

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson

10:00 a.m./~~p.m.~~ on March 3, 1983 in room 514-S of the Capitol.

All members were present ~~except~~ Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Wayne Stratton, Kansas Hospital Association  
Kathleen Sebelius, Kansas Trial Lawyers Association  
Jerry Palmer, Kansas Trial Lawyers Association  
Marjorie Van Buren, Office of Judicial Administrator  
John Brookens, Kansas Bar Association  
Jim Clark, Kansas County and District Attorneys Association  
Bud Grant, Kansas Association of Commerce and Industry

Senate Bill 350 - Registration of process servers.

The chairman announced he will call Judge James Buchele and ask him to come in at the noon meeting to explain the bill to the committee.

Senate Bill 351 - Health care provider malpractice suits, evidence of future reimbursement.

Wayne Stratton explained that Jerry Slaughter asked him also to speak for the Kansas Medical Society. Mr. Stratton testified in support of the bill. He explained the collateral source rule and presented background information to the bill. He stated they are concerned with the wording in line 37 "or receivable in the future". Mr. Stratton explained this bill permits a jury to consider the fact that public funds have been received by an injured person when there is a suit against a hospital. Committee discussion with him followed.

Kathleen Sebelius responded to a committee member's question that this bill was in the House Judiciary Committee two years ago.

Jerry Palmer appeared in opposition to the bill. He testified the wording "or receivable in the future" is not necessary at this time. It will have a big impact on an individual and is meaningless to the entire state. He said Kansas courts do not permit even income tax to be calculated when wage loss is considered. Committee discussion with him followed.

Senate Bill 353 - Issuance of summons instead of warrant in criminal cases.

The chairman explained this bill was introduced at the request of Judge Coffman. He explained the bill and the suggested changes.

Marjorie Van Buren appeared at Judge Coffman's request. She stated in speaking on behalf of the District Judges Association, no one in the group said it was not a good idea. A copy of a proposed amendment is attached (See Attachment #1).

John Brookens stated he was appearing at the request of Marjorie Van Buren and Judge Coffman. He spoke in support of the bill. Committee discussion with him followed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on March 3, 1983.

Senate Bill 353 continued

Jim Clark appeared in opposition to the bill. He feels there is a local personality problem that prompted the bill, and feels there is a serious constitutional problem. Under this bill there is always the situation with a bad check. He thinks the magistrate is not in a position to know whether a person needs to be seized. He does not think the judge should have that knowledge if the judge has an impartial decision to make. Committee discussion with him followed.

Senate Bill 354 - Civil remedies for theft.

The chairman explained the bill to the committee.

Bud Grant appeared in support of the bill. A copy of his remarks is attached (See Attachment #2). He stated the retailers of Kansas feel that it is time to get the shoplifter's attention; Senate Bill 354 will do just that. Committee discussion with him followed.

John Brookens spoke on his own behalf in support of the bill. He stated people who have things stolen suffer a loss. Following committee discussion, Senator Hein moved to amend the bill in the way Senate Bill 205 last year was in its final version; Senator Gaar seconded the motion, and the motion carried. Senator Gaar moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

Senate Bill 353 - Issuance of summons instead of warrant in criminal cases.

Senator Werts moved to adopt the amendments as suggested by John Brookens; Senator Hess seconded the motion, and the motion carried. Senator Werts moved to report the bill favorably as amended; Senator Gaines seconded the motion. Following committee discussion, Senator Gaar made a substitute motion to amend the bill by differentiating between misdemeanor and felony; discretion for the magistrate only with misdemeanors, for felonies, it would be solely with the prosecutor; Senator Feleciano seconded the motion. Committee discussion followed. With a show of hands, five voted in favor of the substitute motion, and four voted in opposition, and the motion carried. Senator Gaar moved to report the bill favorably as amended; Senator Werts seconded the motion, and the motion carried.

Senate Bill 351 - Health care provider malpractice suits, evidence of future reimbursement.

Following committee discussion, Senator Gaines moved to report the bill adversely; Senator Hess seconded the motion. Following further discussion, the motion carried.

Senate Bill 141 - Driving under the influence of alcohol or drugs.

The chairman asked for the sense of the committee whether they want to work the bill. Following discussion, it was the consensus of the committee to work the bill. The chairman requested staff to prepare a memorandum showing the proposed amendments, and the committee will take up the bill tomorrow.

The chairman reminded the committee of the meeting at noon today in Room 519-S.

The meeting adjourned.

3-3-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Larry D Humes

Lawrence

Staff - Steingger

Tom Miller

Topeka

Assoc. Credit Bureau

Wayne Strickland

1 Lake

NY - Kans Hosp Assoc

William W Sneed

Topeka

Ks Ins Dept.

Shirley Brooks

"

Kans Bar Assn

Mayone Van Buren

"

OJA

Pat Russell

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Budget Division

Jain Clark

"

KCOAA

Mary Satterthwaite

Topeka

BMS

GEORGE HECKMAN

LAWRENCE

KAADPO

DAVID CORNARD

TOPEKA

KAEJ

Arene Johnson

TOPEKA

KCASAP

Jack R Palmer

Topeka

KJ

William Strickland

Topeka

KTLA

Tom Fossum

Topeka

Secretary of State

R. Pilshaw

Lawrence

KHJ

Ed Jones

Topeka

Kans Assoc of POC  
Ins. Co.

SENATE BILL No. 353

By Committee on Judiciary

2-22

0016 AN ACT concerning criminal procedure; relating to issuance of a  
0017 warrant or summons; amending K.S.A. 22-2302 and repealing  
0018 the existing section.

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

0020 Section 1. K.S.A. 22-2302 is hereby amended to read as fol-  
0021 lows: 22-2302. (1) If the magistrate finds from the complaint, or  
0022 from an affidavit or affidavits filed with the complaint or from  
0023 other evidence, that there is probable cause to believe both that a  
0024 crime has been committed and that the defendant has committed  
0025 it, a warrant for the arrest of the defendant shall issue. ~~Upon the~~  
0026 ~~request of~~ *If the magistrate determines that a summons should*  
0027 *issue or if the prosecuting attorney so requests,* a summons  
0028 instead of a warrant may issue. More than one warrant or sum-  
0029 mons may issue on the same complaint. If a defendant fails to  
0030 appear in response to the summons, a warrant shall issue.

unless

in which case

0031 (2) Affidavits or sworn testimony in support of the probable  
0032 cause requirement of this section shall not be made available for  
0033 examination without a written order of the court, except that such  
0034 affidavits or testimony when requested shall be made available to  
0035 the defendant or the defendant's counsel for such disposition as  
0036 either may desire.

0037 Sec. 2. K.S.A. 22-2302 is hereby repealed.

0038 Sec. 3. This act shall take effect and be in force from and after  
0039 its publication in the statute book.

Atch. 1





# Legislative Testimony

Kansas Association of Commerce and Industry

500 First National Tower, One Townsite Plaza

Topeka, Kansas 66603

A/C 913 357-6321

KANSAS ASSOCIATION OF COMMERCE AND INDUSTRY

Testimony Before the

SENATE COMMITTEE ON JUDICIARY

SB 354

March 2, 1983

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 Association of Commerce and Industry. I appreciate the opportunity of appearing before you today in support of SB 354.

The Kansas Association of Commerce and Industry (KACI) 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.

KACI is comprised of more than 3,200 businesses plus 215 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 KACI's members having less than 25 employees, and 86% having less than 100 employees.

The KACI 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.

Over the past several years the problem of shoplifting has reached epidemic proportions. Certainly the problem of theft is not a new problem. But as methods of merchandising and retailing have changed through the years, so has the incidence of

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retail theft. In fact, the problem became so severe that in 1980, the DECA Clubs of America, the American Retail Federation, and the Federated Womens' Clubs of America joined forces to form the National Coalition to Prevent Shoplifting.

The National Coalition estimates that in 1980, \$239 million was drained from the Kansas economy by shoplifters, which represents more than \$7 million in sales tax losses to the state, and adds almost 5¢ to every dollar a product costs. Nationally, losses totaled an astronomical \$24 billion.

The retailers of Kansas feel that it is time to get the shoplifter's attention -- Senate Bill 354 will do just that. We urge your favorable consideration.