

Approved: 3-23-93

Date

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on March 17, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative David Adkins - Excused

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Lori Callahan, General Counsel, Kansas Medical Mutual Insurance Company  
Mark Stafford, Assistant Attorney General  
Roland Smith, Executive Director, Wichita Independent Business Association  
Mike Reece, Director, State Government Affairs, AT&T

Committee minutes of March 9 & 10 were distributed.

Hearings on Substitute SB 337 were opened regarding itemized verdicts in actions for personal injury.

Lori Callahan, General Counsel, Kansas Medical Mutual Insurance Company, appeared before the committee in support of the bill. She stated that in 1987 the legislature enacted the Itemized Verdict Statute which allowed the opportunity to go through the forms and get information regarding the amount juries were awarding for each item of damage. Section (c) stated that if there isn't any evidence on that item then the item doesn't have to be listed on the verdict form. However, several courts have ruled that because subsection (a) stated that the verdict "shall" be itemized, therefore it must be included on the verdict form. Substitute SB 337 clarifies that the verdict form shall not itemize elements of damage for which there is no evidence introduced at trial. (Attachment #1)

Representative Garner questioned if there is currently a problem where juries are awarding damages where there is no evidence to support the damages.

Callahan stated that their cases have all ended up in defense verdicts, but the Civil Law Forum reports that it does happen and there are cases on appeal.

Representative Garner stated that he doesn't see the necessity for this bill. If there is anything incorrectly done the judge can take care of it in a post-trial motion.

Callahan stated that they are not doing that. This is the reason why cases are on appeal.

Hearings on Substitute SB 337 were closed.

Hearings on SB 245 were opened regarding Kansas consumer protection act, deceptive acts and practices, remedies, continuing violations and jurisdiction.

Mark Stafford, Assistant Attorney General, appeared before the committee in support of the bill. They requested this bill as a clean-up measure for the Kansas Consumer Protection Act which in section one would make unsubstantiated claims deceptive acts or practices. They also request an amendment to add false statements to the definition of a deceptive act or practice and that the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 17, 1993.

state of mind provisions for concealing a material fact be brought in line with the rest of the act. Section two adds the authority to seek the same remedy when the assets are the product of the supplier's wrongdoing. Also in section two would change the elements for obtaining a temporary injunction or restraining order so that irreparable harm is presumed.

Chairman O'Neal stated that this provision is using an alleged act without adjudication and then using a presumption based upon that alleged act to get the injunction when neither element hasn't been proven.

Stafford stated that the irreparable harm is satisfied by the allegation that an act has been committed.

Chairman O'Neal stated that commission of the act should raise the presumption that the public interest would be served by the relief requested. However, presuming irreparable harm, with the alleged commission of an act creates a legal fiction.

Stafford commented that the third section would clarify that a continuing violation constitutes a separate violation for each day the practice continues. It would not be a single violation. The fourth section would allow long-arm jurisdiction when a supplier engages in a consumer transaction. (Attachment #2)

Roland Smith, Executive Director, Wichita Independent Business Association, appeared before the committee in opposition to provisions on page 4, lines 11-15. He stated that this provision could do irreparable harm to the honest operator of a business. (Attachment #3)

Mike Reece, Director, State Government Affairs, AT&T, did not testify before the committee but requested that his written testimony be included in the minutes. (Attachment #4)

Hearings on SB 245 were closed.

Substitute SB 337 - itemized verdicts in actions for personal injury

Representative Carmody made a motion to report Substitute SB 337 favorably for passage. Representative Mays seconded the motion. The motion carried.

Representative Carmody made a motion to have the bill placed on the Consent Calendar. Representative Rock seconded the motion. The motion carried.

SB 108 - Amendments to the Kansas Limited Liability Company Act

Representative Carmody made a motion to report SB 108 favorably for passage. Representative Wells seconded the motion. The motion carried.

SB 292 - confidentiality of diversions agreements which terms have been fulfilled

Representative Garner made a motion to report SB 292 favorably for passage. Representative Mays seconded the motion.

Representative Mays made a substitute motion to amend everywhere "county and district attorney" add Attorney General's office. Representative Mayans seconded the motion. The motion carried.

Chairman O'Neal made a motion to amend on line 36 so that the Division of Motor Vehicle will receive only receive notice when a person is on diversion. Representative Carmody seconded the motion. The motion carried.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 17, 1993.

Representative Garner stated that the whole purpose of this bill is to give people who have completed diversions the same privileged as people who go through and finish their probation period who have the right to expungement and the record is clean. With being on diversion there is no type of expungement.

Chairman requested that the Office of Judicial Administration provide the committee with language regarding a form of expungement.

Representative Wagnon made a motion to table the bill. Representative Carmody seconded the motion. The motion carried.

SB 319 - bonds approved by judge not clerk

Currently the clerk of district courts approve bonds and the association feels that it is not the proper agency to do this. The proposed bill would make it a judicial function. (Attachment #5)

Representative Carmody made a motion to adopt the subcommittee report and report SB 319 favorably for passage. Representative Mayans seconded the motion. The motion carried.

SB 316 - service agents for service of process

Representative Carmody stated that this is a request of the Secretary of State's Office. This bill would allow service of process agents to file with the Secretary of State's Office. The subcommittee recommends adopting the proposed Secretary of State's Office amendment. (Attachments #6 & #7)

Representative Carmody made a motion to adopt the subcommittee report and report SB 316 favorably as amendment. Representative Smith seconded the motion. The motion carried.

SB 315 - in change of venue cases, movant to pay docket fee to receiving district court

Representative Carmody explained that when a case is filed in the wrong venue and the judge orders a transfer of venue to another court a docket fee has to be paid in the second court by the party that makes the motion for change of venue. (Attachment #8)

Representative Carmody made a motion to adopt the subcommittee report and report SB 315 favorably for passage and be placed on the Consent Calendar. Representative Smith seconded the motion. The motion carried.

SB 124 - civil remedies for shoplifting

Representative Carmody stated that the balloon passed out is the recommended changes of the subcommittee (Attachment #9). He stated that a merchant may file a civil action to receive a penalty against anyone who shoplifts. If the merchandise is not in merchantable condition, the merchant shall be entitled to a civil penalty of no more than \$500. He stated that this does not eliminate other remedies. (Attachments #10, 11, & 12)

Representative Carmody made a motion to adopt the subcommittee report and report SB 124 favorably for passage as amended. Representative Mayans seconded the motion.

Representative Garner suggested that if you go after civil penalties then you shouldn't be able to go after criminal restitution.

Representative Carmody answered that the merchant can make a demand for civil penalties, but if they do threaten criminal prosecution they cannot file a civil action.

Representative Garner stated the he has concerns about the fact that anyone could be subjected to paying both restitution in criminal proceedings and then a civil penalty.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on March 17, 1993.

Representative Garner made a substitute motion to table the bill. Representative Macy seconded the motion.

Representative Carmody stated the he opposed the motion because this option should be available. Restitution is not always effective just because it is ordered.

The motion failed.

Representative Garner made a motion to add that no civil penalty will be available under section 1 if a judgement for restitution has been ordered. Representative Macy seconded the motion.

Representative Macy made a substitute motion to add the language "ordered and paid" Representative Garner seconded the motion. The motion failed 7-9.

Representative Heinemann made a motion to change the minimum penalty from \$50 to \$100. Representative Mays seconded the motion. The motion failed.

Back on the original motion to report the bill favorably for passage as amendment, the motion carried.

The Committee adjourned at 5:15 p.m. The next Committee meeting is March 18, 1993 at 3:30 p.m. in room 313-S.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE MARCH 17, 1993

[illegible]

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

SUB-COMMITTEE #2

DATE MARCH 11, 1993

[illegible]



# KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

AND

KANSAS MEDICAL INSURANCE SERVICES CORPORATION

TO: House Judiciary Committee  
FROM: Lori Callahan, General Counsel  
RE: S.B. 337  
DATE: March 17, 1993

Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic, physician-owned, professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures over 1,000 Kansas physicians.

KaMMCO supports Senate Bill 337.

When the Kansas Legislature enacted the Itemized Verdict Statute, K.S.A. 60-249a in 1987, it did so in order to have a tool to gain information regarding the amounts juries were awarding for each item of damage which had been proven at trial. Included in that legislation was subsection (c) which stated:

"In any action for damages for personal injury, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award."

This was done so that juries would not be presented with instructions, and thereby, verdict forms which contained items of damage for which there was no evidence. Despite the inclusion of subsection (c), several courts throughout Kansas have ruled that because subsection (a) states that the verdict "shall" be itemized to reflect the amounts awarded for the items listed under section (a), that despite the existence of subsection (c), the verdict form itself must include items of damage for which there was no evidence at trial. Thus, juries are faced with a list of items and blanks next to those items for amounts to be entered for elements of damage for which there was no evidence.

Thus, Senate Bill 337 clarifies that the verdict form shall not itemize elements of damage for which there is no evidence introduced at trial. The Senate amendments were an attempt to clarify that this was the only intended result of the proposed changes. S.B. 337 passed the Senate 40-0.

As severity and frequency begin to climb once again in our state, as well as the nation in the area of medical malpractice, it is as important now as ever, to ensure that our tort laws adequately ensure that defendants will be fairly treated and juries will not be misled into awarding damages for which there is no evidence.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

TESTIMONY OF  
ASSISTANT ATTORNEY GENERAL MARK W. STAFFORD  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE HOUSE COMMITTEE ON JUDICIARY

RE: Senate Bill No. 245  
March 17, 1993

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Bob Stephan. We support Senate Bill 245 as amended. This bill is an enhancement to the shields afforded by the Kansas consumer protection act.

Our office requested the bill to address situations in which our efforts to protect consumers were hampered. The amendments involve substantive as well as procedural issues.

The Kansas consumer protection act is an exercise of the State's police power, designed to protect the public welfare. Consumer transactions are regulated so that the playing field between consumers and suppliers is leveled. One method of achieving this level playing field is to prohibit deceptive and unconscionable acts or practices in connection with consumer transactions. The act provides remedies to redress consumer injuries. The remedies may be enforced by the Attorney General, by a District or County Attorney, or by the consumer.

Section One of the bill would identify making unsubstantiated claims as per se deceptive acts or practices. The meaning of the language is drawn from the federal trade commission interpretation of section five of the FTC act, as the interpretation is published at 49 Fed. Reg. 30999(1984). The language would prohibit statements of material fact regarding the use, benefit or characteristic of a product or service unless the supplier has a basis for making the representation. Likewise, the supplier may not attribute similar representations to third parties unless the supplier has documentation that the third person actually made the representations.

Also, please note the clean-up language in Section One (b)(2) and (3). We request that false statements be added to

HOUSE JUDICIARY  
Attachment #2

03-17-93



the definition of a deceptive act or practice, and that the state of mind provisions for concealing a material fact be brought in line with the rest of the act.

Section Two enhances the remedies available to the Attorney General, and gives county and district attorneys similar ability. Initially, we request that the authority to seek an asset freeze be expanded. It should be noted that the asset freeze is accomplished through the court, not administratively within our office. As the statute now stands, we may seek an asset freeze, and or seek appointment of a master or receiver if it appears that the supplier is about to abscond with property. It is often too late to seek such action by the time we gather evidence to meet the elements of the statute. We ask authority to seek the same remedy when the assets are the product of the supplier's wrongdoing. This preserves the assets to restore consumers' losses.

Secondly, Section Two would alter the common law test for obtaining a temporary injunction or a temporary restraining order. The common law test is announced in Wichita Wire, Inc. v. Lenox, 11 Kan.App.2d 459(1986). The applicant must show a likelihood of success on the merits, irreparable injury, a balancing of interests in favor of the relief, and that the public interest is served by the relief. If money damages are available, irreparable harm is difficult to establish. The trend in many states has been to judicially establish that irreparable harm is presumed with a violation of a statute designed to protect the public health, safety or welfare.

Section Three would clarify that a continuing violation constitutes a separate violation each day the practice continues, and is not just a single violation. This addresses situations such as the gasoline pump labeling cases where specific consumer transactions could not easily be identified, and where the deceptive label remained in place for weeks. A single civil penalty became insignificant in comparison to the volume of consumers involved. A civil penalty for each day the practice continued would have made the practice less profitable for the supplier.

Finally, Section Four would add a jurisdictional statement to the act. Currently, we must establish long-arm jurisdiction through K.S.A. Chapter 60. Typically, we base jurisdiction upon suppliers transacting business within the state, and upon tort and contract principals. Suppliers often use sophisticated and complex schemes to separate themselves from the transaction. The common law elements of the transaction of business within the state become difficult to establish. Violations of the Kansas consumer protection act do not always amount to tortious activity as defined by our courts. Additionally, not all consumer transactions reach the point of contract formation. The requested amendment would allow long-arm jurisdiction when a supplier engages in a consumer transaction within the State of Kansas.

Once again, thank you for the opportunity to appear before this committee. We urge your support of this bill.



## WICHITA INDEPENDENT BUSINESS ASSOCIATION

Riverview Plaza Suite 103 • 2604 W. 9th St. N. • Wichita, Kansas 67203-4794  
(316) 943-2565 FAX (316) 943-7631

ROLAND E. SMITH, *Executive Director*

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*President*  
Baird Investments

**Pat Finn**  
*1st Vice President*  
Finn & Associates

**Gary Ackerman**  
*2nd Vice President*  
Mid-America Building Maintenance

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Peterson, Peterson & Goss

**Ray Hinderliter**  
*Secretary*  
Power Chemicals, Inc.

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Commercial Insurers, Inc.

**Lonnie Hephner**  
Hephner TV and Electronics

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Staats Decals, Inc.

**Richard Miller**  
West Side Mattress

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Planning Group

**Willard Walpole**  
Wilco, Inc.

**Dan Wendell**  
Wend-Wood, Inc.

**Barry Wessel**  
Emprise Bank

**Ron Yarrow**  
Alpha Omega Insurance

March 17, 1993

### STATEMENT TO THE HOUSE JUDICIARY COMMITTEE SUBJECT: SB 245

Mr. Chairman and Members of the Committee, I am Roland Smith, Executive Director for the Wichita Independent Business Association. It was called to my attention last Friday that a provision in SB 245 had not been thought through enough and could possibly do irreparable harm to the honest operator of a business and I believe this legislation is intended to protect the consumer from illegal practices by unscrupulous business operators.

The general concept of this bill has our support as WIBA has over 400 types of businesses and most of them are in retail and service type businesses and are aware of many of the problems, however, on page four of SB 245 Section (c) (6) lines 10 thru 15 allows anyone to obtain a restraining order that stops a business from operating by filing an unproven complaint.

This is very unamerican, lacks due process and needs to be eliminated or a provision inserted that would force the person or persons filing the complaint to compensate the business for their losses and damage to their business if their complaints proved unfounded.

I don't know how this bill originated but, please don't let this fall through the cracks and get passed as it did in the Senate.

Thank You!

HOUSE JUDICIARY  
Attachment#3  
03-17-93



Mike Reecht  
State Director  
Government Affairs  
Kansas

Capitol Tower  
400 SW 8th Street, Suite 301  
Topeka, KS 66603  
Phone (913) 232-2128

COMMENTS ON BEHALF OF AT&T  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
MIKE REECHT  
SENATE BILL 245  
MARCH 17, 1993

Mr. Chairman and members of the committee:

My name is Mike Reecht. I am Director-State Government Affairs for AT&T in Kansas. I offer the following written comments on SB 245.

AT&T can appreciate the intentions of the Attorney General to be able to act quickly with regard to a business that is violating consumer protection statutes. However, Sec. 2(c)(6) on Page 4, Lines 8-12 suggests a remedy that could constitute unwarranted expansion of the Attorney General's authority to obtain injunctive relief.

I am advised the effect of this revised section is that the Attorney General, by mere allegation of a violation of the act, could obtain a court order to shut down a business until such time as the business can prove it is not guilty. This provision indeed shifts the burden of proof from the Attorney General to prove irreparable harm to the business owner to prove that the business is not violating the law. To the layman, it appears to suggest "guilty until proven innocent".

I have no doubt that there are businesses in the marketplace today who knowingly and wantonly violate consumer protection laws, and the Attorney General must prosecute their actions. However, I question the means suggested in Sec. 2(c)(6) to accomplish that end.

Thank you for this opportunity to offer comments on SB 245.

SENATE BILL 319  
HOUSE JUDICIARY COMMITTEE

TESTIMONY OF JANE E HRABIK  
Clerk of District Court, Rice County

Mr. Chairman and Committee Members:

I appreciate the opportunity to appear today on behalf of our association to discuss SB 319. HB 3856 from last year, changed statutory language to direct that the approval of bonds be a judicial, rather than a clerk of court, function. At that time, two statutes, KSA 60-705 and KSA 60-905 were not changed.

SB 319 would amend the requirement that clerks of court examine and approve plaintiff's bonds, pursuant to K.S.A. 60-705; and, temporary injunction bonds, pursuant to K.S.A. 60-905. The language would be amended to require judicial approval of these bonds and that they be filed with the clerk of the court.

Considering the fact that all other bond approvals are now a judicial function I urge you to move favorably upon this request.

Thank you for this opportunity to appear before you today. If you have any questions, I will attempt to answer them.



Bill Graves  
Secretary of State

2nd Floor, State Capitol  
Topeka, KS 66612-1594  
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## STATE OF KANSAS

### TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE SENATE BILL NO. 316

March 11, 1993

The office of the Secretary of State requests this committee to amend SB 316 to simplify the filing process in our office.

The Court Clerks asked our office if we would object to having transferred to our office the service agent filings described in this bill. We have no objections and, because there is a filing fee that would be deposited in a fee fund that would support the cost of performing the duties, there would be no fiscal impact on the general fund.

However, we ask this committee to amend the bill to clarify that a contractor only needs to appoint one resident agent. The current language would make it seem necessary for a foreign corporation contractor to make a duplicate filing in our office even though it had already designated a resident agent with us. Furthermore, the bill would seem to require a filing in our office for each county in which the contractor was working.

The attached amendment would clarify that only one service agent would ever be necessary.

Again, we encourage this committee to amend SB 316.

Thank you.

✓ John Wine, General Counsel

## SENATE BILL No. 316

By Committee on Judiciary

2-15

AN ACT concerning service of process; relating to service agents; amending K.S.A. 16-113 and repealing the existing section.

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

Section 1. K.S.A. 16-113 is hereby amended to read as follows:

16-113. (a) Whenever the state or any political subdivision of the state, or any agency or instrumentality thereof, enters into a contract with any person who is not a resident of this state for the construction of any public improvement to be paid for by public funds, such person shall appoint in writing, as such person's agent, a resident of the county where the public improvement is to be constructed.

(b) Process for such person may be served on such agent in any civil action which arises out of the contract and in which the state, political subdivision, agency or instrumentality is a plaintiff. The appointment of such agent shall be filed with the clerk of the district court in the county where the public improvement is to be constructed secretary of state as provided in K.S.A. 60-306 and amendments thereto. No person required to appoint such an agent shall receive public moneys pursuant to such person's contract until the appointment has been made and filed as required by this section.

(b) As used in this section, "person" means any individual, partnership or unincorporated association.

Sec. 2. K.S.A. 16-113 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Change: ". . . Kansas, Except, no appointment under this section is required if the person is a foreign corporation, foreign limited partnership, or foreign limited liability company qualified to do business and in good standing in Kansas."



SENATE BILL NO. 316  
HOUSE JUDICIARY COMMITTEE

TESTIMONY OF ROBIN BECKER  
CLERK OF DISTRICT COURT, PHILLIPS COUNTY

Mr. Chairman and Committee Members:

Thank you for the opportunity to appear before you to discuss Senate Bill 316 a cleanup bill on Process Service Agents, that was overlooked during the 1992 legislative session.

During last years session, testimony was presented on House Bill No. 2831, wanting all process service agents to be registered with the Secretary of State's office to eliminate duplicate filings at the state and local levels.

Kansas Statutes Annotated 60-306 was amended to have service of process agents to be registered with the Secretary of State; however, K.S.A. 16-113 still reflects that the appointment of such agent shall be filed with the Clerk of the District Court.

We are requesting that K.S.A.16-113 be amended to read that the appointment of service of process agents are to be registered with the Secretary of State, and avoid multiple filings throughout the state.

This matter has been discussed with the Secretary of State staff and they have no opposition to the bill; however, John Wine from the Secretary of State's Office would like to make a change in Senate Bill 316, and a copy of the proposed change is attached. We support his requested change to this bill.

Again, thank you for allowing me to speak to you in regards to this bill.

## SENATE BILL No. 316

By Committee on Judiciary

2-15

8 AN ACT concerning service of process; relating to service agents;  
9 amending K.S.A. 16-113 and repealing the existing section.

10

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

12 Section 1. K.S.A. 16-113 is hereby amended to read as follows:

13 16-113. (a) Whenever the state or any political subdivision of the  
14 state, or any agency or instrumentality thereof, enters into a contract  
15 with any person who is not a resident of this state for the construction  
16 of any public improvement to be paid for by public funds, such  
17 person shall appoint in writing, as such person's agent, a resident  
18 of the county where the public improvement is to be constructed.

19 (b) Process for such person may be served on such agent in any civil  
20 action which arises out of the contract and in which the state, political  
21 subdivision, agency or instrumentality is a plaintiff. The appointment  
22 of such agent shall be filed with the clerk of the district court in  
23 the county where the public improvement is to be constructed  
24 secretary of state as provided in K.S.A. 60-306 and amendments  
25 thereto. No person required to appoint such an agent shall receive  
26 public moneys pursuant to such person's contract until the appoint-  
27 ment has been made and filed as required by this section.

28 (c) (k) As used in this section, "person" means any individual, part-  
29 nership or unincorporated association.

30 Sec. 2. K.S.A. 16-113 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after  
32 its publication in the statute book.

Change: "...Kansas, except, no  
appointment under this section is  
required if the person is a foreign  
corporation, foreign limited partner-  
ship, or foreign limited liability  
company qualified to do business and  
in good standing in Kansas."

Senate Bill No. 315  
House Judiciary Committee  
March 11, 1993

Testimony of Sherlyn Sampson  
Clerk of District Court, Douglas County  
for the Kans. Assoc. Of District Court Clerks & Administrators

Mr. Chairman:

I appreciate the opportunity to appear before you today. Senate Bill No. 315 was requested by the Clerk's Association to clarify a problem that occurs when a case is received from another court because the venue was changed.

The current language in K.S.A. 60-611 and 61-1909 allow the judge ordering the change of venue to set out who will pay the costs. We would like that language deleted and the language set out in lines 22-24 and 34-36 added.

When the attorneys prepare the order changing venue for the judge's signature they don't always include language assessing the costs. The judge usually signs the order without ordering anyone to pay costs.

It has been the recommended policy when no party is ordered to pay the new docket fee, that payment be requested from the person requesting the change of venue. When that person objects to paying the fee, the case is either filed without a fee or not filed at all. Most receiving courts file the case without any docket fee being paid which is contrary to K.S.A. 1992 Supp 60-2001(a) and K.S.A. 1992 Supp 61-2501(a) which state: "Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee..." Some courts will not file the case since it does not comply with the above statutes. The matter is not handled consistently throughout the state.

If the case is filed without a fee, at the completion of the case a statement must be sent to the party ordered to pay the costs. The state is losing revenue until these costs are paid.

We wish to eliminate the above problem and in turn create revenue for the State by changing the language in K.S.A. 60-611 and 61-1909 to allow the receiving district court to require the payment of an appropriate docket fee from the movant. At the conclusion of the case, if appropriate, the movant could ask the judge to order the other party to reimbursement them for the docket fee.

We have visited with Judge John White, Chairman of the District Judges Association Legislative Committee about this bill and have his support.

Thank you for allowing me to speak to you on behalf of the clerks in Kansas. I urge your support of this bill.

SENATE BILL No. 124

By Committee on Judiciary

1-29

9 AN ACT concerning civil remedies for shoplifting.

10  
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) Except as otherwise provided, ~~a merchant may file~~  
13 ~~a civil action for damages against any adult or emancipated minor~~  
14 ~~who shoplifts from that merchant for an amount equal to twice the~~  
15 retail cost of the merchandise, or \$50, whichever is greater. If the  
16 merchant recovers the merchandise in merchantable condition, the  
17 merchant shall be entitled to a civil penalty of \$50 or 50% of the  
18 retail cost of the merchandise, whichever is greater, but in no case  
19 shall such civil penalty be more than \$350.

20 (b) Unless the action is brought pursuant to the Kansas small  
21 claims act and a final judgment is rendered in small claims court,  
22 the prevailing party in such action brought pursuant to this section  
23 shall be entitled to reasonable attorney fees and costs. If the action  
24 is brought in small claims court and the judgment is appealed to  
25 district court pursuant to chapter 60 of the Kansas Statutes Annotated  
26 or K.S.A. 61-2709 and amendments thereto, the prevailing party on  
27 appeal shall be entitled to reasonable attorney fees and costs.

28 (c) A conviction or a plea of guilty to the offense of theft of the  
29 merchandise is not a prerequisite to the filing of a civil action under  
this section.

31 (d) Prior to filing a civil action under this section, a merchant  
32 damaged by shoplifting may demand that an individual alleged to  
33 be civilly liable under this act reimburse such merchant ~~for such~~  
34 ~~damages~~. Such ~~offer~~ if made, shall be in writing and may be offered  
35 in consideration for the merchant's agreement not to commence a  
36 civil action under this section. Such demand shall not contain a  
37 threat of criminal prosecution against such individual. Any merchant  
38 who makes a demand with a threat of criminal prosecution against  
39 such individual shall be precluded from filing a civil action under  
40 this section and pursuing any other remedy at law or equity. A  
41 demand pursuant to this subsection is not a prerequisite to filing a  
civil action under this section, but no demand may be made which  
42 does not comply with this subsection.

A merchant may file a civil action to recover  
a civil penalty against any adult or  
emancipated minor who shoplifts from such  
merchant.

If the merchant does not recover the  
merchandise in merchantable condition, the  
merchant shall be entitled to a civil penalty

, but in no case shall such civil penalty be  
more than \$500

in an amount of the civil penalty as  
prescribed in subsection (a)

demand

1 (e) Nothing contained in this act shall be construed to preclude  
2 a merchant from pursuing any other remedy at law or equity prior  
3 to filing an action under this act. A defendant has a complete  
4 defense in a civil action if a civil action is pending or a civil  
5 judgment has been rendered pursuant to this section.

6 (f) For purposes of this act, "shoplift" means any one or more  
7 of the following acts committed by a person without the consent of  
8 the merchant and with the intent of appropriating merchandise to  
9 that person's or another's own use without payment, obtaining mer-  
10 chandise at less than its stated sales price or otherwise depriving a  
11 merchant of all or any part of the value or use of merchandise:

12 (1) Removing any merchandise from the premises of the mer-  
13 chant's establishment;

14 (2) concealing any merchandise with intent to leave the premises  
15 with the merchandise;

16 (3) substituting, altering, removing or disfiguring any label or  
17 price tag;

18 (4) transferring any merchandise from a container in which that  
19 merchandise is displayed or packaged to any other container; or

20 (5) disarming any alarm tag attached to any merchandise; or

21 ~~(6) obtaining or attempting to obtain possession of any mer-~~  
22 ~~chandise by charging that merchandise to another person with-~~  
23 ~~out the authority of that person or by charging that merchandise~~  
24 ~~to a fictitious person.~~

25 Sec. 2. This act shall take effect and be in force from and after  
26 its publication in the statute book.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

STATEMENT OF  
DEPUTY ATTORNEY GENERAL JOHN K. BORK  
BEFORE THE SENATE COMMITTEE ON JUDICIARY  
RE: SENATE BILL 124  
MARCH 11, 1993

I am here today on behalf of Attorney General Stephan to urge your support of Senate Bill 124, which will further enable the victims of theft, specifically shoplifting, to receive restitution for their loss and compensation for their time and trouble.

While the criminal law on theft does address this situation and the sentencing laws address restitution, there are several reasons why these procedures should be supplemented by the procedures outlined in Senate Bill 124.

First of all restitution is now, unfortunately, a hit and miss proposition. With increasing case loads it is not practical to expect county attorney offices to be a collection agency for all restitution. In addition many shoplifting charges are prosecuted through the municipal courts of various cities. Often times the cities do not have the means to enforce orders of restitution. Where the penalty is usually a

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fine, the municipal courts are reluctant to order someone to jail for failure to pay restitution, and the cities lack the resources for probation or court services officers to follow up on the cases.

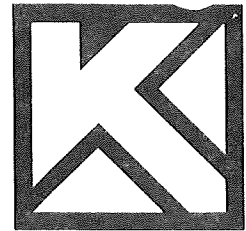
The restitution ordered by the courts, even if it is paid, often does not return the victim to the same financial position he or she had prior to the theft. There are expenses incurred by merchants in assisting the investigation, time off from work to testify and loss of the use of the item while it is held for evidence. The penalty provisions of the bill help to rectify that situation.

This bill will certainly not take the place of criminal prosecution, nor will it be a practical solution to the problem of shoplifting in all cases, but it does give the merchant one more tool in the battle against the very expensive problem of shoplifting. The office of the Attorney General urges the passage of this bill.

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 124

March 11, 1993

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by

Bud Grant  
Executive Director  
Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Bud Grant and I appear on behalf of the Kansas Retail Council, a major division of the Kansas Chamber of Commerce and Industry (KCCI). I want to thank you for allowing me to appear here today in support of SB 124.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

This proposal has been before this committee on several occasions and I have discussed with many of you on those occasions why I feel the time has come for Kansas to

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join with the 45 other states that have already put a civil recovery system in place. To recap briefly, Kansas residents are negatively impacted in at least three ways:

1. **Higher consumer prices** - merchants are forced to raise retail prices to cover their increase in cost of doing business (i.e. loss of merchandise, working capital and cost of security) placing the financial burden ultimately on the honest consumer.
2. **Overburdened criminal justice system** - many apprehended shoplifters are referred to the already overcrowded system (police, courts, corrections), resulting in the need for more tax revenue to pay for a continual expansion of the system.
3. **Lost tax revenues** - merchandise lost to theft is not converted to profit in the form of sales for the retailer. As a result, millions in tax revenues are lost. Keep in mind, the FBI has estimated that the annual loss to shoplifters in Kansas exceeds \$250 million, and nationally \$24 billion.

During the waning hours of the 1992 Kansas legislative session, a House-Senate Conference Committee agreed on a civil recovery bill. In the rush of adjournment, it failed to get to the floor. SB 124 is representative of 90% of the Conference Committee Report. The interim allowed time to review the report and to fine tune its provisions. I don't honestly believe any of the conferees from last session would object to any of this bill's provisions. Those in the Senate did not.

Mr. Chairman, the bill defines "shoplifting" on page 2 to include six different elements. It further provides that if a merchant is damaged by shoplifting, the merchant may demand that an individual alleged to be civilly liable under this act reimburse the merchant for the damages, in consideration for the merchant agreeing not to commence a civil action. Should the alleged shoplifter not agree, the merchant may pursue the issue in small claims court or through the criminal court system.

This issue is very important to the retailers in your community. I hope you will support them and recommend SB 124 to the full House for passage.

Thank you Mr. Chairman. I would be pleased to attempt to answer any questions.

# State Laws – Civil Recovery for Shoplifting

State	Cite	Actual Damages	Retail Value of Merchandise	Additional Penalty	Applies to Minors	Court Costs	Attorney Fees	Written Demand
Alaska	9.65.110	Yes	<retail value or \$1000	\$100-200	Yes	*	Yes	Must
Arizona	12.691	Yes	Yes	\$100	Yes	*	*	*
California	490.5(B)(C)	No	If not saleable	\$50-500	Yes	Yes	Yes	*
Colorado	13-21-107.5	Yes	No	\$100-250	Yes	*	*	*
Connecticut	52.564, 52.564(A)	Yes	If not recovered	to \$300	No	Yes	Yes	*
District of Columbia	1991 Council Bill 9-348	Yes	If not recovered If recovered, loss of value of goods	3 x Value, not < \$50	Yes	Yes	Yes	Yes
Florida	772.11	\$200 +	No	No	Yes	Yes	Yes	Must
Georgia	51-10-6	Yes	If not saleable	\$150	No	Yes	Yes	Must
Hawaii	663A-2	Yes	If not saleable	Sec 1	Yes	*	*	May
Idaho	48-701.702	No	Yes	\$100-250	Yes	Yes	Yes	*
Illinois	CHL38,16A-7	Yes	Actual damages = retail value	\$100-1000	Yes	Yes	Yes	*
Indiana	34-4-30-1	Yes	No	up to actual x 3	Sec 2	Yes	Yes	*
Iowa	343.645.3	If goods are damaged	If not returned	\$50-200	Yes	*	*	*
Kentucky	KRS 411.1	Yes	Yes (to \$500)	\$100-250	Yes	Yes	*	May
Louisiana	9:2799.1	No	If not saleable	\$50-500	No	*	*	*

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## State Laws -- Civil Recovery for Shoplifting

State	Cite	Actual Damages	Retail Value of Merchandise	Additional Penalty	Applies to Minors	Court Costs	Attorney Fees	Written Demand
Maryland	3-1301 (2)(3)	No	Yes	2 x retail value not <\$50 nor >\$500	Yes	Yes	Yes	Must
Massachusetts	231:85G,85R½	Yes	No	Adults \$50-500	See 3	*	*	*
Michigan	600.2917, 2953	No	If not recovered or damaged	See 4	Yes	To \$50	*	May
Minnesota	332.51	No	Yes	>\$50 or 100% of retail value	Yes	*	*	May
Mississippi	1991 HB 1338	>3 x or \$200	No	No	See 5	Yes	Yes	Must
Missouri	570.087	Retail value + incidental cost <100	Yes	\$100-250	Yes	Yes	Yes	*
Montana	27-1-718	Yes	>\$100 or retail value to \$500	No	See 6	*	*	May
Nebraska	25-21,194	Yes	Yes	No	Yes	Yes	Yes	May
Nevada	598.033,035	No	Yes	\$100-250	Yes	Yes	Yes	*
New Hampshire	1991	Yes	If not returned	\$200	No	*	*	Yes
New Jersey	2C:20-20	No	No	3 x damages	No	Yes	Yes	*
New Mexico	30-16-21	No	If not recovered or damaged	\$100-250	No	Yes	Yes	*

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## State Laws – Civil Recovery for Shoplifting

State	Cite	Actual Damages	Retail Value of Merchandise	Additional Penalty	Applies to Minors	Court Costs	Attorney Fees	Written Demand
New York	AB 5783	No	If not recovered in saleable condition	>of 5 x retail value or \$75, to \$500	Yes	*	*	May
North Carolina	1-538.2	No	Sec 8	Sec 8	Sec 8	*	Yes	*
North Dakota	51-21-05	No	Yes	To \$250	Sec 9	Yes	Yes	*
Ohio	2307.60/61	Yes	Yes	>\$100 or 2 x actual damages	No	Yes	Yes	May
Oklahoma	1731.1 Title 21	No	If not saleable or % of diminished value	Yes or \$50-500 in Public service	Yes	Yes	Yes	*
Oregon	30.875	Yes	To \$500	\$100-250	Yes	*	*	*
Pennsylvania	Title 42, 8308	Yes	If not returned or damaged	Retail value + \$150	Yes	Yes	Yes	May
Rhode Island	9-1-2,3	No	Sec 10	Sec 10	Yes	*	*	*
South Dakota	22-30A-19	No	Yes	>\$50 or 3 x retail value	Yes	*	*	Sec 11
Tennessee	39-3-1124,25	No	Sec 12	No	Yes	Yes	Yes	May
Texas	Act 1a	Yes	No	To \$1000	Only for actual damages	Yes	Yes	*
Utah	78-11-15,16,19	Yes	To \$1000	\$100-500	Yes	Yes	Yes	Must
Vermont	78-11-15	No	Yes	\$100-500	Yes	Yes	Yes	*
Virginia	8.01-44.3	No	Sec 13	No	Yes	*	To \$150	May

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## State Laws — Civil Recovery for Shoplifting

State	Cite	Actual Damages	Retail Value of Merchandise	Additional Penalty	Applies to Minors	Court Costs	Attorney Fees	Written Demand
Washington	4.24.230	Yes	To \$1000 Juvenile to \$500	\$100-200	Yes	Yes	Yes	May
West Virginia	61-3A-5	Yes	If not saleable	>\$50 or 2 x value	No	Yes	Yes	May
Wisconsin	943.51	Yes	If not recovered or not saleable	To 3 x retail + actual (maximum \$300)	No	Yes	Yes	*

**Notes:**

- \* No specific provisions.
- 1) Hawaii: Additional penalty or written demand, \$75 civil suit penalty of \$50 to \$500.
- 2) Indiana: Minor liable if parent has custody and child lives with him/her. Parent only liable up to \$3000 in damages.
- 3) Massachusetts: Parent liable only for proved loss or damage, and then the maximum is \$5000.
- 4) Michigan: If a person responds to written demand then he/she is liable for 10 x the retail value of the merchandise, not less than \$40 nor more than \$100. If the person fails to comply with the demand then he or she is liable for the retail value, \$200 civil penalty, and reasonable costs <\$50.
- 5) Mississippi: Parents only liable if they know of juvenile's intent or if they aided in theft. Foster parents never liable.
- 6) Montana: Minor not liable for actual damages, only >\$100 or retail value, to \$500.
- 8) North Carolina: Retail value of merchandise calculated as full value if destroyed. Loss of value if recovered damaged. Additional penalty of 3 x actual or consequential damages. Sign must be displayed. Parent/guardian liable if he/she knew or should have known the propensity of juvenile to commit said act.
- 9) North Dakota: Parent/guardian not liable if shown that juvenile committed crime in order to make parent/guardian liable.
- 10) Rhode Island: 2 x retail value if not returned, if returned then responsible for value of stolen items.
- 11) South Dakota: May make written demand, penalties double if no reply in 30 days.
- 12) Tennessee: Merchandise returned in saleable condition — 2 x retail value or \$100. Merchandise returned damaged but saleable — 3 x the difference between retail and saleable price or \$100. Merchandise not recovered — 3 x retail value or \$100.
- 13) Virginia: If merchandise recovered in saleable condition, liquidated damages of no more than \$350. Otherwise, 2 x actual cost of merchandise, but not less than \$50.



EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

**OFFICERS**

March 11, 1993

PRESIDENT  
SKIP KLEIER  
Carbondale

1st VICE-PRESIDENT  
MIKE BRAXMEYER  
Atwood

HOUSE JUDICIARY COMMITTEE

**SUPPORTING SB 124**

2nd VICE-PRESIDENT  
TREASURER  
DUANE CROSIER  
Seneca

ASST. TREASURER  
JOHN CUNNINGHAM  
Shawnee Mission

As Director of Governmental Affairs for the Kansas Food Dealers Association, I speak for the retailers of food products throughout the State of Kansas and their suppliers.

**BOARD OF DIRECTORS**

CHAIRMAN  
J. R. WAYMIRE  
Leavenworth

Many of you have heard me say over the past years that we are in favor of ANY measure which helps Kansas retailers. Shoplifting is a major cost to our members and we support SB 124.

GLEN CATLIN  
Herington

TOM FLOERSCH  
Fredonia

Whenever a merchant has the opportunity to recover the cost of the stolen merchandise, and seek damages, it helps reduce one element in the broad term "cost of doing business". That in turn can keep the businessman from having to increase prices paid by the honest consumer.

ROY FRIESEN  
Syracuse

ARNIE GRAHAM  
Emporia

STAN HAYES  
Manhattan

We are very much in favor of SB 124 and request your favorable consideration.

ROBERT McCREARY  
Goddard

Frances Kastner, Director  
Governmental Affairs, KFDA

JOHN McKEEVER  
Louisburg

LEONARD McKINZIE  
Overland Park

CHUCK O'DELL  
Wichita

BILL REUST  
Parsons

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**DIRECTOR OF  
GOVERNMENTAL AFFAIRS**

FRANCES KASTNER