

Approved April 4, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 29, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee: None

House Bill 3001 - State not required to issue bond to get temporary injunction.

Senator Yost explained the technical amendments as indicated on the balloon copy of the bill (See Attachment I). Senator Yost moved to adopt the proposed technical amendments. Senator Gaines seconded the motion. The motion carried. Senator Yost moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

Senate Bill 410 - Civil procedure, local human relations commissions, enforcement of orders.

Senator Yost explained the proposed technical amendments that appear on the balloon (See Attachment II). Senator Yost moved to adopt the technical amendments. Senator Burke seconded the motion. The motion carried.

Senator Gaines moved to amend the bill conceptually to provide the court can review the case based upon the record or open it up based on new evidence offered. Senator Gaines withdrew the motion and moved to delete "with a transcript of the record" and insert reference that the hearing shall be de novo. Following considerable committee discussion, Senator Yost asked that the committee pass over the bill.

House Bill 3078 - Cleanup from 1987 session; volunteers immunity from liability.

Senator Hoferer explained the bill. Senator Hoferer moved to report the bill favorably. Senator Burke seconded the motion. The motion carried.

House Bill 2968 - Concerning Kansas advocacy and protective services, inc.

Senator Hoferer explained the bill. Senator Feleciano moved to report the bill favorably. Senator Parrish seconded the motion. The motion carried.

House Bill 2880 - Who is protected, the enforcement of such protection and support payments under the protection from abuse act.

Senator Hoferer explained the bill and a technical amendment

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 29, 1988

House Bill 2880 continued

needed to the bill. Senator Hoferer moved to amend the bill in the definition "creating a definition of persons". Senator Parrish seconded the motion. The motion carried. Senator Hoferer moved to report the bill favorably as amended. Senator Parrish seconded the motion. The motion carried.

House Bill 2860 - Child support and education under decree of divorce.

House Bill 2866 - Judgment or order of court for support under Kansas parentage act.

Senator Hoferer explained the two bills and that the same amendment is needed in both of the bills (See Attachments III). Senator Hoferer then moved to adopt the amendments to the two bills. Senator Parrish seconded the motion. The motion carried. Senator Hoferer moved to report the two bills favorably as amended. Senator Parrish seconded the motion. The motion carried.

House Bill 2943 - Docket fee not required on appeal in code for care of children.

Senator Hoferer reported it was the consensus of the subcommittee the bill not be recommended and asked the chairman to request clarification from the Judicial Administrative Office.

House Bill 2251 - Overpayment of child support credited toward future support.

Senator Hoferer explained the bill. Senator Parrish explained an amendment she had in the subcommittee to let the judge review and not have it automatically cut off. Committee discussion followed. Senator Hoferer moved to report the bill adversely. Senator Parrish seconded the motion. With six members voting in favor of the motion, the motion carried.

Senate Bill 696 - Charitable organizations and solicitations act.

Senator Frey explained the bill. Senator Gaines moved to amend the bill to provide a specified penalty similar to consumer protection act and strike the misdemeanor reference which would allow local enforcement of this law. Senator Langworthy seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Langworthy seconded the motion. The motion carried.

The chairman announced there would be a committee meeting at 7:30 in the morning in the regular meeting room.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-29-88
10:00 AM

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Mike Okerd	1430 Topeka	KALEH
Gerry Frankh	590 Wisconsin Lawrence	Inborn D. Keer
Judy Hates	Topeka, Ks	Supreme Court
JOHN C. BOTTEWBERG	TOPEKA	AIR TRAVEL Assoc of AME
BARR BEINERT	"	KPOA
Bill Hourissey	"	DHR/WC
Ray Siehndel	"	DHR
Alan E. Smith	Overland Park	City of Overland Park
Ron Antth	Topeka	KBA
John Avery	Wichita	Avery Enterprises
Bub Arbuthnot	Topeka	KTLA
Linda McGill	"	KHA
Joan S. Smith	Manhattan	KAPS
JENNIS A. STICKLEY	CITY HALL	KCK
Bennie Rowland	Lawrence	JATERN
Spur Cogswell	Topeka	Alliance of Am. As.

Att. IV

HOUSE BILL No. 3001

By Committee on Judiciary

2-22

Att. I

0017 AN ACT concerning civil procedure; relating to temporary in-
0018 junctions; amending K.S.A. 60-905 and repealing the existing
0019 section.

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

0021 Section 1. K.S.A. 60-905 is hereby amended to read as fol-
0022 lows: 60-905. (a) *Notice and hearing.* No temporary injunction
0023 shall be granted until after reasonable notice to the party to be
0024 enjoined and an opportunity to be heard.

or this section

0025 (b) *Bond.* Unless otherwise provided by statute, no tempo-
0026 rary injunction shall operate unless the party obtaining the same
0027 shall give an undertaking with one or more sufficient sureties in
0028 an amount fixed by the judge and approved by the clerk of the
0029 court, securing to the party injured the damages [he or she] may
0030 sustain including attorney fees if it be finally determined that the
0031 injunction should not have been granted. [Neither the state nor
0032 any of its agencies shall be required to give an undertaking with
0033 one or more sufficient sureties in order to be granted a tempo-
0034 rary injunction.]

such injured party

At the discretion of the judge, the undertaking required by this subsection may be waived.

0035 Sec. 2. K.S.A. 60-905 is hereby repealed.

0036 Sec. 3. This act shall take effect and be in force from and
0037 after its publication in the statute book.

SENATE BILL No. 410

By Committee on Federal and State Affairs

3-30

Att. II

0017 AN ACT concerning civil procedure; relating to enforcement of
0018 orders of local human relations commissions.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (a) A local human relations commission autho-
0021 rized by ordinance to award compensatory ~~and~~ punitive damages,
0022 in a discrimination case may secure enforcement of any final
0023 order of such commission by the district court of the county
0024 where the unlawful discriminatory practice occurred, through
0025 mandamus or injunction in appropriate cases, or by action to
0026 compel the specific performance of the order. Such proceedings
0027 shall be initiated by the filing of a petition in such court, together
0028 with a transcript of the record upon the hearing before such
0029 commission, and issuance and service of a copy of such petition
0030 as in civil actions. The court shall have power to grant such
0031 temporary relief or restraining order as it deems just and proper,
0032 and to make and enter upon the pleadings, testimony and pro-
0033 ceedings an order or decree, enforcing, modifying, and enforc-
0034 ing, as so modified, or setting aside in whole or in part, the order
0035 of such commission.

or

, or both,

, or where authorized by ordinance, its director,

or the record upon which the director issued the order, as appropriate,

or director

0036 (b) The jurisdiction of the district court of the proper county
0037 shall be exclusive and its final order or decree shall be subject to
0038 review in the same manner as other appeals from the district
0039 court in civil cases.

0040 Sec. 2. This act shall take effect and be in force from and
0041 after its publication in the statute book.

HOUSE BILL No. 2866

By Representatives Johnson, Adam, Bideau, Dillon, Fuller, Jenkins, Justice, Kennard, Love, O'Neal, Peterson, Roy, Sebelius, Solbach, Wagnon, Whiteman and Wisdom

2-10

III
Out.

0019 AN ACT amending the Kansas parentage act; concerning the
0020 judgment or order of court; amending K.S.A. 38-1121 and
0021 repealing the existing section.

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

0023 Section 1. K.S.A. 38-1121 is hereby amended to read as fol-
0024 lows: 38-1121. (a) The judgment or order of the court determin-
0025 ing the existence or nonexistence of the parent and child rela-
0026 tionship is determinative for all purposes.

0027 (b) If the judgment or order of the court is at variance with
0028 the child's birth certificate, the court shall order that a new birth
0029 certificate be issued.

0030 (c) Upon adjudging that a party is the parent of a minor child,
0031 the court shall make provision for support and education of the
0032 child including the necessary medical expenses incident to the
0033 birth of the child. The court may order the support and education
0034 expenses to be paid by either or both parents for the minor child.
0035 When the child reaches 18 years of age, the support shall termi-
0036 nate unless: (1) The parent or parents agree, by written agree-
0037 ment approved by the court, to pay support beyond that time; or
0038 (2) *the child reaches 18 years of age before completing the*
0039 *child's high school education in which case the support shall not*
0040 *terminate, unless otherwise ordered by the court, until June 1 of*
0041 *the school year during which the child became 18 years of age if*
0042 *the child is still attending high school. Provision for payment of*
0043 *support and educational expenses of a child after reaching 18*
0044 *years of age if still attending high school shall apply to any child*
0045 *subject to the jurisdiction of the court, including those whose*

0046 support was ordered prior to ~~the effective date of this act~~. The
0047 judgment shall specify the terms of payment and shall require
0048 payment to be made through the clerk of the district court or the
0049 court trustee except for good cause shown. The judgment may
0050 require the party to provide a bond with sureties to secure
0051 payment. The court may at any time during the minority of the
0052 child prospectively modify or change the order of support as
0053 required by the best interest of the child. The court shall enter
0054 such orders regarding custody and visitation as the court consid-
0055 ers to be in the best interest of the child.

0056 (d) In entering an original order for support of a child under
0057 this section, the court may include a requirement that an addi-
0058 tional amount be paid to reimburse the expenses of support and
0059 education of the child from the date of birth to the date the order
0060 is entered and the necessary medical expenses incident to the
0061 birth of the child.

0062 (e) In determining the amount to be paid by a parent for
0063 support of the child and the period during which the duty of
0064 support is owed, a court enforcing the obligation of support shall
0065 consider all relevant facts including, but not limited to, the
0066 following:

- 0067 (1) The needs of the child.
- 0068 (2) The standards of living and circumstances of the parents.
- 0069 (3) The relative financial means of the parents.
- 0070 (4) The earning ability of the parents.
- 0071 (5) The need and capacity of the child for education.
- 0072 (6) The age of the child.
- 0073 (7) The financial resources and the earning ability of the
0074 child.
- 0075 (8) The responsibility of the parents for the support of others.
- 0076 (9) The value of services contributed by the custodial parent.
- 0077 (f) The provisions of K.S.A. 1985 Supp. 23-4,107 and amend-
0078 ments thereto shall apply to all orders of support issued under
0079 this section.

0080 (g) An order granting visitation rights pursuant to this section
0081 may be enforced in accordance with K.S.A. 1986 Supp. 23-701,
0082 and amendments thereto.

July 1, 1988, If an agreement approved by the
court prior to the effective date of this act
provides for termination of support before the
date provided by subsection (c)(2), the court may
review and modify such agreement, and any order
based on such agreement, to extend the date for
termination of support to the date provided by
subsection (c)(2)

HOUSE BILL No. 2860

By Representatives Johnson, Adam, Bideau, Dillon, Fuller, Jenkins, Justice, Kennard, Love, O'Neal, Peterson, Roy, Sebelius, Snowbarger, Solbach, Vancrum, Wagnon, Whiteman and Wisdom

2-10

0 AN ACT relating to divorce and maintenance; concerning orders
0021 providing for child support and education; amending K.S.A.
0022 1987 Supp. 60-1610 and repealing the existing section.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 1987 Supp. 60-1610 is hereby amended to
0025 read as follows: 60-1610. A decree in an action under this article
0026 may include orders on the following matters:

0027 (a) *Minor children. (1) Child support and education.* The
0028 court shall make provisions for the support and education of the
0029 minor children. The court may modify or change any prior order
0030 when a material change in circumstances is shown, irrespective
0031 of the present domicile of the child or the parents. Regardless of
0032 the type of custodial arrangement ordered by the court, the court

0033 may order the child support and education expenses to be paid
0034 by either or both parents for any child less than 18 years of age, at
0035 which age the support shall terminate unless: (A) The parent or
0036 parents agree, by written agreement approved by the court, to
0037 pay support beyond the time the child reaches 18 years of age; or
0038 (B) the child reaches 18 years of age before completing the
0039 child's high school education in which case the support shall not
0040 terminate, unless otherwise ordered by the court, until June 1 of
0041 the school year during which the child became 18 years of age if
0042 the child is still attending high school. *Provision for payment of*
0043 *support and educational expenses of a child after reaching 18*
0044 *years of age if still attending high school shall apply to any child*
0045 *subject to the jurisdiction of the court, including those whose*

0016 support was ordered prior to July 1, 1986. In determining the
0017 amount to be paid for child support, the court shall consider all
0018 relevant factors, without regard to marital misconduct, including
0019 the financial resources and needs of both parents, the financial
0020 resources and needs of the child and the physical and emotional
0021 condition of the child. Until a child reaches 18 years of age, the
0022 court may set apart any portion of property of either the husband
0023 or wife, or both, that seems necessary and proper for the support
0024 of the child. Every order requiring payment of child support
0025 under this section shall require that the support be paid through
0026 the clerk of the district court or the court trustee except for good
cause shown.

0058 (2) *Child custody and residency.* (A) *Changes in custody.*
0059 Subject to the provisions of the uniform child custody jurisdic-
0060 tion act (K.S.A. 38-1301 *et seq.*, and amendments thereto), the
0061 court may change or modify any prior order of custody when a
0062 material change of circumstances is shown.

0063 (B) *Examination of parties.* The court may order physical or
0064 mental examinations of the parties if requested pursuant to
0065 K.S.A. 60-235 and amendments thereto.

0066 (3) *Child custody or residency criteria.* The court shall de-
0067 termine custody or residency of a child in accordance with the
0068 best interests of the child.

0069 (A) If the parties have a written agreement concerning the
0070 custody or residency of their minor child, it is presumed that the
0071 agreement is in the best interests of the child. This presumption
0072 may be overcome and the court may make a different order if the
0073 court makes specific findings of fact stating why the agreement is
0074 not in the best interests of the child.

0075 (B) In determining the issue of custody or residency of a
0076 child, the court shall consider all relevant factors, including but
0077 not limited to:

0078 (i) The length of time that the child has been under the actual
0079 care and control of any person other than a parent and the
0080 circumstances relating thereto;

0081 (ii) the desires of the child's parents as to custody or resi-
0082 dency;

If an agreement approved by the court prior to the
effective date of this act provides for
termination of support before the date provided by
subsection (c)(2), the court may review and modify
such agreement, and any order based on such
agreement, to extend the date for termination of
support to the date provided by subsection (c)(2).