

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

noon
12:00 a.m. on March 25, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Duncan, Harper, and Wunsch.

Representative Justice was 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:

Jim Aiken, Director of Environment, Kansas Department of Health and Environment

Bud Grant, Kansas Retail Council, Kansas Association of Commerce and Industry

Art Griggs, Department of Administration

Jim Clark, Kansas County and District Attorneys Association

Gary Gorup, Assistant Sedgwick County District Attorney

Senator Ron Hein

Jon Josserand, Office of the Secretary of State

The minutes of the meeting of March 21, 1983, were approved.

SB 336 - An act relating to hazardous wastes.

Jim Aiken said the bill was a part of SB 281 which was not worked in the Energy and Natural Resources Committee. SB 336 was introduced for the purpose of raising the criminal penalties and is needed to meet EPA requirements.

SB 354 - An act relating to remedies for certain unlawful acts.

Bud Grant said his group requested the bill in an effort to deter shoplifting which causes a \$7 million loss in taxes to the state. Other methods of curbing shoplifting by minors have failed. He believed the bill would get their attention and that of their parents. Mr. Grant noted the Governor had vetoed a similar bill last session. He requested that Section 2, added by the Senate committee, be removed, noting the chairman of the Senate Judiciary Committee agrees to this.

Art Griggs offered amendments (Attachment No.1) which address the objections of the Governor.

A need for raising the threshold of liability to \$5,000 was discussed.

Senator Ron Hein, whose bill, SB 205, was vetoed, gave a history of that bill. He said he had met with Mr. Griggs to discuss amendments and those in Attachment No.1 were not what they had agreed upon. He said K.S.A.38-120 does not address parental liability which he felt was necessary. He noted instances of vandalism and burglary done by minors for which parents should have some liability. Senator Hein said an agreement had been made to lower, on line 53, the \$5,000 liability to \$2,500 which was stricken in Attachment No.1. He suggested allowing attorney fees for theft of property, leaving in Section 2, but change \$5,000 to \$2,500, reinserting "maliciously or willfully" on line 47, exempting traffic offenses in Section 2 (b), and deleting Section 1 as unnecessary although he supported the language in Section 1 (c).

SB 369 - An act relating to inquisitions.

Jim Clark said the bill was requested by the Sedgwick County District Attorney.

Gary Gorup called attention to lines 34-36 and gave an example of cases where fingerprinting would have helped. The bill provides a procedure to obtain fingerprints without the necessity of filing charges which would result in a criminal record. A member questioned what would happen to the fingerprints after the investigation. Mr. Gorup said they should be kept separate from criminal files and used only for the purpose of the investigation.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
noon
room 526-S, Statehouse, at 12:00 ~~xxxxxxx~~ on March 25, 1983.

SB 371 - An act relating to terroristic threats.

Mr. Clark said the bill was requested by the Lyon County Attorney and would include bogus threats in the statutes. Threats to public officers was not the thrust of the bill.

SB 355 - An act relating to consumer protection.

Representative Ediger moved to report the bill favorable for passage, to be placed on the Consent Calendar, seconded by Representative Solbach. Motion carried.

SB 356 - An act relating to consumer protection.

Representative Miller moved to report the bill favorable for passage, to be placed on the Consent Calendar, seconded by Representative Ediger. Motion carried.

SB 357 - An act relating to consumer protection.

Representative Barkis moved to report the bill favorable for passage, seconded by Representative Ediger. Motion carried.

Substitute for SB 7 - An act relating to securities interests.

Representative Patrick objected to mandating that the Secretary of State get into the central filing business, noting the fiscal effect and the possibility of the private sector providing this service. The Chairman noted that all efforts were made during the interim study and in this session to set the system up in a manner satisfactory to the Secretary of State. The amendments presented at the March 22, 1983, meeting addresses the concerns of involved parties. Mr. Josserand said the Secretary of State takes all filings now except for consumer goods and farm products. Representative Barkis said an indemnity fund could serve the grain dealers' problem and suggested more study was needed and an evaluation needed of the Iowa system. He made a motion to table the bill. Motion died for lack of a second. Representative Patrick moved to pass the bill favorably as written, seconded by Representative Douville. Staff noted the amendments presented on March 22 would affect this motion. Representative Patrick withdrew his motion. Representative Knopp moved to adopt the March 22 amendments presented by the office of the Secretary of State, seconded by Representative Buehler. Representative Patrick made a substitute motion to strike lines 116-154 of the bill which would leave the central filing concept but would remove the Secretary of State from providing information. The substitute motion was seconded by Representative Erne. It failed to carry. Discussion resumed on the original motion. It was pointed out that the Secretary of State is not mandated to adopt any methods but has the discretion to choose. The vote was taken on the motion to adopt the amendments. Motion carried. Representative Knopp moved to report Substitute for SB 7, as amended, favorable for passage, seconded by Representative Douville. Motion carried.

The meeting was adjourned at 1:45 p.m.

SENATE BILL No. 354

By Committee on Judiciary

2-22

0017 AN ACT concerning theft, providing certain civil remedies
0018 therefor for certain unlawful acts ~~amending K.S.A. 38-120~~
0019 ~~and repealing the existing section~~

0020 Be it enacted by the Legislature of the State of Kansas:

0021 Section 1. (a) Any person who commits theft shall be civilly
0022 liable to the owner of the property in an amount equal to:

0023 (1) Actual damages equal to the full retail value of the prop-
0024 erty;

0025 (2) a civil penalty of not less than \$100 or more than \$1,000,
0026 as determined by the court; and

0027 (3) attorney fees and court costs.

0028 (b) ~~If a minor commits theft, the parent or guardian of the~~
0029 ~~minor~~ shall be civilly liable for:

0030 (1) The amount provided by subsection (a), if the theft is
0031 found to be the result of neglect by the parent ~~or guardian~~; or

0032 (2) the amount provided by subsection (a) or the maximum
0033 amount recoverable in actions pursuant to K.S.A. 38-120 and
0034 amendments thereto, whichever is less, if the theft is not found
0035 to be the result of neglect by the parent ~~or guardian~~.

0036 (c) A conviction, plea of guilty or *nolo contendere* or adjudi-
0037 cation of the offense of theft shall not be a prerequisite to the
0038 bringing of an action pursuant to this section.

0039 (d) As used in this section, "theft" means theft as defined by
0040 K.S.A. 21-3701 and amendments thereto.

0041 ~~Sec. 2. K.S.A. 38-120 is hereby amended to read as follows:~~

0042 ~~38-120. (a) Any person receiving bodily injury or any person,~~
0043 ~~partnership, corporation, political subdivision or other entity~~
0044 ~~whose property has been stolen, damaged or destroyed shall be~~

Either

fair market

at the time of the theft in cases where the property has not been recovered, or actual damages equal to the difference between the value of the property at the time of the theft and the fair market value of the property at the time it was recovered

or parents of any child who, while under the age of 18 years and living with the parent or parents, commits a theft

0045 ~~entitled to recover damages in an appropriate action at law in a~~
0046 ~~court of competent jurisdiction from the parent or parents of~~
0047 ~~any child, living with the parents, who maliciously or willfully~~
0048 ~~who, while under the age of 18 years and living with the parent~~
0049 ~~or parents, in the commission of an offense injured such person~~
0050 ~~or damaged, stole or destroyed such property while under the~~
0051 ~~age of eighteen (18) years. Such recovery shall be limited to the~~
0052 ~~actual damages in an amount not to exceed one thousand dollars~~
0053 ~~(\$1,000) \$5,000, in addition to taxable court costs, unless the~~
0054 ~~court or jury finds that the malicious or willful act of such minor~~
0055 ~~causing such injury, damage or destruction offense is the result~~
0056 ~~of parental neglect, in which event the one thousand dollars~~
0057 ~~(\$1,000) \$5,000 limitation does not apply. Recovery under this~~
0058 ~~section for bodily injury shall be limited to actual medical~~
0059 ~~expenses.~~

0060 ~~(b) As used in this section, "offense" means any act which, if~~
0061 ~~committed by a person 18 or more years of age, would make~~
0062 ~~such person liable to be arrested and prosecuted for the com-~~
0063 ~~mission of a felony or misdemeanor, as defined by K.S.A. 21-~~
0064 ~~3105.~~

0065 ~~Sec. 9-2 K.S.A. 38-120 is hereby repealed.~~

0066 ~~Sec. 3 2. This act shall take effect and be in force from and~~
0067 ~~after its publication in the statute book.~~

38-120. Recovery from parents for malicious or willful acts by certain children; limitations. Any person receiving bodily injury or any person, partnership, corporation, political subdivision or other entity whose property has been damaged or destroyed shall be entitled to recover damages in an appropriate action at law in a court of competent jurisdiction from the parents of any child, living with the parents, who maliciously or willfully injured such person or damaged or destroyed such property while under the age of eighteen (18) years. Such recovery shall be limited to the actual damages in an amount not to exceed one thousand dollars (\$1,000), in addition to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such injury, damage or destruction is the result of parental neglect in which event the one thousand dollars (\$1,000) limitation does not apply. Recovery under this section for bodily injury shall be limited to actual medical expenses.