

Approved _____ March 25, 1988
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 16, 1988 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was 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:

Judge Robert L. Morrison, District Judge, 18th District, Wichita
Robert C. Barnum, Commissioner, Youth Services, Social and Rehabilitation Services
John Reiff, Sr. Vice-President, Law & Personnel, Coleman Company, Wichita
Merlin Wheeler, Kansas Bar Association and Western Financial Corporation, Emporia
Danton Rice, Legal Counsel, Deputy Assistant Secretary of State
Lloyd Culbertson, Senior Vice President, First National Bank, Phillipsburg
Jack Glaves, KN Energy, Wichita

Hearing on H.B. 2985 -- Amending and supplementing the Kansas code for care of children

Representative Bideau explained H.B. 2895 replaces 1987 H.B. 2006 that was reported out of the Judiciary Committee. H.B. 2006 was defeated by the House due to the fiscal impact. Representative Bunten had estimated the fiscal note at \$700,000. He reviewed the changes that were made in H.B. 2985. He also explained the amendments made to H.B. 2985 by the subcommittee, (see Attachment I).

Judge Morrison informed the Committee that the present statutes regarding children in need of care are working for some but not for the ones that keep running away. Laws are needed so these runaways can be held long enough so they can receive counseling. He recommended that the state either help with this problem or lower the age for a "child in need of care" from 18 to 16.

Commissioner Barnum estimated there would be 150 chronic runners in a fiscal year that would be addressed in this bill. The fiscal note for 90 days in a secure facility for a fiscal year would be \$1,039,500; 60 days, \$693,000 and 45 days, \$519,750. He estimated the cost per child per day would be \$77.00, which is the level 5 rate plus an additional \$20.00 per day. In answer to a Committee question he said approximately 80% of per day rate would already be paid by S.R.S. as they would have these runaways to care for anyway.

The hearing was closed on H.B. 2985.

Representative Solbach moved to adopt the Committee report. Representative Bideau seconded and the motion passed.

A motion was made by Representative Bideau to report H. B. 2985, as amended, favorable for passage. The motion was seconded by Representative Whiteman. The motion passed.

The Chairman reopened the hearing on H.B. 3021 -- Amending the corporation code.

John Reiff testified the Coleman Company supports this bill, (see Attachment II).

Merlin Wheeler testified the Kansas Bar Association has studied this bill and has not received any negative comments on the bill. He stated it is a technical conforming bill and the Kansas Bar Association supports the passage of this bill.

Danton Rice testified the advantage of adopting the majority of the Delaware Corporate Code is the vast number of reported decisions interpreting it. This will improve corporate decision making and should encourage more businesses to incorporate in Kansas, (see Attachment III).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 16, 1988.

Representative Douville moved and Representative Jenkins seconded to report favorable for passage, H.B. 3021, and recommended that it be placed on the consent calendar. The motion passed.

The Chairman reopened the hearing on H.B. 3018 -- Concerning corporations relating to cumulative voting.

John Reiff testified in support of H.B. 3018. He said there is no good argument against permitting a company to have its shareholders determine whether they want cumulative voting, (see Attachment II).

Danton Rice explained H.B. 3018 would remove the provision requiring mandatory cumulative voting for directors from the Kansas Corporation Code. He stated the Secretary of State has no position on H.B. 3018, (see Attachment IV).

Lloyd Culbertson urged the adoption of H.B. 3018. He stated it is important that the legislation be enacted this session, particularly with respect to utility companies, and suggested the bill could be amended to restrict the law to utility companies, (see Attachment V).

Merlin Wheeler testified Western Financial Corporation is strongly in favor of the voting changes provided by H.B. 3018.

Jack Graves stated there is a crisis situation in corporate America today, that cumulative voting is a tool used by corporate raiders in takeover attempts, and urged the Committee to recommend H.B. 3018 for passage.

The hearing was closed on H.B. 3018.

Representative Adam moved to table H.B. 3018. Representative Roy seconded the motion. The motion failed.

A motion was made by Representative Vancrum and seconded by Representative Shriver to report H.B. 3018 favorable for passage. The motion passed.

The Committee meeting was adjourned at 5:05 p.m. The next meeting will be Thursday, March 17, 1988 at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE March 16, 1988

NAME	ORGANIZATION	ADDRESS
John Reiff	Coleman Co.	2500 W. ST FRANCIS WICHITA KS 67202
Merlin G Wheeler	Kansas Bar Association	Emporia, KS
Jack G Gues	K N Energy, Inc.	1205 Market Wichita, KS
Lloyd K Culbertson	First National Bank	Phillipsburg, KS.
Newton RICE	SOS	
Alice L. Ky	K-Now	Topeka
Belva Ott	Dun & Bradstreet Inc.	Wichita
Rick Keady	KPL Gas Service	Topeka
Ron Hein	Mesa Ltd Partnership	Topeka
David O'Brien	SRS - Youth Services	Topeka
Bob Barnum	SRS " "	TOPEKA
Johannah Bryant	Kansas Action for Children	701 Jackson Topeka
Gerhard Metz	KCCF	Topeka
Sgt Bob Giffin	Kansas Highway Patrol	Topeka
Jim Clark	KCDAA	Topeka
Kevin Kelly	Sun	Overland Park

HOUSE BILL No. 2985

By Committee on Judiciary

2-18

0016 AN ACT amending and supplementing the Kansas code for care
0017 of children; amending K.S.A. 38-1524, 38-1527, 38-1528 and
0018 38-1542 and K.S.A. 1987 Supp. 38-1502 and repealing the
0019 existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1987 Supp. 38-1502 is hereby amended to
0022 read as follows: 38-1502. As used in this code, unless the context
0023 otherwise indicates:

0024 (a) "Child in need of care" means a person less than 18 years
0025 of age who:

0026 (1) Is without adequate parental care, control or subsistence
0027 and the condition is not due solely to the lack of financial means
0028 of the child's parents or other custodian;

0029 (2) is without the care or control necessary for the child's
0030 physical, mental or emotional health;

0031 (3) has been physically, mentally or emotionally abused or
0032 neglected or sexually abused;

0033 (4) has been placed for care or adoption in violation of law;

0034 (5) has been abandoned or does not have a known living
0035 parent;

0036 (6) is not attending school as required by K.S.A. 72-977 or
0037 72-1111, and amendments thereto;

0038 (7) except in the case of a violation of K.S.A. 41-715, 41-2721
0039 or subsection (i) of K.S.A. 1987 Supp. 74-8810, and amendments

0040 thereto, does an act which, when committed by a person under
0041 18 years of age, is prohibited by state law, city ordinance or

0042 county resolution but which is not prohibited when done by an
0043 adult; or

0044 (8) while less than 10 years of age, commits any act which if

Attachment I

0045 done by an adult would constitute the commission of a felony or
0046 misdemeanor as defined by K.S.A. 21-3105 and amendments
0047 thereto; ~~or~~

0048 (9) is willfully and voluntarily absent from: ~~(A) The child's~~
0049 ~~home without the consent of the child's parent or other custo-~~
0050 ~~dian; or (B) a court ordered or designated placement, or a~~
0051 ~~placement pursuant to court order, if the absence is without the~~
0052 ~~consent of the person with whom the child is placed or, if the~~
0053 ~~child is placed in a facility, without the consent of the person in~~
0054 ~~charge of such facility or such person's designee.~~

0055 (b) "Physical, mental or emotional abuse or neglect" means
0056 the infliction of physical, mental or emotional injury or the
0057 causing of a deterioration of a child and may include, but shall
0058 not be limited to, failing to maintain reasonable care and treat-
0059 ment, negligent treatment or maltreatment or exploiting a child
0060 to the extent that the child's health or emotional well-being is
0061 endangered. A parent legitimately practicing religious beliefs
0062 who does not provide specified medical treatment for a child
0063 because of religious beliefs shall not for that reason be consid-
0064 ered a negligent parent; however, this exception shall not pre-
0065 clude a court from entering an order pursuant to subsection (a)(2)
0066 of K.S.A. 38-1513 and amendments thereto.

0067 (c) "Sexual abuse" means any act committed with a child
0068 which is described in article 35, chapter 21 of the Kansas Statutes
0069 Annotated and those acts described in K.S.A. 21-3602 or 21-3603,
0070 and amendments thereto, regardless of the age of the child.

0071 (d) "Parent," when used in relation to a child or children,
0072 includes a guardian, conservator and every person who is by law
0073 liable to maintain, care for or support the child.

0074 (e) "Interested party" means the state, the petitioner, the
0075 child, any parent and any person found to be an interested party
0076 pursuant to K.S.A. 38-1541 and amendments thereto.

0077 (f) "Law enforcement officer" means any person who by
0078 virtue of office or public employment is vested by law with a
0079 duty to maintain public order or to make arrests for crimes,
0080 whether that duty extends to all crimes or is limited to specific
0081 crimes.

¶ (10)

0082 (g) "Youth residential facility" means any home, foster home
0083 or structure which provides 24-hour-a-day care for children and
0084 which is licensed pursuant to article 5 of chapter 65 of the Kansas
0085 Statutes Annotated.

0086 (h) "Shelter facility" means any public or private facility or
0087 home other than a juvenile detention facility that may be used in
0088 accordance with this code for the purpose of providing either
0089 temporary placement for the care of children in need of care
0090 prior to the issuance of a dispositional order or longer term care
0091 under a dispositional order.

0092 (i) "Juvenile detention facility" means any secure public or
0093 private facility used for the lawful custody of accused or adjudi-
0094 cated juvenile offenders which, if in a city or county jail, must be
0095 in quarters separate from adult prisoners.

0096 (j) "Adult correction facility" means any public or private
0097 facility, secure or nonsecure, which is used for the lawful cus-
0098 tody of accused or convicted adult criminal offenders.

0099 (k) "Secure facility" means a facility which is operated or
0100 structured so as to ensure that all entrances and exits from the
0101 facility are under the exclusive control of the staff of the facility,
0102 whether or not the person being detained has freedom of move-
0103 ment within the perimeters of the facility, or which relies on
0104 locked rooms and buildings, fences or physical restraint in order
0105 to control behavior of its residents.

0106 (l) "Ward of the court" means a child over whom the court
0107 has acquired jurisdiction by the filing of a petition pursuant to
0108 this code and who continues subject to that jurisdiction until the
0109 petition is dismissed or the child is discharged as provided in
0110 K.S.A. 38-1503 and amendments thereto.

0111 (m) "Custody," whether temporary, protective or legal,
0112 means the status created by court order or statute which vests in
0113 a custodian, whether an individual or an agency, the right to
0114 physical possession of the child and the right to determine
0115 placement of the child, subject to restrictions placed by the
0116 court.

0117 (n) "Placement" means the designation by the individual or
0118 agency having custody of where and with whom the child will

0119 live.

0120 (o) "Secretary" means the secretary of social and rehabilita-
0121 tion services.

0122 (p) "Relative" means a person related by blood, marriage or
0123 adoption but, when referring to a relative of a child's parent, does
0124 not include the child's other parent.

0125 (q) "Court-appointed special advocate" means a responsible
0126 adult other than an attorney guardian *ad litem* who is appointed
0127 by the court to represent the best interests of a child, as provided
0128 in K.S.A. 38-1505a and amendments thereto, in a proceeding
0129 pursuant to this code.

0130 Sec. 2. K.S.A. 38-1524 is hereby amended to read as follows:
0131 38-1524. (a) When a report to a law enforcement agency indicates
0132 that a child may be ~~in imminent danger~~ *harmed*, the law en-
0133 forcement agency shall promptly initiate an investigation. If the
0134 law enforcement officer reasonably believes the child is ~~in~~
0135 ~~imminent danger~~ *will be harmed*, the officer shall remove the
0136 child from the location where the child is found as authorized by
0137 K.S.A. 38-1527 and amendments thereto.

0138 (b) Whenever any person furnishes information to the state
0139 department of social and rehabilitation services that a child
0140 appears to be a child in need of care, the department shall make a
0141 preliminary inquiry to determine whether the interests of the
0142 child require further action be taken. Whenever practicable, the
0143 inquiry shall include a preliminary investigation of the circum-
0144 stances which were the subject of the information, including the
0145 home and environmental situation and the previous history of
0146 the child. If reasonable grounds to believe abuse or neglect exist,
0147 immediate steps shall be taken to protect the health and welfare
0148 of the abused or neglected child as well as that of any other child
0149 under the same care who may be ~~in danger of~~ *harmed by* abuse
0150 or neglect. After the inquiry, if the department determines it is
0151 not possible to provide otherwise those services necessary to
0152 protect the interests of the child, the department shall recom-
0153 mend to the county or district attorney that a petition be filed.

0154 Sec. 3. K.S.A. 38-1527 is hereby amended to read as follows:
0155 38-1527. (a) A law enforcement officer or court services officer

0156 may take a child under 18 years of age into custody when:

0157 (1) The law enforcement officer or court services officer has a
0158 court order commanding that the child be taken into custody as a
0159 child in need of care; or

0160 (2) the law enforcement officer or court services officer has
0161 probable cause to believe that a court order commanding that the
0162 child be taken into custody as a child in need of care has been
0163 issued in this state or in another jurisdiction.

0164 (b) A law enforcement officer may take a child under 18 years
0165 of age into custody when the officer has probable cause to
0166 believe that the child is a child in need of care and that there are
0167 reasonable grounds to believe that the circumstances or condi-
0168 tion of the child is such that continuing in the place or residence
0169 in which the child has been found or in the care and custody of
0170 the person who has care or custody of the child would ~~present a~~
0171 ~~danger~~ *be harmful* to the child.

0172 (c) A law enforcement officer shall take a child under 18
0173 years of age into custody when the officer has probable cause to
0174 believe that the child is a missing person from another state and a
0175 verified missing person entry for such child can be found in the
0176 national crime information center missing person system.

0177 Sec. 4. K.S.A. 38-1528 is hereby amended to read as follows:
0178 38-1528. (a) ~~Except as provided in subsection (b)~~ *To the extent*
0179 *possible, when any law enforcement officer takes into custody a*
0180 *child under the age of 18 years, without a court order, the child*
0181 *shall forthwith be delivered to the custody of the child's parent*
0182 *or other custodian unless there are reasonable grounds to be-*
0183 *lieve that such action would not be in the best interests of the*
0184 *child. Except as provided in subsection (b), if the child is not*
0185 *delivered to the custody of the child's parent or other custodian,*
0186 *the child shall forthwith be delivered to a facility or person*
0187 *designated by the secretary or to a court designated shelter*
0188 *facility, court services officer or other person. If, after delivery of*
0189 *the child to a shelter facility, the person in charge of the shelter*
0190 *facility at that time and the law enforcement officer determine*
0191 *that the child will not remain in the shelter facility, the law*
0192 *enforcement officer shall deliver the child to a juvenile deten-*

0193 tion facility, designated by the court, where the child shall be
0194 detained for not more than 24 hours, *excluding Saturdays, Sun-*
0195 *days and legal holidays.* It shall be the duty of the law enforce-
0196 ment officer to furnish to the county or district attorney, without
0197 unnecessary delay, all the information in the possession of the
0198 officer pertaining to the child, the child's parents or other per-
0199 sons interested in or likely to be interested in the child and all
0200 other facts and circumstances which caused the child to be taken
0201 into custody.

202 (b) When any law enforcement officer takes into custody any
0203 child as provided in subsection (c) of K.S.A. 38-1527 and
0204 amendments thereto, proceedings shall be initiated in accord-
0205 ance with the provisions of the interstate compact on juveniles,
0206 K.S.A. 38-1001 *et seq.* and amendments thereto. Any child taken
0207 into custody pursuant to the interstate compact on juveniles may
0208 be detained in a juvenile detention facility.

0209 (c) Whenever a child under the age of 18 years is taken into
0210 custody by a law enforcement officer without a court order and is
0211 thereafter placed in the custody of a shelter facility, court ser-
0212 vices officer or other person as authorized by this code, the
0213 facility or person shall have physical custody and provide care
0214 and supervision for the child upon written application of the law
0215 enforcement officer. The application shall state:

- 216 (1) The name and address of the child, if known;
0217 (2) the names and addresses of the child's parents or nearest
0218 relatives and persons with whom the child has been residing, if
0219 known; and
0220 (3) the officer's belief that the child is a child in need of care
0221 and that there are reasonable grounds to believe that the cir-
0222 cumstances or condition of the child is such that, unless the child
0223 is placed in the immediate custody of the shelter facility or other
0224 person, ~~a danger to the child would exist~~ *it would be harmful to*
0225 *the child.*

0226 (d) A copy of the application shall be furnished by the facility
0227 or person receiving the child to the county or district attorney
0228 without unnecessary delay.

0229 (e) The shelter facility or other person designated by the

0230 court who has custody of the child pursuant to this section shall
0231 discharge the child not later than 48 hours following admission,
0232 excluding Saturdays, Sundays and legal holidays, unless a court
0233 has entered an order pertaining to temporary custody or release.

0234 (f) In absence of a court order to the contrary, the county or
0235 district attorney or the placing law enforcement agency shall
0236 have the authority to direct at any time the release of the child.

0237 Sec. 5. K.S.A. 38-1542 is hereby amended to read as follows:

0238 38-1542. (a) The court upon verified application may issue an ~~an ex~~
0239 ~~parte order of ex parte~~ *an order directing that a child be held in*
protective custody *and, if the child has not been taken into*
0241 *custody, an order directing that the child be taken into custody.*

0242 The application shall state:

0243 (1) The applicant's belief that the child is a child in need of
0244 care and is likely to sustain harm if not immediately afforded
0245 protective custody; and

0246 (2) the specific facts which are relied upon to support the
0247 belief.

0248 (b) The order of protective custody may be issued only after
0249 the court has determined there is probable cause to believe the
0250 allegations in the application are true. The order shall remain in
0251 effect until the temporary custody hearing provided for in K.S.A.
0252 38-1543 and amendments thereto, unless earlier rescinded by
0253 the court. No child shall be held in protective custody for more
0254 than 48 hours, excluding Saturdays, Sundays and legal holidays,
0255 unless within the 48-hour period a determination is made as to
0256 the necessity for temporary custody in a temporary custody
0257 hearing.

0258 (c) Whenever the court determines the necessity for an order
0259 of protective custody, the court may place the child in the
0260 protective custody of: (1) A parent or other person having cus-
0261 tody of the child and may enter a restraining order pursuant to
0262 subsection (d); (2) a person, other than the parent or other person
0263 having custody, who shall not be required to be licensed under
4 article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a
0265 youth residential facility; or (4) the secretary. When circum-
0266 stances require, a child in protective custody may be placed in a

0267 juvenile detention facility pursuant to an order of protective
0268 custody for not to exceed 24 hours, excluding Saturdays, Sundays
0269 and legal holidays.

0270 (d) *The order of protective custody shall be served on the*
0271 *child's parents and any other person having legal custody of the*
0272 *child. The order shall prohibit all parties from removing the*
0273 *child from the court's jurisdiction without the court's permis-*
0274 *sion.*

0275 (e) If the court issues an order of protective custody, the court
0276 may also enter an order restraining any alleged perpetrator of
0277 physical, sexual, mental or emotional abuse of the child from
0278 residing in the child's home; visiting, contacting, harassing or
0279 intimidating the child; or attempting to visit, contact, harass or
0280 intimidate the child. *Such restraining order shall be served on*
0281 *any alleged perpetrator to whom the order is directed.*

0282 (e) ~~The order of protective custody shall be served on parents~~
0283 ~~and other persons having legal custody and shall prohibit all~~
0284 ~~parties from removing the child from the court's jurisdiction~~
0285 ~~without the court's permission.~~

0286 (f) The court shall not enter an order removing a child from
0287 the custody of a parent pursuant to this section unless the court
0288 first finds from evidence presented by the petitioner that rea-
0289 sonable efforts have been made to prevent or eliminate the need
0290 for removal of the child or that an emergency exists which
0291 threatens the safety of the child and requires the immediate
0292 removal of the child. Such findings shall be included in any
0293 order entered by the court.

0294 New Sec. 6. (a) *Valid court order.* During proceedings under
0295 this code, the court may enter an order directing a child who is
0296 the subject of the proceedings to remain in a present or future
0297 placement if:

0298 (1) The court makes a finding that the child has been adjudi-
0299 cated to be a child in need of care pursuant to subsection ~~(a)(9)~~ of
0300 K.S.A. 38-1502 and amendments thereto;

0301 (2) the child and the child's guardian *ad litem* are present
0302 before the court at the time the order is entered; and

0303 (3) the child and the child's guardian *ad litem* are given

(a) (10)

0304 adequate and fair warning, both orally and in writing, of the
0305 consequences of violation of the order and a copy of such
0306 warning is recorded in the official file of the case.

0307 (b) *Application.* Any person may file with the court a verified
0308 application for a determination that a child has violated an order
0309 entered pursuant to subsection (a) and for an order authorizing
0310 the holding of such child in a secure facility as provided by this
0311 section. Such application shall state the applicant's belief that
0312 the child has violated a valid court order entered pursuant to
0313 subsection (a) and the specific facts which are relied upon to
0314 support the belief.

0315 (c) *Ex parte order.* Upon the filing of an application in
0316 accordance with subsection (b), the court may enter *ex parte* an
0317 order directing that the child be taken into custody and held in a
0318 secure facility designated by the court if the court determines
0319 that there is probable cause to believe the allegations in the
0320 application. The order shall remain in effect for not more than 24
0321 hours following the child's being taken into custody. The order
0322 shall be served on the child's parents, any legal custodian of the
0323 child and the child's guardian *ad litem*.

0324 (d) *Preliminary hearing.* Within 24 hours following a child's
0325 being taken into custody pursuant to an order issued under
0326 subsection (c), the court shall hold a hearing to determine
0327 whether the child admits or denies the allegations of the appli-
0328 cation and, if the child denies such allegations, whether there is
0329 probable cause to hold the child in a secure facility pending a
0330 hearing on the application pursuant to subsection (e). Notice of
0331 the time and place of the preliminary hearing shall be given
0332 orally or in writing to the child's parents, any legal custodian of
0333 the child and the child's guardian *ad litem*. At the hearing, the
0334 child shall have the right to: (1) Have in writing the alleged
0335 violation and the facts relied upon in the application; (2) a
0336 guardian *ad litem* pursuant to K.S.A. 38-1505 and amendments
0337 thereto; and (3) the right to confront and present witnesses. If,
0338 upon the hearing, the court finds that the child admits the
0339 allegations of the application, the court shall proceed without
0340 delay to hold a hearing on the application pursuant to subsection

0341 (e). If, upon the hearing, the court finds that the child denies the
 0342 allegations of the application, the court may enter an order
 0343 directing that the child be held in a secure facility pending a
 0344 hearing pursuant to subsection (e) if the court finds that there is
 0345 probable cause to believe that the child has violated a valid court
 0346 order entered pursuant to subsection (a) and that secure deten-
 0347 tion of the child is necessary for the protection of the child or to
 0348 assure the appearance of the child at the hearing on the applica-
 0349 tion pursuant to subsection (e).

0350 (e) *Hearing on violation of order; authorization.* The court
 0351 shall hold a hearing on an application filed pursuant to subsec-
 0352 tion (b) within 24 hours following the child's being taken into
 0353 custody, if the child admits the allegations of the application, or
 0354 within 72 hours following the child's being taken into custody, if
 0355 secure detention of the child is ordered pursuant to subsection
 0356 (d). Notice of the time and place of such hearing shall be given
 0357 orally or in writing to the child's parents, any legal custodian of
 0358 the child and the child's guardian *ad litem*. Upon such hearing,
 0359 the court may enter an order awarding custody of the child to the
 0360 secretary, if the secretary does not have legal custody of the
 0361 child, and authorizing the secretary to place the child in a secure
 0362 facility if the court determines that:

- 0363 (1) The child has been adjudicated to be a child in need of
 0364 care pursuant to subsection ~~(a)(9)~~ of K.S.A. 38-1502 and amend-
 0365 ments thereto; (a) (10)
- 0366 (2) the child has violated a valid court order entered pursuant
 0367 to subsection (a);
- 0368 (3) the child has been provided at the hearing with the right
 0369 to: (A) Have the alleged violation in writing and served upon the
 0370 child a reasonable time before the hearing; (B) a hearing before
 0371 the court on the issue of placement in a secure facility; (C) an
 0372 explanation of the nature and consequences of the proceeding;
 0373 (D) a guardian *ad litem* pursuant to K.S.A. 38-1505 and amend-
 0374 ments thereto; (E) confront and present witnesses; (F) have a
 0375 transcript or record of the proceedings; and (G) appeal; and
- 0376 (4) there is no less restrictive alternative appropriate to the
 0377 needs of the juvenile and the community.

0378 The authorization to place a child in a secure facility pursuant 60
 0379 to this subsection shall expire ~~90~~ days after it is issued. The court two
 0380 may grant extensions of such authorization for additional periods 60
 0381 not exceeding ~~90~~ days upon rehearing pursuant to K.S.A. 38-1564
 0382 and amendments thereto.

0383 (f) *Limitations on facilities used.* Nothing in this section
 0384 shall authorize placement of a child in a juvenile detention
 0385 facility, except that a child may be held in any such facility
 0386 which, if in an adult jail, is in quarters separated by sight and
 0387 sound from adult prisoners:

0388 (1) When ordered by a court pursuant to subsection (c) or (d),
 0389 for not longer than the times permitted by those subsections; or

0390 (2) when ordered by a court pursuant to subsection (e), for
 0391 not more than 24 hours following the hearing provided for by
 0392 that subsection.

0393 (g) *Time limits, computation.* Saturdays, Sundays and legal
 0394 holidays shall not be counted in computing any time limit
 0395 imposed by this section.

0396 (h) This section shall be part of and supplemental to the
 0397 Kansas code for care of children.

0398 Sec. 7. K.S.A. 38-1524, 38-1527, 38-1528 and 38-1542 and
 0399 K.S.A. 1987 Supp. 38-1502 are hereby repealed.

0400 Sec. 8. This act shall take effect and be in force from and
 0401 after its publication in the statute book.

Payment by the secretary to a secure facility for child care services provided pursuant to this subsection shall be paid only upon receipt of a copy of a valid court order placing the child in such facility.

, except that nothing in this subsection shall allow a child to be held in an adult jail for more than 24 hours

TESTIMONY OF JOHN M. REIFF OF
THE COLEMAN COMPANY, INC.
BEFORE THE HOUSE JUDICIARY COMMITTEE ON
MARCH 16, 1988

Chairman Wunsch, members of the committee. My name is John Reiff and I am Sr. Vice President, Law and Personnel of The Coleman Company, Inc. You know our products and location. What is important for this testimony is that we are a public company with our stock listed on the New York Stock Exchange, and our company is chartered in Kansas. The Kansas corporation code, not Delaware's, controls our corporate law activities.

As virtually all public companies chartered in Kansas, the corporate law that controls us is an accident of history. We were in no way a public company in 1928 when our charter was originally filed. We were a small lamp and stove company with a Baptist founder who knew how to sell light, but wouldn't have known a corporate charter from a real estate deed.

We grew and drifted public, mostly through employee ownership, and began to raise money through stock sales to the public. In the late 60's, early 70's, some smart people kept us and others from re-chartering the company in another state. Professor Treadway, the late Don Bell, and others, helped encourage this legislature to adopt, almost verbatim, the Delaware Corporation Code. An important exception was the cumulative voting provision which I will discuss in a minute.

There are more advantages to a corporation code like Delaware's than I can list or even know. In summary, however, the Delaware type laws permit management greater flexibility in most all areas, including types of permissible financing, the latitude boards have to take action (yes, including action that will discourage unfair raids and greenmail), and less corporate "red tape."

My company supports H.B. 3021, the technical amendment bill, and H.B. 3018, the bill permitting the shareholders to decide whether a company must have cumulative voting. Present Kansas law requires cumulative voting and this is the most substantive difference between our corporation code and Delaware's.

There is no good argument against permitting a company to have its shareholders determine whether they want cumulative voting. That is the way it is done by Delaware and a number of other states. We support the shareholders' right to determine this issue just as we would oppose a code that mandates non-cumulative voting.

What does cumulative voting do? It allows a shareholder to aggregate votes in favor of one particular director - sort of a super vote feature. Does this help a small shareholder have a stronger voice? In the context of public companies, no, because you need a multi-million dollar position to own enough shares to elect a director, even with cumulative voting.

Attachment II

Then why the hue and cry? That is easy to understand if you look at the hue and criers. You have all heard of corporate raiders, you have all heard of greenmail, and you have all heard of T. Boone Pickens, and others like him, the principal supporters of cumulative voting for all corporations except their own. You have all heard of Coleman and you have all heard of K and N Energy, and other public companies that are not fond of the activities of Mr. Pickens and these people.

The main use of cumulative voting today is as additional leverage for corporate greenmailers. Greenmail is simple. Jump in with a bunch of Texas money, buy some shares, and harass in every way you can. One way in a mandatory cumulative voting state is to slip a greenmailer on the board.

Can he or she outvote the board? No. Can he or she divert management attention from selling products to non-productive procedural hassles? Yes. Does this encourage management in frustration to pay greenmail? Unfortunately, sometimes it does.

I understand that a gentleman named Alderson also opposes this bill. I understand that this is an historic shareholder democracy issue to him. By that I mean that he isn't representing any vested interests. All I can say about his position is that I don't understand his objection to letting the shareholders decide whether they want cumulative voting or not.

Bill Graves
Secretary of State



2nd Floor, State Capitol
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STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON HB 3021

March 16, 1988

BY: Danton B. Rice - Legal Counsel
Deputy Assistant Secretary of State

House bill 3021 would make a number of changes to the General Corporation Code. In 1972 Kansas adopted the current corporation code which was modeled extensively upon the then existing Delaware law. Since 1972 numerous changes have been made to many provisions of the Delaware code. This bill would make the same amendments to the Kansas code.

Work on this bill began in June of 1987 when our office was contacted by both the Kansas Bar Association and the Wichita Bar Association concerning a possible revision of the Kansas General Corporation Code. From July until December our office reviewed the current code, the Delaware code and all available information on the drafting of the 1972 version of the Kansas code. From this research, a draft was developed and circulated to the Kansas Bar Association, Tom Triplett and Dave Edwards of the Wichita Bar Association, John Reiff of Coleman Company, Inc., Bob Alderson and Professors Lovitch and Hecker of the University of Kansas School of Law.

Our office received comments from a number of these individuals and groups and incorporated these into the draft that is now HB 3021. Subsequent to these revisions no individual or group has expressed reservations with regard to specific provisions of the bill.

The advantage of adopting the majority of the Delaware Corporate Code is the vast number of reported decisions interpreting it. This will improve corporate decision making and should encourage more businesses to incorporate in Kansas.

Therefore, the Secretary of State strongly supports the bill because of the benefits it provides corporations in the state.

Attachment III

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STATE OF KANSAS
TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON HB 3018

March 16, 1988

By: Danton B. Rice - Legal Counsel
Deputy Assistant Secretary of State

House bill 3018 would remove the provision requiring mandatory cumulative voting for directors from the Kansas Corporation Code. Cumulative voting for directors is a method of voting that allows minority shareholders to insure representation on the board of directors.

An example of cumulative voting would be a corporation with 2 shareholders, A with 10 shares, and B with 20 shares. Further, assume that there are three directors positions and that the three candidates with the most votes in the election win the seats. If cumulative voting is required, the total number of votes that each shareholder may cast is equal to the number of shares owned multiplied by the number of positions available. In this example A will have 30 votes to cast and B will have 60 votes to cast. If A casts all 30 votes for one candidate they can assure representation on the board.

Currently 18 states require mandatory cumulative voting for directors. However, the voters of the state of Missouri will be considering a constitutional amendment to remove the provision from the Missouri General Corporation Code. Additionally, this change would be consistent with the current Delaware Code.

The Secretary of State has no position on HB 3018.

Attachment IV

TO: THE HOUSE COMMITTEE ON JUDICIARY

STATEMENT OF LLOYD CULBERTSON
IN SUPPORT OF HOUSE BILL NO. 3018

Mr. Chairman, and Members of the Committee:

I am Lloyd Culbertson, a Senior Vice-President with the First National Bank of Phillipsburg, Kansas, which has been my home all my life. I am here in support of House Bill 3018 and earnestly hope that this legislation can be enacted in this Legislative Session.

My interest in this Bill arises from my concern over the economic importance of the offices of K N Energy in Phillipsburg, as well as the overall Kansas operations of K N, as a supplier of natural gas to Phillipsburg, and in fact, a substantial portion of Western Kansas. K N employs 115 people in Phillipsburg, which represents about 34% of its total employment in Kansas, with an annual payroll of over 2.7 million dollars, just in Phillipsburg. They pay over \$90,000 in property taxes annually in our community and are a reliable supplier of natural gas.

Not only Phillips County, but all of North Central and Northwestern Kansas is fighting to survive. In a comprehensive plan developed by Bucher & Willis for the City of Phillipsburg, in 1978, very startling figures are revealed. From 1910 to 1960 the population of Phillips County had decreased from approximately 14,000 people to 8,000 people. They projected that if this trend continues, the year 2000 population for Phillips County will be 5,500 people. The way to counter this projection is with maintaining existing employers and attracting new ones. We have to have a good reason to keep our existing people and attract new ones.

Attachment V

The State of Kansas is developing new methods to attract business and spending large sums of money to do so. I think it is equally important to keep our current companies.

As you are probably aware, K N has been the subject of a takeover attempt by an out-of-state firm that is principally engaged in gas production.

I fully understand that this Bill simply makes cumulative voting optional with the stockholders by their power to amend the Articles of Incorporation to not require cumulative voting, which the present law makes mandatory. Some contend that the present law protects minority stockholders, enabling the minority interest to maximize its voting power for directors by multiplying its shares by the number of board vacancies open at a particular election. We have confidence in the integrity and reliability of the existing management of this firm. It is stable and predictable. The raiding firm has indicated that the current attempt to obtain representation on the Board of Directors, which the Kansas cumulative voting law makes much more achievable, is simply the first step in achieving takeover of the management of the firm. If the takeover attempt succeeds, I am sure the company will be split into various components in the raider's realization of maximizing its profits from the production of its gas reserves. We believe Kansas and Phillips County will be on the losing end, both from the standpoint of the loss of one of our major employers and from a threat to reasonably priced gas for K N's industrial, commercial and domestic customers.

We view this legislation of great importance to the economic prosperity of our area. I appreciate the fact that this legislation will not be enacted in time to alter the outcome of the current proxy fight, since K N's stockholder meeting is scheduled for March 24, 1988. It is, however, of

importance that it be enacted in this session in order to be available for future decision making by the stockholders in determining the future course of management and control of K N and like corporations.

In short, we believe that this legislation is important to the economic prosperity of Kansas in that it serves to protect existing Kansas companies and offers some attraction to companies that are headquartered in states with the same restrictive law as ours to relocate in Kansas.

I urge the adoption of the proposed legislation and if it is decided that it is more realistic to restrict the law to utility corporations, I would urge such an amendment, as I firmly believe that it is important that the legislation be enacted in this session, particularly with respect to utility companies such as K N.

I thank you very much for your time and consideration.