

# CONSUMER PROTECTION 1982



Annual Report of the Consumer Protection Division  
OFFICE OF ATTORNEY GENERAL  
ROBERT T. STEPHAN  
State of Kansas

Submitted pursuant to K.S.A. 50-628.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

January 1, 1983

The Honorable John Carlin, Governor  
and  
Members of the Kansas Legislature

I commend to your reading the following report of my Consumer Protection Division. I am quite proud of the assistance this section of my office has been able to give to Kansans.

The Consumer Protection Division of the Attorney General's office, for many Kansans, is the only source of assistance when they have been the victims of unscrupulous business practices. It is my goal to help as many consumers as we can as economically as possible. Another goal of mine, and a function given the Attorney General by the Consumer Protection Act, is to educate consumers as to their rights under the law and the pitfalls of the marketplace. I believe we are making headway toward accomplishing these goals.

I appreciate the support consumer protection in Kansas has received in the past from the Governor and the Legislature, and ask for your continued assistance in protecting the rights of Kansas consumers.

If my staff or I can be of service to you or your constituents, or if we can answer any questions you may have regarding consumer protection in Kansas, please feel free to contact me.

Very truly yours,

ROBERT T. STEPHAN  
Attorney General

## INTRODUCTION

Attorney General Robert T. Stephan continued during 1982 to place an emphasis on the enforcement of the Kansas Consumer Protection Act, even though the State's fiscal crisis did affect certain phases of the operation.

It was necessary to curtail virtually all of the out-of-state and much of the in-state travel by members of the division. This resulted in fewer presentations to various groups. However, this limitation of the public information and education services has been offset by providing films and pamphlets or other literature to many groups and organizations when it was not possible to make a personal appearance. Also, more and more county and district attorneys have become involved in the enforcement of consumer laws. Especially worthy of note are the offices of the Johnson and Sedgwick County district attorneys. Each of these offices maintains a staff of persons whose full-time efforts are devoted to enforcement of the consumer laws in their respective counties. Similarly, it would appear more private attorneys are becoming involved and are representing clients with consumer problems, rather than routinely forwarding them to the attorney general's office.

Complaints under the category of mail-order problems once again leads the list of the various areas of complaints. These complaints accounted for 23 percent of the total of all new complaints received in 1982. The majority of these companies are located outside the State of Kansas. One inference that may be drawn from this is Kansas businesses are becoming better acquainted with the consumer laws and, as a result, are doing a better job in the area of compliance.

A pilot project has been initiated whereby certain associations handle the complaints lodged against their members. There is a strong indication this program may prove quite successful, thereby aiding in our efforts to hold the line on increasing costs.

Another program which has assisted in this financial crunch has been the utilization of undergraduate interns from several state colleges. This program has not been only beneficial to our office, but has provided a practical learning experience for those students who have participated. Students from Emporia State, Kansas State, and Washburn have taken part in this project.

Attorney General Stephan has completed four years in office and his consumer section has evolved to this point in time where his goal of aiding the largest amount of consumers in the most cost-effective way possible is being accomplished.

DISPOSITION OF CLOSED COMPLAINTS

|  | Complaints<br>Closed | Percent<br>of<br>Total |
|--|----------------------|------------------------|
| Inquiry or Information Only                                    | 468                  | 12.49                  |
| Referred to Private Attorney                                   | 138                  | 3.68                   |
| Referred to County/District Attorney                           | 55                   | 1.47                   |
| Referred to Other Attorney General                             | 202                  | 5.39                   |
| Referred to Other Kansas Agency                                | 44                   | 1.17                   |
| Referred to Small Claims Court                                 | 141                  | 3.76                   |
| Referred to Federal Agency (FTC, Post Office, etc.)            | 79                   | 2.11                   |
| Money Refunded/Contract Cancelled--amount                      | 978                  | 26.10                  |
| Merchandise Delivered  | 354                  | 9.45                   |
| Repaired/Replaced  | 169                  | 4.51                   |
| Mediation Only--No Savings                                     | 225                  | 6.01                   |
| No Reply From Complainant                                      | 190                  | 5.07                   |
| Unable to Locate Respondent                                    | 34                   | .91                    |
| Practice Discontinued  | 23                   | .61                    |
| Respondent Out of Business                                     | 73                   | 1.95                   |
| No Basis   | 47                   | 1.26                   |
| No Jurisdiction  | 187                  | 4.99                   |
| Insufficient Evidence  | 22                   | .59                    |
| Withdrawn  | 43                   | 1.15                   |
| Unable to satisfy complainant--further action<br>not warranted | 62                   | 1.66                   |

|  | Complaints<br>Closed | Percent<br>of<br>Total |
|--|----------------------|------------------------|
| Voluntary Compliance Agreement               | 4                    | .11                    |
| Other  | 41                   | 1.09                   |
| Lawsuit Complaint Files                      | 168                  | 4.47                   |
| a. Insufficient evidence                     | (15)                 | (.40)                  |
| b. Merchandise delivered                     | (0)                  | (0)                    |
| c. Money refunded/contract concluded--amount | (28)                 | (.75)                  |
| d. No jurisdiction                           | (8)                  | (.21)                  |
| e. Practice discontinued                     | (2)                  | (.05)                  |
| f. Repaired/replaced                         | (0)                  | (0)                    |
| g. Respondent enjoined                       | (41)                 | (1.09)                 |
| h. Unable to locate respondent               | (2)                  | (.05)                  |
| i. Other                                     | <u>(72)</u>          | <u>(1.92)</u>          |
| TOTAL CASES CLOSED                           | 3,747                | 100%                   |

CATEGORIES OF NEW COMPLAINTS

|                      |              |
|----------------------|--------------|
| CASES RECEIVED       | 4,533        |
| CASES CLOSED         | 3,747        |
| TOTAL ANNUAL SAVINGS | \$666,413.26 |

---

|   | Complaints<br>Received | Percent<br>of<br>Total |
|---|------------------------|------------------------|
| Miscellaneous                           | 410                    | 9.05                   |
| Aluminum Siding                         | 16                     | .35                    |
| Advertising                             | 74                     | 1.63                   |
| Appliances                              | 184                    | 4.06                   |
| Automobiles                             | 445                    | 9.82                   |
| Boats, Boating Equipment, Repairs, etc. | 7                      | .16                    |
| Book, Record and Tape Clubs             | 52                     | 1.15                   |
| Business Opportunity Services           | 48                     | 1.06                   |
| Cable Television                        | 1                      | .02                    |
| Clothing                                | 36                     | .79                    |
| Cemeteries                              | 129                    | 2.85                   |
| Collection Practices                    | 117                    | 2.58                   |
| Contests                                | 476                    | 10.50                  |
| Credit Reporting Agencies               | 3                      | .07                    |
| Credit Code                             | 90                     | 1.99                   |
| Discount Buying Clubs                   | 69                     | 1.52                   |

---

|   | Complaints<br>Received | Percent<br>of<br>Total |
|---|------------------------|------------------------|
| Door-to-Door Sales  | 21                     | .46                    |
| Encyclopedias   | 8                      | .18                    |
| Energy Savings Devices                                    | 10                     | .22                    |
| Failure to Furnish Merchandise<br>(other than mail order) | 28                     | .62                    |
| Farm Implements/Equipment                                 | 30                     | .66                    |
| Fire, Heat & Smoke Alarms                                 | 1                      | .02                    |
| Floor Coverings   | 20                     | .44                    |
| Food Products   | 6                      | .13                    |
| Fund Raising (charities, etc.)                            | 9                      | .20                    |
| Franchise Sales   | 0                      |                        |
| Funeral Homes   | 1                      | .02                    |
| Furniture   | 45                     | .99                    |
| Gasoline Pricing  | 13                     | .29                    |
| Gasoline Content  | 2                      | .04                    |
| Gasohol and Stills  | 0                      |                        |
| Government Agencies                                       | 0                      |                        |
| Health Services (doctors, dentists, hospitals, etc.)      | 35                     | .77                    |
| Health Spas and Weight Salons                             | 49                     | 1.08                   |
| Hearing Aids  | 7                      | .15                    |
| Heating and Air Conditioning                              | 50                     | 1.10                   |
| Home Improvements   | 105                    | 2.32                   |

|  | Complaints<br>Received | Percent<br>of<br>Total |
|--|------------------------|------------------------|
| Home Construction  | 8                      | .18                    |
| Hypnosis (smoking, weight loss, etc.)                            | 0                      |                        |
| Inquiries  | 27                     | .60                    |
| Insurance  | 1                      | .02                    |
| Invoice and Billing Schemes (noncredit code)                     | 9                      | .20                    |
| Interest Rates and Lending Companies<br>(other than credit code) | 1                      | .02                    |
| Jewelry  | 46                     | 1.02                   |
| Kitchenware  | 1                      | .02                    |
| Land Sales (subdivided out of state)                             | 5                      | .11                    |
| Land Sales (subdivided Kansas)                                   | 0                      |                        |
| Land Resale Companies  | 0                      |                        |
| Landlord/Tenant  | 20                     | .44                    |
| Loan Finders   | 1                      | .02                    |
| Lotteries  | 1                      | .02                    |
| Magazines  | 214                    | 4.72                   |
| Mail Order Companies   | 1,033                  | 22.79                  |
| Mobile Homes and Campers (sales/service)                         | 20                     | .44                    |
| Mobile Home Parks  | 0                      |                        |
| Motorecycles and Bicycles  | 15                     | .33                    |
| Moving and Storage   | 21                     | .46                    |
| Multilevel and Pyramid Distributorship Companies                 | 40                     | .88                    |

|   | Complaints<br>Received | Percent<br>of<br>Total |
|---|------------------------|------------------------|
| Musical Instruments, Lessons, etc.                          | 9                      | .20                    |
| Nurseries, Gardening Equipment, etc.                        | 41                     | .91                    |
| Nursing Homes   | 2                      | .04                    |
| Office Equipment and Supplies                               | 11                     | .24                    |
| Pest Control  | 25                     | .55                    |
| Pets/Animals  | 9                      | .20                    |
| Photo Equipment and Services                                | 31                     | .68                    |
| Photo Studios and Companies                                 | 65                     | 1.43                   |
| Referral Selling  | 4                      | .09                    |
| Real Estate (houses)  | 13                     | .29                    |
| Real Estate (other than houses)                             | 8                      | .18                    |
| Securities and Investments (other than<br>stocks and bonds) | 2                      | .04                    |
| Services (general)  | 12                     | .27                    |
| Services (professional)                                     | 0                      |                        |
| Sewing Machines   | 2                      | .04                    |
| Sporting Goods  | 11                     | .24                    |
| Stereos and Record Players                                  | 3                      | .07                    |
| Stocks and Bonds  | 0                      |                        |
| Sundries  | 0                      |                        |
| Televisions and Radios                                      | 9                      | .20                    |
| Toys  | 9                      | .20                    |
| Trade and Correspondence Schools                            | 33                     | .73                    |

|  | Complaints<br>Received | Percent<br>of<br>Total |
|--|------------------------|------------------------|
| Travel Agencies                                | 8                      | .18                    |
| Travel and Transportation                      | 42                     | .93                    |
| Utilities                                      | 21                     | .46                    |
| Vending Machines                               | 0                      |                        |
| Warranty Problems                              | 39                     | .86                    |
| Water Softeners, Conditioners, Purifiers, etc. | 2                      | .04                    |
| Work-at-Home Schemes                           | <u>62</u>              | <u>1.37</u>            |
| TOTAL  | 4,533                  | 100.00%                |

## SUMMARY OF 1982 LAWSUITS

### STATE, ex rel. v. RONALD BENUS, d/b/a BENUS TRUCK AND TRAILER SALES

This matter involved the nondelivery of a trailer unit of the kind used to haul goods. The action was instituted under the provisions of the Kansas Consumer Act which make it a deceptive practice to offer property without the intent to actually sell them. As the investigation showed facts which supported the inference that delivery was never intended, this situation differed from a simple breach of contract over which this office has no authority. Following the filing of the petition, the defendant refunded all money paid to him by the consumers, totalling \$5,362.

### STATE, ex rel. v. LOREN JONES, d/b/a CAPITOL PRODUCTIONS

The defendant was engaged in the business of taking picture portraits in a number of smaller towns in the northeastern part of the state. While those pictures which were delivered were of good quality, most individuals never received their merchandise, even after approving the prints and paying for the poses selected. Over forty complaints were the basis of the lawsuit, which was resolved by the defendant's business associate, who delivered all prints which had been paid for. The defendant himself was already in custody on several criminal charges, and subsequently has been sentenced.

### STATE, ex rel. v. LENNOX INDUSTRIES and BILL'S FURNACE

This lawsuit was filed in April, 1981, and concerned a warranty dispute about heat pumps manufactured by Lennox Industries and installed by a Missouri firm, Bill's Furnace. Both parties were made defendants so that complete relief would be afforded to the affected consumer. Prior to any formal hearing, a settlement was reached whereby the manufacturer supplied a new unit and the installer placed it in the consumer's home.

### STATE, ex rel. v. WESTLAWN CEMETERY ASSN., et al.

A petition to declare a cemetery abandoned was filed in May, 1982. This stemmed from the failure of either the cemetery association, which is

defunct, or any subsequent persons to provide care for Westlawn Cemetery in Kansas City, Kansas. The City of Kansas City stipulated that the cemetery met the statutory test for abandonment, and a journal entry was agreed to on the day of the scheduled trial. All remaining assets, such as tools and one savings account, were transferred to the City.

STATE, ex rel. v. FINANCIAL RESEARCH AND  
DEVELOPMENT, INC., UNIFIED BROKER CONSULTANTS, INC.,  
INDEPENDENCE BROKER CONSULTANTS, INC.,  
JACK CHOATE, ROBERT JONES, and CHARLES NAUDET

This lawsuit was filed in November, 1982, naming the above parties as defendants. The petition alleged that each defendant participated in a scheme by which consumers who wished to become loan brokers paid \$7,790. The materials received in return proved to be of dubious worth, while the references given later were found to be linked directly with the defendants' businesses. As of this time, no answer to the Attorney General's petition has been made by any of the defendants.

STATE, ex rel. v. MARKETING ASSOCIATES, INC.  
and WILLIAM BEILMAN

This lawsuit was filed in 1981, naming two defendants--a Denver-based corporation and its president. Kansas consumers paid the defendants to deliver and service video game machines, but no machines were ever delivered, nor was the money returned. Following information from the Denver authorities that other incidents of this type had occurred there and elsewhere, suit was filed. However, service could not be obtained and the case was dismissed without prejudice, and should new information be obtained, the lawsuit could be re-filed.

STATE, ex rel. v. JAMES E. WALLIS,  
d/b/a COMET MOVING & STORAGE CO.

Following the receipt of a consumer complaint and subsequent investigation, suit was filed against the defendant seeking recovery of actual damages arising out of the sale of a diesel tractor unit. The unit, which was sold to a Kansas consumer, was represented as being a 1979, when, in fact, it was a 1978 model.

After the completion of discovery, defendant moved for dismissal on the grounds that the sale had occurred between individuals, rather than between a supplier and a consumer. While there was evidence the defendant was a

supplier, as that term is defined by the Kansas Consumer Protection Act, the court found it not to be of a material nature and outweighed by evidence to the contrary. Accordingly, the action was dismissed as not properly filed under the Act. Private action, however, would still be possible if the consumer so desired.

STATE, ex rel. v. LANE CLEAR  
SPAN BUILDING CORPORATION

The defendant, a Michigan-based supplier of agricultural buildings, took a number of orders for buildings that were never delivered, despite payment having been made by the Kansas consumers. Before the matter could be brought to judgment, the company filed for reorganization under Chapter 11 of the Bankruptcy Code, thus putting our action on hold. While a plan was proposed that would have allowed another firm to fulfill the orders, it was not approved, and the company now faces a complete dissolution under Chapter 7. While this office assisted individual consumers in filing proofs of claim, the preemption of the lawsuit by the bankruptcy action is total.

STATE, ex rel. v. BROTHERHOOD  
BANK & TRUST CO.

A petition was filed in July, 1980, against defendant on behalf of consumers who had taken out a loan from the bank five years earlier and who had secured the notes with mortgages on their homes. The notes were set up to have a 25-year amortization, but only a 5-year maturity, leaving the balance to either be paid in a "balloon" or refinanced at the prevailing interest rate. The suit was based on the bank's alleged failure to state the existence and effect of the balloon payment feature.

The court ruled that as the statute of limitations had run, the action was out of time and should be dismissed. An appeal was filed by this office to the Court of Appeals which reversed the lower court, holding that statutes of limitation do not run against the Attorney General when he is exercising authority under the Kansas Consumer Protection Act. The Court of Appeals also found it is the State of Kansas, and not an individual consumer, who is the real party in interest in a consumer suit brought by the Attorney General, in that the public welfare is being protected.

Following the decision, discovery was completed, and it is anticipated a settlement by which the consumers will receive actual damages will be entered into shortly.

STATE, ex rel. v. ROY "DICK" HALEY  
and INTERNATIONAL JEWELS, INC.

The defendants in this action induced a Kansas couple to invest in a franchise operation whereby defendants would supply them with jewelry they could re-sell for profit. Following the initial consignment, defendants failed to supply any further items, and did not help the consumers to sell the pieces they had. Many of the items subsequently were shown to be unmarketable, although a number of the others were sold, reducing the consumers' damages to just over \$7,000. After the defendants failed to answer, default judgment was taken and enforcement proceedings begun in Tulsa, Oklahoma. To date, \$1,500 has been recovered for the consumers.

STATE, ex rel. v. CUTLASS CARPETS, INC.

This consumer action was filed against the defendant, a Georgia-based manufacturer of carpet, on the basis that it had failed to honor the implied warranty of merchantability established by Kansas law in all consumer transactions. Some carpet sold by a Kansas retailer to a consumer proved to be defective, and when defendant, as the manufacturer, declined to make any refund or replacement, suit was brought.

The case went to the district court on a motion for summary judgment, in that the only questions which existed were ones of law, i.e., did the Kansas Consumer Protection Act apply to defendant. In ruling defendant was liable, the court ordered it to take the necessary steps to replace the carpet. The case is still open, pending final compliance by defendant.

STATE, ex rel. v. BARKMAN BROS., INC.

Following receipt of a consumer complaint against this supplier, an investigation was made which indicated a riding lawnmower sold by it was not rebuilt as represented. An action was instituted following attempts at settlement, with a trial held in October, 1982. Subsequent to trial, the judge ruled that insufficient evidence existed to find the defendant liable, although he did rule the sale had been made by the defendant as a corporation, not by one of the employees, which would have taken the transaction out from the scope of the Kansas Consumer Protection Act.

STATE, ex rel. v. SCHERLING FILM CLUB  
and  
STATE, ex rel. v. PANACOLOR LAB,  
A Division Of Raycor Corporation

Both of the above legal actions stemmed from complaints concerning the practices of the two companies, independently engaged in the sale of film club memberships on a door-to-door basis. The memberships, which also involve the sale of cameras and photo albums, were paid for over a period of time, and included a considerable finance charge. Both companies agreed to consent judgments, a remedy provided under Kansas law whereby a supplier agrees to refrain from certain practices and to observe certain procedures in the future. Both Scherling and Panacolor agreed to extend the cancellation period given by law in door-to-door sales (3 days), and to cancel those contracts presently in dispute.

STATE, ex rel. v. SHERI FARLEY,  
d/b/a CATHERINE & COMPANY

This lawsuit stemmed from complaints received from a number of fraternities and sororities who had paid for merchandise but never received the items. Conduct by the defendant indicated no intent to ever perform the agreements.

Following service upon the defendant, discovery is proceeding to determine the exact number of aggrieved consumers, the dollar amounts of the unfulfilled contracts and what steps, if any, the defendant has taken to remedy the situation.

STATE, ex rel. v. FORD MOTOR CO.,  
LAIRD NOLLER FORD, INC., DALE WICHMAN FORD, INC.,  
HARPER FORD, INC., and SHAWNEE MISSION FORD, INC.

In a suit filed in 1981, the Attorney General alleged the Ford Motor Co. manufactured a number of vehicles which subsequently proved to have defective engines. These vehicles included mid-sized cars and pick-up trucks, and involved cracked blocks and premature engine wear. Furthermore, it was alleged that when Ford became aware of these problems, it notified its dealers, but did not notify the general public until much later. As a result, consumers continued to buy both new and used vehicles without knowledge of the possibility of these problems, as neither Ford nor the dealers disclosed their existence.

Following the receipt of several dozen complaints, a settlement was reached whereby Ford agreed to review each complaint on its own merits, regardless of whether the previous 36,000 mile/36-month warranty was strictly met. Most of the reimbursements were on a percentage basis, as an acknowledgment of the implied warranty principle that a manufacturer is responsible for an ever-decreasing portion of the repairs made to an item as it is used and grows older.

Total settlement in the case was nearly \$9,000. In addition, the concept of an implied warranty in Kansas was further strengthened.

STATE, ex rel. v. DAVID THOMMEN,  
d/b/a FUR, FEATHER AND FIN

This proceeding was instituted following reports that dogs represented as registered with the American Kennel Club were being sold without papers. Suit was brought in an effort to halt such practices and obtain the documents. Although the business had earlier closed its doors, a settlement was reached whereby the owner of the dogs, who had not been paid, would receive her money, and would, accordingly, release the documents to the good-faith buyers.

STATE, ex rel. v. G & M DISTRIBUTING

This case was filed as a result of misrepresentations made by the sellers of tote-bags advertised as being made of "Llama-skin." In fact, the bags, which were otherwise well made, were made of plastic and synthetic fibers. Since the sellers were only in the area for a brief time, a preliminary injunction was obtained to halt the misrepresentations, with a consent judgment thereafter made by which those consumers who had been deceived could obtain refunds.

STATE, ex rel. v. J. F. STRAW,  
d/b/a HERITAGE EXCHANGE

The defendant, Heritage Exchange, is the brainchild of J. F. Straw of Georgia and was billed as a "group banking" organization. For an initial membership fee, a consumer could obtain low cost or free banking services, although such services were not actually offered. For an additional fee, a consumer could sell the program to others, and then receive a portion of the money he or she brought in. It is this feature which violates the Kansas Consumer Protection Act, as a form of pyramid or multi-level sales operation.

Following institution of a legal action to enjoin the operation of the Exchange in this state, the defendant answered on his own behalf, with a motion to dismiss on jurisdictional grounds. This motion, and the Attorney General's response, is now before the District Court of Shawnee County.

STATE, ex rel. v. THE KEYTON COMPANY, INC.,  
THE EXECUTIVE BUYING SERVICE, INC.,  
THE BUYING SERVICE, INC., and CHARMIL CORPORATION

Each of the defendants is engaged in the business of soliciting and then servicing memberships in buying clubs where a member pays a large initial fee and subsequent annual fees for the right to buy items at an alleged discount.

Problems which were expressed by consumers included misrepresentations as to the actual lines and types of merchandise available, the discounts which would be obtained, and the ways in which orders could be placed and filled.

Settlement negotiations were completed in December, 1982. Under the agreements, the first three of the above-named defendants agreed to refrain from certain listed practices, to follow certain others, and to cancel the contracts of a specific number of consumers, some of whom also received refunds of money paid in. Over twenty consumers were included in the settlement, with total savings of nearly \$5,000.

#### STATE, ex rel. v. IFG LEASING

A rural family in the southeastern part of the state wished to improve its hog-raising operations. After receiving information about a new type of structure used to house pigs that contained elements of solar heating, an agreement was made with the defendant for a long-term lease, at the end of which time the building would be paid off entirely. The building proved to be defective in a number of respects in its construction. Additionally, it retained heat during the summer months so as to make it unusable.

This action was commenced following unsuccessful negotiations with defendant as to the warranty problems. Since defendant initiated proceedings with an action against the consumers for payment in federal district court, the State's action was also filed there. The consumers' defense raised all issues contained in the State's petition and discovery is proceeding in the private lawsuit, with the State's action on hold.

#### STATE, ex rel. v. MATNEY, et al.

This action was filed in November, 1980, and sought a variety of remedies, including actual damages and injunctive relief under the Kansas Consumer Protection Act. It was alleged that the defendants, who were both the owners of six separate cemetery corporations and the corporations themselves, had failed to deliver burial markers upon need by the consumer. Further portions of the petition alleged that the cemeteries were abandoned under state law, and that permanent maintenance trust funds had not been maintained as required by law.

Following extensive discovery, a settlement agreement was reached as to a portion of the lawsuit in February, 1982. The permanent maintenance funds were restored in the form of trust accounts in a bank (for a total of \$206,000), and the owners agreed to sell their interests by January 1, 1983. If not, a receiver would be appointed to manage the cemeteries until they could be sold. That portion of the lawsuit concerning the burial markers was continued, with the addition of the former owner, who had made most of the pre-need burial merchandise agreements in the 1960s.

After further discovery into the marker situation, a motion for summary judgment has been filed with the court. The motion would hold the former owner, Norman Anderson, liable for the markers which were sold during the time of his ownership, since state law required the establishment of individual merchandise trust funds, which was not done. Although information on the wholesale amount of contracts outstanding is still being collected, it is anticipated the figure will be in excess of \$200,000.

STATE, ex rel. v. ALLSTATE MARKETING, INC.  
STATE, ex rel. v. CASINO ENTERPRISES  
STATE, ex rel. v. EAST WEST DISTRIBUTING, INC.  
STATE, ex rel. v. QUALITY PROMOTIONS, INC.  
STATE, ex rel. v. MOTIVATIONAL MARKETING, INC.

Each of the above cases was filed against an out-of-state company doing business in Kansas by means of telephone solicitations of small businesses and sole proprietorships. In each case, virtually the same situation would occur, i.e., the consumer would be promised a valuable prize or gift if an order would be placed for a certain number of ball-point pens, key rings, calendars, etc., which would bear the name, address, and telephone number of the business which could be distributed for advertising purposes. While the price per item would be high (\$1.50 for a pen), the items were represented to be of high quality and the receipt of the valuable prize or gift was assured.

In no case did either the merchandise or the prize meet the representations. When the prize was sent at all, it would be worth only a fraction of the alleged value, while the pens, key rings, etc., would be of a type available locally for much less. Following institution of suit, each company agreed to refund all moneys paid in by consumers filing complaints, and also agreed to refrain from certain deceptive practices in the future. These agreements were in the form of consent judgments filed with the court, with the result that any violation in the future would be subject to contempt penalties. Total savings in the above cases equaled \$5,026.

STATE, ex rel. v. NATIONWIDE PROMOTIONS, INC.  
STATE, ex rel. v. COMPUTRONICS,  
A Member Of The Hallmark Group  
STATE, ex rel. v. QUALITY ENTERPRISES  
STATE, ex rel. v. CENTRAL ADVERTISING SPECIALITY HOUSE

Each of these cases is similar to those which have been closed, and it is expected that similar relief will be sought when the lawsuits are more advanced. The suit against Computronics has an additional element, since this company provides the prize and gift material for a number of the others.

STATE, ex rel. v. AER-VAC INDUSTRIES

A petition was filed on May 18, 1982, alleging defendant added conditions and terms to a written warranty issued to consumers who purchased heavy duty sprag, carriers, and gear for International Harvester tractors. The additional conditions and terms were not disclosed to the consumer when the equipment was purchased. A settlement agreement was reached between the parties whereby the company agreed to honor the warranty according to its stated conditions. In addition, any consumer's money wrongfully paid out under the added terms of the warranty was refunded to the consumer.

STATE, ex rel. v. FUTURE HOMES INSPECTION, INC.,  
FLOYD D. PARRY and PAMELA S. PARRY

The petition in this case was filed October 20, 1980. The State contended defendants misrepresented the quality of home inspections they performed. Three consumers relied on defendants' representations and were damaged as a result. The lawsuit sought restitution for these consumers, and injunctive relief. All of the complainants' claims were satisfied through negotiations between the parties. A journal entry of dismissal with prejudice will be filed shortly.

STATE, ex rel. v. EDUKAN, INC., d/b/a CLARK'S  
SCHOOLS OF BUSINESS, CAMDEN MCKINLEY, JOE SWALLWELL,  
NORTHWESTERN NATIONAL INSURANCE COMPANY, and  
WESTERN CASUALTY & SURETY COMPANY

A petition was filed on September 3, 1980, alleging violations of the Kansas Consumer Protection Act and the Proprietary School Act in connection with a medical assistants' program offered by Clark's School of Business. The petition alleges the defendants represented that (a) students who had completed the program would be allowed to sit for a certification examination for the American Association of Medical Assistants, (b) graduates would find a good market for their training and starting salaries commensurate with their advanced education, and (c) placement service was effective in obtaining employment for graduates. The petition alleges the above representations were false or misleading, and asks for damages, penalties, and injunctive relief.

All parties have answered the petition. Western Casualty and Surety Company filed a third-party petition against third-party defendant Marshall Payn, former president of EduKan, Inc. In addition, Western Casualty and Surety filed a cross-claim against EduKan. Defendants EduKan and Camden McKinley submitted interrogatories to the State, which were answered. On April 1, 1981, plaintiff's motion to amend its petition was filed with the court. That motion was granted. Plaintiff's first set of interrogatories to defendants EduKan, Inc.,

and Camden McKinley were received by the State on June 2, 1981. The State's request for admissions directed to defendant EduKan, Inc., were received by the State on May 29, 1981. On November 10, 1981, a discovery conference was held by all parties. Time deadlines for discovery were set and settlement negotiations were explored at that time, and are continuing to be explored. On November 30, 1981, a second motion to amend the petition was filed by the State. Defendant insurance companies filed partial motions for summary judgment which were answered by the State. The court has not yet ruled on those pleadings. Settlement negotiations have continued between all parties and resolution of the case through compromise appears imminent.

STATE, ex rel. v. LOGAN & TAYLOR, INC.

This action was filed after the purchaser of a home discovered termite damage in a house the real estate agent had represented would be repaired. The defendant initially refused to pay for the termite repair work, but the case settled for \$990.44, the price of the lowest repair estimate which the consumer received.

State, ex rel. v. STATE FAIR AGENCY,  
a/k/a State Fair Products, Cheyenne Institute,  
Leather Feather, Grace White Sales Company

The defendant operated a mail order business which sold tear-gas guns, sub-machine guns, and similar equipment. After receiving a number of complaints from consumers, a subpoena, pursuant to K.S.A. 50-631, was issued. Defendant failed to appear, and an action for injunction was filed. A default judgment was granted, enjoining the defendant from selling or advertising any merchandise in the State of Kansas.

STATE, ex rel. v. LIBERAL MOBILE HOMES, INC.

The consumers purchased a mobile home from the defendant. At the same time, they also purchased a compressor. The compressor was defective and was replaced. The replacement compressor was also defective. The defendant's statements to the consumers led them to believe they could have the compressor replaced and the defendant would reimburse them. The consumers replaced the defective compressor and, in turn, relying on defendant's representation, requested reimbursement of \$243.20, the cost expended by the consumers. The defendant was only willing at that time to again replace the compressor. A suit was filed and settled for the value of the tendered compressor, \$243.20.

STATE, ex rel. v. MIDWEST HEARING AID CENTER

A Nebraska hearing aid company was selling hearing aids door-to-door in Kansas. The company's forms did not comply with the Kansas statutory requirements. Letters and telephone calls to the company did not resolve the matter. A suit for a temporary restraining order and permanent injunction was filed. The company altered its form to comply with the statutory requirements and the suit was dismissed.

STATE, ex rel. v. ANDREW BARNES, et al.,  
d/b/a GREENWOOD CEMETERY

An abandonment of cemetery suit was filed against the defendants. After an estate was settled and the owners' partnership was dissolved, the cemetery was voluntarily deeded to the city and the suit was dismissed.

STATE, ex rel. v. LOFTIN ENTERPRISES, INC.,  
POOL CONSTRUCTION COMPANY

The defendants operated a pool construction company which started the construction of a pool for the consumers. The consumers were required to provide advance payments to the defendants. The defendants not only did not complete the pool on the date they represented it would be completed, but had made very little progress toward the digging of the pool hole. A suit was filed and a default judgment granted. The defendants moved, leaving no forwarding address. No recovery was obtained.

STATE, ex rel. v. GLEN BISHOP

This action was brought against the defendant for deceptive acts in connection with home repair and household improvement contracts.

On June 4, 1981, judgment was granted. The defendant agreed to make refunds, comply with the Act, and pay costs and a sum to the State. On July 2, 1981, the defendant filed a petition in bankruptcy. The discharge of the debtor was entered on November 30, 1981. By an agreed upon court order, the judgment is determined to be nondischargeable. The defendant is obligated to pay \$21,663.50 to the plaintiff, \$19,163.50 for restitution, and \$2,500 to the Office of the Attorney General. During 1982, the defendant has made regular payments of \$150 monthly on the judgment. The twenty consumers received a partial payment of their claims in July and December. Throughout 1983 the defendant will increase his monthly payments.

STATE, ex rel. v. UNITED FRATERNAL ORDER OF  
PEACE OFFICERS ASSOCIATION, ROSE MARY EVANS

In August, 1982, a petition for registration of foreign judgment was filed in the Circuit Court of Jackson County, Missouri. On July 31, 1981, a judgment in the amount of \$10,000 had been granted to the State as a result of a proceeding to recover civil penalties. The defendants solicit advertisers for its publication. A 1974 court order prohibits certain practices and requires specific disclosures by the defendants in their solicitations of advertisers. We filed the subsequent proceeding because defendants were not complying with the 1974 court order.

We were unaware of money in Kansas and the defendants refused to voluntarily pay the judgment. On October 22, 1982, the Missouri court ordered the Kansas judgment be a final personal judgment enforceable in Missouri. Attempts are being made to discover money and property in Missouri that can be used to satisfy this judgment.

STATE, ex rel. v. LARRY KING

On June 23, 1982, a proceeding to recover civil penalties was filed against Larry King. The defendant was charged with violating a court order issued in June, 1981. The deceptive practices involved his entering into contracts to make and paint signs, requesting and accepting prepayment, but failing and refusing to perform as agreed. In August, 1982, the defendant was ordered to pay an additional \$750. He has made partial payments; however, there is a balance due on this judgment, and the 1981 judgment. Collection efforts continue.

STATE, ex rel. v. HENRY FULK, d/b/a NATIONAL  
HOME BUSINESS SERVICES, FULK ENTERPRISES, INC.

In June, 1981, a petition was filed against the defendants. The defendants advertised and sold work-at-home programs for a charge to consumers and promised substantial earnings. The petition alleges defendants are committing deceptive and unconscionable acts in connection with the solicitation and sale of envelope stuffing and circular mailing programs.

On April 26, 1982, a consent judgment was entered into. The defendants were enjoined from conducting the work-at-home programs and ordered to pay \$506 as consumer refunds, \$1,500 as expenses and costs, and \$2,500 as civil penalties.

On May 7, 1982, the defendant Henry Fulk filed a Chapter 13 bankruptcy petition. The proposed plan provided for 100 percent payment of the

expenses and costs, 100 percent payment of consumer refunds, but zero percent payment of the civil penalties. A proof of claim and objection to this plan was filed. A plan was agreed upon and confirmed on September 28, 1982, which provides that the debtor pay the full amount of consumer refunds of \$506, the full amount of expenses and costs of \$1,500, and 50 percent of the civil penalties, \$1,250.

STATE, ex rel. v. PASSPORT TO PLEASURE  
VACATIONS OF TEXAS

In March, 1981, a lawsuit was filed against Passport to Pleasure Vacations of Texas. The company solicited Kansas consumers by mailing a Speed Gram and proceeded with a telephone solicitation for sale of a vacation certificate in Las Vegas. The fee charged was \$129 or \$139. The petition alleges the company misrepresented the package and benefits and utilizes a misleading marketing device.

On February 25, 1982, a consent judgment was agreed to. The company is enjoined from soliciting or promoting or selling or distributing vacation packages in Kansas. It is ordered to pay over \$7,100 for consumer refunds and \$3,500 for expenses and costs. Because of the early filing of the lawsuit, Kansas consumers recovered over \$3,700. The remaining judgment has not been voluntarily paid. The Kansas judgment was filed in Dallas County, Texas; however, the company is out of business, and there are no known assets.

STATE, ex rel. v. F.G. COMFORT, d/b/a  
COMFORT AND SONS ASPHALT PAVING

This case was filed on March 25, 1982. A consent judgment was agreed to on May 6, 1982. By the terms of the order, the defendant is restrained from entering into door-to-door sales, agreeing to supply asphalt materials and labor associated with asphalt paving, unless the defendant fully complies with K.S.A. 50-640 pertaining to the buyer's right to cancel door-to-door sales. Additionally, the consumer received a \$700 payment.

STATE, ex rel. v. GARY PIPER,  
d/b/a BITTERSWEET AUTO FARM

On April 6, 1982, a lawsuit was filed against Bittersweet Auto Farm. The petition alleges the defendant sold a TransAm to the consumer while representing it to be a 1978 model, when in actuality it was a 1977. A 1977 vehicle differs materially from a 1978 model. Damages, civil penalties, costs, and injunctive relief were sought.

At the completion of discovery, it was evident that a bona fide dispute remained. The defendant contended he had made a mistake in completing paperwork associated with the transaction, but that he had verbally advised the purchaser the vehicle was, in fact, a 1977, and the purchaser agreed to complete the sale. The consumer stated he was not so advised and would not have proceeded with the sale without concessions had he known the vehicle was a 1977 model.

Trial to the court was scheduled for December 3, 1982. The purchaser failed and refused to appear. Without him being present and testifying, we were unable to meet our burden of proof. Judgment was granted for the defendant.

STATE, ex rel. v. QUIK-DRI, INC.,  
DRI-DOWN, INC., DONALD E. MUNDY

This action was filed on April 16, 1982, to halt deceptive practices in the agricultural area. Both Quik-Dri, Inc. and Dri-Down, Inc., two Nebraska corporations, were served with process. A consumer had purchased a Dri-Down grain dryer for \$3,250. The seller misrepresented the dryer and its characteristics and benefits. The dryer has never worked. The lawsuit sought an injunction, contract cancellation, full restitution to consumers, civil penalties, and expenses.

On June 21, 1982, judgment by default was entered for the plaintiff and against the defendant Dri-Down, Inc. Dri-Down, Inc. was ordered to pay \$5,750 and enjoined from selling grain dryers in Kansas. On October 1, 1982, Dri-Down, Inc. filed a Chapter 11 petition in bankruptcy. The monetary portion of the judgment has not been satisfied.

This lawsuit is in the discovery stage with defendant Quik-Dri, Inc. The pretrial conference has been scheduled for February 4, 1983.

STATE, ex rel. v. UNITED STATES TESTING AUTHORITY

On September 1, 1982, a petition for injunction, restitution, and civil penalties was filed, alleging violations of the Kansas Consumer Protection Act by the Florida corporation's solicitations which involve the mailing of an "official testing survey." The solicitation offers 20 prizes with values represented as being from \$260 to \$2,000. Everyone is a winner, but must pay \$14.80 to receive the "free" gift. We contended the solicitations were false, deceptive, and misleading.

In December, 1982, a consent judgment was entered into with the defendant. The company is permanently enjoined from soliciting or promoting or

distributing its television testing procedure packet marked "Official Television Survey" or similar materials in Kansas. Additionally, the defendant is ordered to pay \$15,000 to the State, \$11,000 for consumer refunds, \$1,500 for civil penalties, and \$2,500 for expenses and costs.

STATE, ex rel. v. LAW ENFORCEMENT REVIEW

On October 25, 1982, a consent judgment was entered into with the defendant, a California business. The defendant agreed to certain conditions relative to its solicitation and sale of advertisements. The defendant will not falsely represent it is connected with, sanctioned, endorsed, or approved by an official law enforcement organization. It will not falsely represent itself as being a nonprofit or charitable organization. Further, it will not mail billing statements or invoices to Kansans in an attempt to create an impression of an existing obligation to pay for said advertisements, unless there is a valid contract supporting it.

STATE, ex rel. v. AMERICAN HEALTH ASSISTANCE FOUNDATION,  
soliciting as Coronary Heart  
Disease Research Foundation

On December 14, 1981, a lawsuit was filed against American Health Assistance Foundation for failure to comply with the Charitable Solicitation Act. The defendant was soliciting contributions in Kansas under the name "Coronary Heart Disease Research Foundation." On February 8, 1982, judgment was granted for the plaintiff by default. The defendant was enjoined from soliciting contributions until it fully complied with our law. Notice of the injunction was sent to the defendant. Subsequently, the defendant complied with the law. On June 11, 1982, the February 8 judgment was vacated and defendant may solicit lawfully.

STATE, ex rel. v. HOSIERY  
CORPORATION OF AMERICA, INC.

Defendant has engaged in the mail order business relating to the sale of hosiery as well as a variety of gift items for home and personal use. Defendant's failure to send items when they have been ordered, billing for items received in the mail but not ordered, and failure to credit consumers for returning merchandise, led to the filing of the petition on March 8, 1982. Defendant's answer was filed May 13, 1982. The credit collection agency employed by Hosiery Corporation to make collections has been notified of the status of the complaint. The case has now proceeded to discovery.

STATE, ex rel. v. RAY JORDAN and  
CLIFF JORDAN, d/b/a EXPANSO MANUFACTURING COMPANY

This action was filed July 9, 1980, as a result of defendants' failure to build an Expanso room addition after accepting \$1,000 as a down payment. A journal entry of default judgment was filed on August 18, 1981, against defendant Ray Jordan, who has been ordered to pay actual damages of \$1,000 to the complainants. In addition, he was ordered to pay investigation fees in the amount of \$500.

The Missouri Attorney General's office was contacted regarding filing the judgment in Missouri, pursuant to the Uniform Reciprocal Enforcement of Judgments Act. However, the sheriff is unable to serve the defendants at this time.

STATE, ex rel. v. NATUR-ALL INTERNATIONAL,  
BILL KEOHO and KEITH PROBASCO

The petition was filed on January 15, 1980, alleging defendants had engaged in a multilevel marketing scheme in connection with the sale and promotion of vitamin distributorships. Promised training, supplies, and commissions were not delivered. As defendants could not be located for service of process, the original petition was dismissed and refiled on October 6, 1981. Personal service was obtained on Bill Keoho, both individually and as president of Natur-All International. On February 8, 1982, plaintiff took default judgment against defendants in the amount of \$44,000 in civil penalties, \$14,876.40 in actual damages, and \$1,000 in investigation fees. A permanent injunction was also granted which prohibits defendants from doing business in the State of Kansas. The judgment has not been paid. We are waiting on some type of notification from Sedgwick County as to their success in locating Bill Keoho.

STATE, ex rel. v. MARTIN F. BURIK,  
d/b/a E.R.A. ACTION REALTY;

and

ANN E. MEADE, ASSOCIATE  
BROKER, E.R.A. ACTION REALTY

This lawsuit was filed on October 21, 1982, against the defendants who had served as real estate agents on the sale of a house to the complainant in Ottawa, Kansas. Defendant Meade represented to the complainant that the real estate sale contract included the requirement for a termite inspection prior to the sale of the house, when, in fact, the contract did not include this provision.

There was also misrepresentation by defendant Meade as to the cause of a worn spot in the carpeting. Defendants filed an answer on November 16, 1982, and, in addition, filed a countersuit against Hazel Gieber, the complainant, joining her as a third party defendant, alleging slander and libel. An answer was filed on Mrs. Gieber's behalf on November 30, 1982. Depositions are scheduled for the third week in December, and the case is proceeding with discovery.

STATE, ex rel. v. JEWELART, INC.

The original lawsuit in this case was filed on November 30, 1981, against the defendant who was a mail order company operating out of California. The catalogues mailed out advertised mostly jewelry. When customers placed an order, the checks were cashed, but the merchandise was never received by the customer. The company refused to satisfy the complaints or to refund any money. A default judgment was entered on May 11, 1982, in which the defendant was ordered to reimburse Kansas consumers in the amount of \$1,630.72, pay \$15,250 in civil penalties, and \$500 in investigation fees. In July, 1982, defendant filed for bankruptcy in the Central District of California under Chapter 11 of the bankruptcy code. A proof of claim has been filed with the court.

A second lawsuit was filed against the same defendant on May 26, 1982, due to the continued complaints received by our office. Due to the pending bankruptcy action, a proof of claim has been filed with the bankruptcy court in the amount of \$931.43, which represents the amount of actual claims by Kansas consumers.

STATE, ex rel. v.  
SMM MAIL ORDER MARKETING, INC.

This lawsuit against a defendant engaged in the mail order business was filed on November 30, 1981. Defendant had failed to mail or send ordered merchandise or to refund the consumers' money. A default judgment was taken on July 14, 1982, in which defendant was ordered to return the sum of \$1,616.98 to Kansas consumers, pay civil penalties in the amount of \$29,500, and pay \$1,000 in investigation fees. As defendant is a California corporation, this judgment was entered and registered in California by the California Attorney General's office on October 22, 1982. Defendant filed for bankruptcy under Chapter 7 of the bankruptcy code, and a proof of claim in the amount of \$32,728.50 has been filed with the bankruptcy court by this office.

STATE, ex rel. v.  
DANIEL A. BURWELL, D.C.

A petition was filed on January 18, 1980, alleging violations of the Kansas Consumer Protection Act for practicing without a chiroprator's license and other misrepresentations. The lawsuit seeks restitution and injunctive relief. On March 24, 1981, plaintiff's motion for partial summary judgment was granted, and defendant was permanently enjoined from doing business in Kansas. Defendant was ordered to make available to plaintiff documents needed to determine the names of Kansas residents who had received services from defendant. The files have never been made available, and our office has not been successful in serving defendant with an order to appear and show cause why contempt should not be issued for having failed and refused to obey the orders of the court.