

Approved 3/20/85
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative Robert S. Wunsch, Vice-Chairman at
Chairperson

3:30 ~~am~~/p.m. on March 7, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Adam, Cloud, Fuller and Knopp 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:

The Vice Chairman conducted the meeting since the Chairman was absent.

HB 2517 - Concerning compulsory school attendance; relating to certain reports of noncompliance.

Representative Whiteman explained this bill by saying that in a case of truancy, the current law requires that it be reported to SRS, and this bill would require that it be reported to the county or district attorneys. She said that the SRS had no problem with this change. There was discussion on why the SRS did not get to these truancy cases quick enough. The local SRS office said it was because of a large caseload.

HB 2521 - Concerning real property; relating to certain mortgages and deeds of trust.

The Vice Chairman said this bill needed a date change in line 26.

Representative Snowbarger made a motion to pass this bill favorably and it was seconded by Representative Walker. It carried.

HB 2442 - Concerning criminal procedure; relating to pleas of guilty or nolo contendere.

Representative Solbach made a motion to strike the word "felony" and insert the word "criminal" in line 30. Representative Roy seconded the motion.

Representative O'Neal pointed out that he wanted to make sure that criminal could not be applied to traffic infractions. Representative Solbach said that, as a friendly amendment, he would add the words "except minor traffic offenses" in the appropriate place. Representative Walker said he felt they should be consistent with "criminal" (in place of "felony") throughout the whole bill.

Representative Snowbarger made a substitute motion to table HB 2442 and it was seconded by Representative Bideau. Upon vote, the motion carried nine to seven.

Representative Luzzati suggested that the Chairman be asked to work through the Judicial Council in connection with the subject matter of this bill. A vote was taken, but further discussion was requested.

Representative O'Neal made a motion to reconsider the action of tabling this bill. Representative Solbach seconded it.

Representative Solbach said that attorneys and judges need to be protected. He said this is a bill that will put it in the statutes that will require that it be done.

After further discussion, a vote was taken on the motion to reconsider the action of tabling. It carried ten to six.

A vote was taken to lay the bill on the table. It failed five to nine.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 526-S, Statehouse, at 3:30 ~~xxxx~~ p.m. on March 7, 1985

Representative Solbach withdrew this motion to add the words "except minor traffic offenses". The Vice Chairman said the committee was now back to the bill as it appeared before them.

Representative Shriver made a motion to have HB 2442 be reported adversely. It was seconded but, upon a vote, did not pass by a count of six to nine.

Representative Solbach made a motion to report HB 2442 favorably. It was seconded by Representative O'Neal.

Representative Whiteman made a motion to delete the words "in" through "States" and insert "if the defendant is a not a citizen of the United States" after "that" in line 31. Representative Duncan seconded this motion. Representative O'Neal pointed out that this amendment would require the judge to make that caveat in every single plea. A vote was taken and it did not carry by a count of seven to eight.

Representative Solbach made a motion to report this bill favorably as is. Representative O'Neal seconded the motion and it carried by a vote of eleven to seven.

HB 2517 - Concerning compulsory school attendance; relating to certain reports of noncompliance.

Representative Solbach made a motion to report this bill favorably and it was seconded by Representative Whiteman. There was discussion about whether truancies should be reported to the school, the SRS or county attorneys.

Representative Duncan made a motion to amend section 1 (a) to refer to the language of (c). It was seconded by Representative Vancrum and it carried.

Representative Duncan made a motion to report HB 2517 favorably as amended and it was seconded by Representative Cloud.

Representative Bideau made a substitute amendment that would require a dual report to both the SRS and the county attorneys. Representative Vancrum seconded it and it carried.

Representative Duncan made a motion to report HB 2517 favorably as further amended. Representative Whiteman seconded it and the motion carried.

HB 2519 - Concerning administrative procedures of certain state agencies.

Representative Duncan reviewed the amendments to this bill which are shown in Attachment No. 1 which only helps the Securities Exchange people.

Representative Duncan made a motion to amend HB 2519 by incorporating the balloon of Attachment No. 1 and the balloon presented by Mr. Strole of the Board of Healing Arts on March 6. It was seconded by Representative Vancrum. A vote was taken on the balloon shown in Attachment No. 1 and it carried. Another vote was taken on the balloon of the Board of Healing Arts and it carried.

Representative Duncan made a motion to report HB 2519 favorably as amended. It was seconded by Representative Walker and the motion carried.

It was moved by Representative Snowbarger and seconded by Representative Harper to approve the minutes of February 27, 1985.

The meeting adjourned at 4:35 p.m.

HOUSE BILL No. 2519

By Committee on Judiciary

2-26

0017 AN ACT concerning administrative procedures of certain state
0018 agencies; amending K.S.A. 17-1254, 17-1260, 17-1266, 17-
0019 1266a and 17-1269, all as amended by chapter 313 of the 1984
0020 Session Laws of Kansas, ~~and section 2 of chapter 313 of the~~
0021 ~~1984 Session Laws of Kansas~~ and repealing the existing sec-
0022 tions.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. Section 2 of chapter 313 of the 1984 Session Laws
0025 of Kansas is hereby amended to read as follows: Sec. 2. As used
0026 in this act:

0027 (a) "State agency" means any officer, department, bureau,
0028 division, board, authority, agency, commission or institution of
0029 this state, except the judicial and legislative branches of state
0030 government and political subdivisions of the state, which is
0031 authorized by law to administer, enforce or interpret any law of
0032 this state.

0033 (b) "Agency head" means an individual or body of individu-
0034 als in whom the ultimate legal authority of the state agency is
0035 vested by any provision of law.

0036 (c) "License" means a franchise, permit, certification, ap-
0037 proval, registration, charter or similar form of authorization re-
0038 quired by law for a person to engage in a profession or occupa-
0039 tion.

0040 (d) "Order" means a state agency action which pertains to a
0041 license and is of particular applicability to a person the legal
0042 rights, duties, privileges, immunities or other legal interest of
0043 one or more specific persons.

0044 (e) "Party to state agency proceedings," or "party" in context
0045 so indicating, means:

0046 (1) A person to whom an order is specifically directed; or

0047 (2) a person named as a party to a state agency proceeding or
 0048 allowed to intervene or participate as a party in the proceeding.
 0049 (f) "Person" means an individual, partnership, corporation,
 0050 association, political subdivision or unit thereof or public or
 0051 private organization or entity of any character, and includes
 0052 another state agency.

0053 (g) "Political subdivision" means political or taxing subdivi-
 0054 sions of the state, including boards, commissions, authorities,
 0055 councils, committees, subcommittees and other subordinate
 0056 groups or administrative units thereof, receiving or expending
 0057 and supported in whole or in part by public funds.

0058 ~~Sec. 2.~~ K.S.A. 17-1254, as amended by chapter 313 of the
 0059 1984 Session Laws of Kansas, is hereby amended to read as
 0060 follows: 17-1254. (a) It is unlawful for any person to engage in
 0061 business in this state as a broker-dealer, except in transactions
 0062 exempt under K.S.A. 17-1262 and amendments thereto, unless
 0063 such person is registered as a broker-dealer under this section. It
 0064 is unlawful for any person to engage in business in this state as
 0065 an agent, except in transactions exempt under K.S.A. 17-1262 and
 0066 amendments thereto, unless such person is registered under this
 0067 section as an agent for a specified broker-dealer registered under
 0068 this section or for a specified issuer. It is unlawful for any person
 0069 to transact business in this state as an investment adviser unless
 0070 such person is registered under this section as an investment
 0071 adviser or as a broker-dealer or such person's only clients in this
 0072 state are investment companies as defined in the investment
 0073 company act of 1940 or insurance companies.

0074 (b) A broker-dealer, agent or investment adviser may be
 0075 registered after filing with the commissioner, or the commis-
 0076 sioner's designee as permitted by subsection (j), a written appli-
 0077 cation containing such relevant information and in such form as
 0078 the commissioner may require. The applicant shall be registered
 0079 if the commissioner finds that the applicant and, if applicable,
 0080 the officers, directors or partners are of good ~~moral~~ character and
 0081 reputation, that the applicant's knowledge of the securities bus-
 0082 iness and *the applicant's* financial responsibility are such that
 0083 the applicant is suitable to engage in the business, that the

Section 1

0306 leading and calculated to deceive the purchaser or investor;
 0307 (3) the securities offered or to be offered, or issued or to be
 0308 issued, in payment for property, patents, formulae, goodwill,
 0309 promotion or intangible assets, are in excess of the reasonable
 0310 value thereof, or the offering has been, or would be, made with
 0311 unreasonable amounts of options;

0312 (4) the enterprise or business of the issuer, promoter or
 0313 guarantor is unlawful;

0314 (5) the statements or circulars filed are misleading, incorrect,
 0315 or incomplete;

0316 (6) there is a refusal to furnish information required by the
 0317 commissioner within a reasonable time to be fixed by the com-
 0318 missioner;

0319 (7) there has been a violation of any of the provisions of this
 0320 act or of the orders of the commissioner of which such issuer has
 0321 notice; or

0322 (8) there has been a failure to keep and maintain sufficient
 0323 records to permit of an audit satisfactorily disclosing to the
 0324 commissioner the true situation ~~of~~ or condition of such issuer.

0325 (b) The commissioner may by *emergency order summarily*
 0326 postpone or suspend the effectiveness of the registration state-
 0327 ment pending final determination of any proceeding under this
 0328 section. Upon the entry of such an order, the commissioner shall
 0329 promptly notify ~~each person specified in subsection (c) the~~
 0330 *applicant or registrant, the issuer and the person on whose*
 0331 *behalf the securities are to be or have been offered that it the*
 0332 *order has been entered and of the reasons therefor and that, upon*
 0333 *written request, the matter will be set for a hearing which shall*
 0334 *be conducted in accordance with the provisions of the Kansas*
 0335 *administrative procedure act.*

0336 Sec. ~~4~~ K.S.A. 17-1266, as amended by chapter 313 of the
 0337 1984 Session Laws of Kansas, is hereby amended to read as
 0338 follows: 17-1266. Whenever it appears to the commissioner that
 0339 any person has engaged or is about to engage in any act or
 0340 practice constituting a violation of any provision of this act or any
 0341 rule *and regulation* or order hereunder, the commissioner may
 0342 bring an action in any court of competent jurisdiction to enjoin

Such order, even though not an order within the meaning of section 2 of the Kansas administrative procedures act, shall be subject to the same procedures as an emergency order issued under section 36 of such act.

0343 the acts or practices and to enforce compliance with this act or
 0344 any rule *and regulation* or order hereunder ~~in accordance with~~
 0345 ~~the act for judicial review and civil enforcement of agency~~
 0346 ~~actions.~~ Upon a proper showing, a permanent or temporary
 0347 injunction, restraining order, restitution, writ of mandamus or
 0348 other equitable relief shall be granted and a receiver or conser-
 0349 vator may be appointed for the defendant or the defendant's
 0350 assets. The commissioner may not be required to post a bond.

0351 Sec. 5. ~~K.S.A. 17-1266a, as amended by chapter 313 of the~~ 4
 0352 1984 Session Laws of Kansas, is hereby amended to read as
 0353 follows: 17-1266a. (a) If the commissioner determines after no-
 0354 tice and opportunity for a hearing that any person has engaged, is
 0355 engaging or is about to engage in any act or practice constituting
 0356 a violation of any provision of this act or any rule *and regulation*
 0357 or order hereunder, the commissioner by order may require that
 0358 such person cease and desist from the unlawful act or practice
 0359 and take such affirmative action as in the judgment of the
 0360 commissioner will carry out the purposes of this act.

0361 (b) If the commissioner makes written findings of fact that
 0362 the public interest will be irreparably harmed by delay in issuing
 0363 an order under subsection (a), the commissioner may seek issue ~~an emergency~~

0364 temporary cease and desist order ~~in accordance with the act for~~
 0365 ~~judicial review and civil enforcement of agency actions.~~ Upon
 0366 the entry of such an order, the commissioner shall promptly
 0367 notify the person subject to the order that it has been entered, of
 0368 the reasons therefor and that upon written request the matter
 0369 will be set for a hearing which shall be conducted in accordance
 0370 with the provisions of the Kansas administrative procedure act.
 0371 If no hearing is requested and none is ordered by the commis-
 0372 sioner, the order will remain in effect until it is modified or
 0373 vacated by the commissioner. If a hearing is requested or or-
 0374 dered, the commissioner, after notice of and opportunity for
 0375 hearing to the person subject to the order, shall by written
 0376 findings of fact and conclusions of law vacate, modify or make
 0377 permanent the order.

Such order, even when not an order within the meaning of section 2 of the Kansas administrative procedures act, shall be subject to the same procedures as an emergency order issued under section 36 of such act.

0378 Sec. 6. ~~K.S.A. 17-1269, as amended by chapter 313 of the~~ 5
 0379 1984 Session Laws of Kansas, is hereby amended to read a

0380 follows: 17-1269. Any person aggrieved by a final order of the
0381 commissioner may ~~appeal~~ *obtain a review* of the order in ac-
0382 cordance with the provisions of the act for judicial review and
0383 civil enforcement of agency actions.

0384 ~~Sec. 7. K.S.A. 17-1254, 17-1260, 17-1266, 17-1266a and 17-~~ 6
0385 ~~1269, all as amended by chapter 313 of the 1984 Session Laws of~~
0386 ~~Kansas, and section 2 of chapter 313 of the 1984 Session Laws of~~
0387 ~~Kansas~~ are hereby repealed. 7

0388 Sec. 8. This act shall take effect and be in force from and
0389 after its publication in the statute book.