

Approved March 31, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

4:45 ~~xxx~~ p.m. on March 24, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Adam, Bideau, Crowell, Duncan, Peterson, Shriver, Solbach, Wagnon and Whiteman, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Harold Shoaf, The Associated Landlords of Kansas, Inc.  
Shirley Atteberry, Research and Data, Inc.  
Steve Stagner, Landlord, Rose Hill  
Jim Clark, Kansas County and District Attorneys Association  
Clark Owens, Sedgwick County District Attorney  
Jim Flory, Douglas County District Attorney  
Terry Shistar, Kansas Sierra Club  
Nick Tomasic, Wyandotte County District Attorney  
Lt. Bill Jacobs, Kansas Highway Patrol

Hearing on S.B. 273 - Crimes and punishment, fraud in obtaining accomodations.

Harold Shoaf testified this bill gives landlords the same protection that motels and hotels have. This bill addresses tenants who defraud or cheat landlords, (see Attachment I).

Shirley Atteberry testified in support of S.B. 273. She presented statistics on the number of people who write bad checks, defraud inkeepers, etc. (see Attachment II)

Steve Stagner related his experiences with renters. He strongly supported passage of S.B. 273 to protect landlords from tenants who skip without payment their rent and who maliciously damage property.

The public hearing was closed on S.B. 273.

Hearing on H.B. 272 - Criminal procedure, appeals by prosecution.

Jim Clark presented written testimony. The Kansas County and District Attorneys Association requested this legislation. Passing this bill will not lead to a host of new appeals by prosecutors, since the amendment limits it to A and B felonies. An appeal requires releasing the defendant from custody and the Kansas Supreme Court, in considering prosecutor appeals on suppression of evidence rulings, has required a showing of substantial significance, rather than mrrer attempts to show the trial judge made a mistake, (see Attachment III).

Clark Owens testified this bill gives the state the right to appeal from an order granting a new trial. The bill was amended by the Senate Judiciary Committee to apply only to class A and B felonies.

Jim Flory testified in support of S.B. 272. He said it would be preferable if the bill applied to all classes A through E felonies.

Marjorie VanBuren testified this bill is a significant change to the statutes and recommended the bill be referred to the Judicial Council for review.

The hearing was closed on S.B. 272.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 4:45 ~~xxx~~ p.m. on March 24, 1987

Hearing on S.B. 278 - Injunctions against the misuse of registered agricultural chemicals.

Terry Shistar testified in opposition to S.B. 278. She stated there is a whole class of pesticides, restricted use pesticides for which the label is generally not sufficient. Farmers and others who receive personal and property damage from drift, runoff or careless application should not be limited to collecting damages only when the law has been violated, (see Attachment IV).

Hearing on S.B. 289 - Docket fees, prosecuting attorneys training funds

Jim Clark presented written testimony in support of S.B. 289. The bill increases the docket fee \$.50 in criminal action to provide a \$.50 increase for the prosecutors training fund from \$.50 to \$1.00. (See Attachment V)

Clark Owens testified the \$.50 docket fee was initiated in 1977 and has not been raised since. This source of funding is a means of providing funds for continuing legal education for prosecutors.

Nick Tomasic testified the American Bar Association standards states that training programs should be established in a prosecutor's office for personnel and for continuing education of staff. In his office there are twenty attorneys and 25 support staff and his office does not receive enough money to pay for training and continuing education.

Lt. Bill Jacobs testified the Highway Patrol is concerned about collecting the \$.50 additional fee. This would cause a problem in making change for the highway patrolman. He recommended the fees be raised \$1.00 to keep the docket fee in an even amount of money. He stated the Motor Carrier Inspection Bureau also requested the docket fee be in an even amount. He testified the Highway Patrol is not opposed to increasing the fees.

The hearing was closed on S.B. 289.

The Chairman adjourned the meeting at 5:50 p.m.

The next meeting will be Wednesday, March 25, 1987, at 3:30 p.m. in room 313-S.



# THE ASSOCIATED LANDLORDS OF KANSAS, INC.

PO Box 86026, Topeka, Kansas 66666  
(913) 272-0058

## AREA CHAPTERS

Hutchinson, Johnson County, Kansas City, Lawrence,  
Salina, Shawnee County, & Wichita

Tuesday, March 24, 1987

Testimony submitted by, Harold Shoaf, Legislative Coordinator for The Associated Landlords of Kansas, Inc. (TALK), 4545 SW 21st, Topeka, Kansas 66604.

To the House Judiciary Committee in support of SB273.

Mr. Chairman and members of the Committee, my name is Harold Shoaf. I am Legislative Coordinator for The Associated Landlords of Kansas (TALK), a statewide organization.

The Associated Landlords of Kansas (TALK) strongly supports SB273 and believes it is in the best interest of both landlords and tenants. This bill deals only with tenants who, clearly and without question, defraud or cheat a landlord. Statistical data will be given today that will show that the present innkeepers act is working. Evidence will be given that cases going to court relating to defrauding or cheating a motel or hotel by not paying their lodging bills are few. There are few court cases, because there is a law on the books that protects these people from those who would dishonestly cheat and defraud. Landlords do not now enjoy this protection. In fact, it is a common practice to defraud a landlord, especially a small landlord. This malicious destruction of property, non-payment of rent, freely giving hot checks to prolong eviction, and 60-90 days to evict is running many small landlords out of business and causing rent to be raised on good tenants. There is no free lunch in this business; if you dance someone must pay the fiddler. Receipts must exceed expenses or the landlord goes broke.

One of our present goals is to eliminate a negative misconception which regards landlords as wealthy. For example, a little known fact is that most rental property in Kansas is owned by local individuals who come from all walks of life. Many of these individuals do their own maintenance and management while also working a full time job. Their average age is between 35 and 50. Some of these individuals, in their retirement years, count on their rental property to supplement their income besides being a hedge against inflation and economic uncertainty.

Rental housing is directly affected by high interest rates, rapidly increasing operating costs and current stagnant real estate values. As serious as these facts are, the final blow is cheating and fraudulent practices by some tenants who resort to unethical, malicious destructive practices. This is the cancer in the landlord business for which we seek a cure.

I have asked Shirley Atteberry, who owns Research and Data, Inc. here in Topeka, to share some statistical data with you. She works closely with the District Attorney's office and others in supplying factual data.

The testimony that will be given by Steve Stagner, Rose Hill, Kansas, is an average typical case that is happening across Kansas to landlords every day, by tenants who desire to defraud, cheat and escape without paying rent, and who leave no forwarding address and suffer no penalty.

In summary we believe that the present law protecting motels and hotels has worked well, and the fact that the law is on the books is the real reason there are few who try defrauding and cheating innkeepers, making court cases very few.

Landlords desperately need this same protection. The open season to defraud a landlord is a common practice that is driving many out of the business. This needs to be corrected. The fact that a law exists will curtail this practice.

Good tenants will profit from this bill, because they will not have to pay higher rent on a unit which was maliciously damaged by another tenant, who left without paying rent, or even without leaving a forwarding address.

We urge the Committee to approve SB273.

Thank you Mr. Chairman for the opportunity to appear before this committee.

3-24-87

PHONES  
TOPEKA, KAN. (913) 267-4931  
LAWRENCE, KAN. (913) 841-3902  
LELAND W. ATTEBERRY, President

To: HOUSE Judiciary Committee, Kansas Legislature.

RE: SENATE BILL #273, relating to DEFRAUDING AN INNKEEPER OR OWNER IN OBTAINING ACCOMMODATIONS.

26% of the people Research & Data has worked on collections on bad checks for over 3 months, move AT LEAST TWICE A YEAR.

Of these, 48% do NOT LEAVE a forwarding address. WAS THEIR RENT PAID?

We average 861 letters returned "MOVED, NOADDRESS" for a 3 month period, averaging 11 a day. There are additional 11 address corrections a day--moving again.

90% of the landlords of these people that we talk to say they, too, are looking for these "SKIPS" as they owe them back rent, and in many cases also damaged their property. The losses were usually several months rent, plus cleanup and repair. This frequently ran at least \$400 to \$600, and frequently more. If this renter moved twice a year leaving the same amount of loss each time, he could be quite a costly item to landlords. He usually has no money in the bank to garnish, and frequently no job to garnish...

Research & Data Inc, gathers public criminal records from the courts. There were 2496 criminal cases filed in Shawnee County District Court in 1985, and 2674 in 1986. There were about 1200 more criminal cases filed in Municipal Court, averaging about a total of 75 cases per week in Topeka. This includes such crimes as shoplifting, bad checks, burglary, robbery, theft, and other crimes against persons such as sex crimes & battery.

Of these, there were approximately 10 cases of defrauding inn keepers, which include theft of food at restaurants as well as lodging at motels and hotels.

Our office filed reports on 147 people involving \$100,466.57 losses in Insufficient and Account Closed checks in 1985 with the Shawnee County District Attorney 30 of these people had over \$1000 each in bad checks. This did not include forged checks.

\$1319.00 was the total of losses in convenience store robberies in 1985. 26 of these robberies averaged \$50 each. (We do not have the 1986 figures as yet).

\$3346 total was for 25 gas station robberies, averaging \$133 each in 1985.

Sure, these robberies do involve more threat to life.

But, so are the losses from these people who skip their rents. Many of these landlords are people who are retired, or on limited income, or the rental property is their only means of support. They cannot "RAISE" the rent to offset these losses, as competition then would prohibit them from renting the property at all.

Many of these "SKIPS" make a "GAME" to see how long they can live "rent free". A lot only pay 4 months rent a year to different landlords, as it frequently takes several months to get a "non-paying" renter off the property. They can easily make \$2700 per year, plus damages thru this "cheating" of their landlords.

We need tougher laws to combat these problems. The passing of Senate Bill #273 would help prevent some of these problems.

Thank you for the opportunity to voice my opinion.

Shirley Atteberry.  
Research & Data, Inc.

Attachment II  
House Judiciary 3/24/87

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## Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351  
EXECUTIVE DIRECTOR • JAMES W. CLARK

### Testimony in Support of

### SB 272

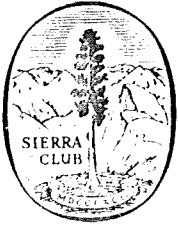
The Kansas County and District Attorneys Association appears in support of SB 272, which was introduced at our request. The bill simply adds another instance when the prosecution may appeal a decision of the trial judge, specifically when the judge orders a new trial after a jury has already convicted the defendant. (This bill does not allow an appeal after an acquittal, since the double jeopardy clause of the Constitution would preclude further prosecution).

Our reasoning is this, in a few isolated instances, the trial judge, by ordering a new trial, subjects the county and state to the considerable expense of another trial, and more importantly, subjects victims and witnesses to the additional inconvenience, expense, and in some cases, agony, of undergoing another trial.

A case in point is State v. Grimes, 229 Kan. 143, where a prominent doctor was convicted by a jury of his peers (and perhaps his patients) in Rice County for an aggravated battery involving the shooting of his wife's suspected paramour. Shortly after the trial, the U.S. Supreme Court, in Sandstrom v. Montana, 442 U.S. 510 (1979) ruled that an instruction on intent was unconstitutional. At the time of the trial court's decision, no Kansas Appellate Court had a chance to decide whether the Kansas instruction was also unconstitutional. The prosecutor, not wishing the additional expense and aggravation of the new trial, attempted to appeal under the present version of the statute, only to have the appeal dismissed some three months later, as not authorized by the statute. By the time the case returned to the trial court, the 180-day period for new trial had passed, and defendant (even though already convicted) was discharged. The public was outraged, the prosecutor was defeated in the next election, and most ironically, the Kansas Court of Appeals subsequently held that the Kansas instruction was correct, State v. Acheson, 3 Kan. App. 2d 705. This situation should not be allowed to be repeated.

Passing this bill will not lead to a host of new appeals by prosecutors (Particularly since the Senate amendments limit it to A and B felonies). First, such an appeal requires releasing the defendant from custody. Second, the Kansas Supreme Court, in considering prosecutor appeals on suppression of evidence rulings, has required a showing of substantial significance, rather than mere attempts to show the trial judge made a mistake. State v. Newman, 235 Kan. 29.





# SIERRA CLUB

## Kansas Chapter

3 March 1987

To: Senate Committee on Agriculture  
From: Terry Shistar

### SIERRA CLUB TESTIMONY ON SB 278

The Kansas Sierra Club is non-profit organization of about 1600 members concerned with protection of the environment for people and wildlife. For many years, pesticide misuse has been a concern of the Sierra Club in Kansas and elsewhere. I am the volunteer Pesticide Coordinator for the Sierra Club nationally and a member of the Executive Committee of the Kansas Sierra Club.

We are concerned about SB 278 because it appears that a criminal standard is being extended to civil cases. Since I was not aware of anyone ever requesting an injunction to prevent pesticide misuse under the Kansas Pesticide Law, and since the language suggests a civil action for damages rather than an injunction, I concluded that it was meant to address civil actions for damages. The comments I have are based on the assumption that this guess is correct.

Certainly frivolous suits should be discouraged. However, in previous years when pesticide damages have been discussed in this committee, it was pointed out that Kansas law on civil procedure does address frivolous suits. I enclose with my testimony a copy of the appropriate section of the law, which states in part:

"...if the court finds that a party ... has asserted a claim or defense ... without a reasonable basis in fact and not in good faith, the court shall assess against the party as additional costs of the action, and allow to the other parties, reasonable attorney fees and expenses incurred by the other parties as a result of such claim, defense or denial."

If this bill applies to civil actions, it would go beyond the current law in a way never intended by Congress in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA did not intend the following the label to produce immunity to civil actions. Indeed, FIFRA provides that:

"If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:" (Section 3(d)(1)(C))

In other words, there is a whole class of pesticides,

Attachment IV

House Judiciary 3/24/87

restricted use pesticides, for which the label is generally not sufficient. Thus, labels are not written in such a way that compliance with the label alone, without additional good judgment and training of the applicator, can assure application that will not result in damages, so farmers and others who receive personal and property damage from drift, runoff, or careless application should not be limited to collecting damages only when the law has been violated.

CHAPTER 241

House Bill No. 2615

AN ACT concerning court costs of civil actions; providing for the assessment of additional costs; imposing liability on certain parties and attorneys for payment thereof; conditions; amending K.S.A. 60-211 and repealing the existing section.

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

New Section 1. (a) Except as otherwise provided in this subsection, the provisions of this section shall apply to any civil action brought in a court of this state, including any action pending on the effective date of this act. This section shall not be applied retroactively to specific conduct occurring prior to the effective date of this act. The provisions of this section shall not apply to proceedings brought under K.S.A. 60-1507.

(b) At the time of assessment of the costs of any action to which this section applies, if the court finds that a party, in a pleading, motion or response thereto, has asserted a claim or defense, including setoffs and counterclaims, or has denied the truth of a factual statement in a pleading or during discovery, without a reasonable basis in fact and not in good faith, the court shall assess against the party as additional costs of the action, and allow to the other parties, reasonable attorney fees and expenses incurred by the other parties as a result of such claim, defense or denial. An attorney may be held individually or jointly and severally liable with a party for such additional costs where the court finds that the attorney knowingly and not in good faith asserted such a claim, defense or denial or, having gained knowledge of its falsity, failed to inform the court promptly that

such claim, defense or denial was without reasonable basis in fact.

(c) The additional costs provided for in this section may be assessed only upon motion filed by the aggrieved party prior to taxation of costs by the clerk of the court under subsection (c) of K.S.A. 60-2002. The party against whom the additional costs are to be assessed shall be given notice of the motion and afforded an opportunity to be heard. If the additional costs are assessed, the court shall make findings with respect thereto, including the specific facts and reasons on which the findings are based.

(d) The purpose of this section is not to prevent a party from litigating bona fide claims or defenses, but to protect litigants from harassment and expense in clear cases of abuse.

(e) The state of Kansas, or any agency thereof, and all political subdivisions of the state shall be subject to the provisions of this section in the same manner as any other party.

Sec. 2. K.S.A. 60-211 is hereby amended to read as follows: 60-211. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in ~~his~~ *the attorney's* individual name, ~~whose~~ *and the attorney's* address and telephone number shall be stated. A *pleading of a party* who is not represented by an attorney shall ~~sign his pleading~~ *be signed by the party and shall state his the party's* address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by *an* affidavit. The signature of an attorney constitutes a certificate by ~~him~~ *the attorney* that ~~he~~ *the attorney* has read the pleading; that to the best of ~~his~~ *the attorney's* knowledge, information, and belief there ~~is~~ *are* good ~~ground~~ *grounds* to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this section, it may be stricken ~~as sham and false~~, and the action may proceed as though the pleading ~~has had~~ not been served. For a willful violation of this section, an attorney may be subjected to appropriate disciplinary action *and may be held liable, pursuant to section 1, for the payment of attorney fees and expenses of adverse parties incurred as a result of such violation.* Similar action may be taken if scandalous or indecent matter is inserted.

Sec. 3. K.S.A. 60-211 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 22, 1982.

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## Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351  
EXECUTIVE DIRECTOR • JAMES W. CLARK

### Testimony in Support of

### SB 289

The Kansas County and District Attorneys Association appears in support of SB 289, which raises the docket fee for the prosecuting attorneys training fund from \$.50 to \$1, for the following reasons:

1. The docket fee was initiated in 1977, and has not been raised since, even though the demands on prosecutors has increased considerably (i.e. DUI, child abuse, sex crimes, juvenile intake, diversion supervision, victim services, truancy investigation, and most probably, death penalty).
2. Other than the docket fee, the state spends no money on prosecution services, (yet at the same time, spends over \$3 million for indigent defense services.)
3. Turnover of prosecutors is over 70% every four years. The rate for elected officials was 67% in 1980, and 66% in 1984. The assistants turnover is even higher but more difficult to document. (Sedgwick County has lost 9 of its 27 assistants in the past year, Crawford county has turned over its entire staff of two assistants three different times in the past two years, Barton and Reno counties have turned over their assistants by 100% in the past four years.)
4. Criminal law, and especially prosecution, is a highly specialized and fluctuating area, requiring considerable training simply to keep abreast. Because of the relative small numbers, other continuing education providers do not market programs for prosecutors. National programs, such as the National College of District Attorneys, are expensive, and do not deal specifically with Kansas law.
5. County governments are in the same financial bind as the state, hence general fund moneys for training is unavailable.
6. Under the new tax law, unreimbursed employee expenses are not deductible, unless they exceed 2% of gross income. For full-time prosecutors, there is no business deduction. For part-time prosecutors that can deduct continuing education costs as a business deduction, the money is better spent on improving their private practice.

In conclusion, for full-time prosecutors, this source of funding is their only reliable means of continuing legal education. For the majority, who are part-time prosecutors, there is already tremendous competition for their time and energy between their public duties and their private interests. By providing funding for educating them in their public duties, the State furnishes a positive incentive toward the public interest.