

Approved March 9, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~am~~/p.m. on March 1, 1988 in room 313-S of the Capitol.

All members were present except:
Representatives Peterson and Vancrum, who were excused

Committee staff present:
Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Joan Strickler, Kansas Advocacy and Protective Services, Inc.
Art Weiss, Deputy Attorney General, Consumer Protection Division
Daniel P. Kolditz, Assistant Attorney General

Hearing on H. B. 2968 - Concerning Kansas Advocacy and Protective Services, Inc.

Joan Strickler explained this bill changes the name of the agency by dropping "for the Developmentally Disabled; deleting the language "and do not have legal guardians" on lines 77 and 78; and further amendments to comply with federal laws, (see Attachment I).

There being no other conferees, the hearing on H.B. 2968 was closed.

Representative Shriver moved to report H.B. 2968 favorably. Representative Sebelius seconded the motion. The motion passed.

Hearing on H.B. 3000 - An act regulating travel promoters

Art Weiss testified H.B. 3000 addresses "travel scams". The bill regulates travel promoters, sets standards which will safeguard people against financial hardship and encourages competition, fair dealing and prosperity in the travel business (see Attachment II). In regard to the definition of travel promoter, Mr. Weiss said he would prepare an amendment clarifying the definition of travel promoter and submit it to the Committee.

The hearing on H.B. 3000 was closed.

Hearing on H.B. 3001 - An act concerning civil procedure, relating to temporary injunctions.

Daniel P. Kolditz explained H.B. 3001 amends the statute which regulates the granting of temporary injunctions by courts, by adding the sentence "Neither the state nor any of its agencies shall be required to give an undertaking with one or more sufficient sureties in order to be granted a temporary injunction". He stated this bill would be of great value to the state, (see Attachment III).

The hearing was closed on H.B. 3001.

A motion was made by Representative Douville to report H.B. 3001 favorable for passage. The motion was seconded by Representative Solbach. The motion passed.

Hearing on H.B. 3003 - Concerning consumer protection, relating to deceptive acts and practices.

Art Weiss testified H.B. 3003 adds a section to K.S.A. 50-626 which outlines practices which are deemed deceptive in connection with consumer transactions. He said consumers have a right to know the true price of products or services advertised, (see Attachment IV).

The hearing was closed on H.B. 3003.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 1, 1988

Representative Solbach moved to recommend H.B. 3003 favorable for passage. Representative Kennard seconded and the motion passed.

The Committee considered S.B. 157 - Kansas Public Disclosure Commission authorized to issue subpoenas under campaign finance act
S.B. 252 - Investigation of complaints by Public Disclosure Commission under governmental ethics law

Representative Bideau presented amendments to S.B. 157, (see Attachment V), and S.B. 252, (see Attachment VI). The amendments are language taken from the inquisition statutes concerning inquisitions which are conducted by County or District Attorneys whereby County and District Attorneys are given authority to subpoena people for examination under oath concerning alleged violations of the law. He explained "at an inquisition" on line 13, page 2 of the amendments should be omitted.

A motion was made by Representative Bideau to adopt the amendments to S.B. 157 and S.B. 252, with the stricken language. Representative Snowbarger seconded the motion. The motion passed.

Representative Bideau moved to report S.B. 157 and S.B. 252, as amended, favorable for passage. The motion was seconded by Representative Snowbarger. The motion passed.

The Committee considered H.B. 3002 - Clerk of the District Court may use a facsimile signature

Representative Snowbarger moved and Representative Douville seconded to report H.B. 3002 favorable for passage, and that it be placed on the consent calendar. The motion passed.

The minutes of February 10, 11 and 15 were approved.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Wednesday, March 2, 1988 at 3:30 p.m. in room 313-S.

Kansas Advocacy & Protective Services, Inc.



Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

Chairperson TO: The House Committee on Judiciary
R. C. (Pete) Loux Robert Wunsch, Chairperson
Wichita

Vice Chairperson FROM: Kansas Advocacy and Protective Services
Robert Anderson R.C. Loux, Chairperson
Ottawa

Secretary RE: H.B. 2968
Neil Benson
El Dorado

Treasurer DATE: February 29, 1988
Robert Epps
Topeka

Rep. Rochelle Chronister KAPS assists disabled children and adults in gaining
Neodesha access to the rights and services to which they are
Sen. Norma Daniels entitled. We fulfill the protection and advocacy
Valley Center requirements of P.L. 94-103 as amended, the
Sen. Ross O. Doyen Developmental Disabilities Act, and P.L. 99-319, the
Concordia Protection and Advocacy for Mentally Ill Individuals
Harold James Act. We also administer a program unique to the state
Hugoton of Kansas, the Kansas Guardianship Program. KAPS is a
James Maag private non-profit corporation which was initially
Topeka created specifically to serve as the developmental
W. Patrick Russell disabilities protection and advocacy agency in Kansas.
Topeka We have been serving the state since 1977.

Rep. Jack Shriver H.B. 2968 contains proposed amendments which are
Arkansas City intended to address two issues. The first would
Raymond L. Spring simply reflect a recent name change for our agency.
Topeka Last year KAPS dropped "for the Developmentally
W. H. Weber Disabled" from it's name since we have, over the
Topeka years, broadened the scope of our services to include
persons with disabilities other than only
developmental disabilities.

W. H. Weber The second purpose is to bring Kansas into compliance
Topeka with the provisions of two federal laws.

Liaison to the Governor
Jose A. de la Torre

Executive Director
Joan Strickler

On page two, lines 77 and 78, we request that the language "and do not have legal guardians" be deleted. From the Conference Report on The Protection and Advocacy for Mentally Ill Individuals Act of 1986, the apparent intention of Congress was that the law should apply to all persons who meet the definition of mentally ill individual without regard to whether the person has a legal guardian. The restriction placed on protection and advocacy programs is that they must

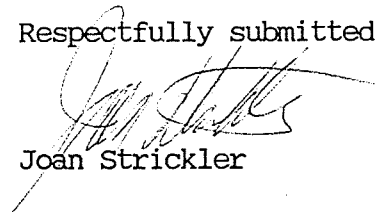
Attachment I

not duplicate any of the efforts of a guardian. We believe that, to insure that Kansas law is consistent with the federal statute, and to allow KAPS to carry out its responsibilities, the exception listed in KSA 65-5603 (n) (10) should be expanded to include persons who have legal guardians.

The amendments on page three are intended to assure that Kansas complies with the new requirements for developmental disabilities protection and advocacy agencies contained in P.L. 100-146, the Developmental Disabilities Assistance and Bill of Rights Act of 1987, which was signed into law on October 29, 1987. One of the new requirements of that Act set out the conditions under which the protection and advocacy agencies are authorized to access records. These conditions are more comprehensive than those presently set out in KSA 74-5515.

We request your support for these amendments.

Respectfully submitted,



Joan Strickler

(3) by striking out "\$47,000,000" in paragraph (4) and inserting in lieu thereof "\$60,000,000";

(4) by striking out "\$160,000" in subparagraph (A) of such paragraph and inserting in lieu thereof "\$200,000";

(5) by striking out "\$300,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "\$350,000"; and

(6) by adding at the end thereof the following new paragraph:
 "(6) In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

"(B) the total amount appropriated under section 130 for the immediately preceding fiscal year, bears to the total amount appropriated under section 130 for such preceding fiscal year."

(b) Section 125(b) is amended to read as follows:

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid."

WITHHOLDING

Sec. 207. Section 127(1) is amended by inserting ", particularly sections 122(b)(3) or 122(f)" after "State plan". 42 USC 6027.

AUTHORIZATION OF APPROPRIATIONS

Sec. 208. Section 130 is amended to read as follows: 42 USC 6030.

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 130. For allotments under section 125, there are authorized to be appropriated \$62,200,000 for fiscal year 1988, \$69,900,000 for fiscal year 1989, and \$77,400,000 for fiscal year 1990."

TITLE III—PROTECTION AND ADVOCACY

REQUIREMENTS FOR SYSTEM

Sec. 301. (a) Section 142(a)(2) is amended— 42 USC 6042

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (E), (F), and (G), respectively;

(2) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) have the authority to—

"(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within Minorities.

10

Ex

the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

"(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

"(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

"(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;

"(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system"; and

(3) by striking out subparagraph (C) (as redesignated by clause (1) of this subsection) and inserting in lieu thereof the following:

"(G) have access to all records of—

"(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

"(ii) any person with developmental disabilities—

"(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

"(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

"(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;"

(b) Section 142(c) is amended—

(1) by striking out "\$11,000,000" in subparagraph (A) of paragraph (1) and inserting in lieu thereof "\$20,000,000";

(2) by striking out "\$80,000" in clause (i) of such subparagraph and inserting in lieu thereof "\$107,000";

(3) by striking out "\$150,000" in clause (ii) of such subparagraph and inserting in lieu thereof "\$200,000";

(4) by striking out "\$11,000,000" in subparagraph (B) of such paragraph and inserting in lieu thereof "\$20,000,000";

(5) by striking out "\$50,000" in such subparagraph and inserting in lieu thereof "\$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$80,000";

(6) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(7) by inserting after paragraph (1) the following new paragraph:

State and local governments.

following "diagnosis of."

5(b). Sec. 3(a)(3) of the Senate Bill further defines "mentally ill person" as one "who is an inpatient or resident in, and who resides for 24 hours a day in a residential facility."

Sec. 102(3)(B) of the House amendment further defines "mentally ill individual" as one "who is an inpatient in a hospital or nursing home or a resident in a board and care home or a community facility for mentally ill individuals."

The Senate recedes with an amendment that removes the list of different types of residential facilities enumerated in the House definition. It is the intent of the Committee that this legislation focus on abuse and neglect of mentally ill individuals and not on the facility in which they reside. Accordingly, residential facility could include, but need not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, and board and care homes.

5(c). Sec. 102(3)(C) of the House amendment further defines "mentally ill individual" as someone "for whom a legal guardian, conservator or legal representative has not been appointed unless these individuals request the eligible system to treat the mentally ill individual."

The Senate Bill contains no similar provision.

The House recedes with an amendment (reflected in Sec. 111) which requires that the system assure as part of their receipt of funds that any activity undertaken on behalf of a mentally ill

individual will not duplicate the efforts of the guardian, unless the guardian requests the system's services, or unless the guardian is the state, or unless after a reasonable time the guardian has not acted. It is the intent of the conferees that P&A agencies not needlessly repeat the activities of an active legal guardian exercising his or her responsibilities. It is not the intent of the conferees to prohibit agencies from working with persons whose legal guardians are the State or public agencies or whose guardians are not exercising their responsibilities, nor is it the intent of the conferees that agencies be prohibited from notifying guardians of possible abuse or neglect of mentally ill persons or notifying or advising guardians of possible remedies available to mentally ill persons.

6(a) Sec. 103(a)(4) of the Senate Bill defines "neglect" as a negligent act or omission by a person responsible for providing services in a residential facility.

Sec. 102(4) of the House amendment defines "neglect" as a negligent act or omission by any person responsible for providing services in a hospital, nursing home, board and care home or community facility for mentally ill individuals.

Sec. 102(4)(A)(i) of the House amendment further defines "neglect" as the failure to place individuals requiring inpatient mental health facilities in optimum therapeutic settings and provide appropriate services.

Sec. 102(4)(A)(ii) of the House amendment further defines "neglect" as the failure to discharge inappropriately placed



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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CONSUMER PROTECTION: 296-3751

Testimony of Arthur R. Weiss
Deputy Attorney General, Consumer Protection Division

Before the House Committee on Judiciary
Hearing on H.B. 3000

March 1, 1988

Mr. Chairman & Members of the Committee:

Attorney General Stephan requested the introduction of this bill to attack a problem which has touched hundreds of Kansas consumers. Virtually every Kansan has received or knows someone who has received a postcard in the mail proclaiming that they have been selected or chosen to receive a "free" vacation. These postcards typically come from California, Texas or Florida. Some have pictures of exotic locations while others are disguised to look like official government mailings. They all have one thing in common, they attempt to get the consumer to give his or her credit card number over the telephone to an operator working out of a boiler room reading from a prepared script. These scripts are filled with lies and misrepresentations. These promotions, which have been labeled by the American Society of Travel

Attachment II

Agents, as "travel scams" steal billions of dollars nationwide from consumers every year. At a recent travel scam seminar, an agent of the U.S. Postal Inspection Service identified 80 such boiler rooms operating in Miami alone and stated that a typical boiler room could bring in 4.5 million dollars in six months.

Anyone who has a credit card or checkbook is a possible victim to these scam artists. These scams transcend educational, political, ethnic and geographical groups. Victims include students, government prosecutors, businessmen, court personnel and legislators. Attorney General Stephan's Consumer Protection Division has received hundreds of complaints from Kansas consumers who have been bilked of their money through these scams.

This bill would prohibit travel promoters from advertising their product unless they have actually acquired the transportation which they claim to provide. The promoter would not receive any money until such time as he provided the consumer with the disclosures set forth in section 4 of this bill. The travel promoter would be required to keep on deposit with the State Treasurer or a bank approved by the State Banking Commissioner cash or securities satisfactory to the Attorney General in the amount of \$500,000. Further, the travel promoter would be required to submit a list to the Attorney General of names and addresses of the promoter's

selling agents. In lieu of the deposit of cash or securities, the promoter may give a surety bond. The monies deposited by the promoter would be used to provide restitution to consumers in the event the promoter could not furnish the services he advertises.

I wish to point out that the definition of travel promoter has been specifically tailored to touch only the scam artists. The definition would not include air carriers, sea carriers or an officially appointed agent of an air carrier who is a member in good standing of the Airline Reporting Corporation; your local travel agent.

This bill is a front line defense for Kansans against travel scam artists. Unfortunately, by the time a consumer realizes he has been the victim of a travel scam, these boiler rooms have closed. Refunds are virtually impossible. However, with this bill, immediately after a promoter begins sending postcards to Kansas consumers, the Consumer Protection Division would be able to seek the relief granted under the Consumer Protection Act to stop further promotions until such time as the promoter complied with the law. This would enable the Consumer Protection Division to stop these travel scams before Kansas consumers are bilked of their hard earned monies. Incidentally, this bill is similar to legislation in effect in Illinois and California. Through discussions with representatives of the California Attorney General's Office,

we learned that the scam artists do not comply with the law, thus enabling the Attorney General's Office to take immediate action against them. Thank you.

HOUSE JUDICIARY COMMITTEE

March 1, 1988

Testimony of
Daniel P. Kolditz, Assistant Attorney General

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

My name is Dan Kolditz. I am an assistant attorney general assigned to the Litigation and Antitrust Division of the Office of the Attorney General. I am here today to testify in support of House Bill No. 3001.

House Bill 3001 is an amendment to the statute which regulates the granting of temporary injunctions by courts. Often, in civil cases and in administrative regulation enforcement cases, the State or its agencies seek to restrain, enjoin, or compel individuals from either committing or refusing to perform certain acts. Temporary injunction orders are often the key to winning a case and preventing irreparable harm to the State or its citizens. Examples of such cases include those which have dealt with state university airplanes, state library computer software, and beef packing plants.

Currently, K.S.A. 60-905(b) provides:

Unless otherwise provided by statute, no temporary injunction shall operate unless the party obtaining the same shall give an undertaking with one or more sufficient sureties in any amount fixed by the judge and approved by the clerk of the court, securing to the party injured the damages he or she

Attachment III

may sustain including attorney fees if it be finally determined that the injunction should not have been granted.

Thus, the State and/or its agencies are placed in the position of having to obtain a bond in order to secure a temporary injunction. Said bonds are expensive and difficult to obtain under current state budgeting procedures.

While often in the past district courts have allowed the State to obtain temporary injunctions without bond. Our state supreme court has held there is no authority which would allow this procedure. See, Ostler v. Nickel, 196 Kan. 477, 479, 413 P.2d 303 (1966).

Thus, it would be very beneficial for the enforcement of the State's laws and the protection of its people if K.S.A. 60-905(b) were amended by the addition of a sentence which would read as follows:

"Neither the state nor any of its agencies shall be required to give an undertaking with one or more sufficient sureties in order to be granted a temporary injunction."

This amendment would be of great value to the State. In addition, no individual would be harmed, for if damages were awarded to a party injured by a temporary injunction which should not have been granted, the State has the financial resources to pay any such award.

House Bill 3001 is a needed refinement of Kansas law. I ask the Committee will afford this legislation favorable consideration.

Thank you for this opportunity to address the Committee.



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CONSUMER PROTECTION: 296-3751

Testimony of Arthur R. Weiss
Deputy Attorney General, Consumer Protection Division

Before the House Committee on Judiciary
Hearing on H.B. 3003

March 1, 1988

Mr. Chairman & Members of the Committee:

Attorney General Stephan requested the introduction of this bill which would add a section to K.S.A. 50-626 outlining practices which are deemed deceptive in connection with consumer transactions. Attorney General Stephan requests the language set forth in H.B. 3003 to deal with what is becoming an increasingly common method of deceptive advertising.

That is the use of large advertised prices which do not properly reflect the true price for the goods or services which they advertise. For example, during Attorney General Stephan's recent participation as a sponsor of a national task force of the National Association of Attorneys General investigating deceptive advertising practices by the airline industry, it became apparent that airlines were advertising one-half of the round trip fare in large bold letters. A

Attachment IV

consumer would then be required to read the fine print at the bottom of the ad to learn this was one-half the round trip fare and the ticket must be purchased as a round trip. Additionally, the consumer must read further to learn that to some cities, there were additional fuel or airport imposed surcharges. For example, a Braniff Airlines ad touted a \$27 fare from Kansas City to Chicago. Only after reading the fine print at the bottom of the ad did you learn that the fares are one-way and require a round trip purchase. Therefore, the product or service advertised is \$54. However, we're not done yet. The City of Chicago also imposes a \$9 surcharge for flights leaving from its airports. Therefore, the true cost of the round trip ticket from Kansas City to Chicago is \$63 not \$27.

Another example is a recent ad promotion by Hertz rent-a-car company. In that promotion, Hertz, in an attempt to make their advertised rates appear competitive with those of its discount competitors, lowered the large printed rate. Hertz, which has many of its locations located on airport property, pays a concession fee to the airport for the use of airport space. This concession fee amounts to a part of the car rental company's overhead. It is actually rent. In order to have its rates appear competitive with off airport locations which do not pay that fee, Hertz lowered its large advertised rate. Hertz then put an asterisk next to that rate

corresponding to the fine print at the bottom that the rate did not include airport imposed fees. These fees were mandatory and average from 8 to 12 percent. They were automatically added to the rental rate much to the consumer's surprise. We also have received complaints about businesses advertising prices which did not include shipping or freight.

The practice of advertising only a portion of the product or service is clearly deceptive. It is for that reason, that Attorney General Stephan requests specific language to be added to the Consumer Protection Act which specifically addresses this deceptive practice. Without such language, we are forced to try to stretch other sections of the Consumer Protection Act to meet this specific problem. If a business elects to advertise its products or services, consumers have a right to know the true price of those products or services. Thank you.

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Braniff 1987

SENATE BILL No. 157

By Senator Vidricksen

2-5

0018 AN ACT concerning the campaign finance act; relating to com-
0019 plaints of violations; amending K.S.A. 25-4161 and repealing
0020 the existing section.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 25-4161 is hereby amended to read as fol-
0023 lows: 25-4161. If the commission determines that a verified
0024 complaint does not allege facts, directly or upon information and
0025 belief, sufficient to constitute a violation of any provision of the
0026 campaign finance act, it shall dismiss the complaint and notify
0027 the complainant and respondent thereof. Whenever a complaint
0028 is filed with the commission alleging a violation of a provision of
0029 the campaign finance act, such filing and the allegations therein
0030 shall be confidential and shall not be disclosed except as pro-
0031 vided in the campaign finance act. If the commission determines
0032 that such verified complaint does allege facts, directly or upon
0033 information and belief, sufficient to constitute a violation of any
0034 of the provisions of the campaign finance act, the commission
0035 shall promptly investigate the alleged violation ~~and for this~~
0036 ~~purpose is hereby authorized to issue subpoenas and subpoenas~~
0037 ~~duces tecum in accordance with the provisions of this section.~~
0038 ~~No subpoena shall be issued pursuant to this section without~~
0039 ~~first having been submitted to and having been approved by the~~
0040 ~~administrative judge of the district court of Shawnee county as a~~
0041 ~~lawful exercise of the authority of the commission granted by~~
0042 ~~this act. Any person subpoenaed to appear and give testimony or~~
0043 ~~to produce books, papers or documents, who fails or refuses to~~
0044 ~~appear or to produce such books, papers or documents, or any~~
0045 ~~person, having been sworn to testify, who refuses to answer any~~

Attachment I

0046 ~~proper question, may be cited for contempt of the district court of~~
0047 ~~Shawnee county, Kansas. The commission shall report to such~~
0048 ~~court the facts relating to any such contempt. Thereupon pro-~~
0049 ~~ceedings before such court shall be had as in cases of other civil~~
0050 ~~contempt.~~ The commission shall notify the attorney general of
0051 any apparent violation of criminal law or other laws not admin-
0052 istered by the commission, which is discovered during the
0053 course of any such investigation. If after the preliminary inves-
0054 tigation, the commission finds that probable cause does not exist
0055 for believing the allegations of the complaint, the commission
0056 shall dismiss the complaint. If after such preliminary investiga-
0057 tion, the commission finds that probable cause exists for believ-
0058 ing the allegations of the complaint, such complaint shall no
0059 longer be confidential and may be disclosed. Upon making any
0060 such finding, the commission shall fix a time for a hearing of the
0061 matter, which shall be not more than 30 days after such finding.
0062 In either event the commission shall notify the complainant and
0063 respondent of its determination.

0064 Sec. 2. K.S.A. 25-4161 is hereby repealed.

0065 Sec. 3. This act shall take effect and be in force from and
0066 after its publication in the statute book.

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Upon filing of a verified complaint with the commission and a decision to conduct an investigation of the complaint, the commission may apply to the administrative judge of the district court of Shawnee county for issuance of a subpoena, a subpoena duces tecum, or both, for the witness named in such praecipe commanding such witness to appear or produce documents and testify concerning matters under investigation. Such subpoenas shall be served and returned as subpoenas for witnesses in criminal cases in the district court. No subpoena shall be issued pursuant to this section without the administrative judge making a finding: (1) That the subpoena is being issued as a lawful exercise of the authority of the commission granted by this act; (2) that the verified complaint filed with the commission alleges sufficient facts directly or upon information and belief sufficient to constitute a violation of any of the provisions of this act; (3) that the application or any supporting affidavits allege sufficient facts to show that the subject of the subpoena has information which is relevant or necessary to the investigation; and (4) with regard to a subpoena duces tecum, that the application or complaint states sufficient facts to show probable cause that a violation of this act has been or is being committed and particularly describes the documents or things subject to the subpoena which constitute evidence of the violation. Any statement which is made orally in support of the application for subpoena shall be either taken down by a certified shorthand reporter or reduced to writing and sworn to under oath and made a part of the application for the issuance of the subpoena. The application for subpoena, affidavits or sworn testimony in support of the application or the subpoena itself shall not be public information or made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the subject of the subpoena, the alleged violator or their counsel. Any motion to quash a subpoena issued pursuant to this section

shall be filed in the district court of Shawnee county, Kansas. Each witness shall be sworn to make true answers to all questions propounded to such witness touching the matters under investigation. The testimony of each witness shall be reduced to writing and signed by the witness. Any person who disobeys a subpoena issued for such appearance or refuses to be sworn as a witness or answer any proper question propounded during the investigation by the commission may be adjudged in contempt of court and punished by fine and imprisonment. No person called as a witness before the commission shall be required to make any statement which will incriminate such witness. The attorney general or assistant attorney general may, on behalf of the state, grant any person called as a witness (at an inquisition) *omit* immunity from prosecution or punishment on account of any transaction or matter about which such person shall be compelled to testify and such testimony shall not be used against such person in any prosecution for a crime under the laws of Kansas or any municipal ordinance. After being granted immunity from prosecution or punishment, as herein provided, no person shall be excused from testifying on the ground that such person's testimony may incriminate such person.

SENATE BILL No. 252

By Committee on Elections

2-16

0018 AN ACT relating to state governmental ethics; concerning in-
0019 vestigations of complaints by the Kansas public disclosure
0020 commission; amending K.S.A. 46-256 and repealing the exist-
0021 ing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 46-256 is hereby amended to read as fol-
0024 lows: 46-256. If the commission determines that a verified com-
0025 plaint does not allege facts, directly or upon information and
0026 belief, sufficient to constitute a violation of any provision of this
0027 act, it shall dismiss the complaint and notify the complainant and
0028 respondent thereof. Whenever a complaint is filed with the
0029 commission alleging a violation of any provision of this act, such
0030 filing and the allegations therein shall be confidential and shall
0031 not be disclosed except as provided in this act. If the commission
0032 determines that such verified complaint does allege facts, di-
0033 rectly or upon information and belief, sufficient to constitute a
0034 violation of any of the provisions of this act, the commission
0035 promptly shall promptly investigate the alleged violation, ~~and~~
0036 ~~for this purpose is hereby authorized to issue subpoenas and~~
0037 ~~subpoenas duces tecum in accordance with the provisions of this~~
0038 ~~section. No subpoena shall be issued pursuant to this section~~
0039 ~~without first having been submitted to and having been ap-~~
0040 ~~proved by the administrative judge of the district court of~~
0041 ~~Shawnee county as a lawful exercise of the authority of the~~
0042 ~~commission granted by this act. Any person subpoenaed to~~
0043 ~~appear and give testimony or to produce books, papers or~~
0044 ~~documents, who fails or refuses to appear or to produce such~~
0045 ~~books, papers or documents, or any person, having been sworn~~
0046 ~~to testify, who refuses to answer any proper question, may be~~

Attachment VI

~~0047 cited for contempt of the district court of Shawnee county,~~
~~0048 Kansas. The commission shall report to such court the facts~~
~~0049 relating to any such contempt. Thereupon proceedings before~~
~~0050 such court shall be had as in cases of other civil contempt. The~~
0051 commission shall notify the attorney general of any apparent
0052 violation of criminal law or other laws not administered by the
0053 commission, which is discovered during the course of any such
0054 investigation. If, after the preliminary investigation, the com-
0055 mission finds that probable cause does not exist for believing the
0056 allegations of the complaint, the commission shall dismiss the
0057 complaint. If after such preliminary investigation, the commis-
0058 sion finds that probable cause exists for believing the allegations
0059 of the complaint, such complaint shall no longer be confidential
0060 and may be disclosed. Upon making any such finding, the
0061 commission shall fix a time for a hearing in the matter, which
0062 shall be not more than ~~thirty (30)~~ 30 days after such finding. In
0063 either event the commission shall notify the complainant and
0064 respondent of its determination.

0065 Sec. 2. K.S.A. 46-256 is hereby repealed.

0066 Sec. 3. This act shall take effect and be in force from and
0067 after its publication in the statute book.

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shall be filed in the district court of Shawnee county, Kansas. Each witness shall be sworn to make true answers to all questions propounded to such witness touching the matters under investigation. The testimony of each witness shall be reduced to writing and signed by the witness. Any person who disobeys a subpoena issued for such appearance or refuses to be sworn as a witness or answer any proper question propounded during the investigation by the commission may be adjudged in contempt of court and punished by fine and imprisonment. No person called as a witness before the commission shall be required to make any statement which will incriminate such witness. The attorney general or assistant attorney general may, on behalf of the state, grant any person called as a witness (at an inquisition) *omit* immunity from prosecution or punishment on account of any transaction or matter about which such person shall be compelled to testify and such testimony shall not be used against such person in any prosecution for a crime under the laws of Kansas or any municipal ordinance. After being granted immunity from prosecution or punishment, as herein provided, no person shall be excused from testifying on the ground that such person's testimony may incriminate such person.

Upon filing of a verified complaint with the commission and a decision to conduct an investigation of the complaint, the commission may apply to the administrative judge of the district court of Shawnee county for issuance of a subpoena, a subpoena duces tecum, or both, for the witness named in such praecipe commanding such witness to appear or produce documents and testify concerning matters under investigation. Such subpoenas shall be served and returned as subpoenas for witnesses in criminal cases in the district court. No subpoena shall be issued pursuant to this section without the administrative judge making a finding: (1) That the subpoena is being issued as a lawful exercise of the authority of the commission granted by this act; (2) that the verified complaint filed with the commission alleges sufficient facts directly or upon information and belief sufficient to constitute a violation of any of the provisions of this act; (3) that the application or any supporting affidavits allege sufficient facts to show that the subject of the subpoena has information which is relevant or necessary to the investigation; and (4) with regard to a subpoena duces tecum, that the application or complaint states sufficient facts to show probable cause that a violation of this act has been or is being committed and particularly describes the documents or things subject to the subpoena which constitute evidence of the violation. Any statement which is made orally in support of the application for subpoena shall be either taken down by a certified shorthand reporter or reduced to writing and sworn to under oath and made a part of the application for the issuance of the subpoena. The application for subpoena, affidavits or sworn testimony in support of the application or the subpoena itself shall not be public information or made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the subject of the subpoena, the alleged violator or their counsel. Any motion to quash a subpoena issued pursuant to this section