

Approved March 26, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 19, 1987 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Jane Holt, Secretary to the Committee

Conferees appearing before the committee:

Senator Robert G. Frey
Kurt Barnard, Federation of Apparel Manufacturers, New York
Bob Cloughley, Director, Kansas City Apparel Mart, Leawood
Paul Cloughley, Kansas City Apparel Mart Sales, Overland Park
Frank Ybarra, Intern for Senator Wint Winter, Jr.

Hearing on S.B. 187-Relating to prohibition of liens or security interests on exempt personal property without joint consent

Senator Frey informed the Committee the bill repeals K.S.B. 58-312, which invalidates security interests or liens made on personal property by only one spouse on property exempt from execution other than purchase money security interests.

The hearing was closed on S.B. 187.

Hearing on S.B. 188-Civil procedure, notice of sale of real property under execution.

Senator Frey explained this bill clarifies that the publication of a notice of sale of real property under execution for a judgment shall be in the county where the judgment is rendered. Also the court may order notice of the sale be published in the county where the property is located.

The hearing was closed on S.B. 188.

Representative Shriver moved to amend S.B. 188 by making the publication of the notice mandatory rather than permissive. The motion was seconded, and the motion passed.

A motion was made by Representative Peterson to report S.B. 188 favorable for passage, as amended. Representative Adam seconded the motion. The motion passed.

Continuation of hearing on S.B. 180-Prompt payment of commissions to commission salespersons when contractual relationship terminates

Kurt Barnard explained the amendments the Federation of Manufacturers are proposing to S.B. 180, (see Attachment I).

Bob Cloughley testified he represents 400 commission salesmen in Kansas. He presented an amendment to Section 3, "A Principal who fails to comply with the provisions of Section 2 concerning timely payment or any contractual provision concerning timely payment of commissions due upon the termination of the Contract with the Salesperson, shall be liable in a Civil Action for Exemplary Damages in the amount which does not exceed three times the amount of the commissions owed to the Salesperson. Additionally, such Principal shall pay the Salesperson's reasonable Attorneys' Fees and Court Costs". (see Attachment II)

Paul Cloughley stated salesmen cannot get a contract with manufacturers usually.

The hearing was closed on S.B. 180.

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 HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~am~~ p.m. on March 19, 1987

Hearing on S.B. 190-Sale or resale of admissions to events at state universities

Frank Ybarra testified this bill applies only to public university events. He stated scalping raises the price of tickets and makes it more expensive and difficult for students and others on fixed incomes to attend events. Scalping also reduces the number of tickets available for students to buy. (see Attachment III).

Written testimony was also distributed supporting S.B. 190 from the Department of Intercollegiate Athletics, Wichita State University, (see Attachment IV); and the University of Kansas Athletic Department, (see Attachment V).

The hearing was closed on S.B. 190.

Representative Buehler moved to report S.B. 190 favorable for passage. Representative Douville seconded the motion.

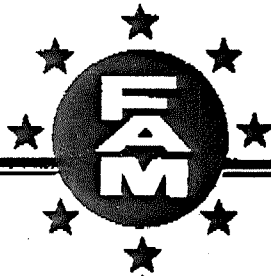
A motion was made and seconded to table S.B. 190. The motion failed.

Representative Snowbarger moved and Representative O'Neal seconded to amend S.B. 190 by stating that ticket scalping to university events should not be limited to the grounds of a state educational institution. The motion failed.

A vote was taken on Representative Buehler's motion to report S.B. 190 favorable for passage, and the motion failed, 7 yeas, 9 nays. Representatives Douville, O'Neal, and Snowbarger requested to be recorded as voting yea.

The Chairman announced the Committee will hear S.B. 264, concerning the division of assets, the week of March 30.

The meeting was adjourned at 4:55 p.m.



FEDERATION OF APPAREL MANUFACTURERS

March 17, 1987

EXECUTIVE COMMITTEE

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Vice President, Co-Treasurer

Mr. Rob Hodges
Executive Director
Kansas Industrial Council
Kansas Chamber of Commerce and Industry
500 First National Tower
One Townsite Plaza
Topeka, KS 66603-3460

Re: Kansas Sales
Representatives Act

Dear Mr. Hodges:

Enclosed is the text of a proposed redrafting of Kansas Senate Bill No 180, proposed by Senator Allen.

To facilitate your review of the redraft, permit me to highlight the changes that I have made and the reasons for which they were made.

1. The bill did not indicate a geographic scope for its application. To clarify the application of the statute I have used the phrase "to solicit and make sales within this State for merchandise to be shipped into or services to be performed either in this state", at various places in the bill. Thus, as redrafted, the bill, applies only where the order was solicited in Kansas and the goods shipped into Kansas.

2. The definition of "commission earned through the last day of the contractual relationship" has been changed by adding the words "and paid for." Thus, as redrafted, the bill now only treats a commission as earned when the goods are shipped, accepted and paid for. This protects the principal against non-payment by the customer.

3. I changed the word "person" in the bill to "principal", which more accurately expresses the relationship

...continued...

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between a sales representative and the manufacturer for whom he/she sells.

4. I cleaned up language in section 2(a) in a number of respects.

First, I did not think that the phrase "terminating" the salesperson really was what they meant. They meant terminating the relationship with the salesperson, so that is the phrase that I used.

Second, I changed the language to deal with the situation where commissions are normally paid by mail, which I assume is the case with most manufacturers using representatives in Kansas.

Third, I generally tried to make the language more precise than that contained in the original draft of the bill.

5. Section 2(b) has been changed to require that only 50% of the commissions be paid within 30 days (plus the 10 days where an audit is required) instead of the 100% required by the original draft of the bill. Under the redraft the remaining 50% of the commissions earned through the last day of the contractual relationship (subject to adjustments for returns, credits and allowances) is due within 100 days.

6. Section 3 was cleaned-up and conformed, but the essential meaning was not changed.

7. Similarly, Section 4(a) was cleaned up but the essential meaning preserved.

8. Section 4(b), the attorney's fee provision, was changed to make an award of attorney's fees and costs discretionary with the court where it is found that the principal's failure to pay was not in good faith.

9. A new section 4(c) has been added allowing the court the discretion to grant attorney's fees and court costs to the principal where the salesperson brings claims in bad faith or brings claims which are frivolous or on insubstantial ground.

Items 8 and 9, above, bring some balance to the bill, and seek to create an atmosphere where the parties will try, in good faith, to resolve legitimate disputes amicably. The bill, as originally drafted, created a one-sided situation which encouraged the salesperson to collect commissions other than "commissions earned through the last day of the relationship.

...continued...

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10. I amended Section 5 to make it neutral. As originally drafted that section might have been read as acknowledging a right in the sales person to collect commissions other than "commissions earned through the last day of the relationship."

Very truly yours,

Kurt Barnard
Director, Government Affairs

KB/ch
enclosure

SENATE BILL No. 180

By Senator Allen

2-9

**PROPOSED
AMENDED LANGUAGE FOR
SENATE BILL 180**

017 AN ACT concerning the prompt payment of commissions to
018 commission salespersons when the contractual relationship
019 terminates.

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

021 Section 1. As used in this act:

022 (a) "Commission salesperson" means a person who is paid on
023 the basis of commissions for sales and who is not an employee
024 subject to the provisions of K.S.A. 44-313 *et seq.*, and amend-
025 ments thereto;

026 (b) "commissions earned through the last day of the contrac-
027 tual relationship" means commissions due for services or mer-
028 chandise which have actually been delivered to and accepted by
029 the customer by the last day of the commission salesperson's
030 contractual relationship;

031 (c) "contractual relationship" means the relationship be-
032 tween a person as defined in subsection (d) and a commission
033 salesperson as defined in subsection (a) based on a contract
034 between those parties to solicit and make sales; and

035 (d) "person" means any individual, partnership, association
036 or corporation contracting with a commission salesperson to
037 solicit and make sales.

(a) "Commission salesperson" means a person who contracts with and is authorized by a principal to solicit within this State wholesale orders for that principal for merchandise to be shipped into or services to be performed within this State and who is compensated therefore by commission, but shall not include one who places orders or purchases for his own account for resale, one who sells products to the ultimate consumer or one who is an employee subject to the provisions of K.S.A. 44-313 *et seq.* and amendments thereto;

(b) "commissions earned through the last day of the contractual relationship" means commissions with respect to services or merchandise which actually have been delivered or furnished to, accepted by, and paid for by the customer by the last day of the commission salesperson's contractual relationship;

(c) "contractual relationship" means the relationship between a principal as defined in subsection (d) and a commission salesperson as defined in subsection (a) based on a contract between those parties for the commission salesperson to solicit and make sales within this State for merchandise to be shipped into or services to be performed within this State; and

(d) "principal" means any individual, partnership, association or corporation contracting with a commission salesperson to solicit and make sales within this State for merchandise to be shipped into or services to be performed within this State.

138 Sec. 2. (a) When any person contracting with a commission
139 salesperson in this state terminates the commission salesperson,
140 or when the commission salesperson resigns, such person shall
141 promptly pay the commission salesperson at the usual place of
142 payment, commissions earned through the last day of the con-
143 tractual relationship as provided in subsection (b) or be liable to
144 the commission salesperson for the penalty provided under
145 section 3 in addition to any earned commissions unless the
146 commission salesperson requests that the commissions be sent
147 through the mail. If, in accordance with a request by such
148 commission salesperson, commissions are sent through the mail,
149 the commissions shall be deemed to have been paid as of the
150 date postmarked for the purposes of this section.

1051 (b) Subject to the provisions of subsection (c), if a person
1052 terminates the commission salesperson, or if the commission
1053 salesperson resigns, such person shall pay the commission
1054 salesperson's commissions earned through the last day of the
1055 contractual relationship not later than 30 days after the last day of
1056 the contractual relationship.

0057 (c) Notwithstanding the provisions of subsection (b), if the
0058 terminated or resigning commission salesperson was entrusted
0059 with the collection, disbursement or handling of money or prop-
0060 erty during the contractual relationship, such person has 10 days
0061 after the termination of the contractual relationship to audit and
0062 adjust the accounts of such commission salesperson before the
0063 thirty-day period required for payment of commissions earned
0064 through the last day of the contractual relationship begins. In
0065 such cases, the penalty provided in section 3 shall apply only
0066 after the expiration of the ten-day audit period and the thirty-day

Sec. 2 (a) When a principal who has contracted with a commission salesperson to solicit and make sales within this State for merchandise to be shipped into or services to be performed within this State terminates the contractual relationship with such commission salesperson, or when such commission salesperson resigns, such principal shall pay to the commission salesperson commissions earned through the last day of the contractual relationship as provided in subsection (b). Such commissions shall be paid to the commission salesperson at the usual place for payment thereof, (including payment by mail if that is the normal method by which the principal makes payments of commissions to the commission salesperson), or if the commission salesperson so requests, such commissions shall be sent by mail. If the principal does not make the payments as required by subsection (b), the principal shall be liable for the penalty provided under section 3 in addition to any unpaid commissions earned through the last day of the contractual relationship. If, such commissions are sent through the mail, such commissions shall, for the purposes of this section, be deemed to have been paid as of the date postmarked.

(b) Subject to the provision of subsection (c), if a principal terminates the contractual relationship with the commission salesperson, or if the commission salesperson resigns, such principal:

(1) shall, not later than 30 days after the last day of the contractual relationship, pay to the commission salesperson fifty (50%) per cent of the commissions earned through the last day of the contractual relationship; and

(2) shall, not later than 100 days after the last day of the contractual relationship, pay to the commission salesperson the balance of the commissions earned through the last day of the contractual relationship, less any adjustments to such commissions for merchandise returned by a customer, and any credits or allowances, granted to the customer.

(c) Notwithstanding the provisions of subsection (b), if the commission salesperson whose contractual relationship is terminated by the principal or by resignation was entrusted with the collection, disbursement or handling of money or property during the contractual relationship, such principal has 10 days after the termination of the contractual relationship to audit and adjust the accounts of such commission salesperson before the thirty-day period provided under section (b)(1) for the payment of fifty (50%) per cent of the commissions earned through the last day of the contractual relationship commences. In such cases, the penalty provided in section 3 shall apply only after the expiration of the ten-day audit period and the thirty-day period required under this subsection.

0068 Sec. 3. If a person fails to pay the commission salesperson's
0069 commissions earned through the last day of the contractual
0070 relationship within the applicable time period as provided in
0071 section 2, such person shall be liable to the commission sales-
0072 person for damages, in addition to earned commissions, in an
0073 amount determined under the provisions of K.S.A. 44-315 and
0074 amendments thereto.

0075 Sec. 4. (a) When there is a dispute concerning the amount of
0076 the commission salesperson's commissions earned through the
0077 last day of the contractual relationship or whether the person has
0078 properly audited and adjusted the commission salesperson's
0079 account, the penalty provided in section 3 shall not apply if such
0080 person pays the amount such person believes in good faith is
0081 owed the commission salesperson for commissions earned
0082 through the last day of the contractual relationship within the
0083 applicable period provided under section 2. If the dispute is later
0084 adjudicated and it is determined that the commission salesper-
0085 son's commissions earned through the last day of the contractual
0086 relationship were greater than the amount paid by such person,
0087 the penalty provided in section 3 shall apply.

0088 (b) If a dispute under this section is later adjudicated and it is
0089 determined that the commission salesperson was not promptly
0090 paid commissions earned through the last day of the contractual
0091 relationship as provided in section 2, such person shall pay
0092 reasonable attorney fees incurred by the commission salesper-
0093 son.

Sec. 3 If a principal fails to pay the commission salesperson's
commissions earned through the last day of the contractual relationship within
the applicable time periods as provided in section 2, such principal shall, to
the extent of such non-payment, be liable to the commission salesperson for
damages, in addition to unpaid commissions earned through the last day of the
contractual relationship, in an amount determined under the provisions of K.S.A.
44-315 and amendments thereto.

Sec. 4 (a) When there is a dispute concerning the amount of the commission
salesperson's commissions earned through the last day of the contractual
relationship or whether the principal has properly audited and adjusted the
commission salesperson's account, the penalty provided in section 3 shall not apply
if such principal pays the amount such principal believes in good faith is owed the
commission salesperson for commissions earned through the last day of the
contractual relationship within the applicable periods provided under section 2.
If the dispute is later adjudicated and it is determined that the commission
salesperson's commissions earned through the last day of the contractual
relationship were greater than the amount paid by such principal, the penalty
provided in section 3 shall apply only with respect to the unpaid portion thereof.

(b) If a dispute under this section is later adjudicated and it is determined
that the principal's failure to pay to the commission salesperson commissions
earned through the last day of the contractual relationship as provided in section
2, was not in good faith, then the court shall have the discretion to require the
principal to pay the reasonable attorney's fees of the commission salesperson plus
court costs.

(c) If a dispute under this section is later adjudicated and judgment is
rendered for the principal on all or a portion of the claims by the commission
salesperson and if the court determines that all or a portion of those claims were
brought in bad faith or on frivolous or insubstantial grounds, then the court shall
have the discretion to require the commission salesperson to pay the reasonable
attorney's fees and court costs to the principal.

0094 Sec. 5. Nothing in this act shall be construed to impair a
0095 commission salesperson from collecting commissions on mer-
0096 chandise ordered prior to the last day of the contractual rela-
0097 tionship but delivered and accepted after termination of the
0098 contractual relationship. The penalty prescribed in section 3
0099 shall apply only with respect to the payment of commissions
0100 earned through the last day of the contractual relationship.

0101 Sec. 6. This act shall take effect and be in force from and
0102 after its publication in the statute book.

Sec. 5 Nothing in this act shall be construed to grant to a commission salesperson or to impair any right which a commission salesperson may otherwise have to collect commissions with respect to merchandise or services ordered prior to the last day of the contractual relationship but delivered or furnished, accepted and paid for after termination of the contractual relationship, provided however, that the penalty prescribed in section 3 shall apply only with respect to the payment of commissions earned through the last day of the contractual relationship.

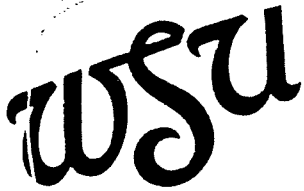
Sec. 6 This act shall take effect and be in force from and after its publication in the statute book.

Amendment Senate Bill #180

Section 3: A Principal who fails to comply with the provisions of Section 2 concerning timely payment or any contractual provision concerning timely payment of commissions due upon the termination of the Contract with the Salesperson, shall be liable in a Civil Action for Exemplary Damages in the amount which does not exceed three times the amount of the commissions owed to the Salesperson. Additionally, such Principal shall pay the Salespersons reasonable Attorneys' Fees and Court Costs.

Testimony on SB 190 submitted by Sen. Wint Winter, Jr.,
Thursday, March 19, 1987:

1. This applies only to public University events.
The ability to "scalp" further "commercializes"
college athletics. We should discourage, not encourage,
that trend.
2. Students pay fees to support intercollegiate athletics.
They (students) have a right to be able to attend the
games. If scalping is legal, scalpers will buy tickets
up and reduce the number of tickets available for
students to buy.
3. Scalping raises prices of tickets and makes it more ex-
pensive and difficult for students and others on fixed
incomes to attend events and allows a type of "income
test" for events.
4. Scalpers harrass people who are going to the game and
become obnoxious.



THE WICHITA STATE UNIVERSITY

Department of Intercollegiate Athletics • Campus Box 18 • Wichita, Kansas 67208

Lew Perkins
Athletic Director
(316) 689-3250

April 7, 1986

Dear Committee Members:

On behalf of the Wichita State University Intercollegiate Athletic Association, I would like to register my support for the proposed legislation making ticket re-sale and scalping in Kansas a misdemeanor.

Ticket scalping has been a problem for us over the past several years. Our ticket personnel have witnessed several individuals attempting to resell tickets outside our football stadium and basketball arena. These individuals are a nuisance to our fans and we have numerous complaints from ticket holders asking us to try and stop this kind of harassment.

When we have asked security personnel for assistance, their response has always been that there is "nothing they can do because state laws do not prohibit this kind of activity." We have in the past posted no loitering signs around our facilities and have asked security personnel to keep these people on the move, however, this approach has had only limited success.

We rely on walk-up ticket sales as a significant portion of our ticket revenue. Scalping and ticket re-sale activities outside our facilities have hurt this revenue area.

In summary, we hope that the committee will recommend passage of this legislation. If I can be of further assistance, please feel free to contact me.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lew Perkins'.

Lew Perkins
Director of Athletics

LP/kw

Attachment IV
House Judiciary 3/19/87



March 18, 1987

STATEMENT ON TICKET SCALPING
SENATE BILL NO. 190

1. Scalpers harass patrons and interfere with our normal conduct of business.

By standing in the lobby and beside our ticket windows, scalpers interfere with our normal business activity. These scalpers pull patrons out of line and sell tickets to them before they reach our window. They have obtained these tickets through a system that includes using children to beg fans entering the arena for free tickets. The children then return with tickets to their supervisor who in turn sells the tickets.

2. Selling of student tickets and tickets to the wrong game.

Scalpers take advantage of those purchasing tickets from them by selling KU student tickets, which are valid only with KU student ID's, to non-students. The people are then denied entrance to the arena since they do not have KU ID's. This results in confrontations with our gate personnel by having irate individuals who have paid, in many cases, a premium for these tickets. We have also experienced problems with individuals trying to enter game on tickets for games already played. Again, scalpers have been the source of these tickets.

3. Security problems for KUAC and patrons.

As tickets become more valuable because of a system that allows the price to be driven up, tickets become targets for theft and fraud. Last season we had a case involving fraudulent tickets being printed and sold at a premium through newspaper ads.

Tickets were stolen by a scalper reaching through our window last year. This individual then stood outside selling the tickets until he was identified and apprehended.

4. Summary

This bill can help keep scalpers away from our place of business. By keeping them farther from the arena and stadium it will be more difficult for them to conduct business and thus reduce or eliminate the problems we now face.

Richard Konzem
Assistant Athletic Director