

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~AM~~ p.m. on January 12, 1984 in room 526S of the Capitol.

All members were present except:

Representatives Kerry Patrick, Bob Wunsch, and Vic Miller were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Representative David Heinemann
Marjorie Van Buren, Office of the Judicial Administrator
John Brookens, Kansas Bar Association
Wayne Hundley, Deputy Attorney General, Consumer Protection Division

The Chairman introduced the staff and welcomed new members.

The Chairman said a request for the Committee to introduce a bill relating to qualifications for filing for nomination to the office of district attorney had been received. After reviewing the bill draft, Representative Harper moved, seconded by Representative Douville, that it be introduced as a bill with a request that it be assigned to the Committee for study. Motion carried. (HB 2687)

Hearings were held on the following bills authored by Representative David Heinemann: HB 2182, HB 2219, HB 2222, HB 2310, and HB 2585. Senate Bills 346 and 357 also were heard.

HB 2182 - An act relating to the gifts to minors act.

Representative Heinemann said the bill allows more flexibility in leaving stocks and other assets to minors without having to go through trusts. It raises the age of minority, only for the purpose of this act, from 18 to 21 years. Other states have been raising the age limitation in this regard.

HB 2219 - An act relating to qualifications for judges.

Representative Heinemann said the basic change clarifies that if the Supreme Court removes a judge for cause, that judge would continue to be ineligible to be appointed or elected as judge of the district court until he is reinstated by the Supreme Court. He said a discussion with a judge in his district prompted the bill.

Marjorie Van Buren said the Office of the Judicial Administrator supported the bill, and it is consistent with laws of other states. She suggested amending the new section to include municipal judges.

HB 2222 - An act relating to clerks of the district court.

Representative Heinemann said the bill makes clear that deputy clerks of the district court can administer oaths and clarifies that advice given by that office to people in small claims procedures is not considered to be "lawyering".

Ms. Van Buren said the bill would be supported by everyone associated with clerks of the district courts.

HB 2310 - An act relating to jury trials in misdemeanor cases.

Representative Heinemann said the bill changes the requirement that notice be given 48 hours in advance if a jury trial is requested to 96 hours. The bill eliminates the possibility of two jury trials being held.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 526S, Statehouse, at 3:30 ~~am~~^{pm} on January 12, 1984.

Ms. Van Buren presented amendments to HB 2310 (Attachment No.1). They make clear that if a jury trial is not requested the first time, the right to a jury trial is waived through the process. The Amendment in Section 3(3) regarding the record is very important. Without that proviso, the bill would slow procedures. She said the 96-hour figure could be changed, but the present 46-hour prior to trial provision is a hardship on the courts. Representative Heinemann had no objections to the amendments.

HB 2585 - An act relating to real property mortgages and deeds of trust.

Representative Heinemann said the legislature enacts the language of the bill every four years. Since 1984 is the fourth year, the bill would be the enactment tool.

SB 346 (Re-referred) - An act relating to marketable record titles.

John Brookens, Kansas Bar Association, knew of no opposition to the bill, the result of a study done by the Title Standards Committee of the Kansas Bar Association whose chairman, Harvey Snapp, had testified at the Committee's hearing in 1983. Because of experience, title lawyers believe the time should be reduced from 40 to 25 years for marketable title records. It would save time and money in quiet title suits. Mr. Brookens noted the two-year date deadline to file purity affidavits needed to be amended since the bill was not passed in 1983. He requested that Mr. Snapp be given the opportunity to answer questions if there is opposition to the bill.

SB 357 (Re-referred) - An act relating to consumer protection.

Wayne Hundley, Deputy Attorney General, said the bill extends to buying clubs and health spas the right to cancel sales contracts that applies ^{now} to door-to-door sales. His office receives numerous complaints regarding high pressure sales tactics. He believed the civil penalty should be raised from \$2,000 to \$50,000 as there are instances where even \$25,000 doesn't hurt. He did not believe enough people were being reached.

A change in agenda for the January 16 meeting was explained by the Chairman.

The meeting was adjourned at 4:50 p.m.

HOUSE BILL No. 2310

By Representative Heinemann

2-9

Attachment #1
1-12-84

7 AN ACT concerning the Kansas code of criminal procedure;
8 relating to jury trials in misdemeanor cases; amending K.S.A.
9 22-3404 and K.S.A. 1982 Supp. 22-3609 and 22-3609a and
10 repealing the existing sections.

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

12 Section 1. K.S.A. 22-3404 is hereby amended to read as fol-
13 lows: 22-3404. (1) The trial of misdemeanor cases shall be to the
14 court unless a jury trial is requested in writing by the defendant
15 not later than 48 hours prior to the trial 96 hours after the first
16 appearance on the complaint.

to trial by jury

Failure to request trial by jury within the allotted time shall be deemed a waiver of the right for the purposes of trial and all subsequent appeals.

17 (2) A jury in a misdemeanor case shall consist of six members.

18 (3) ~~Trials in the municipal court of a city shall be to the court.~~

Trials in the municipal court of a city shall be to the court.

19 *A jury trial in a misdemeanor case may be tried before a district*
20 *magistrate judge, district judge or associate district judge as*
21 *assigned by the administrative judge. Appeals from jury trials*
22 *before a district magistrate judge shall be taken pursuant to*
23 *K.S.A. 22-3609a and amendments thereto. Appeals from jury*
24 *trials before a district judge or associate district judge shall be*
25 *taken pursuant to K.S.A. 22-3601 and amendments thereto.*
26 ~~*Appeals from a jury trial in a municipal court of a city shall be*~~
27 ~~*taken pursuant to K.S.A. 22-3609 and amendments thereto.*~~

(4)

28 (4) ~~Except as otherwise provided by law, the rules and pro-~~
29 ~~cedures applicable to jury trials in felony cases shall apply to jury~~
30 ~~trials in misdemeanor cases.~~

(5)

31 Sec. 2. K.S.A. 1982 Supp. 22-3609 is hereby amended to read
32 as follows: 22-3609. (1) The defendant shall have the right to
33 appeal to the district court of the county from any judgment of a
34 municipal court which adjudges the defendant guilty of a viola-
35 tion of the ordinances of any municipality of Kansas. The appeal

Atch. 1

0046 shall be assigned by the administrative judge to a district judge
0047 or associate district judge. The appeal shall stay all further
0048 proceedings upon the judgment appealed from.

0049 (2) An appeal to the district court shall be taken by filing a
0050 notice of appeal and any required appearance bond in the district
0051 court of the county in which the municipal court is located. No
0052 appeal shall be taken more than 10 days after the date of the
0053 judgment appealed from.

0054 (3) The notice of appeal shall designate the judgment or part
0055 of the judgment appealed from. The defendant shall cause notice
0056 of the appeal to be served upon the city attorney prosecuting the
0057 case. The judge whose judgment is appealed from or the clerk of
0058 the court, if there is one, shall certify the complaint and warrant
0059 to the district court of the county, but failure to do so shall not
0060 affect the validity of the appeal.

0061 (4) Hearing on the appeal shall be to the court ~~unless a jury~~
0062 ~~trial is requested in writing by the defendant not later than 48~~
0063 ~~hours prior to the trial. A jury in an appeal from a municipal court~~
0064 ~~judgment shall consist of six members on the record.~~

0065 (5) Notwithstanding the other provisions of this section, ap-
0066 peal from a conviction rendered pursuant to subsection (b) of
0067 K.S.A. 12-4416 and amendments thereto shall be conducted only
0068 on the record of the stipulation of facts relating to the complaint.

0069 Sec. 3. K.S.A. 1982 Supp. 22-3609a is hereby amended to
0070 read as follows: 22-3609a. (1) A defendant shall have the right to
0071 appeal from any judgment of a district magistrate judge. The
0072 administrative judge shall be responsible for assigning a district
0073 judge or associate district judge for any such appeal. The appeal
0074 shall stay all further proceedings upon the judgment appealed
0075 from.

0076 (2) An appeal to a district judge or associate district judge
0077 shall be taken by filing a notice of appeal with the clerk of the
0078 court. No appeal shall be taken more than 10 days after the date
0079 of the judgment appealed from.

0080 (3) The clerk of the district court shall deliver the complaint,
0081 warrant and any appearance bond to the district judge or asso-
0082 ciate district judge to whom such appeal is assigned. The case

00 shall be tried ~~de novo~~ before and determined on the record by
0084 the assigned district judge or associate district judge

where a record was made of the action or proceeding
otherwise the case shall be tried de novo.

0085 (4) No advance payment of a docket fee shall be required
0086 when the appeal is taken.

0087 (5) All appeals taken by a defendant from a district magistrate
0088 judge in misdemeanor cases shall be tried and determined on the
0089 record by the court unless a jury trial is requested in writing by
0090 the defendant.

0091 (6) Notwithstanding the other provisions of this section, ap-
0092 peal from a conviction rendered pursuant to subsection ~~(2)~~ (c) of
0093 K.S.A. 22-2909, and amendments thereto, shall be conducted
0094 only on the record of the stipulation of facts relating to the
0095 complaint.

0096 Sec. 4, K.S.A. 22-3404 and 1982 Supp. 22-3609 and 22-3609a
0097 are hereby repealed.

5

K.S.A. 20-302b

0098 Sec. 5, This act shall take effect and be in force from and
0099 after its publication in the statute book.

6

Sec 4. K.S.A. 20-302b is hereby amended to read as follows:
1
* * * * *
(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge or an associate district judge, except that in ~~civil~~ cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge or an associate district judge.