

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 ~~XXX~~ p.m. on February 17, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Campbell, Barkis, and Wunsch were excused.

Committee staff present:

Mark Burghart, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Nedra Spingler, Secretary

Conferees appearing before the committee: None

The minutes of the meetings of February 14 and 15, 1983, were approved.

Amendments to HB 2112, HB 2113, HB 2115, and HB 2116, suggested by the Kansas Trial Lawyers Association, were distributed (Attachment No.1).

HB 2112 - An act relating to place of hearing or trial.

Representative Knopp made a motion to adopt the first amendment in Attachment No.1, seconded by Representative Patrick. Motion carried. Representative Solbach moved to recommend HB 2112, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2113 and HB 2235 - Acts relating to commencement of action.

Representative Peterson, sponsor of HB 2235, said its provisions, which allow the court to extend the 90-day limit on serving of processes if good cause is shown, deal with problems of serving processes not covered in HB 2113 and could be included in that bill. He moved that the new language in lines 25, 26, and 27 of HB 2235 be added to HB 2113, seconded by Representative Matlack. In discussion, it was brought out that a time limit should be placed on the extension of time. Representative Peterson changed his motion to state that line 26 of HB 2113 be amended to provide that the court may extend the 90-day period an additional 30 days to which his second agreed. Motion carried.

The second amendment suggested by KTLA in Attachment No.1 was considered, but no action was taken.

Representative Solbach moved to recommend HB 2113, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2115 - An act relating to multidistrict litigation.

Amendment No.3 of Attachment No.1 was considered. Representative Miller moved to adopt the amendment, seconded by Representative Patrick. Motion carried. Representative Patrick then moved to recommend HB 2115, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2116 - An act relating to jury instruction.

The Chairman presented an amendment from the Judicial Council (Attachment No.2) as a correction to the bill. Representative Patrick made a motion to adopt the amendment, seconded by Representative Solbach. Motion carried. Representative Justice moved to recommend HB 2116, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2206 - An act concerning remedies for certain abused persons.

Representative Wagon moved to report the bill favorably, seconded by Representative Justice. In discussion, a member objected to the definition of household members and suggested the definition either be specific or encompass all persons. Constitutional questions which might arise in either case were mentioned. Representative Miller made a conceptionsal substitute

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 526-S, Statehouse, at 3:30 XXX a.m./p.m. on February 17, 19 83

motion to amend HB 2206 to expand provisions to include any persons living together, seconded by Representative Patrick. In discussion, use of the term, "affinity", line 50, was questioned. The Chairman noted the intent of the substitute motion was to apply provisions to persons living together similar to roommates with no other common bond. If it is found that the use of "affinity" conflicts with the intent of the substitute motion, a floor amendment may be offered. The vote was taken on the substitute motion, and it carried. Representative Justice then moved to report HB 2206, as amended, favorable for passage, seconded by Representative Wagnon. Substitute motion carried.

HB 2209 - An act relating to garnishment.

Representative Patrick moved to table the bill, seconded by Representative Schweiker. Motion carried. Representative Erne voted against the motion.

HB 2212 - An act relating to sentencing.

Staff noted the Adult Authority would have a proposal that could be amended into HB 2212.

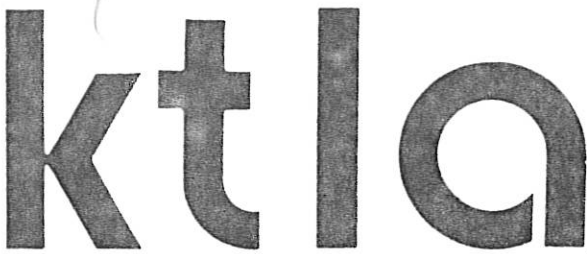
HB 2234 - An act relating to jury trials.

The Chairman stated the bill had the potential for creating problems if plaintiffs forgot to ask for jury trials when cases are filed. No action was taken on the bill.

Proposal Relating to Articles of Incorporation

The Chairman said the State Department of Revenue had requested that a bill be drafted to comply with IRS provisions for corporations. Representative Solbach made a motion that the bill be introduced, seconded by Representative Peterson. Motion carried. (HB 2475)

The meeting was adjourned at 4:40 p.m.



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February 14, 1982

TO: House Judiciary Committee.  
FROM: Kathleen Gilligan Sebelius.  
RE: KTLA recommendations on Judicial Council bills.

① H.B. 2112:

Following the period on line 0026, add the sentence: "However, the right of the plaintiff to choose the forum shall be an important consideration."

② H.B. 2113:

KTLA would prefer the following language, which was Section (f) in S.B. 553 of the 1982 Session, rather than Section (b) of H.B. 2113. But we urge the Committee to take some action in this area.

(f) Sufficiency of other service. Service of process shall be deemed sufficient if any appearance is made by counsel or by any person to be served when the appearance is made prior to the entry of judgment. Failure to perfect service as provided in this section shall give the party not otherwise served additional time to answer or otherwise plead but it shall not be grounds for dismissal of the action.

③ H.B. 2115:

On line 0046, put a period after "discovery" and strike "pretrial proceedings and possible trial". KTLA has no objection to efficiency in the discovery process but recommends that trials be kept separate to preserve the right of a plaintiff to choose a forum.

④ H.B. 2116:

KTLA supports the bill as written.

KGS:jlc

APPROVED BY JUDICIAL COUNCIL  
SEPTEMBER 3, 1982

ATTACHMENT # 2



**21-3107. Multiple prosecutions for same act.** (1) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.

(2) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following: (a) A lesser degree of the same crime;

(b) An attempt to commit the crime charged;

(c) An attempt to commit a lesser degree of the crime charged; or

(d) A crime necessarily proved if the crime charged were proved.

(3) In cases where the crime charged may include some lesser crime it is the duty of the trial court to instruct the jury, not only as to the crime charged but as to all lesser crimes of which the accused might be found guilty under the information or indictment and upon the evidence adduced, ~~even though such instructions have not been requested or have been objected to.~~

(4) Whenever charges are filed against a person, accusing such person of a crime which includes another crime of which the person has been convicted, the conviction of such included crime shall not bar prosecution or conviction of the crime charged if such crime charged was not consummated at the time of conviction of the included crime, but the conviction of such included crime shall be annulled upon the filing of such charges. Evidence of such person's plea or any admission or statement made by such person in connection therewith in any of the proceedings which resulted in such person's conviction of the included crime shall not be admissible at the trial of the crime charged. If such person is convicted of the crime charged, or of an included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for such annulled conviction.

**History:** L. 1969, ch. 180, § 21-3107; L. 1974, ch. 146, § 1; July 1.

If the defendant objects to the giving of such instructions, any error in failing to give such instructions shall be deemed to have been waived by the defendant and shall not be a basis for the reversal of the case on appeal.