

Approved January 27, 1986
Date

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 January 22, 1986 in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Research Department
Jerry Donaldson, Research Department
Mary Hack, Office of Revisor

Conferees appearing before the committee:

James R. Turner, Kansas League of Savings Institutions
Donna Voth, Assistant to the Minority Leader
Charles Simmons, Department of Corrections
Richard Kline, Shawnee County Corrections Department
Marjorie Van Buren, Office of Judicial Administrator

James Turner, Kansas League of Savings Institutions, presented a request for a committee bill concerning garnishment of funds held by financial institutions (See Attachment I). Following his explanation of the proposal, Senator Burke moved to introduce the bill as a committee bill; Senator Parrish seconded the motion, and the motion carried.

Senate Bill 385 - Judge's consent for marriage license under age 16.

Donna Voth appeared in behalf of Senator Johnston, the author of the bill. She explained the bill provides that everyone under the age of 18 must have the consent of the parent or guardian to apply for a marriage license, and the consent of the judge is required if one of the parties is under the age of sixteen. She said a judge reported that 90% to 95% of the requests are over the age of sixteen. Following committee discussion, Senator Burke moved to report the bill favorably; Senator Hoferer seconded the motion, and the motion carried.

Staff presented background information on Proposal No. 41.

Senate Bill 419 - Status of offenders in community corrections.

Charles Simmons, Department of Corrections, testified the department does not oppose this bill, but they don't think it's necessary in light of the supreme court's decision Kansas v. Fowler. He stated they can rely on the decision in the supreme court case and the department sees no need for the third alternative.

Richard Kline, Shawnee County Corrections Department, testified Shawnee County has had community corrections services in operation for six years. Under existing statute they have been able to work through court services, and the administrative judge to get people into community corrections programs. They have had no trouble getting people into the program. He said with introduction of this bill, it does provide some classification options for the judges. This would be no problem for them, but he does understand Sedgwick County has had some problems. He stated the department has no problem with adoption of this bill as it stands.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~PM~~ on January 22, 1986

Senate Bill 419 continued

Marjorie Van Buren, Office of Judicial Administrator, testified her office had input during the interim study last summer, and they have no problem with the bill, and feel it is helpful to clarify the probation. She brought up one other issue concerning ordering restitution in cases when they are sentenced to the Department of Corrections. She referred to the recent supreme court decision, Kansas v. McNaught, and stated this might be an appropriate vehicle in considering restitution. The chairman requested staff to read the supreme court decision to which she referred and provide a summary for committee members.

The hearing on Senate Bill 419 was concluded.

Copies of two bill proposals requested by the Kansas Bar Association for the Wichita Bar Association were passed out to committee members (See Attachments II and III) concerning unauthorized practice of law. Staff explained the proposals to the committee. Senator Gaines made a motion to introduce the bills as committee bills. Senator Hoferer seconded the motion, and the motion carried.

The chairman presented a bill request to change the name of the Kansas Adult Authority back to the Kansas Parole Board. Senator Parrish moved to introduce the bill. Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-22-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Kelle Presch	Lawrence	KS Trial Lawyers Assoc.
Charles Simmons	700 Jackson, Topeka	Ks. Dept. of Corrections
Jim Clark	827 S. Topeka	Ks Co Fed Assoc.
Marjorie VanBuren	Kansas Judicial Cnt	OJA
Dorcas Stott	Sen. Johnston	Sen. Minority Blk
Jim Sumner	Topeka	KLST
Jim Miller	" "	KBA
Pat Maguire	" "	K. A. L. S. O.
Grace Wilson	Topeka	League of Women Voters Ks
Richard Kline	"	Shawnee Co. Corrections
Mervin Umbholtz	Topeka	Ks. Credit Union League
M. Heave	"	cap. Jour
L Ferguson	"	A.P.

Attch. IV

___ BILL NO. ___

AN ACT concerning garnishment of funds held by financial institutions; amount withheld; forms; fee to financial institution; amending 1985 Supp. 60-726 and repealing the existing section.

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

Section 1. K.S.A. 1985 Supp. 60-726 is hereby amended to read as follows: 60-726 (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 1 1/2 times the amount of the plaintiff's claim, in the case of prejudgment garnishment, or 1 1/2 times the amount of the judgment, in the case of postjudgment garnishment.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 1 1/2 times the amount of the plaintiff's claim or 1 1/2 times the amount of the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you

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pursuant to this order of garnishment is not to exceed
\$ _____."
(amount stated in direction)

(d) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the defendant which I shall hold shall not exceed \$ _____."
(amount stated in order)

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) This section shall be part of and supplemental to the Kansas code of civil procedure.

(g) No order of garnishment attaching funds, credits, or indebtedness held by a bank, savings and loan association, savings bank, credit union, or finance company shall be issued unless the party seeking the order deposits a nonrefundable fee of \$15.00 for each order of garnishment which shall be forwarded to the financial institution with each order of garnishment.

Section 2. 1985 Supp. 60-726 is hereby repealed.

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

BILL NO. _____

By _____

AN ACT relating to crimes and punishment; concerning the unlawful practice of law.

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

Section 1. (1) Unlawful practice of law is any of the following acts done by any natural person who has not first been duly and regularly licensed and admitted to practice law by the supreme court of Kansas, by any partnership except one formed for the practice of law and composed of duly licensed natural persons, or by any corporation or voluntary association except a professional law corporation organized pursuant to K.S.A. 17-2706 et seq. and amendments thereto:

(a) Furnishing attorneys or counsel or an attorney and counsel to render legal service;

(b) holding oneself or itself out to the public as being entitled to practice law;

(c) rendering or furnishing legal services or advice adjudged that of a layman;

(d) assuming to be an attorney at law or counselor at law;

(e) assuming, using or advertising the title of lawyer, attorney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles, in such manner as to convey the impression that such person, partnership, corporation or association is a practitioner of law;

(f) in any manner advertising that such person, partnership, corporation or association, either alone or together with any other person, partnership, corporation or association has, owns, conducts or maintains an office of any kind for the practice of law.

(2) This section does not prevent any corporation or

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voluntary association, formed for benevolent or charitable purposes and recognized by law, from furnishing an attorney at law to give free assistance to persons without means.

(3) This section shall not be construed to apply to practice before any federal court by any person duly admitted to practice therein, nor to a person pleading or managing such person's own cause in court, nor to the officer or employee of a corporation, partnership or governmental entity who is not an attorney but is appearing for that organization in an action cognizable as a small claim under K.S.A. 61-2701 et seq. and amendments thereto. In all proceedings, the fact, as shown by the records of the clerk of the appellate courts, that such person is not recorded as a member of the bar of this state shall be prima facie evidence that such person is not a member of the bar licensed to practice law in this state.

(4) Unlawful practice of law is a class A misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

_____ BILL NO. _____

By

AN ACT concerning consumer protection; relating to the unauthorized practice of law as a deceptive act and practice; amending K.S.A. 50-626 and repealing the existing section.

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

Section 1. K.S.A. 50-626 is hereby amended to read as follows: 50-626. (a) No supplier shall engage in any deceptive act or practice in connection with a consumer transaction.

(b) Deceptive acts and practices include, but are not limited to, the following, each of which is hereby declared to be a violation of this act:

(1) Representations made knowingly or with reason to know that:

(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

(B) the supplier has a sponsorship, approval, status, affiliation or connection that ~~he-er-she~~ such supplier does not have;

(C) property is original or new, if such property has been deteriorated, altered, reconditioned, repossessed or is second-hand or otherwise used to an extent that is materially different from the representation;

(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation; or

(E) the consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective

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consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of benefit is contingent on an event occurring after the consumer enters into the transaction;

(2) the intentional use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact;

(3) the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact, whether or not any person has in fact been misled;

(4) disparaging the property, services or business of another by making, knowingly or with reason to know, false or misleading representations of material facts;

(5) offering property or services without intent to sell them;

(6) offering property or services without intent to supply reasonable, expectable public demand, unless the offer discloses the limitation;

(7) making false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time;

(8) falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations;

(9) falsely stating, knowingly or with reason to know, that services, replacements or repairs are needed;

(10) falsely stating, knowingly or with reason to know, the reasons for offering or supplying property or services at sale or discount prices;

(11) holding oneself out as an attorney when not licensed and admitted to practice law by the supreme court of Kansas, or otherwise representing or implying that one has legal knowledge beyond that of a lay person, except for those individuals or organizations which already would have a fiduciary relationship

in a consumer transaction.

Sec. 2. K.S.A. 50-626 is hereby repealed.

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