

Approved _____

3/7/85
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative Joe Knopp at
Chairperson

3:30 ~~a.m.~~/p.m. on February 28, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Roy and Shriver were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Bud Grant, Kansas Association of Commerce and Industry
Ed Schaub, Southwestern Bell Publications
Jim Kaup, League of Kansas Municipalities
Francis Kastner, Director of Governmental Affairs of Kansas
Food Dealers' Association, Inc.

HB 2443 - Providing for licensure and regulation of certain transient merchants;
prohibiting certain acts and providing penalties for violations.

Bud Grant, Kansas Association of Commerce and Industry, spoke on behalf of Kansas Retail Council and retailers across the State of Kansas and testified in favor of this bill. He said they were concerned about three areas: 1.) consumers who buy from transient merchants; 2.) taxes not being paid; and 3.) unfair competition.

Representative O'Neal was concerned whether the State Fair in Hutchinson would be covered by exemptions. Mr. Grant said the language "state fairs" could be added which would cover county fairs all over the state.

Ed Schaub, Southwestern Bell Publications, spoke in opposition to this bill. He said that this organization had their headquarters in Wichita, Kansas, which is their permanent address. They sell yellow page advertising in all the telephone books throughout the State of Kansas. He said in a year's time they will be in all 104 counties. If you apply this operation with the definition of transient merchant, Southwestern Bell Publications could be considered a transient merchant by this legislation which would mean that in all 104 counties they would have to apply for a license, pay \$250 for it, and set up a \$2,000 cash bond or surety bond. They feel this is a bit unreasonable for a very reliable Kansas business. Mr. Schauf said he brought this to the attention of Bud Grant, who agreed that this legislation was not intended to apply to a company like this. He said that he and Mr. Grant came up with an amendment to HB 2443 as shown in Attachment No. 1. He said if the committee accepted this amendment it would be inserted under Section 3 of the statute.

Jim Kaup, League of Kansas Municipalities, spoke in favor of this bill with amendments which are shown in Attachment No. 2.

Francis Kastern, Director of Governmental Affairs of Kansas Food Dealers' Association, Inc., spoke in favor of HB 2443 but with amendments as shown in Attachment No. 3.

The Chairman pointed out that this bill would exempt sales of agricultural products which would include milk. Ms. Kastner said she took that section as referring to farmers' markets rather than dairy products. She sees a distinct difference between an agricultural product and a dairy product.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 28, 1985.

Representative Whiteman asked how the fee of \$250 was arrived at and Mr. Kaup said that was the Arkansas fee which probably is the maximum.

HB 2049 - Concerning state institutions for the mentally retarded.

HB 2050 - Concerning care and treatment of mentally ill persons.

HB 2053 - Concerning mentally ill persons; relating to transfers and discharges thereof.

The Chairman turned the meeting over to Representative Duncan since he is the chairman of the subcommittee which did further study on HB 2050. The subcommittee includes Representatives Fuller, O'Neal, Solbach and Whiteman. He said they also studied HBs 2049 and 2053. HB 2053 is almost identical with a section of HB 2050 which amends K.S.A. 59-2924; so he said if HB 2050 passes, there is no need for HB 2053. Concerning HB 2049, Representative Duncan said it is a simple repealer statute and currently there are several sections of Chapter 76 that are individual hospital transfer sections that have been added over the years as individual pieces of legislation. With the amendments to K.S.A. 59-2924 there is no need for the individual statutes dealing with specific hospitals and HB 2049 needs to be passed simply to remove those areas that will no longer be necessary.

Concerning HB 2050, Representative Duncan said the subcommittee had spent considerable time on this bill which included the two and one half hour regular committee meeting, a two and one half hour mark-up session, visiting with individuals and correspondence. Attachment No. 1 shows all the changes that were made and Representative Duncan went over the bill page by page to explain these proposals. Some of the major changes that were made are the following: 1.) New Section 12, page 18, which was very controversial and said a person did not have the right to remain silent at their own hearing was deleted; 2.) hearsay at the formal meeting was deleted on page 21, lines 287-289; 3.) a New Section 18 concerning outpatient treatment, was added on pages 23-26; 4.) Section 21(b) on page 29, the transfer section relating to HB 2053; 5.) Section 23(b), page 32, which is the restraint section and was controversial; 6.) Section 27, pages 35 and 36, the "nobody is liable" section, was very controversial and was deleted to be introduced as a separate bill; 7.) New Section 29 concerning discharge; and 8.) New Section 37 concerning filing a petition to start committment proceedings.

Concerning the new definition of "mentally ill", Representative Duncan said this definition, although it enchances the ability to place people in involuntary care, goes a long way towards solving the problem of being constitutionally right on what to do with people who need to be committed and abuse that treatment. He said it puts it on an active present tense, is suffering basis, so that they would still have to be suffering at the time of the hearing.

The Chairman suggested that the committee go through the balloon again to see if there is any controversial problems, give everyone a weekend to read it over, and take it up next week. Representative Duncan said he was concerned that there are persons who would like the bill put into an interim committee since it is such a massive concept. He said when asked if these people would support the same bill after an interim study, they said "no". He said it is clear to him that the strategy in placing this bill in interim study is an attempt of some people to kill this bill.

The minutes of February 13 and 14 were approved.

The meeting adjourned at 5:00 p.m.

0046 church or religious organization;

0047 (f) garage sales held on premises devoted to residential use;

0048 (g) sales of crafts or items made by hand and sold or offered
0049 for sale by the person making such crafts or handmade items;

0050 (ii) sales of agricultural products, except nursery products
0051 and foliage plants;

0052 (i) sales made by a seller at residential premises pursuant to
0053 an invitation issued by the owner or legal occupant of such
0054 premises; or

0055 (j) school sponsored bazaars and sales; concessions at school
0056 athletic and other events; sales of paraphernalia used in the
0057 celebration of any nationally recognized holiday or used in
0058 connection with any public school, university or college related
0059 activities; flea markets; retail fireworks establishments; gun
0060 shows; sales by charitable organizations; sales of coins; and
0061 expositions sponsored by government entities or by nonprofit
0062 trade associations.

0063 A transient merchant not otherwise exempted from the provi-
0064 sions of this act shall not be relieved or exempted from the
0065 provisions of this act by reason of temporary association with any
0066 local dealer, auctioneer, trader, contractor or merchant or by
0067 conducting temporary or transient business in connection with
0068 or in the name of any local dealer, auctioneer, trader, contractor
0069 or merchant.

0070 Sec. 4. It is unlawful for any transient merchant to transact
0071 business in any county in this state unless such merchant and the
0072 owners of any goods, wares or merchandise or the providers of
0073 any services to be offered for sale or sold by the merchant, if such
0074 are not owned or provided by the merchant, first comply with the
0075 requirements of this act.

0076 Sec. 5. (a) Any transient merchant desiring to transact busi-
0077 ness in any county in this state shall make application for and
0078 obtain a license in each county in which such merchant desires
0079 to transact business.

0080 (b) The application for license shall be filed with the county
0081 clerk and shall include the following information:

0082 (1) The name and permanent address of the individual or

(k) Any person who has a permanent business location in this state for more than six months in each year, but who may carry on a transient business at locations in this state other than at said permanent business location.

Attachment # 1
House Judiciary
February 28, 1985

Attachment #1
House Judiciary Committee
February 28, 1985



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Members, House Judiciary Committee
FROM: Jim Kaup, Staff Attorney
DATE: February 26, 1985
SUBJECT: Amendment to HB 2443, to Clarify No Intended State Preemption of Local Regulation

The League, by action of its Public Personnel Committee, on February 22, 1985, has taken a position of support for HB 2443 if it is amended to specifically recognize that this plan for State licensure of transient merchants does not preempt in any way present or future local regulation of transient merchants.

The League is supportive of State involvement in this area, as such a measure of supervision and control as is likely to come from State Licensure will work to prevent or eliminate some of the problems associated with transient merchants.

State licensing would be particularly helpful for those cities which have had bad experiences with transient merchants, but which have not, for whatever reason, chosen to regulate transient merchants by means of local licensing, or to prohibit transient merchants by means of the so-called "Green River" ordinance. (An outright prohibition against unsolicited sales upon residential premises.)

Another advantage foreseen from the passage of HB 2443 is that some cities which presently regulate transient merchants would be anxious to defer to the State's licensing program and get out of the business of regulating transient merchants.

However, it is on behalf of the remaining group of cities--those which now, or may in the future, regulate by ordinance the conduct of transient merchants, that the League offers the attached amendment to Section 4 of HB 2443.

We are concerned that an inference could be drawn from HB 2443 that if one holds a State-issued license city authorities cannot regulate that person's conduct. Our amendment specifically provides that the holding of a State license does not authorize the licensee to conduct business in violation of any city ordinance governing transient merchants. Many cities go beyond the provisions of HB 2443's licensing program and regulate the business practices of transient merchants--for example, the hours of the day business can be conducted, limitations upon use of public property, deceptive business practices--and those lawful regulations must not be seen to be preempted by passage of HB 2443.

Similarly, this proposed amendment will prevent questions from arising as to a city's legal authority to regulate persons or entities which are specifically exempted by HB 2443 from the requirement to obtain a State license. For example, unlike HB 2443, some cities do not exempt sales by catalogue (lines 41:42), by churches (lines 45:46) or by charitable organizations (line 60).

The League supports HB 2443 in its proposed amended form.

Attachment #2

House Judiciary Committee

February 28, 1985

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HOUSE BILL No. 2443

By Committee on Judiciary

2-18

0017 AN ACT providing for licensure and regulation of certain tran-
0018 sient merchants; prohibiting certain acts and providing pen-
0019 alties for violations.

0070 Sec. 4. It is unlawful for any transient merchant to transact
0071 business in any county in this state unless such merchant and the
0072 owners of any goods, wares or merchandise or the providers of
0073 any services to be offered for sale or sold by the merchant, if such
0074 are not owned or provided by the merchant, first comply with the
0075 requirements of this act.

Nothing in this act shall be interpreted as meaning that the holding of a license under the provisions of this act shall authorize any person to transact business as a transient merchant in violation of any city ordinance governing the conduct of transient merchants within the corporate limits of the city.



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

February 25, 1985

HOUSE JUDICIARY COMMITTEE HB 2443

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Over the years we have received numerous complaints from grocers operating along the Nebraska border because of refrigerated trucks setting up in a Kansas town selling dairy products at a much lower price than the supermarkets in that town. We found there was nothing we could do about it.

The same held true with the trucks coming into this city, and you probably have seen them, or will see them if you look along Topeka Avenue, south of 29th Street, or on Gage around 21st Street. We first called them the "shrimp boats" when they first appeared a few years ago, and again, tried to find out if there was any way we could keep them from competing with local grocers who sell the same products.

We found that as long as the trucks had the proper license from the local health department, had scales that were supposedly weighing correctly and filed their sales tax, there was nothing we could do about it.

This bill addresses at least part of the problem by requiring a \$250 license fee and a resident agent. We DO not feel that the license fee is nearly high enough, or if the \$250 is the fee you agree to, then surely SEVEN days would be long enough. In that length of time they would have to go restock their supplies anyway and leave their location. No local merchant can compete with such a \$250 fee and operate 90 days.

Those transient merchants compete with us, but do not support the local community by hiring employees or pay the property tax, business or equipment tax etc. we have to pay. The Resident Agent could even be the County Clerk, according to lines 126 and 127 and further benefit the transient merchant by being able to use a tax supported county clerk to do the paperwork.

We would like to see lines 126 and 127 deleted and increase the license fee, or decrease the number of days the license is in effect for a specified fee. We do commend you for recognizing the problem and trying to help the Kansas businessmen.

Attachment #3
House Judiciary Committee
February 28, 1985