

Approved 3-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 6, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Charles Bartlett, American Collectors Association
Rich Kready, KPL Gas Service

Senate Bill 300 - Collection agencies, assignment of claims.

Charles Bartlett, American Collectors Association, testified despite the best efforts of agencies, it is sometimes necessary to recommend legal action to our clients when it is determined the debtor has the capability to repay but refuses. Copies of his testimony and attachment are attached (See Attachments I). Committee discussion was held with Mr. Bartlett. A committee member inquired why do you have to have an attorney to do this? Why can't you do this in another court? Mr. Bartlett replied it is best to let them handle it anyway they want to. We are trying to make it simpler for everyone.

Rich Kready, KPL Gas Service, testified they support the concept of this bill. Their company has a few collection problems. We turned \$8 million over to collection agencies; about half of those are smaller than \$200. This bill would really help our rate payers. A lot of the claims are large enough we can collect on our own. The problem is with the people who have terminated service here and have moved out of town. A committee member inquired of this \$8 million of debts that are turned over to a collection agency excluding the number of larger claims that you process yourselves, how does your collection ratio run on those? Mr. Kready replied, we have had pretty good luck. The committee member inquired what would you guess is your success rate? Mr. Kready replied around 30% range.

The hearings on Senate Bill 300 were concluded.

The chairman announced he would like to have another hearing on Senate Bill 49 and also take up Senate Bill 335. Senator Morris moved that the committee recommend the chairman write a letter asking that Senate Bill 49 be referred to Ways and Means Committee. Senator Bond seconded the motion. The motion carried.

The chairman asked the committee review the subcommittee report concerning the parole question in Senate Bill 335.

Senate Bill 276 - Law library in Riley county

Senator Oleen moved to amend the bill by reinstating the stricken language in lines 34 through 37. Senator Petty seconded the motion. The motion carried. Following committee discussion, Senator Oleen moved to report the bill favorably as amended. Senator D. Kerr seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 6, 1989, 1989.

Senate Bill 242 - Amendments to professional corporations code.

The chairman reviewed the bill. Senator Gaines moved to report the bill favorably. Senator Petty seconded the motion. The motion carried.

Senate Bill 301 - Discharge of voluntary patients under treatment act for mentally ill persons.

Senator Yost explained his subcommittee recommended the bill favorably. Following discussion, Senator Yost moved to adopt the subcommittee's recommendation to report the bill favorably. Senator Rock seconded the motion. The motion carried. A copy of the subcommittee report is attached (See Attachment II).

Senate Bill 73 - Divorce and maintenance, child custody, counseling.

Senate Bill 74 - Child support, Kansas guidelines.

Staff reported the draft of the resolution is in the final stages. A committee member stated concern that the chief justice would convene the same task force. Another committee member was concerned with the composition of the task force and that more than judges are needed on it. Lay people are needed as well. Another committee member wished to remind the judge these are advisory suggestions only. Another committee member wished to include within the resolution a request that the court be a directive to remind the judges they are to use their discretion. It was the consensus of the committee in the final draft of the resolution to proceed as expeditiously as possible. A final draft of the resolution will be circulated to committee members later.

Senate Bill 296 - Evidentiary foundation necessary for admissibility of breath tests in certain alcohol and drug related offenses.

Senator Bond moved to report the bill favorably. Senator Petty seconded the motion. Senator Yost made a substitute motion to amend the bill in line 36 by striking "submission" and inserting "admission"; in line 37 by striking "the results of a breath test shall be presumed valid". Senator Parrish seconded the motion. The motion carried. Senator Bond made a substitute motion to amend the bill in line 39 by striking "validity" and inserting "admission". Senator Gaines seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Rock seconded the motion. The motion carried.

Senator Rock moved to approve the minutes of February 23 and 24. Senator Yost seconded the motion. The motion carried.

The meeting adjourned.

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

A copy of a letter from Shirley Fleener regarding Senate Bill 219 is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-6-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Walt Scott	Topeka	Assoc. Cr. BORGIS
Richard Joylon	Topeka	Lifecare's Best
CHAS BARTLETT	WICHITA	Kas Collector Assoc
Warren Parker	Manhattan	Kansas Farm Bureau
E J Eaton	Topeka	K HCA
Ken Bahr	Topeka	KCMR
Mark Whelan	Topeka	Bellin W/H
W C Buckfield	MISSION	Kansas Collectors Assoc
Judy Browne	Topeka	Consumer Credit
Hebe Johnson	Topeka	Ks. Comm. As. NP & Son
Rick Kready	"	KPL Gas Service
Paul Shulby	Topeka	OZA
Paula Sue Heathouse	Lawrence	Antenn
Shirley Fleener	Manhattan	Little Apple Task Force ^{on alcohol & Div. of}
Jean Farrell	"	" " " " "
Roy Smith	Topeka	Ks. Bar Assoc
Jan Drap	Topeka	Lifecare's Best
Lenora Armstrong	Topeka	Antenn

Some facts about collection agencies: In the American Collectors Association, there are approximately 3,400 debt collectors employing about 40,000 people nationwide. Through this association, about 340,000 accounts are forwarded each month. These accounts total about 14 billion dollars each year and encompass past due retail, professional and wholesale accounts for about one million credit grantors. Additionally, agencies recover many millions of dollars for federal, state and municipal governments.

Our association developed a manual on the federal Fair Debt Collection Practices Act which the Federal Trade Commission characterized as the finest manual available on F.D.C.P.A. All association members are required to comply with the act as well as a strict code of ethics.

Despite the best efforts of agencies, it is sometimes necessary to recommend legal action to our clients when it is determined the debtor has the capability to repay but refuses. This contingency has not been treated uniformly in all 50 states.

Twenty states have the Right of Assignment clearly affirmed by statute or court decision. Eighteen states clearly do not have it. Thirteen states are undetermined (Kansas is listed as undetermined).

What is assignment? Assignment means the transfer of ones rights to another, such as the right to collect for another.

In Kansas, delinquent accounts are not assigned but are "referred" to a collecting agent. In effect, the credit grantors ask the agent to collect their accounts, however any court action must be

Attachment I

*SJC
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brought by and in the name of the credit grantor. The credit grantor usually has only one account with a debtor and often that account is not large enough to justify court action.

The collecting agency often has multiple accounts against the same debtor and frequently none of the individual accounts are large enough to justify suit, while the aggregate amount this debtor owes may be quite substantial.

I suggest that Kansas does have 'assignment' because assignment is specifically covered in Section 5 (d) KSA 60-2310. However, assignment to a collection agency precludes the benefit of wage garnishment for any assignor or assignee. Kansas is the only state that has that exclusion. (See Addendum "A", attached.)

In my opinion, as presently written, the law is unreasonably discriminatory. Inasmuch as the great bulk of collection work is done by collecting agencies, this discrimination is transferred to the businesses and professions who utilize collection agency service.

Most businesses and many professional people suffer unnecessary losses because it isn't economically feasible to pursue legal action on relatively small account balances. Of course, these losses are made up by increasing prices for the majority of their customers or patients who do pay.

Collection agencies are faced with the same limitations. Although the problem is mitigated to some extent because the agency may have listed multiple debts against the same debtor, the basic problem (of inability to pursue any single account because of its size) remains.

Attorneys cannot afford to pursue collection on a contingency basis unless an account is of substantial size. I suggest that size may be \$300 or larger. If venue is distant, account size would need to be much higher. The client cannot afford suit fees that may exceed the size of the account. Handling costs per account would be lessened. The larger combined accounts would reduce the attorney's handling costs.

The combination of mutiple accounts for purposes of legal action offers the possibility of fewer cases to clog court dockets.

We ask that you consider Senate Bill #300 and revise Section 5(d)K.S.A. 60-2310 coincide with Senate Bill #300.

Senate Bill 301

The sub-committee received testimony in favor of SB 301 from Daric Smith, of the Topeka law firm of Skinner and Smith.

The sub-committee recommended that SB 301 be recommended favorably to the whole committee. There were no amendments.

*Attachment II
Senate Judiciary Committee
3-6-89*

Follow up to remarks to the statements made to the Judiciary
Committee on S.B. 219, March 3, 1989.

It was suggested in testimony last Friday that perhaps S.B. 219 was discriminatory toward minors. In THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE I found that the word discriminate means "to note or observe a difference; distinguish accurately."

This bill does distinguish accurately. Minors as opposed to most mature adults seem to have only two alcohol use patterns: to drink until it is gone -- or drink until drunk. The adolescent is not an adult and needs special support and concern. These years, 14 to 18, are still the formative years and as such need special consideration.

This bill offers minors this special support and consideration in the following ways:

1. Minors want and need guide lines and limits and look to adults for them.
2. Minors need and want a strong sure reason for saying no to peer pressure to consume.
3. This is a lesson in responsibility, as Senator Petty pointed out, the minor would experience the consquence of their action.
4. This is prevention at an early age that will help remove the necessity for rehabilitation.

The sponsors of this bill have indeed observed a difference and have distinguished accurately and are offering the minor protection and support.

I respectfully request passage of Senate Bill 219.

Shirley Fleener
2026 Parkway Drive
Manhattan, Ks. 66502

913-537-0472

Attachment IV
SJC
3-6-89