

Approved March 16, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

7:30 a.m. ~~p.m.~~ on March 3, 1989 in room 423-S of the Capitol.

All members were present except:

Representatives Crowell and Peterson, 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:

COMMITTEE ACTION ON BILLS:

H.B. 2353 - Oil and gas owner's lien act

A motion was made by Representative Shriver and seconded by Representative Walker to table H. B. 2353. The motion passed.

H.B. 2436 - Verification of documents, under penalty of perjury

A motion was made by Representative Walker and seconded by Representative Shriver to amend the provisions of 1987 H.B. 2082 into H.B. 2436. The motion passed.

Representative Shriver moved to report Substitute for H.B. 2436 favorably for passage. Representative Walker seconded the motion. The motion passed.

H.B. 2091 - Indecent liberties with a child, elements, affirmative defense

Representative Buehler moved to take H.B. 2091 off the table. Representative Lawrence seconded the motion. The motion passed.

A motion was made by Representative Buehler and seconded by Representative Lawrence to report H.B. 2091 favorably for passage. The motion failed.

Representative Solbach moved to report H.B. 2091 adversely. Representative Everhart seconded the motion. The motion was withdrawn.

Representative Snowbarger moved to table H.B. 2091. The motion was seconded by Representative Buehler. The motion passed.

H.B. 2347 - Nuisances/actions to close "party shacks"

Representative Gomez explained the proposed amendments to H.B. 2347, see Attachment 1.

Representative Gomez moved to adopt the proposed amendments. Representative Roy seconded the motion. The motion was withdrawn.

The Committee discussed the bill and decided the bill needed more work and study. The Chairman said he would request the bill be withdrawn from the Committee and rereferred to allow more time to work on the bill.

The Chairman cancelled the Committee meeting on adjournment. The Committee meeting was adjourned at 8:30 a.m.

HOUSE BILL No. 2347

By Representatives Hensley, Barr, Bunten, Cates,
Everhart, Gomez, Roy, Sebelius, Smith and Wagnon

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

AN ACT concerning certain nuisances; providing for the enjoining,
abatement and prevention thereof.

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

Section 1. (a) Any building or property where violations of the
uniform controlled substances act or violations of the alcoholic bev- or where two or more violations of city ordinances
erage laws of this state occur is a nuisance which may be enjoined,
abated and prevented, and for which damages may be recovered,
whether a public or private nuisance.

(b) Whenever there is reason to believe that a nuisance described
in subsection (a) exists:

(1) The county ~~or district attorney of the county or district where~~ or any citizen
the nuisance exists may bring an action in district court against the
person conducting or maintaining the nuisance and against the owner
or lessee of the building or property, or the agent thereof, to enjoin,
abate and prevent the conduct, maintenance and permitting of such
nuisance; and

(2) the city attorney of any city where such nuisance exists may
bring an action in municipal court against such person, owner, lessee
or agent to enjoin, abate and prevent the conduct, maintenance and
permitting of such nuisance.

(c) If the existence of a nuisance described in subsection (a) is
shown by affidavit to the satisfaction of the judge, the judge shall
issue a temporary injunction to enjoin, abate and prevent the con-
duct, maintenance and permitting of such nuisance pending outcome
of the action. On the granting of the temporary injunction, the judge except as provided in subsection (f),
shall require the party obtaining such injunction to give an under-
taking with one or more sufficient sureties in an amount fixed by

House Judiciary
3/3/89
Attachment I

the judge and approved by the clerk of the court, securing to the party injured the damages such injured party may sustain, including attorney fees, if it is finally determined that the injunction should not have been granted.

(d) If the existence of a nuisance is established in an action pursuant to this section, an injunction shall be entered as a part of the judgment. Such injunction shall be accompanied by an order directing the removal from the building or property of all fixtures, musical instruments and other movable property used in conducting, maintaining, aiding or abetting the nuisance and shall direct their sale in the manner provided for sales in execution of judgment. The order shall provide for the effectual closing of the building or property against its use for any purpose and for keeping it closed for a period of ~~one year~~ up to ~~one year~~. In addition, the court may assess a civil penalty not to exceed \$25,000 against any or all of the defendants, based upon the severity of the nuisance and its duration. Such penalty shall be paid into the city treasury, if the action is brought by a city attorney, ~~or into the county treasury, if the action is brought~~ ; by a county or district attorney. ~~;~~ or to the citizen who is bringing the action

(e) An action pursuant to this section shall have precedence over all other actions except as otherwise provided by law.

Sec. 2. (a) While an injunction issued pursuant to section 1 remains in effect, the building or property shall be in the custody of the court.

(b) The proceeds of any sale pursuant to section 1 shall be applied as follows:

- (1) First, to the fees and costs of the removal and sale.
- (2) Second, to the costs of closing the building or property and keeping it closed.
- (3) Third, to payment of the costs of the action.
- (4) Fourth, to payment of any fine imposed for contempt in the proceedings.
- (5) Fifth, to the owner of the property.

(c) If the proceeds of any sale pursuant to section 1 do not discharge the fees, costs and fines enumerated in subsection (b)(1), (2), (3) and (4), the court shall order the sale of the building or property in the manner provided for execution of judgment and the

(f) The surities requirement specified in subsection (c) shall not apply if the county or district attorney of the county or district or the city attorney of any city brings the action.

H/g. 3/3/89
Att I
pg 2

proceeds of such sale shall be applied as provided by subsection (b).

82 (d) If the owner of the building or property has not been guilty
83 of contempt in the proceedings and appears and pays all fees, costs
84 and fines enumerated in subsection (b)(1), (2), (3) and (4) and files if required by the judge,
85 a bond in the full value of the building or property conditioned on
86 the owner's prevention and immediate abatement of any nuisance
87 that may exist at the building or property within one year thereafter,
88 the judge, if satisfied as to the owner's good faith, may order that
89 the building or property be delivered to the owner and that the
90 injunction be cancelled. The release of the building or property
91 pursuant to this subsection does not release it from any judgment,
92 lien, penalty or liability to which it may be subject.

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

Sec. 3. The provisions of this act shall be supplemental to any legal authority cities and counties may exercise in identifying, abating and preventing the conduct, maintenance or permitting of a nuisance.

Sec. 4. Before any court action is filed under this act, the county attorney, district attorney, city attorney or attorney for any citizen shall notify the landlord seven days in advance of the action being filed.

Sec. 5. This act shall be construed in conjunction with article 9 of chapter 60 of the Kansas Statutes Annotated and article 25 of chapter 58 of the Kansas Statutes Annotated.

mech2347

H. J. 3/3/89
Att I
pg 3