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**Testimony in Support of House Bill 2024**  
**An Act enacting the Kansas roofing contractor registration act**

**Presented to the Senate Standing Committee on Commerce**  
**By Assistant Attorney General Adrian Serene**

**March 18, 2013**

Chairperson Lynn and Members of the Committee:

Thank you for the opportunity to speak in support of HB 2024, a bill creating the Kansas roofing contractor registration act (“the Act”). This bill would establish a system of registration for roofing contractors operating in Kansas.

**Features and Penalties of HB 2024**

HB 2024 defines “roofing contractor” and requires all roofing contractors to obtain an annual registration certificate from the attorney general for a fee not to exceed \$500. Any roofing contractor who fails to obtain a valid registration certificate or acts as a roofing contractor while their registration certificate is suspended or revoked shall be liable for a civil penalty, as provided in K.S.A 50-636(a), of not more than \$10,000 for each violation along with any other penalty prescribed by law.

The application for a roofing contractor certificate would be made under oath and must contain enumerated information. A certificate of liability insurance of not less than \$500,000 and proof of worker compensation insurance must be provided with the application. A non-resident applicant must appoint the secretary of state for purposes of service of process.

The attorney general would be authorized to adopt rules and regulations necessary to enforce the Act. Additionally, the attorney general would maintain a system for the public to confirm roofing registration certificates and other information collected pursuant to the Act.

## **Current Kansas Law**

Kansas does not currently require general contractors or roofing contractors to register at the state level. Many Kansas municipalities require contractors to apply for and receive a license or registration prior to engaging in contractor work within their jurisdiction. These municipal registration requirements vary by location. As with other businesses operating in Kansas, contractors must currently register with the Kansas Department of Revenue.

Currently, the Kansas Consumer Protection Act (“KCPA”), K.S.A. 50-623 *et seq.*, operates as a defense for Kansas consumers against deceptive or unconscionable “suppliers,” as such term is defined by the KCPA. In certain cases a roofing contractor can be considered a “supplier,” pursuant to the KCPA. The KCPA authorizes the attorney general to investigate claims of roofing contractor misconduct, when such misconduct involves Kansas consumers.

The KCPA does not require roofing contractors to first register with the attorney general, nor does the KCPA require roofing contractors to maintain liability insurance. As a result, the attorney general is often confronted with a situation wherein a complaining consumer presents a valid claim against a roofing contractor, but the contractor may have left the State of Kansas before any claim can be prosecuted. The liability insurance requirements of the Act would allow adequate redress in such situations. Additionally, the registration requirement may prevent such problems from arising by allowing consumers to make an educated choice whether to do business with a particular roofing contractor based on such contractor’s willingness to comply with Kansas law.

One significant change in the Act would be the application of the Act to all roofing contractors, even if such contractors were operating on a business to business basis. As described above, the KCPA applies to “consumer transactions,” as such term is defined by the KCPA. A violation of the Act would be considered a deceptive or unconscionable act, pursuant to the KCPA. This change means that businesses may maintain—for the first time—KCPA claims against other businesses.

## **Statutes from Other Jurisdictions**

Many states currently require general contractors to register their business with the state. Certain states require roofers, specifically, to register with the state. In those states supporting roofing contractor registration, the registration requirements are largely similar to those requirements of HB 2024. The Oklahoma Roofing Contractor Registration Act was enacted in 2010, and it contains many provisions similar to HB 2024.

## **Significance of Changes Reflected in the Substitute Bill**

HB 2024 was introduced and heard in the House Committee on Commerce, Labor and Economic Development (“House Committee). The House Committee considered several technical and substantive amendments, many of which were adopted in the Substitute Bill for HB 2024. The Office of the Attorney General supports most of these changes. One amendment

giving rise to concern involves the exemptions included in Section 9, subsection (a)(8). As written in Substitute for HB 2024, Section 9 reads as follows:

“9(a) The roofing contractor registration act shall not apply to:

[...]

(8) any person having the necessary technical knowledge to properly plan and supervise the erection, remodel or addition to any building not exceeding three stories in height and nonstructural remodeling of any building.

This entire subsection was added during the House Committee hearing. The language constituting Section 9(a)(8) appears to match verbatim the definition of “building contractor,” as defined by K.S.A. 12-1540(e).<sup>1</sup> Chapter 12, Article 15 of the Kansas Statutes Annotated authorizes Kansas cities and counties to require licensure of certain technical professions—including “building contractors”—and sets forth the procedures for such licensure.

One potential drawback to the new exemption is the potential for all defendants to an attorney general action to claim the applicability of this exemption. The source of the exemption language, K.S.A. 12-1540(e), uses the definition as a starting point for cities and counties wishing to license building contractors. As used in Substitute for HB 2024, however, the exemption works to the opposite effect (i.e. K.S.A. 12-1540 and 12-1557 allow cities and counties to license persons acting as building contractors, but those same persons would be exempt from the registration requirements of HB 2024). In practice, defendants accused of operating as unregistered roofing contractors would likely claim exemption under this section. And since the exemption, as written, is keyed off of a person’s “technical knowledge,” and not off of a person’s registration, the standards for determining the scope of the exemption are unclear. It is very difficult to predict the likelihood of success for any attorney general prosecution under this Act given this exemption.

This language, as used here, is likely to become the exemption that swallows the bill. A substantial narrowing of this exemption would be advisable, and we would be happy to assist in that if the committee so desires.

## **Conclusion**

There are approximately 700 roofing businesses in Kansas. The number of non-resident roofers operating in Kansas is currently unknown. This Act would allow the attorney general the ability to maintain a system for the public to verify the current registration status of roofing contractors. Additionally, by requiring roofing contractors to carry liability insurance of at least \$500,000, Kansas citizens can rest assured that any circumstance giving rise to a valid claim under the Act could be prosecuted openly and productively by the attorney general.

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<sup>1</sup> K.S.A. 12-1540(e) "building contractor" means any person having the necessary technical knowledge to properly plan and supervise the erection, remodel or addition to any building not exceeding three stories in height and nonstructural remodeling of any building”