

Help Yourself

Mr. Businessman!



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27 00

ACKNOWLEDGMENTS

I wish to express my appreciation to Keith Sanborn for his guidance and direction in writing this booklet; my wife, Cornelia, for her many hours of proofreading, and Mr. Carrol Vance, District Attorney of Harris County, Texas, for permission to reproduce herein some suggestions on crime prevention from his booklet, "WATCH OUT"

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Dear Mr. Businessman;

The Consumer Protection Division of the Sedgwick County Attorney's Office was officially established on November 1, 1970, although consumer complaints have been handled by this office since long before that date. The goal of the Division - Integrity in the Marketplace - was likewise officially set in 1970, although, as with the Division, it has been our goal since at least 1958. It can best be achieved by protecting those who practice it; by eliminating those who do not; by making the violations so costly that no unfair competitive advantage can be achieved or held thereby.

Fair, open, and honest competition requires that we deal forthrightly with improper practices, and we are grateful for the support and assistance of sources within and without industry and business for the successful prosecution of some of our most serious cases.

The Consumer Protection Division of this office prosecutes cases wherein businesses have been the victims of fraud, as well as cases wherein businessmen have been the perpetrators.

In 1971, with the assistance of a grant from the Governor's Committee on Criminal Administration, "Help Yourself! A Handbook on Consumer Fraud" was printed and distributed. "Help Yourself, Mr. Businessman!" is a publication designed to help achieve Integrity in the Marketplace, and was likewise written and printed with the help of a grant from the Governor's Committee.

Sincerely yours,

KEITH SANBORN
Sedgwick County Attorney

"HELP YOURSELF MR. BUSINESSMAN!"

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CHAPTER I

CRIMES AGAINST BUSINESS WORTHLESS CHECKS

SUMMARY OF THE LAW (K.S.A. 21-3707 & 21-3708)

The Kansas Worthless Check law makes it a crime to write and pass a check with the intent to defraud, knowing that there are no funds or insufficient funds in the bank for the payment of the check in full upon its presentation.

Generally, bad checks for over \$50 are felonies, and bad checks under \$50 are misdemeanors.

"Habitually Giving Worthless Checks" is giving a worthless check (as defined in the first paragraph) "drawn for less than fifty dollars, by a person who has within two years immediately preceding the giving of such worthless check, been twice convicted of giving worthless checks." If a person has two prior convictions for writing worthless checks within the past two years, and he writes another worthless check for less than \$50, it is a felony rather than a misdemeanor.

It is also a felony to give two or more worthless checks, each drawn for less than \$50, where the total amount of the checks is \$50 or more and each of the checks was given on the same day.

Requirements For Prosecution

1. If you receive a worthless check, you must first give notice to the person who wrote the check by certified or registered mail. This notice should inform the person that his check has been returned and that he has seven days from the date notice was given to pay the check. Notice is presumed to have been given when the letter has been deposited in the mail. An example of this letter is as follows:

TO:

You are hereby notified that your check number _____ written on _____ (date) _____ payable to _____ in the amount of \$ _____, and signed by _____, has been returned to us by the bank marked _____ (insufficient funds, no account, or however marked) _____.

This letter is to inform you that under the Kansas Worthless Check Law you have seven (7) days from the date of this letter to pay this check in full.

(Signed)

Mail this letter by certified or registered mail to the person who signed the check at the address shown on the check. Instruct the postman to deliver the letter to addressee only and request a return receipt. The new Worthless Check Law, effective July 1, 1972, allows you to charge up to three dollars service charge on a returned check.

You should NOT threaten criminal prosecution in order to collect a bad check.

2. If the check is not paid in the allotted time, take the check, your copy of the letter, and the receipt showing that the person received the letter (or the returned letter, if it was unclaimed or refused) to the proper law enforcement agency.

a. If the check was passed inside the Wichita City Limits, go to the Fraud Division of the Wichita Police Department.

b. If the check was passed outside the Wichita City Limits but in Sedgwick County, go to the Detective Division of the Sheriff's Office.

The detectives in charge of fraud will then compile all the evidence and present the case to the County Attorney's Office (in the case of a check over \$50 passed in the city limits, or all checks written in Sedgwick County but outside the city limits), or to the Wichita City Prosecutor (in the case of a misdemeanor check passed inside the city limits). When the complaint is prepared, you will be notified to sign it. After the defendant is arrested, you will be notified when you are needed in court.

Do not bring any papers to the County Attorney's Office unless they are requested.

Special Problems

There are special provisions in the law which prevent criminal prosecution for some bad checks and constitute an absolute defense to a person charged with writing a worthless check. A criminal prosecution for writing a bad check cannot be commenced on post-dated checks, hold checks, or any other check where the payee had knowledge or had been informed when he accepted the check, that the maker did not have sufficient funds in the bank to cover the check.

This provision in the law is important for two reasons: First, it is not advisable to commence a prosecution for a bad check if that prosecution has no chance of being successful. Second, it is a crime to cause an unlawful prosecution for a worthless check.

Kansas law provides that if you file a complaint before a judge, or supply information upon which a prosecution for giving a worthless check is commenced, knowing that the check was a post-dated, hold, or insufficient funds, check, you are guilty of a misdemeanor.

If you receive a bad check and your only wish is to collect it, you should refer the check to your own attorney.

Prevention

BEFORE ACCEPTING A CHECK:

1. Require a valid check, with all items of information legibly filled in, including the giver's address, complete date, and the same amount expressed in numerals and in words.

2. Require identification. Personal acquaintanceship is best. A single photograph showing both the checkwriter and the check is the next best. Credit cards may be reliable, but they are often stolen or forged and then used by professional hot check writers.

3. Require the signature to be made in your presence.

4. Make sure the correct address and phone number of the maker is written on the check, by checking it with the identification.

5. Have your employees initial checks when they accept them. The chance of conviction is best when the person who accepted the check can recall the face and appearance of the giver. A positive identification in court is essential; a Regiscope picture is valuable, especially in a high volume business.

6. Call the bank when in doubt.

7. Take immediate action when a check bounces.

UNLESS YOU REALIZE YOU ARE FOREGOING PROSECUTION, DON'T:

1. Accept a personal check in exchange for a worthless check you already hold.

2. Accept post-dated checks or agree to hold a check.

3. Hesitate to check identification and compare photographs.

REMEMBER:

1. Out-of-state and third-party checks involve special problems.

2. Criminal prosecution is not a collection process.

You should set a policy on cashing checks, write it down, and instruct your employees in its use. Your policy might require your approval before a sales-clerk can cash a check. When all check-cashers are treated alike, customers have no cause to feel that they are being treated unfairly.

Remember! The policy of the check law is to keep worthless and doubtful commercial paper from being placed in circulation. You can help by following the above suggestions.

FORGERY

SUMMARY OF THE LAW

(K.S.A. 21-3710)

The crime of Forgery is defined by statute and committed three ways. Each requires an intent to defraud.

First, the making or altering of a written instrument in a way that it purports to have been made by another person, at another time, with different provisions, or by authority of one who did not give such authority, is forgery.

Second, passing that written instrument with the knowledge that it is forged is forgery.

Third, possessing a forged instrument with the intent to pass it and the knowledge that it is forged is called forgery.

It is generally thought that forgery involves checks, but it can involve any written instrument.

Prevention

See the list of suggestions under the crime of Worthless Checks.

UNLAWFUL USE OF CREDIT CARD

SUMMARY OF THE LAW (K.S.A. 21-3729)

It is unlawful for any person to present a credit card with the intent to defraud in order to obtain money, goods, property, or communication services if the credit card is issued to someone else and the individual presenting it is using it without the consent of that other person.

It is also unlawful to knowingly use a credit card which has been revoked, cancelled, falsified, mutilated, or altered.

This crime is a misdemeanor, unless the value of any purchase or the total of a number of purchases within a seven-day period amounts to \$50 or more.

Prosecution

To support prosecution for this offense the facts must show an intent to defraud, and the actual or attempted obtaining of something of value. The intent to defraud could be shown by proving the presentation of a stolen card or by proving the use of a card without the permission of the owner. A signature on the charge ticket would make a stronger case.

To aid in prosecution for this offense, the complaint should have proof of:

1. Use of credit card without permission of the owner, or
2. Expiration or revocation of the card.
3. Purchase after date of revocation or expiration.
4. Identifying witnesses.

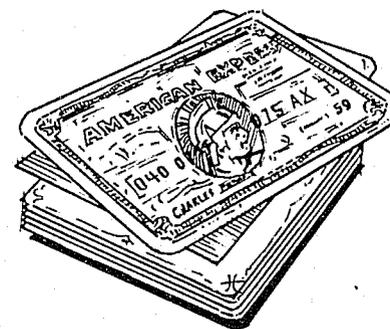
Prevention

DO:

1. Require other identification.
2. Beware of mutilated or changed cards.
3. Check lists of revoked cards.

REMEMBER:

1. You may be inviting trouble, as well as risking federal liability, by mailing unsolicited credit cards.
2. New credit cards are stolen before delivery to owners; dealing in these stolen cards is big business. Do not hesitate to verify credit card identity by calling home and business of the holder.
3. The biggest losses are inside losses. Keep internal controls and audit all credit card vouchers.



SHOPLIFTING

SUMMARY OF THE LAW (K.S.A. 21-3701)

Shoplifting is technically called theft, and is committed by obtaining or exerting unauthorized control over property. It is also necessary to prove the shoplifter intended to permanently deprive the owner of the use, possession, or benefit of the property.

Shoplifting of merchandise with a total value of \$50 or more is a felony; less than \$50 is a misdemeanor.

Prosecution

How far must the goods be taken to constitute shoplifting? The accused does not have to leave the store with the goods, although this fact would make a stronger case. Each case rests on its own facts. The size and arrangement of the store and exactly where in the store the accused removed the goods are significant. There is a clearer case if the accused took the property to another department or another floor without paying the cashier. On the other hand, a person who walks to another counter near the same department probably has not technically committed the offense. The degree of concealment of the items taken and whether the accused left the area of the appropriate cashier are important factors to observe.

Special Problems

PRESERVATION OF EVIDENCE:

There is no perfect substitute in the trial of a shoplifting case for the introduction in evidence of the actual articles shoplifted or, for example, found in the purse of the accused. We realize that problems arise from the frequency of this offense and the volume of goods involved, but every consideration should be given to a successful prosecution.

RECALLING THE EVENT:

As in any criminal trial, the defendant in a shoplifting trial must be positively identified. The law enforcement agency notified will make a report. Additionally, it will be most helpful if the person who witnesses shoplifting will make written notes, describing the shoplifter by appearance, dress, and manner, recording the incident and noting the price of the article, in order to refresh his memory later on. A printed or mimeographed form designed to record this information is most helpful.

MALICIOUS PROSECUTION:

Care must be exercised to avoid mistakenly embarrassing, accusing, or detaining a person suspected of shoplifting. Before acting, the merchant or his agent must be certain in his own mind that an offense has been committed. Otherwise, the mistake could mean possible liability for malicious prosecution or false imprisonment. In this connection, consider the reaction of a jury to an accused woman who stuffed stolen articles down her own clothing as opposed to another woman who openly carried articles to another department and later testifies she did so to match colors of clothing from two separate departments. The subject of malicious prosecution should be carefully explored with your own attorney.

Under some circumstances, the law allows merchants and their agents or employees to restrain persons suspected of shoplifting. Specifically, any merchant, his agent, or employee who has reasonable grounds to believe that a person has actual possession of merchandise and has wrongfully taken, or is about to wrongfully take, that merchandise from the store, can detain that person on the premises or in the immediate vicinity of the premises, in a reasonable manner and for a reasonable period of time, for the purpose of investigating the circumstances of the possession of the merchandise. Some case law, however, indicates that reliance on this law where the merchandise stolen is less than \$50 is dangerous unless you are actually stopping a thief. To avoid false arrest litigation, consult with your attorney to arrive at a store policy.

Prevention

There are both professional and amateur shoplifters. They may be seeking "a living," a thrill, or support for a drug habit. The word spreads when a store has a professional security force or takes other effective action against shoplifters.

Mirrors, one-way mirrors, raised observation platforms, and real or fake cameras are effective against shoplifters. A fact to remember is that a watched shoplifter, or one who thinks he is being watched, is much less likely to shoplift.

Good salesmanship is also good security. A courteous, attentive sales person can keep a customer from shoplifting. Sales personnel should be trained to watch for suspicious mannerisms like the shopper's furtive glance around to determine whether he is alone. Sales personnel should be aware of the following devices and procedures:

1. Some shoplifters work in teams. One person diverts the attention of the salesman, while the partner takes the merchandise.

2. Palming is a technique in which the shoplifter covers the item with his hand and then drops the article into his pocket.

3. Amateurs may take several items of clothes into a booth and wear them out under other clothes.

4. Professionals may use a booster box. This is a box with one hinged side which opens easily to admit merchandise.

5. Booster pants and bloomers are worn under regular street clothes. They consist of an extra "leg" with a tight cuff. A professional can conceal and carry away surprisingly large items this way – even a small television set. Coats with numerous hooks in the lining are a similar device used to conceal small items.



EMBEZZLEMENT

SUMMARY OF THE LAW (K.S.A. 21-3701)

Embezzlement is a particularly insidious crime, since it generally involves a breach of trust between an employer and employee. It is defined under the general Theft law, and consists of exerting unauthorized control over property with the intent to permanently deprive the owner of its use, possession or benefit.

Prosecution

The most important single factor in a successful embezzlement prosecution is adequate preparation. This preparation is best achieved by the methods described under the following section on prevention. With adequate prevention, when embezzlement is discovered, law enforcement authorities will have sufficient evidence in a presentable form for prosecution.

Prevention

A wide variety of factual situations can give rise to embezzlement, from ordinary employee pilferage to complicated bookkeeping transactions designed to conceal the theft of company funds. By utilizing accurate and up-to-date security, the temptation to steal will be reduced.

PILFERAGE. The Small Business Administration lists the following suggestions to prevent employee pilferage:

1. Make a dependable check of incoming merchandise to rule out the possibility of collusive theft between drivers and employees who handle the receiving.
2. Inspect every lunchbox, toolbox, bag or package as employees leave the plant.
3. Make sure padlocks are closed when not in use, to prevent switching of locks, and keep the keys to padlocks in a secure place with one person in charge.
4. Supervise and inspect trash dumps. Dishonest employees may place pilfered goods in the trash and pick them up later.
5. Obtain the services of security guards and rotate them to prevent monotony.
6. Control receiving reports and shipping orders (preferably by numbers in sequence) to prevent duplicate or fraudulent payment of invoices and the padding or destruction of shipping orders.
7. Regardless of the size of the business, one person should be in charge of security procedures.

8. Employees who are caught stealing should be prosecuted. Settling for restitution and an apology invites theft to continue.

EMBEZZLEMENT. Employees who work with the books of the company can devise any number of methods to conceal money shortages. To prevent this:

1. Conduct a regular audit of the books by an outside Certified Public Accountant. The failure to do this may result in looting of your business. Substantial preventable losses have occurred because outside audits have not been conducted. Successful prosecution requires the testimony of an auditor, and is supplied by the C.P.A. employed by the victim.

2. Year-round cash control at all sources is a must. The use of sequentially numbered receipts and sales tickets can minimize loss.

ROBBERY

SUMMARY OF THE LAW
(K.S.A. 21-3426 and 21-3427)

It is robbery to take property from a person or in the presence of another person by force or by threat of bodily harm. If the robber is armed with a dangerous weapon or if he inflicts bodily harm on any person in the course of the robbery, the criminal act is called aggravated robbery, a more serious crime.

Prosecution

Identification of the specific defendant is one of the critical elements. In burglary and theft, identification may depend on investigation and scientific analysis by law enforcement agencies. In robberies, identification may depend solely upon the accuracy with which the victim can describe the criminals. Weapons must also be identified. Accuracy is again important, as your description given in trial testimony may be compared with the actual weapon. The sooner facts are written down, the more likely they are to be complete and accurate. Filling out a form like the one shown in the appendix can be of great help.

If you find it difficult to estimate height, compare the individual with a familiar object which you can later measure, like a hat rack or a filing cabinet. If you don't know the difference between an automatic pistol and a revolver, ask a policeman how to explain the difference.

Prevention

DO:

1. Have a silent alarm for your clerk connected to the Police dispatcher.
2. Have a hidden camera in operable condition.
3. Have the windows where the clerk handles the money clear of obstructions, so passers-by can see the transactions from the street.
4. Have a roof alarm for spotting by helicopter, and an outside light.
5. Train your clerks to be observant, and not to resist a robbery.
6. Always write down the serial number of a five or ten dollar bill and place the bill on the bottom of the stack so it won't be given in change.

Be especially watchful of the following:

1. Persons who ask questions about security, alarms, the number of employees or other unusual questions about the operation of the store, the hours or the name of the manager;

2. Shoppers wearing sunglasses, hats, gloves, or other clothing which seem out of place;

3. Shoppers loitering near the office or money room.

Remember that the critical times for robberies are Mondays and Fridays at opening and closing times and immediately following money deliveries. The young robber may be a particularly dangerous threat because he is nervous and inexperienced and usually armed with a loaded gun. Don't argue with a hold-up man; give him what he wants.

Special Problems

USE OF FORCE FOR PROTECTION:

Is the homicide ever legally justified in protecting your life or property? The answer is a qualified yes. The safest rule is that one can take a life in defense of himself or another, but the law is strictly applied. We strongly recommend that you consult with your own attorney about the civil and criminal aspects of the use of force for defense before establishing procedures for yourself or your employees.



BURGLARY

SUMMARY OF THE LAW (K.S.A. 21-3715 and 21-3716)

It is unlawful to enter into a building or structure without authority to do so, with the intent to commit a felony or theft once inside. This crime is called Burglary and also applies to mobile homes, tents, motor vehicles, aircraft, watercraft, railroad cars, or any other means of conveyance of persons or property. If there is another human being already inside the place burglarized, the crime is called Aggravated Burglary.

Prosecution

When you discover a burglary, don't touch anything! Call the police or sheriff. Unless you actually saw the crime committed, the scientific evidence gathered by law enforcement laboratory investigators may be the most important evidence in a prosecution. Provide the investigating officers with the most complete list you can of the items stolen, including model and serial numbers, full descriptions, and any identifying characteristics of the item.

Prevention

1. Lock doors, windows, ventilators, and establish a routine to check them.
2. Check the building before leaving at night, to make sure that no one is hiding inside.
3. Make sure your alarm system is working properly. Check the alarm wiring around doors and windows for jump wire or tape that may have been placed during the day.
4. Burn lights inside and outside your business.
5. Before opening a store in the morning, have one employee who does not have access to the money or safe inside enter the store to check it, while other employees wait at a distance. Arrange a signal, such as turning off a light, to indicate that everything is all right. If the employee inside does not signal by a prearranged time, call the police.
6. Before closing, have one employee stand near a door while other employees check the building. If anything is wrong, the employee by the door can run out and call the police.
7. If you use an employee to carry money to the bank, he should periodically change his route and time of departure. Different employees should be assigned to this task from time to time.
8. Beware of calls to your home at night even if the call is from an employee saying that something is wrong at the store. There is a good chance he is being forced to call and that someone else will be waiting for you and your money. Call the police and ask them to meet you there.

Till Tapping

Till tapping is the dubious art of getting one's hand into the cash drawer and out with money without being observed. The theft is often achieved by teams. The "decoy" engages the sales person in conversation while his partner takes cash out of the register.

Prevention

1. Never leave the register unattended without locking the drawer.
2. Keep the cash drawer closed except when making change or a sale.
3. Alert employees to this scheme and caution them to be attentive when the cash drawer is open.

Theft by Employees

Employers should be aware that a major percentage of losses from theft results from theft by employees. Employee thefts consist primarily of the following practices:

1. Sales persons cooperating with customers to give them special mark downs and pocketing the difference.
2. Back door thefts in which merchandise is simply taken out the back door, or even the front, and off the shipping and receiving dock.
3. Cash handling procedures like failing to ring up a sale when the customer presents money for the exact amount of the sale.
4. Refund schemes like writing a credit sale, showing the merchandise returned and pocketing the cash refund.

Reduction of employee theft requires constant thought before and after hiring salesmen and other employees. Careful scrutiny of prospective employees and actual contact and evaluation of references can help. Inventory and cash control procedures are also effective measures.

Other Practices

The schemes discussed above are just a sampling. There are others. It is appalling to know that there is a regular traffic in stolen credit cards. In a large city recently, a group was uncovered which was selling stolen American Express cards for as much as \$100. Alertness is always necessary to detect and defeat fraud.

FRAUDS AGAINST BUSINESS Coupon Fraud

Several times a year, businessmen are approached on new methods to increase business. One of these methods is the use of coupons which offer free gifts to consumers in connection with the sale of a regular item. The promoter of a coupon book contacts many businesses about coupons and then sells coupon books to consumers for about ten dollars. This money all goes to the promoter and his employees; none goes to the businessman. One coupon, for example, will offer the consumer a free meal at XYZ Restaurant with the purchase of another meal at regular price. Two precautions are in order here. First, make sure that you are able to handle the increase in business generated by the coupons or that you have an adequate supply of promotional gifts on hand to take care of the demand; the promotion could result in a loss of good will. Second, satisfy yourself that you are dealing with a reputable promoter. Ask for references and check with other businessmen who have subscribed to this service. Some promoters have been known to tell a businessman that 1,000 coupon books would be sold when in fact over 10,000 were sold.

This fraud has been worked in this community on several occasions, with merchants in the unenviable position of honoring the coupons (in excess of the agreed number) or risking being sued by the purchaser of the coupon book at worst, and loss of good will at best. The tickets are sold in a telephone "boiler room" with immediate delivery to purchasers for cash in hand. The idea, of course, is to sell as many books as possible as fast as possible and leave town.

Advertising Fraud

Billions of dollars are spent on advertising every year, and included in this titanic sum is that money collected by small, low-circulation magazines whose purpose is to sell advertising. Five and ten dollar advertisements in magazines of some "benevolent societies" are nothing more than a small drop in a very large bucket of advertising expenses for some businesses, but they can mount up over a period of time. Some magazines that have been published are distributed to the advertisers only, and consist of nothing more than pages and pages of advertisements and a few uninteresting articles.

It is a good policy not to place advertisements in publications with which you are not familiar. Require the salesman to bring you a copy of the publication before you agree to place an ad.

Directories for business or real property for sale, as well as those for merchandise for sale, are frequently less than worthless. In many cases, the directory publisher may send out "statements" which are timed to arrive at the time

Yellow Pages advertisements are being sold. Although you may think the notice is a "statement", the fine print on the back or at the end "discloses" that it is an offer. If you send a check, you accept the offer. One promoter prompted 3,700 people into believing the ad was from the telephone company by sending it out in invoice and sample listing form at the time the phone company was verifying its directory listings.

An implied threat of ill will unless an ad is taken is sometimes a key to a shady operation. In one case, a man solicited for a directory and threatened to "get labor down" on those who did not subscribe. His "directory" was a special edition of a newspaper; the "labor hall" was his newspaper office. He had no connection with organized labor which published a pocket directory and did not use such methods.

Fraudulent Credit Bureau Identification

Theft by deception can be committed any number of ways, and this is just one. It takes place when a new customer comes into your business, fills out a credit application, and places a sizable order. When his credit is checked at the credit bureau, you are told that he has no account or that they can't find his file. The customer then leaves on another errand, telling you that he will pick up the rest of his purchase later. While he is gone, you receive a call from the "credit bureau" telling you that the "customer's" file was misplaced, and that his credit is excellent. When the customer comes back, you deliver the merchandise.

The credit bureau verification was false — it was really the so-called customer calling from another store. To prevent this, have a special code with the credit bureau so you can tell when they are calling.

Phony Charities

Because businessmen are always anxious to generate good will and wish to fulfill their social responsibility by contributing to worthwhile causes, they are easy marks for charity frauds. Some charity drives are conducted by promoters who are interested in making a profit and nothing else. One recent "benefit" was conducted for underprivileged children. Businessmen were asked to buy tickets which would benefit orphans; they were told that the proceeds of the ticket sales would go to a children's home. They were not told, of course, that of every dollar contributed by businessmen, over 80% went for "administrative expenses," including the salary of the promoter. In some cases, less than 5% of the proceeds went for the benefit of the charity.

When you as a businessman donate to charity, you have a right to expect that most of your donation will go to that charity. Reasonable administrative expenses do not exceed 15%. If you have a question concerning a charity, contact your local Better Business Bureau, United Fund office, or Community Planning Council.

Another variation is to get a local civic club to lend its name (for a fee) to the promotion of a variety show, amateur night, talent contest, or other contest. The promoter handles the money and takes a percentage, usually substantial, and does not mind a hard sell. He may promise the organization a set amount, and then keep all the proceeds raised over the set amount, no matter how much that may be.

The promoter uses the name of the organization, hires a "telephone room" and people to make the written pitch. He may use the contest pitch, where people are asked questions like "Who is buried in Grant's Tomb?" "Winners" have the opportunity to buy a product at a "special price." If it's your product, you may be responsible.

These frauds are just a few of the several hundred frauds in use in the United States, many of which are aimed at businessmen. Since businessmen are the ultimate consumers of some types of merchandise, the classification of these frauds as "consumer frauds" is appropriate. If you have a question concerning a practice of this nature, call the Better Business Bureau, the Kansas Attorney General's Consumer Protection Division, the Sedgwick County Attorney's Consumer Protection Division, or your local county attorney.

CHAPTER III

LAWS GOVERNING BUSINESS

Lotteries

A lottery consists of three elements: prize, consideration and chance. A raffle is a good example of a lottery, where the participant pays a certain amount of money (called consideration), for a chance (usually in a drawing), to win a prize (something of value).

By Kansas statute, consideration means anything which is a "commercial or financial advantage to the promoter or a disadvantage to any participant." The law further provides that the mere registration at a place of business without the purchase of goods or services, personal attendance at places or events without payment of an admission price or fee, listening to or watching radio and TV programs, and answering the telephone or making a telephone call and acts of like nature are not consideration.

Under Kansas statutes, then, a merchant who advertises a chance to win a prize upon mere registration without the purchase of goods is not conducting a lottery. If the merchant requires a purchase for a chance to win a prize, he is conducting a lottery.

Since the Kansas Constitution provides that lotteries are strictly prohibited, some serious questions have arisen concerning the constitutionality of our lottery laws. Businessmen contemplating drawings should keep themselves apprised of any changes in the law, and realize that even a giveaway where registration at the place of business is required might constitute a violation of our Constitutional lotteries prohibition. Consult your attorney before starting the promotion.

Debt Adjusting

In Kansas, it is unlawful to engage in debt adjusting. Debt adjusting is an agreement between the debtor and the adjuster. The debtor agrees to make periodic payments to the adjuster, who then distributes the money to certain specified creditors for a fee.

Credit counseling services, which make no charge for their services, are lawful.

Kansas Buyer Protection Act

Since July 1, 1968, the Kansas Buyer Protection Act has been the basis for most consumer protection litigation in the state. It provides that the

"... act, use or employment of any deception, fraud, false pretense, false promise, or misrepresentation or the concealment, suppression, or omission of any material fact with the intent that others rely on that concealment, suppression or omission, in connection with the advertisement or sale of any merchandise, is unlawful."

It is not necessary to prove that any individual was misled, deceived, or damaged because of the misrepresentations, nor is it necessary to prove any intent to deceive on the part of the advertiser. Some examples of deceptive practices under this Act are those set forth in Chapter IV.

This Act is civil in nature, and no criminal penalties are provided. The Court can order that companies or persons in violation of this law make restitution to individuals who have been the victim of misrepresentations, enjoin the company from engaging in any unlawful practices, and make any other orders which the court may deem fair and just. For wilful violations of the Act, the court can appoint a receiver to take charge of the assets of a defendant, and can permanently enjoin persons from engaging in business in the State.

Deceptive Commercial Practices

Two provisions of the Kansas Buyer Protection Act were deleted, and the remaining wording was passed in 1970 as a part of the new Kansas Criminal Code. This crime, known as Deceptive Commercial Practices, provides that the act, use or employment of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a material fact with the intent that others rely thereon in connection with the sale of any merchandise is a misdemeanor. Again, it is not necessary that any person be misled, deceived or damaged. Unlike the Buyer Protection Act, the misrepresentation must be material, and the suppression, concealment or omission of material facts is not an element of this crime.

Deceptive Commercial Practices is punishable by a fine of up to \$1,000, six months in jail, or both. In the alternative, the court can levy a fine in an amount not exceeding double the pecuniary gain derived from the crime by the offender.

Trading Stamps

With one exception, it is unlawful for any company to use or distribute any stamps with the sale of merchandise which entitles the purchaser to redeem them for anything of value. It is also unlawful for any company to furnish stamps to another company so the other company can so use them. The law however, is not strictly limited to trading stamps but includes any stamps, coupons, tickets, certificates, cards or other similar devices. If any of these devices can be redeemed for any goods, merchandise, cash, or any thing of value, and the device was obtained with the purchase of merchandise, the use of it is unlawful.

This law does not apply to the use of coupons, or other similar devices which are issued distributed, furnished or redeemed by a manufacturer or packer in connection with the sale of its products. The coupon must however be redeemable for a product of the manufacturer or packer or for one specified product not manufactured or packed by the manufacturer or packer, and can not be accompanied by more than \$5.00.

A violation of this act will subject the offender to a fine of \$100.00 per day or 60 days in jail or both. If the offender is a corporation, the individual directors and officers and agents of the corporation who authorize any of the unlawful acts are also criminally responsible and can be prosecuted.



Truth-In-Lending

Truth-In-Lending brings with it specific requirements concerning credit advertising. For purposes of the Kansas Truth-In-Lending Act K.S.A. 1971 Supp. 16-802 et seq.), catalogs and other multi-page advertisements such as circulars, are considered as a single advertisement, if they "clearly and conspicuously" display a credit terms table on which the information required to be stated under the Act is clearly set forth.

Generally, no advertisement used directly or indirectly to promote the extension of consumer credit may state that a "specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount, and that a specified down payment is required" unless the creditor "usually and customarily arranges down payments in that amount."

OPEN-END CREDIT PLANS. As defined by law, the term "open-end credit plan" refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

Advertisements concerning open-end credit plans that set forth any of the terms of that plan or the appropriate annual percentage rate must also "clearly and conspicuously" disclose all of the following items:

1. The time period, if any, within which any credit extended may be repaid without incurring a finance charge.
2. The method of determining the balance upon which a finance charge will be imposed.
3. The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.
4. Where periodic rates are used to compute the finance charge, the periodic rates should be expressed as annual percentage rates.
5. Such other or additional information for the advertising of open-end credit plans as the Consumer Credit Commission may by regulations require to provide for adequate comparison of credit costs between different types of open-end credit plans. So far, no regulations have been passed by the Commission.

CREDIT OTHER THAN OPEN-END PLANS. Advertisements concerning credit plans other than open-end plans which state the rate of a finance charge must state that charge as an annual percentage rate.

If an advertisement states the amount of the down payment (if there is one), the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, the advertisement must also state all of the following items:

1. The cash price or the amount of the loan as applicable.
2. The down payment, if any.
3. The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.
4. The rate of the finance charge expressed as an annual percentage rate.

Here are some examples of allowable phrases (no addition disclosures required) under the Truth-In-Lending Law.

1. Charge Accounts Available
2. Open a Revolving Budget Account.
3. Just say charge it.
4. All major credit cards honored.
5. Shopping dollars go further when you use brand X charge- all charge cards.
6. Liberal budget terms - or - easy terms.
7. Low, low financing.
8. Terms arranged - or - store financing.
9. Bank financing by the XYZ bank.
10. On the spot financing.
11. Your first installment begins in (month.) (Clearly referring to "installments.")

Non-acceptable statements, according to the FTC are:

1. No money down - or - no down payment.
2. \$50 down - or - Pay \$9 a month - or - \$5 per week.
3. Take as long as 25 months to pay on dealer's convenient budget plan.
4. 20 installments of \$10 each.
5. Finance for under \$100 - or - \$50 financing.
6. Less than \$100 interest.
7. 30 equal payments - or - 36 months to pay.
8. No charge for credit.
9. Nothing to pay until (month).(Which means no down payment.)

For additional information concerning Truth-In-Lending, contact:

Consumer Credit Commissioner
State Office Building
Topeka, Kansas
Phone: (913) 296-3151

Federal Trade Commission
911 Walnut - Suite 2806
Kansas City, Missouri 64106
Phone: (816) 374-5256

CHAPTER IV

GUIDELINES FOR BUSINESS

These guidelines are not meant to be a cut and dried list of "do's and don'ts", but are merely practical aids to the honest businessman who seeks to conform his conduct to the requirements of fair and legitimate merchandising.

GUIDES AGAINST DECEPTIVE PRICING

Former Price Comparisons

FORMER PRICE COMPARISONS:

Former price comparisons are frequently used by businessmen to indicate to consumers that a price reduction has been made on that merchandise. These comparisons should not be made in order to make the consumer believe that he is getting a bigger value than he really is, but can be made for the purpose of advertising a legitimate price comparison.

The general rule is that the former price referred to in any advertisement must be a price at which the article was offered to the public on a regular basis for a reasonably substantial period of time.

As an example of a deceptive former price comparison, if a businessman offered a wrist watch for \$20 for a few days with the intent of later reducing it to \$10 so he could advertise: "BARGAIN - WATCHES WERE \$20, NOW ONLY \$10," the advertised bargain would not be a truthful comparison. This is because the original price was at \$20 ONLY for the purpose of establishing a higher price comparison.

If, on the other hand, the watch was offered for a substantial period of time in the recent and regular course of business, this would be a legitimate comparison.

Comparable Value Comparisons

Many merchants offer merchandise at a price less than the price charged by competitors. The advertising in our wrist watch example as applied to this situation would be as follows: "MEN'S WATCH \$10, COMPARABLE VALUE \$20."

In this case, the merchant should make sure that the watch advertised, or a comparable watch, is presently being sold in his trade area at the higher price.

If only a few small merchants in outlying areas sell the watch for \$20, the price comparison is misleading.

Suggested Retail Price Comparisons

The purchasing public may assume that a price characterized as "list" or "suggested" retail price is the price at which an article is generally sold. If a reduction from such a price is advertised, many people will believe that they are being offered a bargain.

If the list price or suggested retail price of a manufacturer is the same price at which a substantial number of sales are made in the advertiser's trade area, then the comparison of a reduced price to the list price would not be deceptive. However, if a substantial number of stores in the trade area sell the merchandise at less than the suggested retail price, the consumer can be misled by an advertised reduction from this price.

The manufacturer of a coffee pot may place a price tag on it as follows: "Suggested Retail Price \$29.95." If a substantial number of stores in the trade area do not regularly sell the coffee pot at the suggested retail price, it is a deceptive price to leave the manufacturer's price tag on it.

Free Merchandise



Many promotions offer merchandise free or at a reduced price in connection with the purchase of other merchandise. In other words, an ad may promise one wrist watch free with the purchase of another watch at \$10. Since very few merchants can afford to actually give away merchandise free of any conditions, it is possible that the consumer may be deceived unless all of those conditions are explained.

Accordingly, whenever an offer for free merchandise, a half-price, one-cent sale, or other similar offer is made, and there are conditions attached, all the terms and conditions of the offer should be made clear in any advertisements for the merchandise.

Guarantees and Warranties

Generally speaking, guarantees in advertising should disclose three things: the nature and extent of the guarantee, the manner in which the guarantor will perform, and the identity of the guarantor.

The nature and extent of the guarantee includes what product or part of the product is guaranteed, the duration of the guarantee, and what a purchaser must do before the guarantee will be fulfilled.

The manner in which the guarantor will perform consists of a statement of what the guarantor will do under the guarantee. Included in this would be repair, replacement, or refund.

The identity of the guarantor should be set forth in full. This will eliminate any confusion on the part of the purchaser if he finds it necessary to return the merchandise for guaranteed work. If a product is guaranteed for life or has a life time guarantee, the advertisement or guarantee should clearly disclose whose life the guarantee refers to. Some fire alarms have a life time guarantee, but it is not clear for whose life time the alarms are guaranteed. The company could claim if the alarms did not work in case of a fire and the owner of those alarms died in the fire that the guarantee had expired. This is certainly a deceptive practice. Regardless of the product or service for which the guarantee is made, no merchant should make a guarantee which he does not intend to honor or can not possibly honor. These guidelines are applicable not only to guarantees but also to warranties or any promises or representations in the nature of a guaranty or warranty.

Bait Advertising

Bait advertising or Bait and Switch advertising is simply defined as an alluring but insincere offer to sell a product or service which the advertiser does not intend or does not want to sell. The purpose of bait advertising is to lure consumers into a place of business with the intent to switch them to higher priced merchandise once they get in the store. The primary aim of this type of advertisement is to obtain leads on persons interested in buying merchandise of the type advertised. In order to avoid this type of advertisement, make sure that all advertisements constitute a bona fide effort to sell the advertised product.

Certain practices are considered in determining whether or not an advertisement is a bona fide offer. Among those are the refusal to sell the advertised product, the failure to have available a sufficient quantity of the product to meet reasonably anticipated demands (unless the advertisement adequately discloses a limited supply), demonstration of a defective product, and use of a sale plan which is designed to prevent or discourage salesman from selling the advertised product.

The offering of loss leaders at an attractive price to gain customers, even though the sale of other merchandise may result, is not considered bait advertising so long as the customer has plenty of opportunity to purchase the loss leaders.

YOU AS A WITNESS



Apprehending a criminal and filing a complaint are just the first steps in the criminal process. At a trial for any offense discussed in this pamphlet, the successful prosecution will depend in part upon the willingness of all involved citizens – storeowner, employer, or employee – to serve and upon their conduct as witnesses.

The District and County Attorney's Office needs your cooperation and appreciates the problem of "who is running the store" while managers and other employees testify. If a witness will contact, ahead of time, a prosecutor in the court in which a case is set, every effort will be made to put the witness on call. Under this arrangement, the witness must be present in court as agreed, but will not miss any more time than necessary from work. In some cases, in addition to testimony of a witness who saw the crime, testimony of the person who had control of the property is also necessary.

A witness should prepare for his testimony by refreshing his memory of the event. Before coming to court, he should be conversant with the pertinent facts of the crime. While in court he should remember that a trial or hearing is a matter of grave importance to the State and all other parties involved and should conduct himself with appropriate dignity. Before the trial, a witness should tell the prosecutor everything relevant to the case. After he takes the stand, the witness should not volunteer any information, but should answer honestly and directly any question asked. If he doesn't know the answer, the witness should say so.

There is nothing unusual or wrong in discussing a crime with other witnesses or employees after it has happened. Certainly it is permissible and desirable to discuss the crime with the prosecutor before and during a trial. When the defense counsel asks a witness whether he discussed a matter with the prosecutor, the witness should simply tell the truth.

REPORTING CRIMES — LAW ENFORCEMENT AGENCIES

Crimes should be reported immediately
to your local law enforcement agency.

The following list may be useful to you in the prompt reporting of a crime. If the incident occurred in an incorporated city, notify the Police Department of that City. Most of these numbers are shown inside the front cover of the telephone directory.

If the incident occurred in the City of Wichita Proper, call:

WICHITA POLICE DEPARTMENT 262-2611
115 E. William St.
Wichita, Kansas 67202

If the incident occurred in Sedgwick County, but not in an incorporated city, call:

SEDGWICK COUNTY SHERIFF 263-3181
Sedgwick County Courthouse
525 N. Main
Wichita, Kansas 67203

If you have questions or suggestions for this booklet, please let us know.

DISTRICT ATTORNEY 268-7281
Sedgwick County Courthouse
525 N. Main
Wichita, Kansas 67203

If you are in a county other than Sedgwick County, and you think you were taken by a con man, and your local law enforcement agency is unable to provide assistance, call:

KANSAS ATTORNEY GENERAL (913) 296-3752
State Capitol Building
Topeka, Kansas 66612

APPENDIX

FILL OUT IMMEDIATELY AFTER HOLD-UP OR SHOPLIFTING
BEFORE DISCUSSING DESCRIPTION WITH ANYONE ELSE

PHYSICAL DESCRIPTION

COLOR _____ SEX _____ NATIONALITY _____ AGE _____ HEIGHT _____
WEIGHT _____ BUILD _____ COMPLEXION _____
(THIN, STOCKY, ETC.) (LIGHT, DARK, RUDDY, ETC.)
HAIR _____ EYES _____ NOSE _____
COLOR WAVY STRAIGHT, (COLOR SMALL, LARGE, ETC.) (LARGE SMALL, BROAD, BUD, ETC.)
HOW COMBED
EARS _____ GLASSES _____ MUSTACHE OR BEARD _____
PROMINENT, SMALL, ETC.) (DESCRIBE FRAMES) (COLOR, SHAPE, ETC.)
MASK OR FALSE FACE _____ SCARS OR MARKS _____
(TYPE, COLOR, ETC.) (TATTOOS, BIRTHMARKS, FACIAL BLEMISHES, ETC.)

DISTINGUISHING CHARACTERISTICS _____
(HOW WOULD YOU PICK THIS PERSON OUT OF A CROWD?)

CLOTHING <small>(DESCRIBE COLOR, TYPE OF MATERIAL, STYLE, ETC.)</small>	MISCELLANEOUS
Hat _____	Weapon Exhibited _____ <small>(REVOLVER, AUTOMATIC, KNIFE, ETC.)</small>
Overcoat _____	Speech _____ <small>(ANY ACCENT, PECULIARITY OF SPEECH)</small>
Raincoat _____	Any Names Used _____
Jacket _____	
Suit _____	
Trousers _____	
Shirt _____	
Tie _____	
Shoes _____	Mannerisms _____ <small>(RIGHT OR LEFT HANDED, UNUSUAL)</small>
Other Clothing _____	

_____	<small>(WALK OR CARRIAGE, NERVOUS HABIT, ETC.)</small>

END

PROMPTLY FILL OUT THIS FORM AS ACCURATELY AND AS COMPLETELY AS POSSIBLE AND GIVE IT TO MANAGER AND POLICE