

HS 3001

None opposed

Mr. Dan ~~Kolitz~~^{Kolditz} of Attorney General's office spoke in favor

Attachment: 1. Statement in favor by Dan Kolditz

Sub-Committe recommendation: Be passed with amendment

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SENATE JUDICIARY COMMITTEE

March 23, 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

Attach 1

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.