

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 13, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association

Jim Clark, Kansas County and District Attorneys Association, presented two requests for committee bills. The first proposal concerned the uniform controlled substances act relating to forfeitures (See Attachment I). Following the explanation, Senator Burke moved to introduce the bill. Senator Hoferer seconded the motion. The motion carried. The second proposal concerned crimes relating to collection fee for processing worthless checks (See Attachment II). Following the explanation, Senator Gaines moved to introduce the bill. Senator Parrish seconded the motion. The motion carried.

Senator Parrish presented a request for a committee bill concerning the definition of obscenity relating to minors. Following the explanation, Senator Parrish moved to introduce the bill. Senator Burke seconded the motion. The motion carried.

Senator Steineger presented a request for a committee bill that would provide that a party can hire a retired judge to hear their case. He explained this would help to relieve the crowded docket problem. Senator Steineger then moved to introduce the bill. Senator Gaines seconded the motion. The motion carried.

Senate Bill 68 - Time limit for request of jury trial in misdemeanor cases.

Following committee discussion, Senator Gaines moved to report the bill adversely. Senator Steineger seconded the motion. The motion carried.

Senate Bill 69 - Adoption investigations and central registry of child's history.

Following committee discussion, Senator Steineger moved to amend the bill by striking "shall" in line 43 and inserting "may". Senator Gaines seconded the motion. Following considerable committee discussion, the motion failed.

Senator Burke moved to amend the bill by adopting the amendments proposed by SRS by adding two subsections in Section 1 (See Attachment III). Senator Hoferer seconded the motion. The motion carried.

Senator Burke moved to amend the bill by adopting the proposed amendment by adding a new Section 3 concerning interstate placements as indicated in Attachment III. Senator Hoferer seconded the motion. The motion carried.

Senator Burke made a conceptual motion to amend the bill in lines 80 through 82 to provide that the clerk of each district court transfer all journal entries of final adoption decrees and social assessments

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 SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 13, 1985

Senate Bill 69 continued

as proposed by SRS and the Judicial Administrator. Senator Feleciano seconded the motion. Following committee discussion, Senator Steineger made a substitute motion to amend the bill in lines 80 through 82 to provide that the clerk of each district court transfer the adoption decree. Senator Burke seconded the motion. The motion failed.

The chairman referred back to the original motion to have the journal entry and social assessment transferred and continue on into the future. Senator Burke had made the motion and Senator Feleciano seconded. The original motion carried.

The committee will continue action on Senate Bill 60 at a later date.

Senator Winter presented a request for a committee bill concerning limitation on attorneys fees. Following the explanation, Senator Winter moved to introduce the bill. Senator Parrish seconded the motion. The motion carried.

The meeting adjourned.

The guest list is attached (See Attachment IV).

0121 forfeited under this section remaining after payment of such
0122 expenses shall be transferred to the general fund of the unit of
0123 government having custody of the forfeited property or money.

0124 (f) Controlled substances listed in schedule I that are pos-
0125 sessed, transferred, sold or offered for sale in violation of this act
0126 are contraband and shall be seized and summarily forfeited to
0127 the state. Controlled substances listed in schedule I which are
0128 seized or come into the possession of the state, the owners of
0129 which are unknown, are contraband and shall be summarily
0130 forfeited to the state.

0131 (g) Species of plants from which controlled substances in
0132 schedules I and II may be derived which have been planted or
0133 cultivated in violation of this act, or of which the owners or
0134 cultivators are unknown or which are wild growths may be
0135 seized and summarily forfeited to the state.

0136 (h) The failure, upon demand by the law enforcement agency
0137 having jurisdiction, of the person in occupancy or in control of
0138 land or premises upon which the species of plants are growing or
0139 being stored, to produce an appropriate registration, or proof that
0140 ~~he~~ such person is the holder thereof, constitutes authority for the
0141 seizure and forfeiture of the plants.

0142 Sec. 2. K.S.A. 65-4135 is hereby repealed.

0143 Sec. 3. This act shall take effect and be in force from and
0144 after its publication in the statute book.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1983

SENATE BILL No. 51

By Senator Bogina

1-18

0020 AN ACT concerning the uniform controlled substances act; re-
0021 lating to forfeitures; amending K.S.A. 65-4135 and repealing
0022 the existing section.

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

0024 Section 1. K.S.A. 65-4135 is hereby amended to read as fol-
0025 lows: 65-4135. (a) The following are subject to forfeiture: (1) All
0026 controlled substances which have been manufactured, distrib-
0027 uted, dispensed or acquired in violation of this act;

0028 (2) all raw materials, products and equipment of any kind
0029 which are used or intended for use in manufacturing, con-
0030 pounding, processing, delivering, importing or exporting any
0031 controlled substance in violation of this act;

0032 (3) all property which is used or intended for use as a con-
0033 tainer for property described in paragraph (1) or (2);

0034 (4) all conveyances, including aircraft, vehicles or ve
0035 which are used or intended for use to transport or in any man
0036 to facilitate the transportation for the purpose of sale or receipt of
0037 property described in paragraph (1) or (2), but:

0038 (A) No conveyance used by any person as a common carrier
0039 in the transaction of business as a common carrier is subject to
0040 forfeiture under this section unless it appears that the owner or
0041 other person in charge of the conveyance is a consenting party or
0042 privy to a violation of this act;

0043 (B) no conveyance is subject to forfeiture under this
0044 by reason of any act or omission established by the owner thereof
0045 to have been committed or omitted without his the owner's
0046 knowledge or consent.

Attach. F

0041 (C) a conveyance is not subject to forfeiture for a violation of
 0048 subsection (c) K.S.A. 65-4123(e) and amendments thereto; and
 0049 (D) a forfeiture of a conveyance encumbered by a bona fide
 0050 security interest is subject to the interest of the secured party if
 0051 ~~he~~ *the secured party* neither had knowledge of nor consented to
 0052 the act or omission;

0053 (5) all books, records and research products and materials,
 0054 including formulas, microfilm, tapes and data which are used or
 0055 intended for use in violation of this act;

0056 (6) *Everything of value furnished, or intended to be fur-*
 0057 *nished, in exchange for a controlled substance in violation of the*
 0058 *uniform controlled substances act, all proceeds traceable to*
 0059 *such an exchange, and all moneys, negotiable instruments and*
 0060 *securities used, or intended to be used, to facilitate any violation*
 0061 *of the uniform controlled substances act, except that no prop-*
 0062 *erty shall be forfeited under this paragraph (6), to the extent*
 0063 *of the interest of an owner, by reason of any act or omission*
 0064 *established by the owner to have been committed or omitted*
 0065 *without the owner's knowledge or consent. All moneys, coin and*
 0066 *currency found in close proximity to forfeitable controlled sub-*
 0067 *stances, to forfeitable drug manufacturing or distributing par-*
 0068 *aphernalia or to forfeitable records of the importation, man-*
 0069 *ufacture or disposition of controlled substances, are presumed*
 0070 *to be forfeitable under this paragraph (6). The burden of proof*
 0071 *shall be upon claimants of the property to rebut this presump-*
 0072 *tion-[, and]*

0073 [(7) all real property, including any building or structure
 0074 thereon, which is used or intended for use in violation of this act,
 0075 except:

0076 [(A) No homestead shall be subject to forfeiture;

0077 [(B) real property is not subject to forfeiture under this
 0078 section by reason of any act or omission established by the owner
 0079 thereof to have been committed or omitted without the owner's
 0080 knowledge or consent;

0081 [(C) real property is not subject to forfeiture for a violation
 0082 of subsection (c) of K.S.A. 65-4123 and amendments thereto; and
 0083 [(D) a forfeiture of real property encumbered by a bona fide

0084 *mortgage or lien is subject to the interest of the secured party*
 0085 *who neither had knowledge of nor consented to the act or*
 0086 *omission.]*

0087 (b) Property subject to forfeiture under this act may be seized
 0088 by any law enforcement officer upon process issued by any
 0089 district court having jurisdiction over the property.

0090 (c) In the event of seizure pursuant to subsection (b), pro-
 0091 ceedings under subsection (d) shall be instituted promptly.

0092 (d) Property taken or detained under this section shall not be
 0093 subject to replevin, but is deemed to be in the custody of the law
 0094 enforcement agency seizing it subject only to the orders of the
 0095 district court having jurisdiction over the forfeiture proceedings.
 0096 When property is seized under this act, the law enforcement
 0097 agency seizing it may: (1) Place the property under seal;
 0098 (2) remove the property to a place designated by it; or
 0099 (3) require the board to take custody of the property and
 0100 remove it to an appropriate location for disposition in accordance
 0101 with law.

0102 (e) When property is forfeited under this act the law en-
 0103 forcement agency having custody of it may: (1) Retain it for
 0104 official use;

0105 (2) sell that which is not required to be destroyed by law and
 0106 which is not harmful to the public. ~~The proceeds shall be used~~
 0107 ~~for payment of all proper expenses of the proceedings for~~
 0108 ~~feiture and sale, including expenses of seizure, maintenance~~
 0109 ~~custody, advertising and court costs;~~

0110 (3) transfer it for medical or scientific use to any state agency
 0111 in accordance with the rules and regulations of the board;

0112 (4) require the sheriff of the county in which the property is
 0113 located to take custody of the property and remove it to an
 0114 appropriate location for disposition in accordance with law; or
 0115 (5) forward it to the bureau for disposition.

0116 *The proceeds from the sale under paragraph (2) and any*
 0117 *moneys forfeited under this section shall be used to pay all*
 0118 *proper expenses of the proceedings for forfeiture and sale in-*
 0119 *cluding expenses of seizure, maintenance of custody, advertising*
 0120 *and court costs. The proceeds from such sale and any moneys*

BILL NO. _____

AN ACT concerning crimes; relating to collection fee for processing worthless checks.

New Section 1. Worthless Check Collection Fee. (1) A county or district attorney may collect, as costs for processing, a fee if the county or district attorneys office processes and collects a check, order or draft if the check, order, or draft:

(a) has been made, drawn, issued or delivered in a manner constituting a violation of K.S.A. 21-3707 or 21-3708.

(2) The county or district attorney may collect the fee from any person who is a party to the offense described in subsection (1) of this Act.

(3) The amount of the fee shall be:

(a) \$5 if the face amount of the check, order or draft is \$10 or less,

(b) \$10 if the face amount of the check, order or draft is greater than \$10, but \$100 or less.

(c) \$30 if the face amount of the check, order or draft is \$300.

(d) \$50 if the face amount of the check, order or draft is \$500.

(e) \$75 if the face amount of the check, order or draft is greater than \$500.

(4) Fees collected under this article shall be paid to the county treasurer who shall credit the same to a separate, special fund.

Expenditures from this fund shall be paid by the county treasurer upon the order of the county or district attorney

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and shall be used exclusively to defray the expenses of the county or district attorneys office. In no event may this fund be used to supplement the salary of the county or district attorney. Nothing in this Act shall be construed to decrease the total salaries, expenses and allowances which a county or district attorneys office is receiving at the time this Act takes effect.

adoption records

2-13-85

SRS

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Session of 1985

SENATE BILL No. 69

By Committee on Judiciary

1-23

0017 AN ACT concerning adoption; relating to procedures therefor;
0018 amending K.S.A. 59-2278 and repealing the existing section.

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

0020 Section 1. K.S.A. 59-2278 is hereby amended to read as fol-
0021 lows: 59-2278. (a) The written consents to adoption which are
0022 required by K.S.A. 59-2102 and amendments thereto *and, if*
0023 *applicable, the information required by section 2* shall be filed
0024 with the petition for adoption *of a minor child*. Upon the filing of
0025 the petition, the court shall fix the time and place for the hearing
0026 thereon. The time fixed for the hearing may be any time not more
0027 than 60 days from the date the petition is filed if (1) consents ~~and~~,
0028 waivers of notice of each living parent *and, if required by section*
0029 *2, the child's genetic and medical history and birth verification*
0030 *are filed;* (2) the court does not require the petitioner to obtain
0031 an assessment by a person licensed to practice social work in
0032 *Kansas or by a licensed child-placing agency* to determine the
0033 advisability of the adoption; and (3) there are no interested
0034 parties other than the petitioner and the consenting parties. In all
0035 other cases, the time fixed by the court shall be not less than 30
0036 days or more than 60 days from the date of the filing of the
0037 petition. The time fixed for the hearing may be extended by the
0038 court for cause.

0039 (b) Notice of the hearing shall be given to all interested
0040 parties. Pending the hearing the court may make an appropriate
0041 order for the care and custody of the child.

0042 (c) Promptly upon the filing of the petition by a petitioner
0043 who is not a stepparent, the court ~~may~~ *shall* require the peti-
0044 tioner to obtain an assessment by a court designated social
0045 worker licensed to practice social work in *Kansas or by a licensed*

Attch. III

Attch. III
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0046 child-placing agency of the advisability of the adoption, and file
 0047 a report of such assessment. The petitioner shall file with the
 0048 court, not less than 10 days before the hearing on the petition, a
 0049 report of the assessment and, if applicable, the information filed
 0050 under section 2. If there is no licensed social worker or licensed
 0051 child-placing agency available to make the social assessment and
 0052 report to the court, the court may use the department of social
 0053 and rehabilitation services for that purpose. The costs for making
 0054 the social of making the assessment and report may be assessed
 0055 as court costs in the case as provided in article 20 of chapter 60 of
 0056 the Kansas Statutes Annotated and acts amendatory of the provi-
 0057 sions thereof or supplemental amendments thereto. In making
 0058 the assessment, the licensed social worker or the social worker,
 0059 child-placing agency or department of social and rehabilitation
 0060 services is authorized to observe the child and to contact the
 0061 agency or individuals consenting to the adoption and obtain any
 0062 voluntarily given genetic information about the child confirm
 0063 and, if necessary, clarify any genetic and medical history filed
 0064 with the petition. This information shall be made a part of the
 0065 report to the court. The licensed social worker's report or the
 0066 report of the social worker, child-placing agency or department
 0067 of social and rehabilitation services to the court may inquire
 0068 whether the consents to the adoption were freely and voluntar-
 0069 ily made. The report to the court by the social worker, child-
 0070 placing agency or department of social and rehabilitation ser-
 0071 vices shall include the results of investigation of the adopting
 0072 parents, their home and their ability to care for the child.

0073 (d) Upon the hearing of the petition, the court shall consider
 0074 the social assessment and all evidence offered by any interested
 0075 party. If the court is of the opinion that the adoption should be
 0076 made, it shall make a final order of adoption and shall deliver the
 0077 child to the petitioner, if that has not already been done. In any
 0078 event, the costs of the adoption proceedings shall be paid by the
 0079 petitioner.

0080 (f) The clerk of each district court shall transfer all legal
 0081 documents and social assessments pertaining to any adoption,
 0082 except stepparent adoptions, finalized on or after July 1, 1983,

- (d) In the case of nonresidents who are filing a petition to adopt a child in Kansas, the assessment and report required herein must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity, and filed with the court, not less than 10 days before the hearing on the petition.
- (e) The assessment and report shall be ineffective if completed more than one year prior to the filing of the adoption petition.

Attach. III

0083 *and prior to the effective date of this act, to the secretary of social*
0084 *and rehabilitation services on or before January 1, 1986, or 30*
0085 *days after the report is filed, whichever is later. The transferred*
0086 *reports shall be maintained by the secretary and shall be subject*
0087 *to disclosure to the same extent as reports and other records of*
0088 *investigations made by the secretary pursuant to this section.*

0089 New Sec. 2. (a) Unless the petitioner is a stepparent, the
0090 following information shall be filed with the petition for adop-
0091 tion of a minor child:

0092 (1) A complete written genetic, medical and social history of
0093 the child;

0094 (2) the names, addresses and telephone numbers of each of
0095 the child's biological parents, if known;

0096 (3) any hospital records pertaining to the child or a properly
0097 executed authorization for release of those records; and

0098 (4) the child's birth verification, which shall include the date,
0099 time and place of birth and the name of the attending physician.

0100 (b) The secretary of social and rehabilitation services shall
0101 adopt rules and regulations specifying what should be contained
0102 in the genetic, medical and social history required by this sec-
0103 tion, which shall include but not be limited to genetic and
0104 medical information concerning each of the child's biological
0105 parents, if known; and the date of birth and sex of any of the
0106 child's siblings who are known at the time of filing the petition.

0107 (c) The secretary of social and rehabilitation services shall
0108 adopt rules and regulations establishing procedures for updating
0109 a child's genetic, medical and social history if new information
0110 becomes known at a later date. The secretary or the child-placing
0111 agency, whichever conducts the investigation under K.S.A. 59-
0112 2278 and amendments thereto, shall advise in writing each of the
0113 child's biological parents, if known, of those procedures.

0114 (d) Within 30 days after the final order of adoption is entered,
0115 the clerk of the court shall send to the secretary of social and
0116 rehabilitation services a copy of any information filed pursuant to
0117 this section by anyone other than the secretary, together with any
0118 clarification or modification of that information contained in a
0119 report filed pursuant to K.S.A. 59-2278 and amendments thereto

Attch. III

0120 by anyone other than the secretary. Such information shall be
 0121 subject to disclosure to the same extent as similar information
 0122 concerning children relinquished to the department of social and
 0123 rehabilitation services pursuant to K.S.A. 38-125 and amend-
 0124 ments thereto.

0125 (e) Any employee or agent of the department of social and
 0126 rehabilitation services, a child-placing agency or a district court
 0127 who intentionally destroys any information required to be filed
 0128 under this section is guilty of a class C misdemeanor.

0129 (f) If any information required to be filed under this section is
 0130 not available, an affidavit explaining the reasons why it is not
 0131 available and signed by each party whose consent to the adop-
 0132 tion is required shall be filed with the petition for adoption.

0133 (g) As used in this section and K.S.A. 59-2278 and amend-
 0134 ments thereto, "child-placing agency" means any corporation
 0135 organized under the laws of this state and authorized by law to
 0136 care for and surrender children for adoption as provided in
 0137 K.S.A. 38-112 *et seq.*, and amendments thereto.

0138 ~~Sec. 34~~ K.S.A. 59-2278 is hereby repealed.

0139 ~~Sec. 45~~ This act shall take effect and be in force from and
 0140 after its publication in the statute book.

New Sec. 3. Interstate placements shall follow ^{the} interstate
 compact on placement of children procedures
 as set forth in K.S.A. 38-1201 and amendments
 thereto.

Attach. III