

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 28, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, 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:

Gordon Hahn, The Associated Landlords of Kansas  
Karen McClain, Kansas Association of Realtors

Senate Bill 112 - Tenant utility lien.

Gordon Hahn, The Associated Landlords of Kansas, testified his association feels creating liens against property is not the answer. Although it appears simple, the creation of a lien is time consuming, complex and often requires the services of a lawyer. A copy of his testimony is attached (See Attachment I). During committee discussion, a committee member inquired if he had heard of this as being a very common problem, the failure to pay utility bills by landlords? Mr. Hahn replied, no, only when building is in foreclosure. The committee member inquired if there is a policing program within the association, or any education programs? Mr. Hahn replied, no, for sometime they have had a clean organization. The landlords who won't comply will not belong to our organization. Committee discussion followed.

Karen McClain, Kansas Association of Realtors, appeared in opposition to the bill. She stated the association is opposing this bill because they feel that tenants have an adequate remedy already provided for them in the Kansas Residential Landlord Tenant Act. A copy of her testimony is attached (See Attachment II). Committee discussion with her followed.

Senate Bill 73 - Restrictions on adoption by nonresidents.

The chairman reviewed the bill and pointed out this is one of a series of three adoption bills. Senate Bill 69 had already been passed out of the Committee of the Whole. Following considerable committee discussion, it was the consensus of the committee they would like more information from SRS concerning Senate Bill 73.

Senate Bill 103 - Inspection of records relating to juveniles and children in need of care.

Following committee discussion of the bill, Senator Talkington moved to table the bill. Senator Gaines seconded the motion. The motion carried.

Senate Bill 167 - Admissibility of videotaped testimony by child witnesses in certain cases.

Considerable committee discussion was held on the bill. Staff will check the Kentucky and Oklahoma laws that are similar to this bill and report back to committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 28, 1985

Senate Bill 36 - Increase in judges on court of appeals.

Following committee discussion, Senator Talkington moved to amend the bill to provide for two judges; one appointed upon the effective date, and the other before January 1, 1987. Senator Gaines seconded the motion. The motion carried.

Senator Talkington moved to report the bill favorably as amended; Senator Gaines seconded the motion, and the motion carried.

Senate Bill 170 - Issuance of subpoenas by secretary of corrections.

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

Senate Bill 171 - Prohibiting persons convicted of felonies from being employed by department of corrections.

Following committee discussion, Senator Gaines moved to report the bill favorably. Senator Steineger seconded the motion. Following further committee discussion, and with a vote of four in favor of the motion and five opposed, the motion failed.

Senator Winter moved to report the bill adversely. Senator Parrish seconded the motion. The motion carried.

Senate Bill 185 - Prohibiting sanctions by employer for absence due to jury service.

Following committee discussion, Senator Winter moved to table the bill. Senator Gaines seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment III).



**THE ASSOCIATED LANDLORDS OF KANSAS, INC.**  
P.O. BOX 4282, SHAWNEE MISSION, KS. 66204



(913)-232-4476

## **Commentary on Senate Bill 112**

### **February 28, 1985**

The Associated Landlords of Kansas are especially interested in Senate Bill 112, being heard today. We welcome this opportunity to provide you with commentary about the bill.

Our more than 1,200 members, represented through active local chapters in more than six Kansas cities, primarily purchase real estate as an investment outside their other employment, meaning they are primarily individuals working with other individuals (tenants) and hoping to continue good relations with their customers (tenants) over a long period of time. Unfortunately, some landlords are not ethical. We absolutely abhor the thought that a landlord would contractually agree to provide utility services under a lease agreement and then fail to honor that obligation, especially when it would endanger a tenant or family by not providing light or heat, especially during winter months. Any such landlord should be dealt with as promptly and as firmly as is possible under the judicial system.

Unfortunately, we feel creating liens against property is not the answer. Although it appears simple, the creation of a lien is time-consuming, complex, and often requires the services of a lawyer. Tenants faced with the sorry situation described above often have neither the resources or time it takes to pursue lien creation. The creation of a lien also does nothing to solve the immediate problem, the restoration of utility service under the "proper" arrangements. We would suggest instead that a tenant faced with a non-compliant landlord be able to pursue the matter in expedited court proceedings, and that courts be empowered to grant injunctive relief, ordering the landlord to honor the obligations immediately, and repay the tenant as well. A landlord who failed to either repay the tenant or resume payment for utility services could then be held in contempt of court. Injunctive relief could even include an order to the utility to maintain the threatened service(s), and consider the landlord's obligation as a debt that could not be discharged through other means such as bankruptcy.

If there is other information or commentary you would like to have about the proposed bill, please let us know, either by writing us or by leaving a message at our Topeka office phone (232-4476).

2/28/85  
Atch. I

2-28-85

TESTIMONY BEFORE  
THE SENATE JUDICIARY COMMITTEE  
SB 112  
FEBRUARY 28, 1985  
KAREN MCCLAIN  
KANSAS ASSOCIATION OF REALTORS®

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, I AM KAREN MCCLAIN, DIRECTOR OF GOVERNMENTAL AFFAIRS FOR THE KANSAS ASSOCIATION OF REALTORS®.

I AM HERE TODAY TO OPPOSE SB 112 WHICH WOULD PROVIDE FOR TENANTS TO BE ABLE TO FILE LIENS AGAINST THE PROPERTY OF THEIR LANDLORD.

THE ASSOCIATION IS OPPOSING THIS BILL BECAUSE WE FEEL THAT TENANTS HAVE AN ADEQUATE REMEDY ALREADY PROVIDED FOR THEM IN THE KANSAS RESIDENTIAL LANDLORD TENANT ACT. K.S.A. 58-2563 PROVIDES THAT IF A LANDLORD WILFULLY DIMINISHES SERVICES TO A TENANT BY INTERRUPTING OR CAUSING THE INTERRUPTION OF ELECTRIC, GAS, WATER, OR OTHER ESSENTIAL SERVICE TO A TENANT, THE TENANT MAY TERMINATE THE RENTAL AGREEMENT AND RECEIVE EITHER ONE AND ONE-HALF MONTHS RENT, OR WHATEVER DAMAGES WERE SUSTAINED DUE TO THE LANDLORD'S ACTIONS.

WE FEEL THAT IF A LANDLORD WAS SUPPOSED TO PAY THE UTILITIES AND FAILED TO DO SO, THE ONLY REASON A TENANT WOULD PAY THE UTILITIES WOULD BE IF THE UTILITY COMPANY THREATENED TO, OR ACTUALLY DID, TERMINATE SERVICE. IT HAS BEEN THE EXPERIENCE OF OUR MEMBERS THAT TENANTS USUALLY MOVE OUT AT THIS POINT, RATHER THAN DEAL WITH A LANDLORD WHO HASN'T PAID THE UTILITIES, OR LIVE IN A HOUSE OR APARTMENT WHERE ONE OR MORE OF THE UTILITIES HAS BEEN SHUT OFF.

UNDER THE CURRENT LAW, A TENANT HAS THE RIGHT AT THAT POINT TO TERMINATE THE AGREEMENT, GET THE SECURITY DEPOSIT BACK, AND, IF THEY DID PAY ANY PART OF THE UTILITY BILL, THEY CAN RECOVER THEIR COST BY GETTING EITHER ONE AND ONE-HALF TIMES THEIR RENT, OR THE AMOUNT OF THEIR DAMAGES, WHICHEVER IS GREATER.

2/28/85  
Attch. II

IT SEEMS TO BE A DUPLICATION OF THE MEANS OF RECOVERY, IF NOT A CIRCULAR MEANS OF RECOVERY, FOR THE TENANT TO FILE A LIEN ON THE PROPERTY FOR THE AMOUNT OF THE DAMAGES, WHEN THEY CAN TAKE DIRECT ACTION AGAINST THE LANDLORD FOR THEIR DAMAGES.

IN ADDITION, THE PLACING OF A LIEN OF THIS SORT ON RENTAL PROPERTY CAUSES PROBLEMS AT THE TIME THE PROPERTY IS SOLD. RENTAL PROPERTY, BY ITS NATURE, HAS A VERY HIGH TURNOVER RATE. THIS IS PARTICULARLY TRUE IN THE CASE OF RENTAL PROPERTY IN COLLEGE TOWNS. IF ONE OF THESE UTILITY LIENS IS FILED ON PROPERTY, AND THE TENANT SUBSEQUENTLY LEAVES TOWN, OR GRADUATES, HOW CAN A LANDOWNER BEGIN TO TRACK DOWN THESE PAST TENANTS WHEN IT COMES TIME TO CLEAR THE TITLE ON THE PROPERTY? THIS SEEMS TO BE AN UNFAIR BURDEN ON THE LANDOWNER WHEN THEY ARE AT THE POINT OF SELLING THE PROPERTY AND ARE TRYING TO PAY THE LIEN OFF IN ORDER TO BE ABLE TO DO SO.

WE UNDERSTAND THE RIGHT OF A TENANT TO HAVE THE SERVICE OF UTILITIES, AND THE RIGHT OF THE TENANT TO REGAIN ANY DAMAGES WHICH HAVE BEEN CAUSED BY AN IRRESPONSIBLE LANDLORD. HOWEVER, WE BELIEVE THAT TENANTS HAVE A DIRECT, SUFFICIENT REMEDY UNDER THE CURRENT LAW, AND THAT THE LAW PROPOSED HERE WILL ONLY CAUSE ADDED PROBLEMS, FAR BEYOND THE PROBLEM WHICH THE PROPONENTS ARE TRYING TO REMEDY.

*Attch. II*