ORDINANCE NO. 18419


WHEREAS, there are adequate provision for consumer protection and remedies for citizens available at the state level; and

WHEREAS, it is more economically efficient and expedient to encourage citizens to avail themselves of consumer protection provisions available state-wide; and

WHEREAS, the city council has determined to avoid duplication of efforts and services in this area.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code § 46-1, Purposes, interpretation of chapter, is hereby repealed.

Purposes, interpretation of chapter.

To promote the following policies, this chapter shall be construed liberally in order to:

(1) Simplify, clarify and modernize the law governing consumer practices;
(2) Protect consumers from suppliers who commit deceptive and unconscionable practices;
(3) Protect consumers from unbargained for warranty disclaimers; and
(4) Provide consumers with a three day cancellation period for door-to-door sales.

Section 2. That City of Topeka Code § 46-2, Definitions, is hereby repealed.

Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ag**r**icultural products means and includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

Agr**i**cultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products.

Consumer means an individual who seeks or acquires property or services for personal, family, household, business or agricultural purposes.

Consumer transaction means a sale, lease, assignment or other disposition for value of property or services within this state (except insurance contracts and securities regulated under federal or state law) to a consumer, or a solicitation by a supplier with respect to any of these dispositions.
Final judgment means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

Merchantable means, in addition to the qualities prescribed in K.S.A. 84-2-314, in conformity in all material respects with applicable state and federal statutes and regulations establishing standards of quality and safety.

Person means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative or any other legal entity.

Property means and includes real estate, goods and intangible personal property.

Services means and includes:

(1) Work, labor and other personal services;

(2) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals and cemetery accommodations; and

(3) Any other act performed for a consumer by a supplier.

Supplier means a manufacturer, distributor, dealer, seller, lessor, assignor or other person who, in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not he deals directly with the consumer.

Section 3. That City of Topeka Code § 46-3, Waiver or agreement to forego rights; settlement of claims, is hereby repealed.

Waiver or agreement to forego rights; settlement of claims.
(a) Except as otherwise provided in this chapter, a consumer may not waive or agree to forego rights or benefits under this chapter.

(b) A claim, whether or not disputed, by or against a consumer may be settled for less value than the amount claimed.

(c) A settlement in which the consumer waives or agrees to forego rights or benefits under this chapter is invalid if the court finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

Section 4. That City of Topeka Code § 46-4, Deceptive acts and practices, is hereby repealed.

Deceptive acts and practices.

(a) No supplier shall engage in any deceptive act or practice in connection with a consumer transaction.

(b) Deceptive acts and practices include, but are not limited to, the following, each of which is hereby declared to be a violation of this chapter:

(1) Representations made knowingly or with reason to know that:

a. Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

b. The supplier has a sponsorship, approval, status, affiliation or connection that he does not have;
e. Property is original or new, if such property has been deteriorated, altered, reconditioned, repossessed or is secondhand or otherwise used to an extent that is materially different from the representation;

d. Property or services are of a particular standard, quality, grade, style or model, if they are of another which differs materially from the representation; or

e. The consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of benefit is contingent on an event occurring after the consumer enters into the transaction.

(2) The intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact.

(3) The intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in-fact been misled.

(4) Disparaging the property, services or business of another by making, knowingly or with reason to know, false or misleading representations of material facts.

(5) Offering property or services without intent to sell them.
(6) Offering property or services without intent to supply reasonable, expectable public demand, unless the offer discloses the limitation.

(7) Making false or misleading representations, knowingly or with reason to know, of facts concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time.

(8) Falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations.

(9) Falsely stating, knowingly or with reason to know, that services, replacements or repairs are needed.

(10) Falsely stating, knowingly or with reason to know, the reasons for offering or supplying property or services at sale or discount prices.

Section 5. That City of Topeka Code § 46-5, Civil penalties, is hereby repealed.

Civil penalties.

(a) The commission of any act or practice declared to be a violation of this chapter shall render the violator liable to the aggrieved consumer or the city as provided in subsection (c) of this section, for the payment of a civil penalty, recoverable in an individual action, brought by the city attorney in the sum of not more than $2,000.00 for each violation. An aggrieved consumer is not a required party in actions brought by the city attorney pursuant to this section.

(b) Any person who willfully violates the terms of any injunction or court order issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $10,000.00 per violation, in addition to other penalties that may be imposed by the court,
as the court shall deem necessary and proper. For the purposes of this section, the district
court issuing an injunction shall retain jurisdiction, and, in such cases, the city attorney
acting in the name of the city may petition for recovery of civil penalties.

(c) In administering and pursuing actions under this chapter, the city attorney is
authorized to sue for and collect reasonable expenses and investigation fees as
determined by the court. Civil penalties or contempt penalties sued for and recovered by
the city attorney shall be paid into the general fund of the city.

Section 6. That City of Topeka Code § 46-6, Exemptions from chapter, is hereby
repealed.

Exemptions from chapter.

This chapter does not apply to a publisher, broadcaster, printer or other person
engaged in the dissemination of information or the reproduction of printed or pictorial
matter so far as the information or matter has been disseminated or reproduced on behalf
of others without actual knowledge that it violated this chapter. A person alleged to have
violated this chapter has the burden of showing the applicability of this section.

Section 7. That City of Topeka Code § 46-7, Unconscionable consumer sales
practices, is hereby repealed.

Unconscionable consumer sales practices.

(a) No supplier shall engage in any unconscionable act or practice in connection
with a consumer transaction. An unconscionable act or practice violates this chapter
whether it occurs before, during or after the transaction.

(b) The unconscionability of an act or practice is a question for the court. In
determining whether an act or practice is unconscionable, the court shall consider
circumstances which the supplier knew or had reason to know, such as, but not limited to, the following:

(1) That the supplier took advantage of the inability of the consumer reasonably to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor;

(2) That when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers;

(3) That when the consumer transaction was entered into, the consumer was unable to receive a material benefit from the subject of the transaction;

(4) That when the consumer transaction was entered into, there was no reasonable probability of payment of the obligation in full by the consumer;

(5) That the transaction he induced the consumer to enter into was excessively one-sided in favor of the supplier;

(6) That he made a misleading statement of opinion on which the consumer was likely to rely to his detriment;

(7) That the supplier excluded, modified or otherwise attempted to limit either the implied warranties of merchantability and fitness for a particular purpose or any remedy provided by law for a breach of those warranties.

Section 8. That City of Topeka Code § 46-8, Disclaimer or limitation of warranties; liabilities; attorney fees, when; section inapplicable to seed for planting or livestock for agricultural purposes, is hereby repealed.
Disclaimer or limitation of warranties; liabilities; attorney fees; when; section inapplicable to seed for planting or livestock for agricultural purposes.

(a) Notwithstanding any other provisions of law, with respect to property which is the subject of or is intended to become the subject of a consumer transaction in this city, no supplier shall:

(1) Exclude, modify or otherwise attempt to limit the implied warranties of merchantability as defined in K.S.A. 84-2-314 and amendments thereto, and fitness for a particular purpose, as defined in K.S.A. 84-2-315 and amendments thereto; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of implied warranty of merchantability and fitness for a particular purpose.

(b) Notwithstanding any provision of law, no action for breach of warranty with respect to property subject to a consumer transaction shall fail because of a lack of privity between the claimant and the party against whom the claim is made. An action against any supplier for breach of warranty with respect to property subject to a consumer transaction shall not, of itself, constitute a bar to the bringing of an action against another person.

(c) A supplier may limit the supplier’s implied warranty of merchantability and fitness for a particular purpose with respect to a defect or defects in the property only if the supplier establishes that the consumer had knowledge of the defect or defects, which became the basis of the bargain between the parties. In neither case shall such limitation apply to liability for personal injury or property damage.
(d) Nothing in this section shall be construed to expand the implied warranty of merchantability as defined in K.S.A. 84-2-314 and amendments thereto, to involve obligations in excess of those which are appropriate to the property.

(e) A disclaimer or limitation in violation of this section is void. If a consumer prevails in an action based upon breach of warranty, and the supplier has violated this section, the court may, in addition to any damages recovered, award reasonable attorney fees and a civil penalty under section 46-5, to be paid by the supplier who gave the improper disclaimer.

(f) The making of a limited express warranty is not in itself a violation of this section.

(g) This section shall not apply to seed for planting.

(h) This section shall not apply to sales of livestock for agricultural purposes, other than sales of livestock for immediate slaughter, except in cases where the supplier knowingly sells livestock which is diseased.

Section 9. That City of Topeka Code § 46-9, Door to door sales, is hereby repealed.

Door-to-door sales.

(a) Consumer’s right to cancel. Except as provided in subsection (c)(1)c of this section, in addition to any right otherwise to revoke, a consumer has the right to cancel a door-to-door sale made within the city until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase which includes the disclosures required by this section.
(b) Required disclosures. In connection with any door-to-door sale made within the city, it constitutes an unfair and deceptive act or practice within the meaning of section 46-4 for any seller to:

(1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, Spanish, for example, as that principally used in the oral sales presentation, and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used, and in boldface type of a minimum size of ten points, a statement in substantially the following form:

YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(2) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer property or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and be easily detachable, and which shall contain in ten-point boldface type the following information and statements in the same language, Spanish, for example, as that used in the contract:

NOTICE OF CANCELLATION
TABLE INSET:

(Enter date of transaction)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,
WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU
UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT
EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING
RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY
INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR
RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY
PROPERTY DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY,
IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING
THE RETURN SHIPMENT OF THE PROPERTY AT THE SELLER'S EXPENSE AND
RISK.

IF YOU DO MAKE THE PROPERTY AVAILABLE TO THE SELLER, AND IF THE SELLER
DOES NOT PICK SUCH PROPERTY UP WITHIN 20 DAYS OF THE DATE OF YOUR
NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE PROPERTY
WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE PROPERTY
AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE PROPERTY TO
THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE
OF ALL OBLIGATIONS UNDER THE CONTRACT.
TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY
OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A
TELEGRAM TO

____________
(Name of Seller)

- AT ______________________________________

(Address of Seller's Place of Business)

- NOT LATER THAN MIDNIGHT OF __________

(Date)

I HEREBY CANCEL THIS TRANSACTION.

____________

(Date) (Buyer's Signature)

(3) Fail, before furnishing copies of the notice of cancellation to the buyer,
to complete both copies of such notice of cancellation by entering the name
of the seller, the address of the seller's place of business, the date of the
transaction, and the date, not earlier than the third business day following the
date of the transaction, by which the buyer may give notice of cancellation.

(4) Include in any door-to-door sale contract or receipt any confession of
judgment or any waiver of any of the rights to which the buyer is entitled
under this section, including specifically his right to cancel the sale in accordance with the provisions of this section.

(5) Fail to inform each buyer orally, at the time he signs the contract or purchases the property or services, of his right to cancel.

(6) Misrepresent in any manner the buyer’s right to cancel.

(7) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after the receipt of such notice, to:

   a. Refund all payments made under the contract or sale;

   b. Return any property traded in, in substantially as good condition as when received by the seller;

   c. Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(8) Negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the property or services were purchased.

(9) Fail, within ten business days of receipt of the buyer’s notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered property.

(c) Definitions. For the purposes of this section, the following definitions shall apply:
(1) *Door-to-door sale* means a sale, lease or rental of consumer property or services with a purchase price of $25.00 or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the property is exhibited or the services are offered for sale on a continuing basis;

b. In which the consumer is accorded the right of rescission by the provisions of the consumer credit protection act (15 USC 1635) or regulations issued pursuant thereto;

c. In which the buyer has initiated the contract and the property or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

d. Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller.
or its representative prior to delivery of the property or performance of the services;

e. In which the buyer has initiated the contract and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or property other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of the additional property or services would not fall within this exclusion; or

f. Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

(2) Consumer property or services means property or services purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken.

(3) Seller means any person engaged in the door-to-door sale of consumer property or services.

(4) Place of business means the main or permanent branch office or local address of a seller.
(5) Purchase price means the total price paid or to be paid for the consumer property or services, including all interest and service charges.


Section 10. That City of Topeka Code § 46-10, Thermal insulation, flame spread standards, is hereby repealed.

Thermal insulation, flame spread standards.

(a) No person shall manufacture, distribute, offer for sale, sell or install any thermal insulation in the city unless such insulation has been tested in accordance with the American Society for Testing and Materials Standard E-84, Standard Method of Test for Surface Burning Characteristics of Building Materials, and certified by an independent testing laboratory approved by the state fire marshal as having a flame spread rating of 75 or less, or as having a classification representing a flame spread rating not in excess thereof, and is clearly labeled to that effect on the package or, if not contained in a package, is accompanied by a written statement to that effect.

(b) As used in this section, "thermal insulation" means any material designed for installation in the walls, floors or ceilings of a structure for the specific purpose of reducing loss or gain of energy by such structure, but shall not include any backing or vapor barrier attached to such material.

Section 11. That City of Topeka Code § 46-31, Consumer protection division, is hereby repealed.
Consumer protection division.

The consumer protection division is established as a part of the city attorney's office under the control, direction and direct supervision of a deputy city attorney who shall be responsible for the enforcement of this chapter.

Section 12. That City of Topeka Code § 46-32, Duties of the city attorney, is hereby repealed.

Duties of the city attorney.

(a) The city attorney shall:

(1) Enforce this chapter throughout the city;

(2) Cooperate with state and local officials, officials of other states and cities and officials of the federal government in the administration of comparable statutes;

(3) Mail information concerning final judgments to persons who request it, for which the city attorney may charge a reasonable fee to cover the expense thereof;

(4) Receive and act on complaints;

(5) Maintain a public file of:

a. Final judgments rendered under this chapter that have been either reported officially or made available for public dissemination under section 46-34(a)(3); and

b. Consent judgments; and
(6)—Report annually on or before January 1 of each year to the mayor and council on the operations of his office and on the acts or practices occurring in this city that violate this chapter.

(b)—The city attorney's report under subsection (a)(6) of this section shall include a statement of the investigatory and enforcement procedures and policies of the city attorney's office, of the number of investigations and enforcement proceedings instituted and of their disposition, and of the other activities of the office and of other persons to carry out the purposes of this chapter.

Section 13. That City of Topeka Code § 46-33, General powers of the city attorney, is hereby repealed.

General powers of the city attorney.

The city attorney may conduct research, hold public hearings, and make inquiries and public studies relating to consumer sales acts or practices.

Section 14. That City of Topeka Code § 46-34, Rule making requirements, is hereby repealed.

Rule-making requirements.

(a)—The city attorney may:

(1)—Adopt as a rule a description of the organization of the attorney's office, stating the general course and method of operation of the office and methods whereby the public may obtain information or make submissions or requests;
(2)—Adopt rules of practice setting forth the nature and requirements of all
formal and informal procedures available, including a description of the forms
and instructions used by the city attorney or the attorney’s office; and

(3)—Make available for public inspection all rules, written statements of
policy and interpretations formulated, adopted or used by the city attorney in
discharging the attorney’s functions.

(b)—Rules and regulations adopted by the city attorney shall be consistent with
the terms of this chapter.

Section 15. That City of Topeka Code § 46-35, Investigatory powers of the city
attorney, is hereby repealed.

Investigatory powers of the city attorney.

(a)—If, by the city attorney’s own inquiries or as a result of complaints, the city
attorney has reason to believe that a person has engaged in, is engaging in or is about to
engage in an act or practice that violates this chapter, the city attorney may administer
oaths and affirmations, subpoena witnesses or matter and collect evidence.

(b)—If matter that the city attorney subpoenaed is located outside this city, the
person subpoenaed may either make it available to the city attorney at a convenient
location within the city or pay the reasonable and necessary expenses for the city attorney
or a representative to examine the matter at the place where it is located. The city attorney
may designate representatives, including officials of the city or state in which the matter is
located, to inspect the matter on the city attorney’s behalf, and the city attorney may
respond to similar requests from officials of other cities or states.
(e) Service by the city attorney of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without this state;

(2) The mailing thereof by certified mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended;

(3) In the manner provided in the code of civil procedure as if a petition had been filed; or

(4) Such service as the district court may direct in lieu of personal service within this state.

(d) The city attorney may request that an individual who refuses to comply with a subpoena, on the grounds that testimony or matter may incriminate the individual, be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which the individual is entitled by law, may not be subjected to a criminal proceeding or to a civil penalty to the transaction concerning which the individual is required to testify or produce relevant matter.

(e) If any person willfully fails or refuses to file any statement or report required by this chapter, or obey any subpoena issued by the city attorney, the city attorney may, after notice, apply to the district court for, and, after a hearing thereon, the district court may issue an order:
(4) Granting injunctive relief restraining the sale or advertisement of any merchandise by such persons;

(2) Vacating, annulling or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation, or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practices; or

(3) Granting such other relief as may be required, until the person files the statement or report or obeys the subpoena.

Section 16. That City of Topeka Code § 46-36, Remedies of the city attorney, is hereby repealed.

Remedies of the city attorney.

(a) The city attorney may bring an action to:

(1) Obtain a declaratory judgment that an act or practice violates this chapter;

(2) Enjoin, or to obtain a restraining order against a supplier who has violated, is violating or is otherwise likely to violate this chapter; or

(3) Recover actual damages on behalf of consumers by reason of violations of this chapter; and

(4) Recover reasonable expenses and investigation fees.

(b) In lieu of instigating or continuing an action or proceeding, the city attorney may accept a consent judgment with respect to any act or practice declared to be a violation
of this chapter. Such a consent judgment shall provide for the discontinuance by the person
entering the judgment of any act or practice declared to be a violation of this chapter, and it
may include a stipulation for the payment by such person of reasonable expenses and
investigation fees incurred by the city attorney. The consent judgment also may include a
stipulation for restitution to be made by such person to consumers of money, property or
other things received from such consumers in connection with a violation of this chapter,
and also may include a stipulation for specific performance. Any consent judgment entered
into pursuant to this section shall not be deemed to admit the violation, unless it does so by
its terms. Before any consent judgment entered into pursuant to this section shall be
effective, it must be approved by the district court and an entry made thereof in the manner
required for making an entry of judgment. Once such approval is received, any breach of
the conditions of such consent judgment shall be treated as a violation of a court order and
shall be subject to all the penalties provided by law therefor.

(c) In any action brought by the city attorney under this chapter, the court may,
without requiring bond of the city attorney:

(1) Make such orders or judgments as may be necessary to prevent the
use or employment by a person of any practices declared to be a violation of
this chapter;

(2) Make such orders or judgments as may be necessary to compensate
any person for damages sustained;

(3) Make such orders or judgments as may be necessary to carry out a
transaction in accordance with consumers' reasonable expectations;
Appoint a master or receiver or order sequestration of assets whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this section, and assess the expenses of such master or receiver against the defendant;

Revoke any license or certificate authorizing that person to engage in business in this state;

Enjoin any person from engaging in business in this state; or

Grant other appropriate relief.

Section 17. That City of Topeka Code § 46-37, Coordination with other supervision, is hereby repealed.

Coordination with other supervision.

If the city attorney receives a complaint or other information relating to noncompliance with this chapter by a supplier who is subject to other supervision in this city or state, the city attorney shall inform the official or agency having that supervision. The city attorney may request information about suppliers from the official or agency.

The city attorney and any other official or agency in this state having supervisory authority over a supplier shall consult and assist each other in maintaining compliance with this chapter. Within the scope of their authority, they may jointly or separately make investigations, prosecute suits and take other official action they consider appropriate.

Section 18. That City of Topeka Code § 46-38, Powers of receiver, is hereby repealed.
Powers of receiver.

(a) When a receiver is appointed by the court pursuant to this chapter, he shall have the power to sue for, collect, receive and take into his possession all the property and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, including property with which such property has been commingled, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any practice declared to be a violation of this chapter, and submits proof to the satisfaction of the court that he has in fact been damaged, may participate in the distribution of the assets.

(b) Subject to an order of the court terminating the business affairs of any person who is the subject of receivership proceedings held pursuant to this chapter, the provisions of this chapter shall not bar any claim by a consumer against any person who has acquired any money or property, real or personal, or anything of value by means of any practice herein declared to be a violation of this chapter.

Section 19. That City of Topeka Code § 46-39, Venue, is hereby repealed.

Venue.

Every action pursuant to this chapter shall be brought in the county district court, or the district court of the county in which the defendant resides or has his principal place of business within the state.

Section 20. That City of Topeka Code § 158-1, Consumer protection division, is hereby amended to read as follows:
Consumer protection division.

The positions of weights and measures inspector and weighmaster are hereby established as a part of the consumer protection division of the city attorney's office. These positions are under the control, direction and direct supervision of an assistant city attorney who shall be responsible for the enforcement of this chapter the city manager or designee.

Section 21. That City of Topeka Code § 158-2, Pumps for petroleum products—Inspection, is hereby repealed.

Pumps for petroleum products—Inspection.

Any newly installed pumps used commercially to dispense petroleum products shall be inspected by the division of consumer protection within three days after notification to the division that the equipment has been installed, as to the correctness and accuracy, and passed by the division before the pumps are placed in service to the public, and such pumps shall be inspected annually thereafter or as otherwise deemed necessary by the weights and measures inspector.

Section 22. That City of Topeka Code § 158-3, Same—Sealing when broken, is hereby repealed.

Same—Sealing when broken.

All pumps or other equipment used for the sale of petroleum products not meeting requirements of the division of weights and measures shall be sealed until properly repaired or replaced, whereupon such equipment shall again be sealed as inspected and passed and the seal shall under no condition, or for any reason whatsoever, be removed by anyone other than an inspector of the division, or state inspector, except upon receiving
written permission from the division or inspector therefor. The breaking of any such seal by anyone other than an inspector for the division or state inspector shall be construed as a violation of this article.

Section 23. That City of Topeka Code § 158-4, Inspection fees for weighing or measuring devices, is hereby repealed.

**Inspection Fees for Weighing or Measuring Devices.**

(a) The inspector of weights and measures shall charge to and collect from the person in possession of such weighing or measuring devices as may be inspected as required by this chapter the following fees:

(1) Scales:

a. Place of business having only one scale of zero to ten pounds capacity. . . . $10.00

b. All other places of business:

1. Service charge . . . 15.00

2. Plus, inspection of each scale with capacity of zero to 100 pounds . . . 5.00

3. Plus, inspection of each scale with capacity of 101 to 1,000 pounds . . . 7.00

4. Plus, inspection of each scale with capacity of 1,001 to 10,000 pounds . . . 10.00

5. Plus, inspection of each motor truck scale . . . 15.00

(2) Taximeters, per inspection . . . 10.00

(3) Gas station pumps . . . 10.00
(4) All other weighing or measuring devices . . . 10.00

(b) The inspector of weights and measures shall charge to the person in possession of any weighing or measuring device which the inspector condemns or requires to be repaired a fee of $5.00 for rechecking the device.

Section 24. That City of Topeka Code § 158-5, Due process hearing, is hereby repealed.

Due process hearing.

Any person aggrieved by any act or order of the inspector of weights and measures may file a written request for a hearing before the city council within ten days after the act or order. Within seven days of receipt of this request for a hearing, the city council shall give notice of a public hearing, to be held in not less than five days nor more than ten days after service of the notice on the person requesting the hearing. At such hearing, the city council shall determine whether the act or order was done or issued within the provisions of this chapter and shall issue written findings of fact and conclusions, which shall be filed with the city clerk and served upon all parties appearing or represented at the hearing.

Section 25. That City of Topeka Code § 158-6, Court review, is hereby repealed:

Court review.

Any order of the city council either sustaining, vacating or otherwise affecting the act or order of the inspector of weights and measures may be appealed to the district court within ten days after the order is issued. Upon any such appeal, the findings of fact of the council, if supported by substantial evidence and not found to be arbitrary or capricious, shall be conclusive.

Section 26. That City of Topeka Code § 158-36, Authorized, is hereby repealed.
Authorized.

The city council is authorized to devise at suitable places in the city such number of public scales as may from time to time be necessary for the use of the public. Such public scales shall be suitable for weighing all produce, materials or commodities.

Section 27. That City of Topeka Code § 158-37, Weighmaster, is hereby repealed.

Weighmaster.

(a) The inspector of weights and measures shall employ one or more suitable persons to act as weighmasters of the city. The inspector shall supervise the work of such employees unless in the opinion of the city council the business done at public scales does not justify the operation of such scales. In that event, the council shall make other arrangements or contract with some person to do the public weighing and measuring at less expense to the city.

(b) It shall be the duty of each weighmaster to keep an office, or stay at or convenient to the scales operated by the weighmaster from 8:00 a.m. to 4:30 p.m. daily, Saturdays, Sundays and holidays excepted, and to weigh every load or parcel of produce or commodities, according to Handbook 44, presented to him at the scales for such purpose and to give to the person for whom such load or parcel is weighed a certificate showing the gross and net weight thereof. Such weighmaster shall also keep suitable books in tabulated form, showing each and every load or part thereof weighed or measured, and shall at any time when requested furnish to any party interested a certificate showing such weight and measurement.

Section 28. That City of Topeka Code § 158-38, Standards of weights and measures, is hereby repealed.
Standards of weights and measures.

In weighing and measuring all loads of any produce or commodity, the weighmaster shall be governed by the standards of weights and measures in force under this chapter, the laws of the state, or generally adopted by the custom of the community where no standard of weights and measures is fixed by law.

Section 29. That City of Topeka Code § 158-39, Fees, is hereby repealed.

Fees.

(a) The weighmaster shall charge to the person having weighing or measuring done at the city scales a fee of $5.00 for weighing each load.

(b) Any person having weighing or measuring done on the city scales, in lieu of the above schedule, may contract with the city providing for a monthly charge payment and such other terms and conditions as the applicant and the city may agree upon.

Section 30. That City of Topeka Code § 158-40, Reports, is hereby repealed.

Reports.

Each weighmaster in the city shall on the first of each month file an itemized report with the city auditor to be presented to the city council showing the amount of money received by the weighmaster for weighing and measuring during the last preceding month and the persons from whom collected. The weighmaster shall take duplicate receipts for all money-collected, one of which shall be filed with the report.

Section 31. That City of Topeka Code § 158-71, Adopted, is hereby repealed.

Adopted.

The Model Weights and Measures Ordinance, 1974, adopted by the National Conference on Weights and Measures and promulgated by the United States Department
of Commerce, is hereby adopted as the weights and measures ordinance of the city, subject to the amendments, changes, omissions and additions set forth in this article. Such Model Weights and Measures Ordinance is referred to in this article as the "weights and measures code."

Section 32. That City of Topeka Code § 158-91, Generally, is hereby repealed.

Generally.

Amendments to the weights and measures code adopted by Code section 158-71 shall be as set out in this division. All references to part and section numbers in the text of this division shall be construed as if followed by the words "of the weights and measures code" unless clearly indicated to the contrary.

Section 33. That City of Topeka Code § 158-92, Part A, section 1.6, director, is hereby repealed.

Part A, section 1.6, director.

Part A, section 1.6 is hereby amended to read:

Sec. 1.6. Director.

The term "director" means the inspector of weights and measures or a designated representative.

Section 34. That City of Topeka Code § 158-93, Part A, section 3, technical requirements for commercial devices, is hereby repealed.

Part A, section 3, technical requirements for commercial devices.

Part A, section 3 is hereby amended to read:

Sec. 3. Technical requirements for commercial devices.

Section 35. That City of Topeka Code § 158-94, Part A, section 4.6, variations of contents, is hereby repealed.

Part A, section 4.6, variations of contents.

Part A, section 4.6 is hereby amended to read:

Sec. 4.6. Variations of contents.

Allow reasonable variations from the stated quantity of contents as provided by the terms of this code.

Section 36. That City of Topeka Code § 158-96, Part A, section 9, sale from bulk, is hereby repealed.

Part A, section 9, sale from bulk.

Part A, section 9 is hereby amended to read:

Sec. 9. Sale from bulk.

Whenever the quantity is determined by the seller, bulk sales in excess of $30.00 and all bulk deliveries of heating fuel shall be accompanied by a delivery ticket containing the following information:

(1) The name and address of the vendor and purchaser;

(2) The date delivered;
(3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity;

(4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;

(5) The count of individually wrapped packages, if more than one.

Section 37. That City of Topeka Code § 158-97, Part B, section 12.1.1, variations from declared quantity, is hereby repealed.

Part B, section 12.1.1, variations from declared quantity.

Part B, section 12.1.1 is hereby amended to read:

Sec. 12.1.1. Variations from declared quantity.

Variations for the declared weight, measure or count shall not be permitted except as allowed in section 12.1.2 of this code.

Section 38. That City of Topeka Code § 158-99, Part C, section 15, machine vended commodities, is hereby repealed.

Part C, section 15, machine vended commodities.

Part C, section 15 is hereby amended to read:

Sec. 15. Machine vended commodities.

All vending machines dispensing packaged commodities shall indicate:

(1) Product identity;

(2) Net quantity;

(3) Name, street address, city, state, zip code and telephone number of responsible parties; however, the street address may be omitted if this is shown in a current city directory or telephone directory.
Requirements for product identity and net quantity can be met either by display of the
package or by information posted on the outside of the machine.

Section 39. That City of Topeka Code §158-103, Part F, offenses and penalties, is
hereby repealed.

Part F. Offenses and penalties.

Part F is hereby amended to read:

Part F. Offenses and penalties.

Any person who violates any provision of this code shall be guilty of a misdemeanor
upon conviction in the municipal court. No person shall:

(1) Use or have in possession for use in commerce any incorrect or illegal
   weighing or measuring device or any weight or measure;

(2) Remove any tag, seal or mark from any weight or measure without
    specific written or oral authorization from the proper authority;

(3) Hinder or obstruct any weights and measures official in the
    performance of duty.

Section 40. That originals of City of Topeka Code §§ 46-1, 46-2, 46-3, 46-4, 46-5,
46-6, 46-7, 46-8, 46-9, 46-10, 46-31, 46-32, 46-33, 46-34, 46-35, 46-36, 46-37, 46-38, 46-
39, 158-1, 158-2, 158-3, 158-4, 158-5, 158-6, 158-36, 158-37, 158-38, 158-39, 158-40,
158-71, 158-91, 158-92, 158-93, 158-94, 158-96, 158-97, 158-99, and 158-103 are hereby
specifically repealed.

Section 41. This ordinance shall take effect and be in force after its passage,
approval and publication in the official city newspaper.
PASSED and APPROVED by the City Council APR 19 2005

William W. Bunten, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 4/20/05 BY
TO BE CODIFIED □
NOT TO BE CODIFIED □