in amounts determined by the courts for child support. The bank interest would be rolled over into a saving account to be used for post-secondary education. She requested that if the Committee agrees to introduce this bill she would request that the word "shall" be change to "may".

Representative Heinemann made a motion to have these two bill introduced as Committee bills.
Representative Everhart seconded the motion. Representative Macy requested that the bills be divided.
On amending the Landlord Tenant Act, the motion carried. On amending the Child Support Act,
Representative Macy stated that usually child support is needed immediately, and it doesn't seem fair for the parent who has custody of the children to have to wait longer to receive the money to pay bills. Representative Everhart withdrew her second on the bill introduction to amending the Child Support Act. Representative Smith seconded the motion. The motion failed on the bill introduction on amending the Child Support Act.

Representative Everhart made a motion to have a bill introduced which would change the docket fees and expenses; and some additional options of when a warrant could be issued for a juvenile offender, (see attachment 1). Representative Mays seconded the motion. The motion carried.

Bill Mitchell, General Council, Kansas Land & Title Association, appeared before the Committee with a request for a bill introduction. This proposed bill would clean up K.S.A. 60-1101 & 60-1103 by adding "owner contractor" to the statute and guidelines for releasing mechanic's liens, (see attachment 2).

Representative Heinemann made a motion to have this bill introduced as a Committee bill. Representative Robinett seconded the motion. The motion carried.

Hearings on **HB 2612** - Prohibiting certain prize notification contest, were opened.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 25, 1994.

Representative Adkins appeared before the Committee as the sponsor of the bill. He stated that this proposed bill was designed to provide a tool to use in Kansas to deter unscrupulous prize solicitations. This would require full disclosure of all details of a prize offering prior to the solicitations. He stated that the Attorney General's office had some suggested amendments that he believes would improve the bill, (see attachment 3).

The Chairman stated that under the Consumer Protection Act there is possible enforcement by the Attorney General's Office. He inquired whether the bill contains a private cause of action. Representative Adkins responded that it does.

Representative Mays stated that he doesn't see that a fine is going to deter anyone and questioned if there could be something done to make the penalties stiffer. Representative Adkins responded that he has no objection to making it stricter.

Kathy Greenlee, Assistant Attorney General, appeared before the Committee in support of the bill. She stated that this proposed bill is similar to the Wisconsin prize notification statute. The Attorney General had several amendments that he offered. The first would create a provision that a "reasonable impression" that a payment is required. The second would remove the prize notice exceptions, (see attachment 4).

Representative Rock stated that as far as he knows there is not one person that likes receiving solicitations over the telephone and questioned why is that allowed and can't the solicitations over the phone be outlawed. Ms. Greenlee stated that she really couldn't answer that but there was talk about trying to do this. She stated that they would check and see what other states have done.

Representative Garner did not testify before the Committee but requested that his testimony be included in the minutes, (see attachment 5).

Hearings on **HB 2612** were closed.

The Chairman stated that he understood that **HB 2612** is a better piece of legislation than **HB 2447** - Certain advertising and sales promotions violations of consumer protection act. She stated that this was correct.

Representative Heinemann made a motion to report **HB 2447** adversely. Representative Rock seconded the motion. The motion carried.

Hearings on **HB 2643** - Civil procedure, photographic copies & **HB 2678** - Copies to prove content of business and public records, were opened.

George Barbee, Kansas Association of Financial Services, appeared before the Committee in support of both the proposed bills. These bills would both update the statutes dealing with admissible evidence by allowing original documents to be scanned and transferred by a laser to a disk for permanent filing, (see attachment 6). He requested that the bill be placed on the consent calendar.

The Chairman stated that he understood that this would update the statute to include technology that wasn't available when the original bill was passed. He questioned if the quality would be as good as the original. Mr. Barbee responded that the quality would be better than the original.

John Smith, Kansas Department of Revenue, appeared before the Committee as a proponent of both bills. He stated that **HB 2643** was drafted after a California statute. Computer scanning is a much faster and accurate system than keeping a paper file. They requested the bill to make sure that this type of document would be allowed by the courts, (see attachment 7).

Chairman O'Neal questioned that once the information is scanned could it be altered. Mr. Smith responded that the original can't be but they can put "notes" on the documents but they won't be printed off when a copy is requested. Chairman O'Neal questioned how the courts are going to know the difference between a copy and the original document. Mr. Smith stated that copy would print off differently than the original.

Hearings on **HB 2643** & **HB 2678** were closed.

Chairman O'Neal stated that he had a request for a bill introduction from Uniform Law Commission which would amend the Uniform Statute and Rule Construction Act. This is the latest version that makes uniform the laws regarding how the courts apply rules of statutory construction to legislative enactments.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 25, 1994.

Representative Heinemann made a motion to have this request introduced as a Committee bill. Representative Adkins seconded the motion. The motion carried.

The Chairman stated that he has also received a request for a bill introduction from the Kansas University Medical Center that would repeal K.S.A. 75-418. It's an old statute which allows service of process upon the state by serving the Secretary of State. New legislation (K.S.A. 63-04) requires service upon the Attorney General.

Representative Adkins made a motion to have this request introduced as a Committee bill. Representative Heinemann seconded the motion.

Representative Mays stated that there are other statutes that reference this issue, would all statutes be amended. Chairman O'Neal stated that staff would do a search and see if any others statutes would need to be amended. The motion carried.

Chairman O'Neal also received a request for a bill introduction in regard to inconsistent recording of mortgages. This would amend K.S.A. 66-1217 which requires that the filing with the county registrar of deeds of real property mortgages made by utilities companies. However, K.S.A. 17-630 requires that any mortgage made to secure an indebtedness that has occurred under the rural electric vocation act shall be executed and filed with the Secretary of State.

Representative Heinemann made a motion to have this introduced as a Committee bill. Representative Adkins seconded the motion. The motion carried.

The Committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 26, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE January 25, 1994

[illegible]

District Court of Kansas
Third Judicial District

Shawnee County, Kansas

Chambers of
Daniel L. Mitchell
Judge of the District Court
Division No. Ten
Shawnee County Courthouse
Topeka, Kansas 66603-3922

Lee Ann Froelich
Administrative Assistant
(913) 233-8200 Ext. 4361

January 19, 1994

Honorable Denise Everhart
Representative of District 53
State Capitol Building
Topeka, Kansas 66603

Dear Representative Everhart:

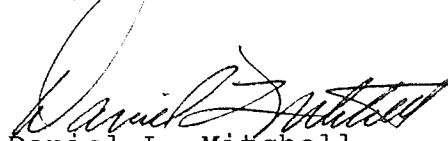
Enclosed please find proposed changes in existing statutes which the Court/Education/SRS Liaison Committee believe to be appropriate.

As chair of the committee, I am requesting the introduction of the proposal modifications as bills from the committee as a whole.

I will be available at the request of the committee to personally appear in support of these requested modifications.

Thank you for your attention to and assistance in this matter.

Very truly yours,



Daniel L. Mitchell
District Court Judge

DLM:laf
Enclosure

33-1511. Docket fee and expenses. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided in this section, shall be \$16.50. Only one docket fee shall be assessed in each case.

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.*

(1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and may be assessed against the complaining witness or person initiating the proceedings or an interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be assessed against the complaining witness or person initiating the proceedings or an interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. If it appears to the court in any proceedings under this code that expenses were unreasonably incurred at the request of any party the court may assess that portion of the expenses against the party.

(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportion of the expenses is collected by the receiving court. All amounts collected shall first be applied toward payment of the docket fee.

History: L. 1982, ch. 182, § 11; L. 1992, ch. 128, § 9; July 1.

Research and Practice Aids:

Infants ⇌ 212.

C.J.S. Infants §§ 57, 69 to 85.

CASE ANNOTATIONS

1. Child in need of care proceedings discussed generally, with emphasis on roles of respective parties thereto. In re D.D.P., Jr., 249 K. 529, 539, 819 P.2d 1212 (1991).

(3) The docket fee and expenses assessed hereunder shall constitute a judgment against the person against whom they are assessed. They may be collected through the issuance of garnishments, executions and any other legal process by which a civil judgment may be collected.

A warrant may also be issued at any time when a person alleged to be a juvenile offender under this code has failed to appear in court at a scheduled hearing, at a scheduled appointment with a court service officer, or when a motion to revoke probation with a supporting affidavit has been filed with the court.

38-1631. Issuance of warrant. If the court finds there is probable cause to believe that an offense was committed and that it was committed by the respondent, or that a person has absconded while on probation or escaped from a facility or person vested with that person's legal custody or supervision pursuant to this code or the Kansas juvenile code for a nonstatus offense, the court may issue a warrant commanding that the respondent or person be taken into custody and brought before the court. The warrant shall designate where or to whom the respondent or person is to be taken if the court is not open for the regular conduct of business. The warrant shall describe the offense charged in the complaint or the applicable circumstances of the person's absconding or escaping.

History: L. 1982, ch. 182, § 85; Jan. 1, 1983.

AN ACT concerning mechanic's and materialmen's liens;
amending K.S.A. 60-1101, 60-1103b and
repealing the existing sections.

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

Section 1. K.S.A. 60-1101 is hereby amended to read as follows: 60-1101. Any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, under a contract with the owner or with the trustee, agent or spouse of the owner, or with an owner contractor as defined in K.S.A. 60-1103, shall have a lien upon the property for the labor, equipment, material or supplies furnished, and for the cost of transporting the same; however, a notice of intent to perform, if required pursuant to K.S.A. 60-1103b, must have been filed as provided by that section. The lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies by such claimant at the site of the property subject to the lien. When two or more such contracts are entered into applicable

to the same improvement, the liens of all claimants shall be similarly preferred to the date of the earliest unsatisfied lien of any them.

Section 2. K.S.A. 60-1103b is hereby amended to read as follows: 60-1103b. ^{New Residential Property.} ~~(a) As used in~~ this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage, or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1101 OR K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the

recording of the deed effecting passage of the title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

(c) The notice of intent to perform provided for in this section, to be effective, shall contain substantially the following statement:

NOTICE OF INTENT TO PERFORM

"I _____
(name of supplier, subcontractor or Contractor)

(address of supplier, subcontractor or contractor)
do hereby give public notice that I am a supplier,
subcontractor or contractor or other person providing
materials or labor on property owned by _____
(name of

property owner

and having the legal description as follows:

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103 shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d) above.

(f) Any claimant filing a notice of intent to perform who refuses or neglects to file a release of the notice and waiver of lien within 20 days after demand has been made as provided in subsection (e) above shall be liable in damages to the person for whom the demand was made in the sum of \$500.00, together with reasonable attorney's fees for preparing and prosecuting the action. The plaintiff in such action may recover any additional

damages that the evidence in the case warrants. Civil actions may be brought under this act before any court of competent jurisdiction, and attachments may be had as in other cases.

(g) Notwithstanding the requirements of subsections (d), (e), and (f), a notice of intent to perform shall be of no further force or effect after the expiration of one (1) year from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 or 60-1103.

A PROPOSAL FOR CLARIFICATION OF KANSAS

MECHANIC'S LIEN LAWS

I.

Amendments were made to the Kansas Mechanic's Lien Statutes¹ in 1986 for the purpose of offering protection to purchasers of new homes against the filing of mechanic's liens following the receipt of payment in full by the builder and transfer of title of the home to the buyer. The procedure established for this protection was to require parties furnishing labor and material to the home while it was still owned by the builder to file with the Clerk of the District Court in the county in which the house is located a "notice of intent to perform" prior to the time title is transferred to the buyer. The filing of such a notice was made a prerequisite to a mechanic's lien claim under K.S.A. 60-1103. The intention was to enable a buyer to determine, at the time of parting with his purchase money, whether any third parties claimed a right to file a mechanic's lien against the home he was buying.

However, the decision of the Kansas Supreme Court in Star Lumber & Sup. Co. v. Capital Const. Co., Inc., 238 Kan. 743, 715 P2d 11 (1986) determined that a party furnishing labor or material to the builder could file a mechanic's lien either as subcontractor under K.S.A. 60-1103 or as an original contractor under 60-1101.

Page 2

The proposed amendment to K.S.A. 60-1101 and 60-1103b would give recognition to the Star Lumber decision and require that the notice of intent to perform be recorded before the transfer of title, regardless of whether the claimant is claiming as an original contractor under K.S.A. 60-1101 or as a subcontractor under K.S.A. 60-1103.

Another problem that has arisen is that the 1986 Act made no provision for extinguishing a notice of intent to perform once the claim had been satisfied. A new subsection (d) is added to K.S.A. 60-1103b to provide for the filing of a waiver of lien, which will extinguish the Notice of Intent to Perform.

II.

In 1977, K.S.A. 60-1101 was amended for the apparent purpose of abolishing the "first spade" rule. The "first spade" rule says that all mechanics' liens rank in priority from the date the first spade is put into the earth. All mechanics' liens relating to the same improvement had equal rank with one another, and all had priority over any other encumbrance such as a mortgage, that was recorded subsequent to the commencement of work. The 1977 amendment added the

single word "unsatisfied" to the statute, in the following context:

The lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimants shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.

It is felt, however, that the failure to modify the preceding sentence which says that "the lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor ... [or] material ..." creates an ambiguity which is clarified by the proposed addition of the words "by such claimant" immediately following the phrase just quoted. This would establish beyond any doubt that all mechanics' liens resulting from the same improvement are of equal rank with one and another, and that their priority vis-a-vis other liens is measured not from the date that work was commenced by some party who has been paid in full, but from the date of commencement of work by the claimant.

The foregoing amendments are not intended to affect any substantive rights of parties heretofore existing under the Kansas mechanic's lien statutes, but are only to clarify actions previously taken by the Kansas Legislature in 1977 and 1986; or to effect improvements in procedural matters.



State of Kansas
House of Representatives



Committee Assignments

Taxation
Judiciary

David Adkins
Representative, 28th District

TESTIMONY BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
1994 H.B. 2612 - January 25, 1994

Mr. Chairman and Members of the Committee:

I am pleased to appear in support of H.B. 2612 co-sponsored by Representative Garner and me.

If enacted, H.B. 2612, will provide Kansans with a useful tool to deter the use of unscrupulous prize solicitations. I believe many firms that utilize prize offerings as sales gimmicks have one goal - to rip off the consumer. The utilization of inherently deceptive prize offerings can be curtailed with appropriate legislation, such as H.B. 2612.

Wisconsin and Minnesota have enacted legislation similar to that proposed in H.B. 2612 and Iowa is currently considering such a measure. Kansas should likewise provide its citizens with protection from deception in prize offerings.

H.B. 2612 requires full disclosure of all the details of a prize offering. The extent of disclosure required is set forth in lines 8 through 24 on page 2 of the bill.

In prize offering rip offs the consumer is often promised a prize only to learn that a lengthy sales presentation must be attended or an expensive "1-900" number must be called as a condition of claiming the prize. The prizes offered are usually of nominal value such as "a four person boat" that is really an inflatable raft. The provisions of H.B. 2612 prevent such practices without full disclosure in advance.

House Judiciary
Attachment 3

Page 2

A violation of the terms of the proposed law would subject the violator to penalties pursuant to the Kansas Consumer Protection Act.

The Kansas Attorney General's office will also testify in favor of this legislation. Attorneys from that office have met with Representative Garner and me. They will offer some suggested amendments which I believe improve on the current draft of the legislation. I appreciate their input and assistance.

I would urge the committee to report the bill favorably for consideration by the full House. Thank you.

Respectfully submitted,


David Adkins



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of
Assistant Attorney General Kathy Greenlee
On Behalf of Attorney General Robert T. Stephan
Before the House Judiciary Committee
RE: 1994 House Bill 2612
January 25, 1994

Chairperson O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Robert Stephan. I am here to offer testimony in support of House Bill 2612 which proposes to amend the Kansas consumer protection act. I also have some recommendations to make with regard to strengthening the language of the bill.

I would like to be the first one to congratulate you. You have won \$100,000 in cash! I am the officer in charge of the prize committee. It is my job to check and confirm that money actually has been won and must be paid out to the person who is the winner. The procedure for claiming your confirmed money is very simple. Along with the Claim and release document, we request that you enclose the usual discretionary asset entitlement disbursement fee.

House Judiciary
Attachment 4
1-25-94

Perhaps you would rather enclose the standard elective commodities entitlement processing fee?

As you may suspect, I read junk mail for a living. Unfortunately, every day our office is reading complaints and answering calls from consumers who have been victimized by telephone and mail solicitation scams. Many of these rip-offs involve prize notification schemes.

I recently talked to a woman from Kansas City who had been called by a telephone solicitor. They told her she won a prize and she sent them \$1500.00. She was afraid to report them to authorities for fear they'd burn down her house.

There is a business man here in Topeka who has spent over \$100,000 responding to high-pressure telephone calls and fraudulent mail solicitations.

I could stay here the rest of the day giving you examples. The economic drain that prize scams have on the citizens of this state is staggering. Unfortunately, we in Kansas are not alone.

This fall our office was notified that a Representative was considering introducing a prize notification bill. We heartily support this effort. At the time we were contacted we suggested that the Revisor's office review statutes from the states of Iowa, Minnesota and Wisconsin. Wisconsin's prize notification law went into effect on May 1, 1992. Minnesota passed their law last year and it became effective July 1, 1993. The Iowa Attorney General's office is proposing a bill this current legislative session. This current proposal, House Bill 2612, is

most closely patterned after the Wisconsin prize notification statute, although it is also very similar to the Minnesota and Iowa provisions.

In preparation for this testimony, I called the Wisconsin Attorney General's office to determine if they have any suggestions with regard to the prize notification package. They indicated three areas of concern. I have expressed these concerns to Representatives Adkins and Garner.

1. What if payment is not actually required? This law may not apply. Minnesota and Iowa remedy that potential problem by including in their law those solicitations that create the reasonable impression that a purchase is required. I have attached to my written testimony a summary of the key provisions from these other states. Our office recommends amending House Bill 2612 to include the "reasonable impression" language.

2. The Prize Notice exception definition found on page 1, line 24 has been problematic in Wisconsin. It is unclear and may possibly carve out a large loophole. Specifically, we are concerned about the law's applicability to puzzle contests, which are a specific type of mail solicitation promotion. Iowa and Minnesota have removed prize notice exceptions altogether. Likewise, we recommend that you remove the prize notice exception provision, Section 1,(a)(2)(B).

3. The State of Wisconsin is also having trouble with the fact that this law provides no distinction between oral and written communications. Because of the volume of complaints

which our office receives regarding both mail and telephone solicitations, we would take the position that this law applies to both types of solicitations. We raise this issue so that the committee can be clear about our intentions with regard to enforcement.

We are satisfied with the remaining provisions of this bill. This prize notification approach is consistent with the way in which other states are beginning to tackle this issue. We applaud your efforts and urge you to pass this bill, along with the suggested changes. We are happy to consult with any of you regarding this matter. And, if you like, we can bring you some lovely mail to read.

Thank you.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

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Kansas proposed.

If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required

Wisconsin. W.S.A. 1993 Supp. §137.74

If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required . . .

Minnesota. M.S.A. §325F.755. Effective July 1, 1993.

No sponsor shall require a person in Minnesota to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required . . .

Iowa proposed.

No sponsor shall require a person to purchase merchandise, or pay or donate money, as a condition of awarding a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a purchase, payment, or donation is required, unless the person has first received a written prize notice containing the information required . . .

JIM D. GARNER
REPRESENTATIVE 11TH DISTRICT
601 EAST 12TH
P.O. BOX 538
COFFEYVILLE, KS 67337
(316) 251 1864
(316) 251 5950

TOPEKA ADDRESS
STATE CAPITOL RM 284 W
TOPEKA KS 66612 1504
(913) 296 7699
1 800 432 3924



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING DEMOCRAT: JUDICIARY
MEMBER: TRANSPORTATION
LABOR AND INDUSTRY
KANSAS JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
NCSL STATE AND FEDERAL ASSEMBLY
LAW AND JUSTICE COMMITTEE

TESTIMONY IN SUPPORT OF
HOUSE BILL 2612

Mr. Chairman and Members of the Committee:

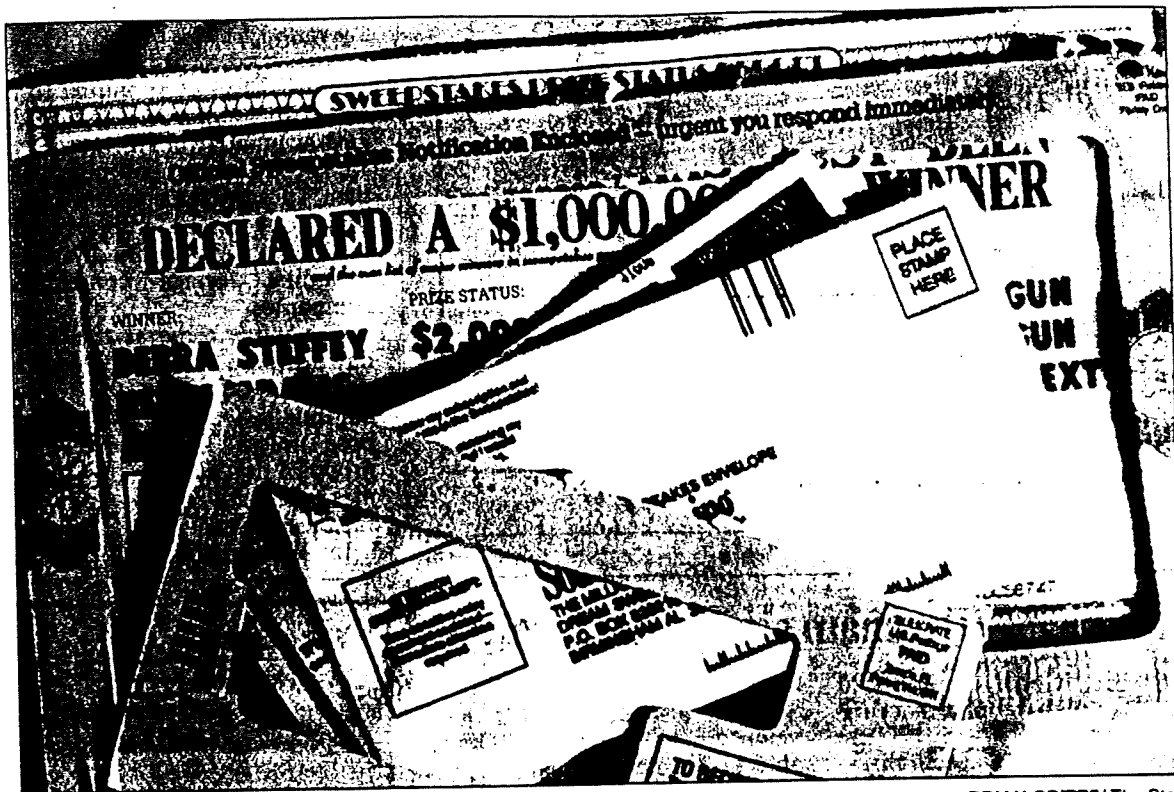
Thank you for the opportunity to appear before the committee and to testify in support of HB 2612. HB 2612 provides some much needed regulation of prize notification mailings and solicitations. Basically, the bill requires a number of disclosure requirements. The solicitor must disclose the verified retail value of any prize offered; the number of prizes actually available; the number of notices sent; a clear statement of the exact amount of money an individual would have to pay to receive the prize; and the name and address of the solicitor. In addition, the legislation would prohibit the delivery of any prize notice that contains language or is designed to mislead persons to thinking that the notice originates from a government agency, public utility or insurance company.

The bill is patterned after a recent enactment in Wisconsin. There is a real need for this type of regulation in Kansas. Many of our older citizens are being victimized by vague misleading promises of prizes. I have attached a copy of a recent article in the Kansas City Star which mentions the overabundance of scam operations in this industry.

This bill is a good effort at providing some regulations and protection in the area of prize notifications. Representative Adkins and I have visited with attorneys from an Attorney General's office, and I feel they have some constructive suggestions on this bill.

Again, thank you for the opportunity to testify in support of HB 2612. I ask that the committee take favorable action on HB 2612.

PRIZES IN THE MAIL



BRIAN CRITES/The Star

At this time of year mailboxes in the United States are filled with sweepstakes promotions that advertise prizes worth millions of dollars, like the one pictured above.

Wow! There's millions just waiting to be won

Publishers games offer big prizes, very long odds.

By JENNIFER MANN FULLER
Staff Writer

YOU'VE WON A MILLION DOLLARS — IT SAYS SO RIGHT ON THE ENVELOPE!

Well, not really ... but maybe.

Yes, it's that time of year again, when mailboxes are bombarded with yellow envelopes

shouting that you've won the big prize.

While it is possible to win money, lots of money, through these publishers sweepstakes, keep in mind that the odds are quite slim.

Also, watch out for scam artists. And don't forget that the ultimate aim of these campaigns is to manipulate you into buying their products.

But if you've heeded this advice, then go ahead ... join the millions of Americans who tackle the herculean chore of filling

out the entry forms.

You could be a winner.

To help you, here's a primer on this annual rite of winter.

The odds

Don't bet the farm on these contests. The odds of winning either the \$5 million grand prize or the \$100,000 first prize in the current Reader's Digest \$5 million sweepstakes is 1 in 206 million.

Other contests are just as out of reach. In fact, you'd generally

See **SWEEPSTAKES, B-7**

► Look before you take a chance

The Direct Marketing Association suggests you think about these things before entering a magazine sweepstakes:

■ **Are the rules and entry instructions for the promotion easy to find and understand?** If you can't understand what you must do to be eligible, think twice about responding.

■ **Does the advertising copy state that no purchase is necessary in order to win?** By law, no purchase is necessary to enter a sweepstakes, and the chances of winning are the same whether you order or not.

■ **Are the prizes worth winning?** Make sure the prizes you're trying for are desirable and worth the effort. Do you really want to win them? Is there a cash option?

■ **Is the grand prize awarded to only one winner or is it a shared prize among many entrants?** Some companies conduct what is known as a "pooled" sweepstakes whereby one grand prize is shared by all consumers who enter the sweepstakes.

For a complete Sweepstakes Advertising: A Consumer's Guide, send a written request to: DMA, Consumer Services Department, 1101 17th Street, N.W., Suite 705, Washington, D.C. 20036-4704.

Sweepstakes entries require close reading

Continued from B-1

have a better chance of getting hit by lightning on the fourth hole of the Kansas City Country Club's golf course wearing a Buffalo Bills blazer.

But that doesn't mean you can't win. Just ask E. Jay and Joyce Hilter of Gladstone, who won the Reader's Digest Sweepstakes \$5 million Grand Prize two years ago.

The Hilters even won an extra \$120,000 by following the contest directions to the letter and sending their entry in early.

The scams

But watch out. Not all these contests are legitimate. Law enforcement officials say there is an overabundance of scam artists trying to take advantage of the reputable companies.

Kansas Attorney General Bob Stephan said Tuesday his office is just beginning to investigate a company calling itself "Publishing Clearinghouse," obviously trading off the well-established name of Publisher's Clearinghouse.

"I can't stress enough that people need to check out these sweepstakes," Stephan said. "We do get inquiries about these sweepstakes, and with the better known ones like Publisher's Clearinghouse and American Family, we haven't found any trickery connected with

them. But people need to be careful."

Toward that end, Reader's Digest — a pioneer in such contests — offers its own consumer tips on how to avoid sweepstakes fraud.

"Legitimate sweepstakes do not require you to pay to collect your prize," said Ronald Leslie, director of the company's sweepstakes. "We notify our winners by mail and we award every prize offered."

Reader's Digest, which conducted its first contest in 1962, has given out more than \$101 million to nearly 2 million winners in the United States alone.

The Direct Marketing Association in cooperation with the U.S. Postal Inspection Service also offers a tips handbook on avoiding scams.

Mary Still of the Missouri attorney general's office in Jefferson City said that office also is continuously monitoring offers in Missouri.

"Seldom do we have a violation," Still said. "The solicitation can sometimes cause confusion, but if consumers read the material carefully, there are clauses that usually protect the company."

The chore

In fact, it's sometimes impossible to enter one of these contests without reading the directions

carefully.

You know the routine ... "Affix blue sticker to correct spot on form B and check the yellow 'no' box in the lower left hand corner of form Z."

"We feel that the people who receive our sweepstakes offers enjoy completing the forms," said Tara Phethean, public relations manager for the Reader's Digest Association Inc.

Judging by the millions of entries Reader's Digest receives, Phethean is probably right.

But the contests aren't just there to give you some fun. These companies want you to buy.

Reader's Digest Association, for example, annually conducts sweepstakes for not only Reader's Digest magazine but a slew of other Reader's Digest merchandise.

"We do these sweepstakes to call attention to our magazines, books, music, video and children's products," Phethean said.

The Direct Marketing Association notes that thousands of companies have conducted legitimate sweepstakes for years — and usually successfully.

"Direct marketers offering legitimate sweepstakes promotions want the consumer's experience with them to be enjoyable. They also want them to respond," says Marsha Goldberger, director, eth-

ics/consumer affairs for the marketing association.

The 'no' box

OK, but what if you say no — that you don't want to buy anything?

"Consumers should understand that in any sweepstakes, by law, they have an equal chance of winning whether or not a purchase is made," Goldberger said.

At least one consumer, a Gary Lewis, filed a lawsuit in Newark, N.J., in 1992, alleging that a sweepstakes operator threw out entries unopened if the contestants did not buy magazines.

However, the industry defends the use of separate envelopes for entries containing a magazine order and ones not containing a magazine order. Industry officials say they need to process those with orders as quickly as possible to satisfy the consumer.

So, in the end, go ahead and enter the sweepstakes, but read the fine print.

"Basically, we get inquiries from people calling and finding out if they've got a bona fide offer," said George Hart, vice president of the Kansas City Better Business Bureau. "Most of them check out — we just tell people to read the offer carefully."

The Kansas Association of Financial Services

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STATEMENT TO:
House Judiciary Committee
January 25, 1994
HB 2643 and HB 2678

Mr. Chairman and members of the committee my name is George Barbee appearing on behalf of the Kansas Association of Financial Services (KAFS). The membership of KAFS consists of large national and international finance companies with approximately 100 branch offices in Kansas.

These firms have accounts receivable that are as high 32 billion dollars for the largest firm. You can imagine the massive amounts of records that must be retained for these credit accounts. To manage this enormous task the companies are turning to new technology in the form of optical imaging.

This allows original documents to be scanned and transferred by laser to a disk for permanent filing. The disk stores documents without the ability for them to be altered. The document cannot be erased and the unaltered document can be retrieved and reproduced at a later time. This is obviously much more efficient than manual filing and retrieval of documents.

This bill would update present statutes dealing with admissible evidence by amending the statute to allow documents produced from optical imaging equipment to be treated with the same legal standing as microfilm, microcard, photostatic, and miniature photographic copies.

The amendment is specific in adding language that this is "non-erasable optical image reproduction provided that additions, deletions or changes to the original document are not permitted by the technology". I do not think this is a controversial issue and would ask that you report this bill favorably and furthermore to consider placing it on the consent calendar.

House Judiciary
Attachment 6
1-25-94

STATE OF KANSAS

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Robert B. Docking State Office Building
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Department of Revenue
Division of Vehicles

To: The Honorable Michael O'Neal, Chairman
House Judiciary Committee

From: Betty McBride, Director, Division of Vehicles
Kansas Department of Revenue

Date: January 25, 1994

Subject: House Bill 2643

Mr. Chairman, members of the committee,

My name is John Smith. I am the Vehicle Administrator for the Driver License and Driver Control Bureaus of the Division of Vehicles, and I appear before you in place of Betty McBride, Director of Vehicles, on behalf of the Kansas Department of Revenue, regarding House Bill 2643.

The division supports passage of House Bill 2643. As many of you may know, the division has recently converted its paper records in driver control to an optical imaging system, which stores an image of the paper document on a disk. Documents are now available to several users simultaneously, thus enabling us to provide better service to our customers. This system also enables us to retrieve an image of the document, and transmit the image electronically, as a facsimile, to any court with a fax machine. By transmitting documents in this fashion we can eliminate errors and ensure that information requested by the court is received in a timely and accurate manner.

Thank you for allowing me to appear before you on this matter. I stand for your questions.

House Judiciary
Attachment 7
1-25-94