

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~xxxx~~ on March 8, 19 78.

All members were present except: Senators Gaines and Hein

The next meeting of the Committee will be held at 11:00 a. m. ~~xxxx~~ on March 9, 19 78.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxxxxx 19 xxx were considered xxxxxxxx and xxxxxx.~~

  
Chairman

The conferees appearing before the Committee were:  
Representative David Heinemann  
Bill Griffin - Attorney General's Office

Staff present:  
Art Griggs - Revisor of Statutes  
Jerry Stephens - Legislative Research Department  
Cynthia Burch - Legislative Research Department

House Bill 2679 - Procedure for assignment of judges in district court. Representative Heinemann appeared in support of the bill. He explained the problem experienced in his judicial district. He stated that there was a printing error in line 26.

Committee discussion followed. It was pointed <sup>out</sup> that Senate Bill 908 amends the same statute as this bill does. Senator Parrish moved to amend the contents of SB 908 into this bill, and to change its effective date to publication in the state paper; Senator Mulich seconded the motion, and the motion carried. Senator Parrish moved to report the bill favorably as amended; Senator Hess seconded the motion, and the motion carried.

House Bill 2759 - Children and minors, period of minority. Representative Heinemann testified in support of this bill. He stated that when the age of majority was 21 years, we had a statute that gave married persons over age 18 the rights of majority. He feels that since the age of majority is now 18, married persons over the age of 16 should have the rights of majority.

House Bill 2653 - Crime of criminal injury to persons. No conferees appeared on the bill. Mr. Griggs explained the background of the bill, which was introduced last year as a result of a Kansas Supreme Court decision ruling the existing statute unconstitutional because of vagueness. Following committee discussion, Senator Allegrucci moved to report the bill adversely;

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 Senate Committee on Judiciary March 8, 1978.HB 2653 continued -

Senator Berman seconded the motion. Following further committee discussion, Senator Parrish made a substitute motion to amend the bill to turn it into a repealer of the existing statute; Senator Simpson seconded the motion, and the motion carried. Senator Parrish moved to further amend the bill to provide for the effective date to be publication in the statute books; Senator Mulich seconded the motion, and the motion carried. Senator Parrish moved to report the bill favorably as amended; Senator Simpson seconded the motion, and the motion carried.

House Bill 2525 - Consumer protection act. Bill Griffin again appeared concerning the bill. He urged the committee to leave the language in lines 74 and 75 as it appears in the bill. Senator Everett discussed a proposed amendment which would deal with pleading in the alternative for one transaction. Mr. Griffin spoke in opposition to the proposed amendment. Mr. Griggs distributed copies of proposed amendments along the lines that the committee had discussed yesterday; a copy is attached hereto. Mr. Griffin stated he supported these proposed amendments. It was pointed out that there was a printing error in line 53. Senator Hess moved to adopt the proposed amendments which had been distributed; Senator Mulich seconded the motion, and the motion carried. By consensus, further action on the bill was postponed.

Senator Everett reported to the committee that he had received a letter from former Senator Tillotson regarding judicial reapportionment in the state. Following committee discussion, Senator Hess moved that the committee instruct the chairman to write a letter to the Legislative Coordinating Council to request an interim study of the matter of "squaring up" judicial district boundaries. Senator Gaar seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved  
by the committee on 4-24-78.

3-8-78

GUESTS

SENATE JUDICIARY COMMITTEE

| NAME              | ADDRESS  | ORGANIZATION            |
|-------------------|----------|-------------------------|
| Martin C. Umbrocz | Lawrence | Ks. Credit Union League |
| E. Herbert        | Topeka   | A Hy Gen                |
| Bill Griffin      | " "      | " "                     |
| Bill Denny        | " "      | Governor's Office       |

0044 ments thereto, by a final judgment of any district court or the  
0045 supreme court of this state that was either officially reported or  
0046 made available for public dissemination under K.S.A. 50-630  
0047 (a) (3) by the attorney general ten (10) days before the consumer  
0048 transactions on which the action is based, or

0049 (3) with respect to a supplier who agreed to it, was prohibited.  
0050 specifically by the terms of a consent judgment which became  
0051 final before the consumer transactions on which the action is  
0052 based.

0053 (e) Except for services performed by the attorney general, the  
0054 court may award to the prevailing party a reasonable attorney's  
0055 fee limited to the work reasonably performed if:

0056 (1) The consumer complaining of the act or practice that  
0057 violates this act has brought or maintained an action he or she  
0058 knew to be groundless and the prevailing party is the supplier; or  
0059 a supplier has committed an act or practice that violates this act  
0060 and the prevailing party is the consumer; and

0061 (2) an action under this section has been terminated by a  
0062 judgment, or settled.

0063 (f) Except for consent judgments, a final judgment in favor of  
0064 the attorney general under K.S.A. 50-632 is admissible as prima  
0065 facie evidence of the facts on which it is based in later proceed-  
0066 ings under this section against the same person or a person in  
0067 privity with him or her.

0068 (g) Notice of an action commenced pursuant to subsection (b)  
0069 or (c) shall be given to the attorney general, but failure to do so  
0070 shall not provide a defendant a defense in such action.

0071 Sec. 2. K.S.A. 50-636 is hereby amended to read as follows:  
0072 50-636. (a) ~~Except as limited by K.S.A. 50-630, and amendments~~  
0073 ~~thereto,~~ The commission of any act or practice declared to be a  
0074 violation of this act shall render the violator liable to the ag-  
0075 griev~~ed consumer~~ for the payment of a civil penalty, recoverable  
0076 in an individual action, including an action brought by the  
0077 attorney general or county attorney or district attorney, in a sum  
0078 set by the court of not more than two thousand dollars (\$2,000) for  
0079 each violation. *An aggrieved consumer is not a required party in*  
0080 *actions brought by the attorney general or a county or district*

office of

or the office of a county or district attorney

to the aggrieved consumer, or the state or a  
county as provided in subsection (c),

*As Amended by Senate Committee*

Session of 1978

**SENATE BILL No. 908**

By Committee on Judiciary

2-7

0016 AN ACT relating to judges of the district courts; amending K.S.A.  
0017 20-311d *and 20-311f* and repealing the existing ~~section~~ *sec-*  
0018 *tions.*

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 20-311d is hereby amended to read as fol-  
0021 lows: 20-311d. (a) If either party *or either party's attorney* to any  
0022 action in a district court files an affidavit alleging any of the  
0023 grounds specified in subsection (b) the administrative judge shall  
0024 at once transfer the action to another division of the court if there  
0025 is more than one division, or shall request a judge of another  
0026 judicial district be assigned to preside in such cause. If an  
0027 affidavit be filed in a district court in which there is but one  
0028 division or judge, then such judge shall at once notify the de-  
0029 partmental justice for such district and request the appointment  
0030 of another judge to hear such action.

0031 (b) Grounds which may be alleged as provided in subsection  
0032 (a) for change of judge are:

0033 (1) That the judge has been engaged as counsel in the action  
0034 prior to the appointment or election as judge.

0035 (2) That the judge is otherwise interested in the action.

0036 (3) That the judge is of kin of or related to either party to the  
0037 action.

0038 (4) That the judge is a material witness in the action.

0039 (5) That the party filing the affidavit has cause to believe and  
0040 does believe that on account of the personal bias, prejudice, or  
0041 interest of the judge he *or she* cannot obtain a fair and impartial  
0042 trial *or fair and impartial enforcement of post judgment remedies.*

0043 Such affidavit shall state the facts and the reasons for the belief

0044 that bias, prejudice or an interest exists.

0045 (c) In any affidavit filed pursuant to this section, the recital of  
0046 previous rulings or decisions by a court concerning the legal  
0047 sufficiency of any prior affidavits filed by counsel for a party in  
0048 any judicial proceeding, or filed by said counsel's law firm,  
0049 pursuant to this section, shall not be deemed legally sufficient for  
0050 any belief that bias or prejudice exists.

0051 **Sec. 2. K.S.A. 20-311f is hereby amended to read as follows:**  
0052 **20-311f. (a) No party shall be granted more than one change of**  
0053 **judge in any action, but each party shall be heard to urge his or**  
0054 **her objections to a judge in the first instance. ~~Provided, however,~~**  
0055 **except that in pre-judgment matters a party shall have seven (7)**  
0056 **days after pre-trial, or after receipt of written notice of the**  
0057 **judge to which the case is assigned or before whom the case is to**  
0058 **be heard, whichever is later, in which the affidavit may be filed.**  
0059 **In post judgment proceedings the affidavit may be filed at any**  
0060 **time.**

0061 **(b) The trial shall be held within the county in which venue**  
0062 **lies.**

0063 Sec. ~~2~~ 3. K.S.A. 20-311d ~~is~~ **and 20-311f are** hereby repealed.

0064 Sec. ~~3~~ 4. This act shall take effect and be in force from and  
0065 after its publication in the statute book.