

Approved April 27, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~/p.m. on March 28,, 1989 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:

COMMITTEE ACTION ON BILLS:

S.B. 126 - Municipal judges, training, testing and continuing judicial education

Representative Hochhouser moved to remove S. S. 126 from the table. Representative Sebelius seconded the motion. The motion passed.

Representative Hochhouser moved to report S.B. 126, as amended by Committee action on March 27, 1989, favorably for passage. Representative Solbach seconded the motion. The motion passed.

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

Representative Roy explained the proposed substitute for H.B. 2347, see Attachment I.

A motion was made by Representative Snowbarger and seconded by Representative Solbach to change the last paragraph on page 1 to "any real property and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property used on such premises in connection with such unlawful activities is subject to injunction and abatement as provided by K.S.A. 22-3902, 03, 04 and amendments thereto. The motion passed.

Representative Vancrum moved to add habitual to the violations and that the violations be for pecuniary gain. The motion was seconded by Representative Fuller. The motion passed.

A motion was made by Representative Roy to report Sub. H.B. 2347 favorably for passage. Representative Sebelius seconded the motion. The motion passed.

S.B. 75 - Alcohol & drug evaluations required for certain offenders

Representative Vancrum moved to delete the statute that would require an alcohol and drug evaluation for purchasing and consuming cereal malt beverages by persons under 21 years of age. The motion was seconded by Representative Solbach. The motion passed.

A motion was made by Representative Douville and seconded by Representative Lawrence to report S.B. 75, as amended, favorably for passage. The motion passed.

Representative Vancrum moved to reconsider Committee action on S.B. 75. Representative Jenkins seconded the motion. The motion passed.

Representative Fuller moved to amend S. B. 75 to include drug and alcohol evaluations for persons over 21 for driving with a open container of alcohol or liquor; transporting an open container of cereal malt beverage or consumption of cereal malt beverage".

After Committee discussion, the motion was withdrawn.

Representative Snowbarger moved to report S.B. 75, as amended, favorably for passage. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 28, 19 89

S.B. 233 - Conditions of release prior to trial

Representative Solbach moved to report S.B. 233 favorably for passage. The motion was seconded by Representative Buehler, and the motion passed.

S.B. 145 - Civil procedure, service of process and venue

Representative Solbach moved and Representative Jenkins seconded to add "transportation services or" to "communication services". The motion passed.

The Committee discussed the proposed amendment by U.S. Sprint, see Attachment II

Representative Vancrum moved to adopt the amendment by U.S. Sprint. Representative Jenkins seconded the motion and the motion passed.

A motion was made by Representative Fuller and seconded by Representative Jenkins to report S.B. 145, as amended, favorably for passage. The motion passed.

The Committee meeting was adjourned at 5:30 p.m.

PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2347

By Committee on Judiciary

AN ACT concerning certain common nuisances; amending K.S.A. 22-3901, 22-3902, 22-3904 and 41-805 and repealing the existing sections.

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

Section 1. K.S.A. 22-3901 is hereby amended to read as follows: 22-3901. The following unlawful activities and the use of real and personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

- (a) Commercial gambling;
- (b) dealing in gambling devices;
- (c) possession of gambling devices;
- (d) promoting obscenity;
- (e) promoting prostitution;
- (f) habitually promoting prostitution;
- (g) violations of any law regulating ~~narcotic~~ narcotic or dangerous drugs controlled substances;
- (h) violations of any law regulating alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated; or
- (i) violations of any law regulating cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated.

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to injunction and abatement as ~~in this article~~ provided by K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

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Sec. 2. K.S.A. 22-3902 is hereby amended to read as follows: 22-3902. (1) Unless otherwise provided by law, proceedings under ~~this article~~ K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) Proceedings under ~~this article~~ K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted only in the name of the state of Kansas upon the relation of the attorney general or the ~~county-attorney-to-enjoin-a--nuisance--within--his county,--or--by--a--city~~ city, county or district attorney in the name of ~~his-city~~ the appropriate city, county or district to enjoin a nuisance within the city, county or district.

(3) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(4) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property described in the petition. If the court finds that there is probable cause to believe that the ~~personalty-described-are-or-have~~ personal property described is or has been used for any of the unlawful purposes set forth in ~~section--22-3901,--it~~ K.S.A. 22-3901 and amendments thereto, the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in his custody pending further order of the court. An order for seizure shall particularly describe the ~~personalty~~ personal property to be seized.

(5) An order for seizure of materials alleged to be obscene

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shall not ~~issue~~ be issued until after a hearing at which evidence in support of the application for such order has been heard. At least three days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(6) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under ~~this--article~~ K.S.A. 22-3901 through 22-3904, and amendments thereto, in an action brought by the attorney general, ~~--county attorney--or-city~~ or city, county or district attorney.

(7) The provisions of ~~this--article~~ K.S.A. 22-3901 through 22-3904, and amendments thereto, shall not limit nor otherwise affect proceedings under ~~section--60-908-of-the-Kansas-code-of-civil-procedure~~ K.S.A. 60-908 and amendments thereto, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that ~~section~~ statute.

Sec. 3. K.S.A. 22-3904 is hereby amended to read as follows: 22-3904. (1) Upon final judgment that any real property is being or has been used as a place where any of the unlawful activities set forth in ~~section--22-3901~~ K.S.A. 22-3901 and amendments thereto are carried on or permitted to be carried on, the court may order that any house, building, room or other structure located on such real estate be closed and padlocked for a period of not less than three months nor more than two years, subject to modification in the manner provided by ~~section--60-910~~ of---the--Kansas--code--of--civil--procedure K.S.A. 60-910 and amendments thereto. The court may require, as part of the judgment, require that the owner, lessee, tenant or occupant enter into a bond to the state of Kansas, in such amount and with security as the court may require, conditioned that he such owner, lessee, tenant or occupant will not within a period of two years use or permit ~~such-real-estate-to-be-used~~ the use of such real estate in violation of law. If any condition of such bond

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~~shall--be~~ is violated, the whole amount may be recovered as a penalty. In addition, the court may assess a civil penalty not to exceed \$25,000 against any or all defendants, based upon the severity of the nuisance and its duration. Such penalty shall be paid into the county treasury, if recovered by a county or district attorney, and into the city treasury, if recovered by a city attorney.

(2) Upon final judgment that any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property are designed for and have been used in carrying on any of the unlawful activities set forth in ~~section--22-3901~~ K.S.A. 22-3901 and amendments thereto, the court may order that such effects, equipment, paraphernalia, fixtures, appliances, musical instruments and other personal property be publicly destroyed by the sheriff or other law enforcement officer ~~of--the~~ county or that such personal property be sold in the manner provided for sales in execution of judgment.

(3) The proceeds of any sale of personal property pursuant to subsection (2) shall be applied as follows:

(a) First, to the fees and costs of the removal and sale.

(b) Second, to the costs of closing the structure and keeping it closed.

(c) Third, to payment of the costs of the action.

(d) Fourth, to payment of any civil penalty imposed pursuant to this section or any fine imposed for contempt in the proceedings.

(e) Fifth, to the owner of the personal property.

(4) Subject to the provisions of subsection (3), upon final judgment for the state the court shall adjudge that the defendant pay all costs, including a reasonable fee, ~~to-be~~ fixed by the court, to be paid to the prosecuting attorney. Such costs shall be a lien upon any real property against which an order of abatement is obtained.

Sec. 4. K.S.A. 41-805 is hereby amended to read as follows:
41-805. (1) Any room, house, building, boat, vehicle, airplane,

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structure or place of any kind where alcoholic liquors are sold, manufactured, bartered or given away, in violation of this act, or any building, structure or boat where persons are permitted to resort for the purpose of drinking same alcoholic liquors, in violation of this act, or any place where such liquors are kept for sale, barter or gift, in violation of this act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance, ~~and~~. Any person who maintains or assists in maintaining such common nuisance ~~shall be guilty of a violation of this act. If it shall be~~ is guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine not exceeding \$25,000, or by both. If it is proved that the owner of any building or premises has knowingly suffered the same to be used or occupied for the manufacture, sale or possession of such liquors, contrary to the provisions of this act, such building or premises shall be subject to a lien for, and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of this act; and such lien shall be immediately enforced by civil action, in any court having jurisdiction, by the county or district attorney of the county wherein such building or premises may be located, or by the attorney for the director, when ordered by the director. If a tenant of any building or premises uses the same building or premises, or any part thereof, in maintaining a common nuisance as hereinbefore defined, or knowingly permits such use by another, such use shall render void the lease under which ~~he or she~~ the tenant holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may ~~avail himself or herself of~~ invoke the remedy provided for the forcible detention thereof.

(2) Upon the filing of a complaint or information charging that a vehicle or airplane is a common nuisance as above declared, a warrant shall be issued authorizing and directing the officer to whom it is directed to arrest the person or persons

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described in said the complaint or information or the person or persons using the vehicle or airplane in violation of this act and to seize and take into ~~his-er-her~~ the officer's custody all such vehicles and airplanes so used which ~~he-er-she--may-find~~ the officer finds, and safely keep ~~the-same~~ them subject to the order of the court. In said the complaint or information it shall not be necessary to accurately describe the vehicle or airplane so used, but only such description shall be necessary as will enable the officer executing the warrant to identify it properly.

Whenever any vehicles or airplanes shall be seized under any such warrant, whether an arrest has been made or not, a notice shall issue within ~~forty-eight~~ 48 hours after the return of the warrant in the same manner as a summons, directed to the defendant in such action and to all persons claiming any interest in such vehicles or airplanes, fixing a time, to be not less than ~~sixty~~ 60 days, and place at which all persons claiming any interest therein may appear and answer the complaint made against such vehicles or airplanes and show cause why ~~the--same~~ they should not be adjudged forfeited and sold as hereinafter provided. Such notice shall be served upon the defendant in the action in the same manner as a summons if the defendant be found within the jurisdiction of the court, and a copy thereof shall also be posted in one or more public places in the county in which the cause is pending. If at the time for filing answer, said the notice has not been duly served or sufficient cause appear, the time for answering shall be extended by the court and such other notice issued as will supply any defect in the previous notice and give reasonable time and opportunity for all persons interested to appear and answer. At or before the time fixed by notice, any person claiming an interest in the vehicles or airplanes seized, may file ~~his-er-her~~ an answer in writing, setting up ~~his--er--her~~ a claim thereto, and shall thereupon be admitted as a party defendant to the proceedings against such vehicles or airplanes. The complaint or information and answer or answers that may be filed shall be the only pleadings required;

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and. At the time fixed for answer, or at any other time to be fixed by the court, a trial shall be had held in a summary manner before the court on the allegation of the complaint or information against the property seized; and. Whether any answer shall be filed or not, it shall be the duty of the county or district attorney to appear and adduce evidence in support of such allegation.

(3) If the court shall--find finds that such vehicles or airplanes were at the time a common nuisance, as defined in this section, ~~it~~ the court shall adjudge forfeited so much thereof as the court shall find--was--such finds to be a common nuisance, and shall order the officer in whose custody ~~it-is-to-sell-the-same publicly;--and-said~~ they are to sell them publicly. The officer shall cause notice to be given by publication for at least one week in the official county paper of the time and place of the sale of ~~said-property-and-shall-file-in-said-court-his-or-her~~ the property and shall file in the court a return showing the sale of ~~said~~ the property and the amount received therefor and shall pay the same into court to await the order of the court. The court, if it approves such sale, shall declare forfeited the proceeds of ~~said--sale;--and~~ the sale and, after paying out of the proceeds of ~~said~~ the sale the costs of the action, including costs of sale and the keeping and maintenance of ~~said~~ the property, shall out of the balance of the money received from ~~said-property--at--said~~ the property at the sale, pay all liens, according to their priorities, which are established by intervention or otherwise at ~~said~~ the hearing or another proceeding brought for ~~said~~ that purpose as being bona fide and for value and as having been created without the lienor having any notice that the vehicle or airplane was being used in so violating the provisions of this act and without the lienor having any notice at any time subsequent to the creation of the lien and prior to the seizure in time to have protected ~~his-or-her~~ the lien that the vehicle was so being used. The balance remaining shall be paid to the state treasurer pursuant to K.S.A. 20-2801;--and--any and

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amendments thereto, except that, if upon proper proof, a lien as herein provided shall-be is established in excess of the value of the vehicle as found by the court, then the court may order, without sale, ~~order~~ the surrender of such vehicle to such lienor upon the payment of all costs as is herein provided.

(4) Either the state or any defendant or other person claiming the vehicle or airplane seized, or an interest therein, may appeal from the judgment of the court in any such proceedings against the property seized in the manner provided for taking appeals in criminal cases. Any claimant of such property who appeals, in order to stay proceedings, must enter into an undertaking with two or more sureties to the state of Kansas, to be approved by the trial court or the clerk thereof, in the sum of not less than ~~one-hundred-dollars-(\$100)~~ \$100 nor less than double the amount of the value of said the property as fixed by the court and the costs adjudged against said--property, ~~conditioned-that--he--or--she--will--prosecute--his--or--her~~ the property, conditioned that the claimant will prosecute the appeal without unnecessary delay, and if judgment ~~be-entered-against-him~~ is entered against the claimant on appeal, ~~the claimant~~ will satisfy the judgment and costs, and no bond shall be required for an appeal by the state, and such appeal shall stay the execution of the judgment.

New Sec. 5. (a) Maintenance of a common nuisance is maintaining or assisting in the maintenance of a common nuisance as described by K.S.A. 22-3901 and amendments thereto.

(b) Maintenance of a common nuisance is a misdemeanor punishable by imprisonment for not more than one year or by a fine not exceeding \$25,000, or by both.

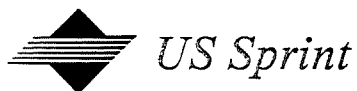
(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 6. K.S.A. 22-3901, 22-3902, 22-3904 and 41-805 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

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US Sprint Corporate
Communications 1500 East Rochelle Boulevard
Company P. O. Box 152051
 Irving, TX 75015-2051
 214 506-1000



March 23, 1989

VIA FAX

The Honorable Michael O'Neal
Room 426-S, Statehouse
Topeka, KS 66612

Dear Representative O'Neal:

Thank you for taking time just now for our discussion of SB145. These are the changes we would like to see:

(b)(11) ... within the state of Kansas/ [As soon ... implied
line 94 arrangement], provided that such person is put on reasonable
 notice ... continuing such telecommunication services ... this
 section.

We would like to omit the wording in brackets. This wording could be misused, by a person who is already our customer, to claim inadequate notification. The phrase "reasonable notice" is sufficient, in our opinion, clearly to protect consumers, as well as suppliers.

So that the committee will know our notification plans, we will advise every new customer, in the new-customer packet we routinely send, that extension of jurisdiction may occur. Customers we already have will be sent a similar notice shortly after the statute is enacted.

(b)(11) "or transportation" needs to be inserted. I have not yet seen
and ff. Mr. Hubbell's balloon amendment, but I'm sure it takes care of
lines 89, these sections.
97,122,,
125,148,151

When you have time to give me a call, I would welcome your judgment of the change we propose in lines 94 and 95. Thank you again for your interest.

Sincerely,

Liberty Ford
Manager, Government Affairs

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