

Approved: 1-26-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on January 14, 1993 in Room 514-S of the Capitol.

All members were present except: Senators Brady and Parkinson (excused)

Committee staff present: Michael Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

John Wine, General Counsel, Secretary of State
Jim Maag, Kansas Bankers Association
Jeff Sonnich, Kansas-Nebraska League of Savings Institutions
Bud Grant, Kansas Chamber of Commerce and Industry

Others attending: See attached list.

Chairman Moran welcomed the members to the committee and discussed procedural issues relating to structure, bill requests and the use of subcommittees. A list of member assignments to the Family, Criminal and Civil law subcommittees was distributed. The Chairman announced that Senate Judiciary would have joint meetings with House Judiciary on January 20 and 21 for the report of the Attorney General's Task Force on Forfeiture. Senator Petty stated that she would like to see the Committee begin a review of Kansas bankruptcy laws in relation to other national standards. Senator Bond suggested revisions are needed in the law regarding foreclosure redemption.

INTRODUCTION OF BILLS

The Chair requested introduction of a bill to extend the mandated deadline for consolidation of probation, parole and community corrections services to July 1, 1994 in lieu of January 1, 1994 presently in statute. Senator Bond moved introduction of the bill extending the deadline for consolidation. Senator Martin seconded. Motion carried.

John Wine, General Counsel, Secretary of State, requested introduction of a bill including several minor or technical changes to the limited liability company act as outlined in a memorandum to the Committee (Attachment 1). Senator Bond moved introduction of the bill including the six items outlined in the memorandum. Senator Vancrum seconded. Motion carried.

Jim Maag, Kansas Bankers Association, requested the Committee introduce a bill related to what constitutes personal liability on the part of a bank officer or director (Attachment 2). Mr. Maag explained that the need for this bill arises out of a recent federal court decision on the Canfield case. Senator Martin moved introduction of the bill. Senator Ranson seconded. Motion carried.

Jeff Sonnich, Kansas-Nebraska League of Savings Institutions, requested introduction of essentially the same bill previously requested by the Kansas Bankers Association regarding liability of officers or directors (Attachment 3). Chairman Moran asked staff to contact the Credit Union League to see if they wish to be included in this bill. Senator Bond moved introduction of a bill pertaining to the liability of officers and directors of bank, savings and loans and credit unions if they wish to be included. Senator Martin seconded. Motion carried. Staff will provide Senator Feleciano with a copy of the Canfield case.

Bud Grant, Kansas Chamber of Commerce and Industry, requested introduction of two bills, one dealing with civil recovery as presented in proposal no. 1 (Attachment 4) and the second pertaining to attorney's fees awarded to the prevailing party as described in proposal no. 2 which Mr. Grant indicated is a copy of the California statute (Attachment 5). Senator Bond moved introduction of both of the bills requested by the KCCI. Senator Emert seconded. Motion carried.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for Wednesday, January 20.

Bill Graves
Secretary of State



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STATE OF KANSAS

- M E M O -

TO: Senate Judiciary Committee
FROM: John Wine, General Counsel
RE: 1993 Proposals for Limited Liability Companies
DATE: January 14, 1993

1. Delete the word "corporate" from K.S.A. 17-7609.
2. Delete the requirement in K.S.A. 17-7616(a)(3) of an amendment to articles when capital is withdrawn. (Capital contributions are no longer included in articles.)
3. Clarify in K.S.A. 17-7634(a)(1) that only the organizer needs to sign the articles. (In 1991, K.S.A. 17-7605 was amended to permit one person as organizer to file the articles.)
4. Add provision to K.S.A. 17-7646(a)(1) requiring a certificate of merger to be filed. (Mergers are authorized but there was no provision for a filing.)
5. Permit FAX filings in the manner permitted corporations under K.S.A. 17-6003(a).
6. Amend K.S.A. 17-7637 to permit a foreign limited liability company seeking authority to do business in Kansas to list the names of the managers instead of its members if the company is managed by managers. (This is currently the requirement for domestic limited liability companies.)

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Attachment 1

Jim Maag, Kansas Bankers Assn.

Section 1. An officer or director of a bank or national banking association shall have no personal liability to the bank, association, or its stockholders, or any other person, for monetary damages for breach of duty as an officer or director, provided that such liability shall not be eliminated (a) for any breach of the officer's or director's duty of loyalty to the bank, association, or its stockholders; (b) for acts or omissions which constitute willful or gross and wanton negligent breach of the officer's or director's duty of care; (c) for acts in violation of K.S.A. 9-910, 9-911, or 9-912, and amendments thereto; or (d) for any transaction from which the officer or director derived an improper personal benefit, provided that the monetary liability shall not exceed the amount of such benefit.

Section 2. This act shall take effect and be in force from and after its publication in the State Register.

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Attachment 2

Jeff Sonnach, Ks-Nebr League of Savings

___ BILL NO. ___

An Act relating to savings and loan associations, federal savings associations, federal savings banks, liability of officers and directors.

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

Section 1: An officer or director of a savings and loan association, federal savings association or federal savings bank shall have no personal liability to the savings and loan association, federal savings association or federal savings bank or its members or stockholders, or any other person, for monetary damages for breach of duty as an officer or director, provided that such liability shall not be eliminated (a) for any breach of the officer's or director's duty of loyalty to the association or bank, its members or stockholders; (b) for acts or omissions which constitute wilful or gross and wanton negligent breach of the officer's or director's duty of care; (c) for acts in violation of K.S.A. 17-5811 and 17-5812 and amendments thereto; or (d) for any transaction from which the officer or director derived an improper personal benefit, provided that the monetary liability shall not exceed the amount of such benefit.

Section 2: This Act shall take effect and be in force from and after its publication in the statute book.

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Attachment 3

Bud Grant, KCCI

PROPOSAL NO. 1

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

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

(c) A conviction or a plea of guilty to the offense of retail theft is not a prerequisite to the bringing of a civil suit hereunder.

(d) Prior to filing a civil action under this section, a merchant damaged by shoplifting may demand that an individual alleged to be civilly liable under this act reimburse such merchant for such damages. Such offer, if made, shall be in writing and may be offered in consideration for the merchant's agreement not to commence a civil action under this section. Such demand shall not contain a threat of criminal prosecution against such individual. Any merchant who makes a demand with a threat of criminal prosecution against such individual shall be precluded from filing a civil action pursuant to this act and

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Attachment 4

pursuing any other remedy at law or equity. A demand pursuant to this subsection is not a prerequisite to filing a civil action pursuant to this section, but no demand may be made which does not comply with this subsection.

(e) Nothing contained in this act shall be construed to preclude a merchant from pursuing any other remedy at law or equity prior to filing an action pursuant to this act. Once a merchant has filed a civil action pursuant to this act, such merchant shall be precluded from pursuing any other remedy at law or equity. A defendant has a complete defense in a civil action if the civil action is pending or a civil judgment has been rendered pursuant to this section.

(f) For purposes of this act:

(1) "shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the intent of appropriating merchandise to that person's or another's own use without payment, obtaining merchandise at less than its stated sales price or otherwise depriving a merchant of all or any part of the value or use of merchandise:

(A) removing any merchandise from the premises of the merchant's establishment;

(B) concealing any merchandise with intent to leave the premises with the merchandise;

(C) substituting, altering, removing or disfiguring the label or price tag;

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

(E) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging the merchandise to a fictitious person.

Section 2. This action shall take effect and be in force from and after its publication in the statute book.

Bud Grant, KCCI

PROPOSAL NO. 2

Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or installment account subject to the provisions of this act, regardless of whether such action is instituted by the seller, holder, or buyer. Where the defendant alleges in this or her answer that the full amount to which the plaintiff is entitled has been tendered, and there upon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be the prevailing party, within the meaning of this section.

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Attachment 5