

Approved

1-26-89

Date

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs

The meeting was called to order by Senator Edward F. Reilly at
Chairperson

11:03 a.m./~~p.m.~~ on January 23, 1989 in room 254-E of the Capitol.

All members were present except:

Senator Yost who was excused.

Committee staff present:

Mary Ann Torrence, Revisor of Statutes Office
Mary Galligan, Legislative Research
Marty Robison, Secretary

Conferees appearing before the committee:

Secretary Ed Rolfs, Department of Revenue

Chairman Reilly called the meeting to order. Senator Daniels moved the minutes of the January 17 meeting be approved. Senator Vidricksen seconded and the motion passed.

A brief of Senate Bill 38, prepared by the Revisor's office, was distributed to committee members for their review before the hearings this week (Attachment 1).

Secretary Rolfs appeared before the committee to request consideration of two statutory changes from the Department of Revenue. The first change would allow the Secretary "or his designee" to hear an appeal. The second request would change the one-time \$25 permit fee for importing alcohol into Kansas into an annual fee, renewable at the beginning of the calendar year (Attachment 2).

Senator Vidricksen moved the committee introduce both proposals. Senator Daniels seconded and the motion carried.

Chairman Reilly told the committee that a group from Johnson County has requested that the bingo statutes be amended to allow bingo to be played seven days a week. Senator Strick moved the committee introduce the amendment to the bingo statutes. Senator Anderson seconded and the motion passed.

A draft which would regulate travel promoters, requested by the Attorney General, was distributed to members (Attachment 3).

Senator Bond moved the introduction of the regulation of travel promoters be passed. Senator Daniels seconded and the motion carried.

The meeting was adjourned at 11:25.

STATE OF KANSAS

ARDEN K. ENSLEY, ATTORNEY

REVISOR OF STATUTES

NORMAN J. FURSE, ATTORNEY

FIRST ASSISTANT REVISOR

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OFFICE OF

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TO: Senate Committee on Federal and State Affairs
FROM: Mary Torrence, Assistant Revisor of Statutes
DATE: January 23, 1989
RE: Senate Bill No. 38 -- Death Penalty

Crimes Subject to Death Penalty (Section 1)

(1) Premeditated murder (killing committed maliciously, willfully, deliberately and with premeditation).

(2) Killing of any of the following in the commission of a felony or in avoiding arrest, prosecution or imprisonment for a felony: A law enforcement officer, corrections officer, parole officer, probation officer, judge, prosecuting attorney or other officer authorized to investigate, prosecute or adjudicate a crime.

(3) Killing a person in the commission of a felony drug offense which is part of a series of drug offenses, committed by a person who acts in concert with 5 or more people operating under such person and who receives substantial gain from the offense.

Exception (Section 4)

Defendant under 18 at time of offense.

Procedure (Section 5)

(1) At arraignment, prosecuting attorney must give notice

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of intent to seek death penalty.

(2) If the death penalty is sought, a separate sentencing procedure is held to determine the sentence. The trial jury determines the sentence unless waived. If the trial jury was waived, the judge determines the sentence.

(3) A death sentence may be imposed only if the court or jury, as applicable, finds that: (a) There are one or more statutory aggravating circumstances; (b) aggravating circumstances are not outweighed by any mitigating circumstances; and (c) the defendant intended a killing to take place or lethal force to be used. Otherwise, the sentence is life imprisonment with parole eligibility after 25 years (current law is 15 years).

Aggravating Circumstances (Section 6)

- (1) Previous violent felony conviction.
- (2) Multiple killing or threat.
- (3) Committed crime for money.
- (4) Employed another to commit crime.
- (5) Avoiding arrest, prosecution or imprisonment.
- (6) Crime especially heinous, atrocious or cruel.
- (7) Crime committed while in prison.
- (8) Victim killed because a witness in a criminal proceeding.

Mitigating Circumstances (Section 7)

- (1) No significant prior record.
- (2) Mental or emotional disturbance.
- (3) Victim was participant or consented.
- (4) Defendant was minor accomplice.
- (5) Extreme distress or under another's domination.
- (6) Impaired capacity to appreciate criminality or conform to law.
- (7) Any other circumstances warranting leniency.

Review and Appeal (Section 8)

When a death sentence is imposed, the conviction and sentence are subject to automatic review and appeal by the state supreme court.

Execution

(1) Execution is by lethal injection. If that is found unconstitutional, it is by hanging or electrocution. (Section 15)

(2) The convict may donate organs, etc. (Section 18)

(3) If the convict is pregnant or insane, execution is postponed (Sections 21 and 22).

Counsel

(1) The board of indigents' defense services establishes a system of experienced defense counsel (Section 28).

(2) The attorney general assists in appeals upon request of prosecutor (Section 30).

MEMORANDUM

TO: The Honorable Edward F. Reilly Jr., Chairman
Senate Committee on Federal and State Affairs

FROM: Ed C. Rolfs
Secretary of Revenue

DATE: January 23, 1989

SUBJECT: Department of Revenue Request for Legislation

I appreciate the opportunity to appear before you today in request of legislation concerning the Alcoholic Beverage Control Division of the Department of Revenue.

The Department of Revenue recommends two statutory changes, regarding the administrative appeal process for liquor violations and the issuance of supplier permits.

Appeal Process

BACKGROUND

Anytime the Director of the ABC or his designee issues an order denying a license to an applicant, or suspends or revokes a license, the order may be appealed to the Secretary of Revenue.

RECOMMENDATION

The Department recommends amending K.S.A. 41-321 to allow the Secretary "or his designee" to hear an appeal. This would allow a scheduled hearing to proceed despite the occurrence of an emergency type situation which could prevent the Secretary from attending, or in a situation where the Secretary might need to excuse himself due to a conflict of interest.

Issuance of Supplier Permits

BACKGROUND

Before importing alcohol into Kansas, a manufacturer must obtain a permit from the Alcoholic Beverage Control Division. The supplier permit was established by the 1987 Legislature (K.S.A. 41-331) as an effort to give the Director more control over out-of-state manufacturers. Because the fee of \$25 is a one-time fee which does not have to be renewed, it does not cover the yearly administrative costs of corresponding with the 231 suppliers currently authorized to do business in Kansas.

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RECOMMENDATION

In order to cover the administrative costs of communicating with the licensed suppliers of alcoholic beverages, the Department recommends making the one-time \$25 permit fee an annual fee. The fee should be structured so that all suppliers renew at the beginning of the calendar year.

Thank you for your time and consideration.

DRAFT
SENATE BILL NO. _____

By Committee on Federal and State Affairs

AN ACT regulating travel promoters.

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

Section 1. The legislature finds and declares that certain advertising, sales and business practices of travel promoters have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well being of this state and its people; that problems have arisen which are peculiar to the travel promoter business; and that the public welfare requires regulation of travel promoters in order to eliminate unfair advertising, sales and business practices. The purpose of this act is to establish standards which will safeguard the people against financial hardship and to encourage competition, fair dealing and prosperity in the travel business.

Sec. 2. As used in this act:

(a) "Air carrier" means a transporter by air of persons subject to regulation as an air carrier by any governmental agency.

(b) "Ticket or voucher" means a writing which is itself good and sufficient to obtain the entire air or ocean transportation, or both, for which the passenger has contracted.

(c) "Travel promoter" means a person who communicates an offer, sells, provides, furnishes, contracts or arranges, or advertises that such person can or may arrange, or has arranged, wholesale or retail air or sea transportation either separately or in conjunction with other services. Travel promoter does not include: (1) An air carrier; (2) a sea carrier; (3) an officially appointed agent of an air carrier who is a member in good standing of the airline reporting corporation; (4) a bona fide

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nonprofit organization exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this act; (5) a member of the national tour association; or (6) a person who offers, sells, provides, furnishes, contracts or arranges, or advertises that such person can or may arrange, or has arranged primarily ground transportation.

Sec. 3. A travel promoter shall not advertise that air or sea transportation is or may be available unless such travel promoter has, prior to the advertisement, contracted for the transportation advertised with the air carrier or sea carrier.

Sec. 4. A travel promoter shall not receive money or other valuable consideration in payment for air or sea transportation or any other services offered by the travel promoter in conjunction with transportation unless at the time of receipt of payment the travel promoter furnishes to the person making payment a written statement clearly and conspicuously setting forth the following information:

(a) The name, business address and telephone number of the travel promoter;

(b) the amount paid, the date of payment, the purpose of the payment made and an itemized statement of the balance due, if any;

(c) the location of the bond required by this article;

(d) the name of the carrier with which the travel promoter has contracted to provide the transportation, the type of equipment to be used, and the date, time and place of each departure;

(e) the conditions, if any, upon which the contract between the travel promoter and the passenger may be canceled, and the rights and obligations of all parties in the event of such cancellation;

(f) the conditions, if any, upon which the contract between the travel promoter and the carrier may be canceled, and the rights and obligations of all parties in the event of such

cancellation;

(g) a statement in eight point boldface type that upon cancellation of the transportation through no fault of the passenger, all sums paid to the travel promoter for services not performed in accordance with the contract between the travel promoter and the passenger will be promptly refunded by the travel promoter to the passenger or to the party who contracted for the passenger, unless the passenger otherwise advises the travel promoter in writing; and

(h) a detailed description of any other services provided in conjunction with the transportation.

Sec. 5. (a) In the event the transportation contracted for is canceled through no fault of the passenger, the travel promoter shall promptly return to the passenger all moneys paid for services not performed and goods not delivered in accordance with the contract, unless the passenger otherwise advises the travel promoter in writing.

(b) Any material misrepresentation of the date, time, place of all departures or arrivals or type of aircraft or ocean carrier or similar occurrence shall be deemed to be a cancellation necessitating the refund required by this section.

Sec. 6. (a) No person shall act as a travel promoter unless:

(1) Such person has deposited and at all times keeps on deposit with the state treasurer, or a bank in this state approved by the state bank commissioner, cash or securities satisfactory to the attorney general in an amount of \$500,000; and

(2) such person submits a list to the attorney general of the names and addresses of such person's selling agents.

(b) In lieu of the deposit of cash or securities, such person may give surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the attorney general and issued by a company authorized to do business in this state, which bond shall run to the state of

Kansas and be filed with the attorney general. The deposit of cash or securities or surety bond shall be for the protection and benefit of passengers and to secure the faithful performance of the obligations of the travel promoter in respect to the providing, furnishing, contracting, arranging or advertising of travel. The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the amount of the bond. The surety on the bond shall have the right to cancel the bond upon giving 30 days' notice to the attorney general and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The attorney general or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the attorney general. If the deposit is made with a bank, any custodial fees shall be paid by such person.

Sec. 7. (a) Upon payment in full by the passenger for air or sea transportation and any related services with a credit card or with cash, the travel promoter shall issue and deliver the ticket or voucher to the passenger or the passenger's designated agent within 48 hours.

(b) Upon payment in full by the passenger for air or sea transportation and any related services with a check, the travel promoter shall issue and deliver the ticket or voucher to the passenger or such passenger's designated agent within 48 hours of the time the passenger's payment is credited to the travel promoter's account.

(c) Tickets, vouchers or receipts shall be deemed to have been delivered if they have been turned over to an independent third-party delivery service or the United States postal service for regular delivery.

(d) Where the travel promoter is unable to issue tickets or

vouchers upon payment as set forth in subsection (a), (b) and (c), the travel promoter may comply with this section by either:

(1) Forwarding to the air or sea carrier, or provider of related services, the portion of the sum paid by the passenger which is required by the air or sea carrier or provider of related services from the travel promoter in order to provide the transportation or services purchased by that passenger. The travel promoter may not offset or reduce the amount forwarded by any amounts due or claimed in connection with any other transaction, or (2) by complying with either the provisions of sections 4 and 5, and subsections (a) and (b) of section 6, or depositing directly into a trust account in a federally insured bank or savings and loan association the portion of the amount paid by the passenger which is required by the air or sea carrier or provider of related services from the travel promoter in order to provide the transportation or services purchased by the passenger. The travel promoter may not offset or reduce the amount deposited by any amount due or claimed in connection with any other transaction.

(e) (1) There is no violation of this section if (A) compliance with this section was rendered impossible as a direct result of an unforeseen condition beyond the travel promoter's control, and (B) the travel promoter complied with this section or made restitution to the passenger within 30 days after receiving the passenger's payment.

(2) A travel promoter has the burden of producing evidence to establish this exception.

Sec. 8. This act shall be a part of and supplemental to the Kansas consumer protection act and any violation of the provisions of this act shall be deemed a violation of the Kansas consumer protection act.

Sec. 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision

or application, and to this end the provisions of this act are severable.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.