

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 February 29, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Duncan, Justice, and Solbach 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:

None

The Chairman said the sponsors of HB 3049 and HB 3078 were not able to appear to testify on the bills, but the bills would be considered and acted upon at this meeting.

HB 3049 - An act relating to records of juvenile offenders.

The Chairman noted the sponsor, Kathryn Ramp, Kansas University professor, had testified previously that the bill was needed in order for research regarding juvenile offenders to be continued statewide. Representative Douville moved to report HB 3049 favorably and that it be placed on the Consent Calendar, seconded by Representative Matlack. Motion carried.

HB 3078 - An act relating to driver's license restrictions.

Representative Knopp said the bill was requested by the Municipal Judges Association and he talked with Judge Pat Caffey, Manhattan Municipal Court, regarding the need for the bill. It attempts to codify all DWI restrictions and suspensions of drivers' licenses, eluding, and reckless driving to make penalties uniform in all areas of the state. It was questioned if the judge's options listed in New Section 1 conflicted with the DWI law. Representative Miller moved to amend HB 3078 by deleting the option of driving to and from the grocery store and service station near the person's home. He believed people would abuse this privilege. Representative Wagnon seconded the motion. A member noted the motion would create a hardship on people living in rural areas. The vote on the motion carried.

Representative Vancrum said Section 5 of the bill reverses a provision enacted last session that suspends, for one year, the learner's permit of repeat violators. He moved that Section 5 and reference to K.S.A. 8-2117 be stricken, seconded by Representative Patrick. Motion carried.

Representative Knopp moved to report HB 3078, as amended, favorably, seconded by Representative Wunsch. Motion carried.

Representative Wunsch gave the report for Subcommittee A regarding HB 3021, HB 3029, and HB 3005 (Attachment No.1).

HB 3021 - An act relating to warning of lien on residential property.

The subcommittee recommended the bill be amended in subsection (c)(1)(A) to extend the 24-hour time limit for claiming a lien to three working days. Representative Wunsch moved the amendment be adopted, seconded by Representative Ediger. It was noted the Attorney General's office supports the amendment. Motion carried. Representative Patrick moved to report HB 3021, as amended, favorably, seconded by Representative Cloud. Motion carried.

HB 3029 - An act relating to forwarding of fingerprints.

Representative Wunsch said the KBI supports the bill because that agency does not believe it is getting its set of fingerprints from local law enforcement officials. Representative Buehler moved to report the bill favorably, seconded by Representative Ediger. Motion carried.

HB 3005 - An act relating to filing of articles of incorporation.

Subcommittee A made no recommendation on the bill which would remove the requirement that a copy of an article of incorporation be filed in the county of origin. Representative Patrick

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 HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~am~~ <sup>XXX</sup> p.m. on February 29, 1984.

moved to report the bill favorably, seconded by Representative Vancrum. It was noted the subcommittee did not like the bill but did not want to report it adversely. Representative Campbell made a substitute motion to table HB 3005, seconded by Representative Harper. The Chairman ruled discussion would be allowed. Members expressed the advantages of one central filing with the Secretary of State versus the advantages of having information convenient locally. The substitute motion to table failed to carry 7 to 8. The vote on the original motion failed to carry 7 to 8. No action was taken on the bill.

Representative Douville, Chairman, reported for Subcommittee B regarding HB 3017, HB 3020, HB 3015, and HB 3022. He said Chuck Simmons of the Department of Corrections met with the subcommittee to explain the bills.

HB 3017 - An act relating to estates of inmates.

Representative Douville said the bill eliminates a statute that is no longer needed, and the subcommittee recommended it be reported favorably. He moved that this be done and that the bill be placed on the Consent Calendar. The motion was seconded by Representative Harper, and it carried.

HB 3020 - An act relating to administration of oaths in re investigations.

The subcommittee recommended the bill, which allows the Secretary of Corrections to administer oaths for the purpose of conducting investigations regarding inmates, be passed. Representative Harper moved to report the bill favorably, seconded by Representative Blumenthal. Motion carried.

HB 3015 - An act relating to reduction or modification of sentence.

The bill clarifies section numbers, and the subcommittee recommended passage. Representative Miller moved to report the bill favorably and that it be placed on the Consent Calendar, seconded by Representative Buehler. Motion carried.

HB 3022 - An act relating to consecutive sentences.

The subcommittee recommended that no action be taken on the bill until such time as it can be understood. Representative Douville moved to table the bill, seconded by Representative Whiteman. Motion carried.

The Committee took action on several other bills.

HB 3026 - An act relating to alcoholism and intoxication treatment.

Amendments recommended by Dr. McHenry, Alcohol and Drug Abuse Commissioner, (Attachment No.2), were considered. Representative Miller moved to adopt the amendment in Section 5 to insert "ex parte", seconded by Representative Wunsch. Motion carried. Representative Miller moved to adopt the amendment to delete the definition of "voluntary patient" which does not apply to alcoholism treatment, seconded by Representative Douville. Motion carried.

Mike Flyzik, Administrator of Program Development Section of the Alcohol and Drug Abuse Division, explained the changes the bill would enact. They attempt to make involuntary alcohol treatment commitment provisions parallel with those for mental health.

There was discussion regarding provisions on page 10, subsection (D), which extends the time limit for a hearing after applications are filed from 48 hours to 5 days. Concern was expressed that an incapacitated person could be held in jail during this time if no other place is available, and 5 days without treatment was too long a time. It was noted this does not compare with the 48-hour provision for mental health cases. Representative Whiteman moved to delete the new language in lines 347 through 355 and to restore the stricken language excluding Sundays and holidays, seconded by Representative Miller. Motion carried. Staff was requested to make the motion's provisions consistent throughout the bill. Representative Patrick moved to report HB 3026, as amended, favorably, seconded by Representative Whiteman. Motion carried.

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HB 2958 - An act relating to judges in the 29th Judicial District.

Representative Miller moved to amend the bill to put retention in office of district court judges to a vote of the people in the 29th Judicial District. The motion died for lack of a second. Representative Patrick moved to table the bill, seconded by Representative Vancrum. Motion carried.

HB 2764 - An act relating to entrapment.

Representative Whiteman moved to table the bill, seconded by Representative Schweiker. Motion carried.

HB 2881 - An act relating to wrongful death recovery.

Representative Patrick moved to report the bill favorably, seconded by Representative Miller. Motion carried.

HB 2712 - An act relating to emergency care.

The motion regarding this bill left on the table from the February 20, 1984, meeting was noted. The draft of amendments, which would be a substitute for HB 2712 (Attachment No.3), was explained by staff. Following discussion, Representative Patrick made a substitute motion to table HB 2712, seconded by Representative Ediger. The substitute motion carried.

The meeting was adjourned at 5:00 p.m.



ROBERT S. WUNSCH  
REPRESENTATIVE, ONE HUNDRED AND FIRST DISTRICT  
BOX 473  
KINGMAN, KANSAS 67068



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ASSESSMENT AND TAXATION  
JUDICIARY  
LOCAL GOVERNMENT

Attachment # 1

February 27, 1984

Representative Bob Frey  
Room 115-S

RE: Subcommittee A - HB 3005, 3021 and 3029

Subcommittee A has met in connection with the above referenced bills, and we make the following report:

Wayne Hundly of the Attorney General's office appeared before us and discussed HB 3021. The purport of this bill is to shorten the period of time in which a potential lien claimant has to give a property owner notice of a lien potential. Currently the period of time is roughly that which a lien claimant has to file his lien, which, at a minimum, is 90 days from the commencement of work. The bill proposes to require a lien claimant to give notice to a land owner of the lien potential within 24 hours of the commencement of labor or the furnishing of material or supplies. After some discussion the committee agreed to the concept of the idea but requested an amendment to subsection C (1) (a) whereby the period of time would be "no later than three working days after the labor, equipment, material or supplies was first furnished", or words of similar import. Words similar to those where a consumer has three working days to negate a contract were suggested as a possible source of language. The Attorney General's office had no disagreement with the proposed amendment.

HB 3021 as proposed to be amended would then be proposed to be passed by the committee as a whole.

Jim Green of the KBI appeared before the subcommittee and expressed their concerns over the need for HB 3029. Apparently the present law, which prescribes for one set of finger prints to be sent to the FBI and one to the KBI, is not being followed. The KBI feels they are not getting the prints the FBI is getting. The KBI and FBI have conferred about this proposal and they apparently agree it would be appropriate for two sets of prints to be sent to the KBI, with one to be forwarded by the KBI to the FBI. This procedure is presently being followed by the City of Wichita, which is of course the largest supplier of prints. Possible objection to the bill was that some departments might feel that there will be a delay in sending the prints on to the FBI. Apparently there is no objection from the City of Wichita to their present working arrangement with the KBI, and thus this objection seems not necessarily well founded. There would be a cost involvement in the passage of this bill, as the KBI would suggest that they would

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need one new position to handle all of the prints that would be coming in which are not now coming in. The counter argument to the anticipated additional expenditure is that if the law was presently being complied with, there would probably be need for an additional staff to handle the one set of prints which are now supposed to be sent to the KBI.

After further discussion the committee unanimously agreed that HB 3029 should be submitted to the whole committee with the recommendation that it be passed.

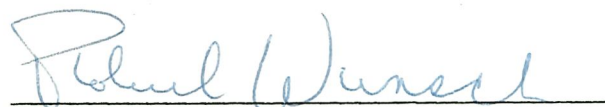
The subcommittee next considered HB 3005. This is a bill that was originally requested by Representative Francisco as a result of a constituent contact. The constituent attempted to ascertain information concerning a Sedgwick County corporation but found that the articles of incorporation had not been filed with the Sedgwick County Register of Deeds even though the law prescribes for the filing or recording of a certified copy of the articles. The constituent's comment was that if it is not being done, and the law prescribes that it should be done, why should not the law be changed? Apparently the Sedgwick County Register of Deeds lead the constituent to believe that many articles are not being recorded with the Register of Deeds as the law prescribes.

The Secretary of State's office wrote Representative Francisco's constituent a letter of January 10, a copy of which I attach to this report. In said letter it is noted that the writer suggested there were no penalties for failing to comply with the requirement to locally record. It may be that there is no specific penalty, but as the letter suggests, the existence of a corporation is often attacked for failure to record locally. The potential of direct liability to incorporator's boards of directors and perhaps stockholders seems a realistic penalty for failing to comply with existing law.

Further discussion was had concerning the fact that the information as to incorporators plus other information gleanable from articles of incorporation is more readily available locally, at least in smaller counties, than going to the Secretary of State's office.

In summation, it was decided by the committee that this bill would be taken back to the full committee without recommendation.

Your subcommittee appreciates the opportunity to be of service to you, Mr. Chairman.



Chairman  
Subcommittee A

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P.S. It was suggested that if a hearing is to be held on HB 3005 that perhaps John Wine, Jr. of the Secretary of State's office, who wrote the January 10 letter, might be invited to appear.

cc - Rep. Frank Buehler  
Rep. Kerry Patrick  
Rep. Steve Ediger  
Rep. Ardena Matlack

RSW/eh  
Enclosure

STATE OF KANSAS

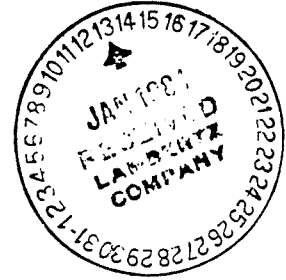
JACK H. BRIER  
SECRETARY OF STATE



OFFICE OF SECRETARY OF STATE

CAPITOL—2ND FLOOR  
PHONE (913) 296-2236  
TOPEKA, KANSAS 66612

January 10, 1984



Vern Lambertz  
Lambertz Company  
812 N. Waco  
Wichita, Kansas 67203

Dear Mr. Lambertz:

We have received your letter dated January 9, 1984 and hope that the following properly responds to your questions.

K.S.A. 17-6003 requires that corporate documents filed in this office be recorded with the register of deeds in the county of the registered office. This requirement has existed since 1972 under the above statute, but has been required much longer under prior statutes.

There are no penalties specified for failure to comply with this requirement and this office is not given any enforcement authority. However, parties seeking to challenge the existence of a corporation are able to offer evidence of a corporation's failure to comply to the court.

Incidentally, similar requirements for limited partnerships existed under the statutes recently replaced by the Revised Uniform Limited Partnership Act. Limited Partnerships organized under the new act will not be required to make any local filings.

Please contact our office if we can ever be of assistance to you in the future.

With every good wish.

Cordially,

JACK H. BRIER  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "John R. Wine, Jr.".

BY: John R. Wine, Jr.  
Legal Counsel



0082 talization, at a treatment facility or who is admitted therein  
0083 pursuant to K.S.A. 65-4025 and amendments thereto;

0084 (14) (13) "voluntary patient" means a person, ~~other than an~~  
0085 ~~informal patient,~~ who is voluntarily receiving care or treatment  
0086 at a treatment facility other than by order of any court;

0087 (15) (14) "proposed patient" means a person for whom an  
0088 application pursuant to K.S.A. 65-4032 and amendments thereto  
0089 has been filed;

0090 (16) (15) "involuntary patient" means an alcoholic or a per-  
0091 son incapacitated by alcohol who is receiving care or treatment  
0092 under an order of a district court;

0093 (17) (16) "other facilities for care or treatment" means any  
0094 mental health clinic, medical care facility, nursing home, physi-  
0095 cian or any other institution or individual authorized or licensed  
0096 by law to give care or treatment to any patient;

0097 (18) (17) "physician" means a person licensed to practice  
0098 medicine and surgery as provided by the Kansas healing arts act;

0099 (19) (18) "head of the treatment facility" means the adminis-  
0100 trative director of a treatment facility;

0101 (20) (19) "care or treatment" means such necessary services  
0102 as are in the best interests of the physical and mental health of  
0103 the patient;

0104 (21) (20) "discharge" means the final and complete release  
0105 from care or treatment, by either an order of a district court  
0106 pursuant to K.S.A. 65-4042 and amendments thereto or a treat-  
0107 ment facility;

0108 (22) (21) "convalescent" describes the status of any patient  
0109 who has not been discharged, but who is permitted by the head  
0110 of the treatment facility to live apart from a treatment facility;

0111 (23) (22) the various terms defined in K.S.A. 59-3002 and  
0112 amendments thereto for obtaining a guardian or conservator, or  
0113 both, mean the same herein as they do in that act;

0114 (24) (23) "law enforcement officer" means any person who by  
0115 virtue of office or public employment is vested by law with a  
0116 duty to maintain public order or to make arrests for crimes,  
0117 whether that duty extends to all crimes or is limited to specific  
0118 crimes;

Delete

Attch. 2



admitted pursuant to subsection (B) or (C), shall not be liable in a civil or criminal action based upon a claim that such treatment was rendered without legal consent.

Sec. 5. K.S.A. 1983 Supp. 65-4031 is hereby amended to read as follows: 65-4031. A district court may issue an order of protective custody under any of the following circumstances:

Insert: "ex parte"

(A) Upon the verified application of any law enforcement officer. The application shall state:

- (1) The name and address of the person, if known;
- (2) the name and address of the spouse or nearest relative of the person, if known;
- (3) the affiant's belief that the person is intoxicated or incapacitated by alcohol and because of this is likely to injure oneself or others if not immediately detained;
- (4) the circumstances under which the person was taken into custody;
- (5) the application provided for in K.S.A. 65-4032 and amendments thereto has been filed.

This order shall only be valid until 5:00 p.m. of the second day the district court is open for the transaction of business after the date of issuance, but in no case more than 72 hours following the issuance of such order, excluding Saturdays, Sundays and legal holidays. The district court shall not issue successive orders of protective custody pursuant to this subsection.

(B) Upon the verified application of any reputable person, if the application provided for in K.S.A. 65-4032 and amendments thereto has been filed in the court. The application shall state:

- (1) The application provided for in K.S.A. 65-4032 and amendments thereto has been filed;
- (2) the affiant's belief that the proposed patient is intoxicated or incapacitated by alcohol;
- (3) because of the proposed patient's intoxication or incapacitation by alcohol, such person is likely to injure oneself or others if not immediately detained.

This order shall only be valid until the conclusion of the hearing held pursuant to K.S.A. 65-4036 and amendments thereto.

PROPOSED Substitute for HOUSE BILL NO. 2712

By

AN ACT concerning emergency care or assistance; relating to immunity from civil liability for certain acts; amending K.S.A. 65-2891 and repealing the existing section.

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

Section 1. K.S.A. 65-2891 is hereby amended to read as follows: 65-2891. (a) Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by ~~such--person~~ the health care provider in rendering such emergency care or assistance.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by ~~such-person~~ the health care provider in rendering such emergency care or assistance.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by ~~his-or-her~~ the patient's family or by ~~his-or-her~~ guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held

liable for any civil damages other than damages occasioned by negligence.

(d) Any person who in good faith and without compensation or the expectation of compensation renders emergency care or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered shall not be liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering such emergency care or assistance.

For the purposes of this subsection, compensation does not include nominal payments, reimbursement for expenses or pension benefits.

(e) Nothing in this section shall be construed to require a person who is ill or injured to be given emergency care or assistance if the person objects to such care or assistance on religious grounds.

(f) Any provision herein--contained of this section notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein in which emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) (g) As used in this section the--term "health care provider" shall--mean means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, registered podiatrist, registered pharmacist and registered physical therapist, and any physician's assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, any person who has successfully completed an approved emergency service program as

defined by K.S.A. 65-2891a and amendments thereto, any mobile intensive care technician who has successfully completed an approved training program required by K.S.A. 65-4308 and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered by the American red cross, by the American heart association or by the mining enforcement and safety administration of the bureau of mines of the department of interior and any person engaged in a postgraduate training program approved by the state board of healing arts.

Sec. 2. K.S.A. 65-2891 is hereby repealed.

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