

Approved January 23, 1990  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~ p.m. on January 16, 1990 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Peterson, and Scott, 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:

Nancy Lindberg, Assistant to the Attorney General  
Randy Hearrell, Research Director, Judicial Council  
Richard Mason, Kansas Trial Lawyers Association  
Ed Schaub, KPL Gas Service Company  
T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants

The Chairman announced Representative Max Moomaw was replacing Representative Rex Crowell as a Committee member.

BILL REQUESTS:

Nancy Lindberg, Assistant to the Attorney General, requested on behalf of the Attorney General and the Victims Rights Task Force, the Committee introduce legislation regarding charitable solicitations; domestic violence inclusion into K.S.A. 74-7305b; compensation for hit and run victims; elderly waiver of the provision of \$100 economic loss; and to repeal K.S.A. 22-3726 which provides for automatic parole after six months supervised furlough.

Representative Snowbarger moved and Representative Fuller seconded to introduce the legislation request as Committee bills. The motion passed.

Randy Hearrell, Research Director, Judicial Council, requested the Committee introduce legislation amending K.S.A. 60-208 raising the amount from \$10,000 to \$50,000 in pleading unliquidated damages; amending Chapters 60 and 61 in regard to service of process by certified mail; and repealing amendments to K.S.A. 58-2242a and 59-2249 made by 1989 SB 268 regarding recording of certain decrees of the court with the Register of Deeds, see Attachment I.

A motion was made by Representative Walker and seconded by Representative Jenkins to introduce the legislation requested by the Judicial Council as Committee bills. The motion passed.

Richard Mason, Kansas Trial Lawyers Association, requested the Committee introduce legislation amending K.S.A. 60-2006 relating to attorney fees taxed as costs in certain actions involving negligent motor vehicle operation and amending K.S.A. 1988 Supp. 60-513 relating to limitation of actions, see Attachment II.

Representative Solbach made a motion to introduce as Committee bills the legislation requested by the Kansas Trial Lawyers Association. Representative Jenkins seconded the motion.

Ed Schaub, KPL Gas Service Company, requested the Committee introduce legislation establishing the overhead power line accident prevention act. Similar legislation was killed in the House last session.

Representative Buehler moved to introduce, as a Committee bill, the legislation requested by KPL Gas Service Company. Representative Lawrence seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on January 16, 1990.

T.C. Anderson, Executive Director, Kansas Society of Certified Public Accountants, requested the Committee introduce a bill amending K.S.A. 1-501, positive enforcement program. The amendment would exempt from the judicial process the results of reviews of certified public accountants.

A motion was made by Representative Buehler to introduce as a Committee bill the legislation requested by the Kansas Society of Certified Public Accountants. Representative Lawrence seconded the motion. The motion passed.

Representative Vancrum requested the Committee introduce legislation relating to the installation and use of a pen register.

Representative Snowbarger moved to introduce the requested legislation as a Committee bill. The motion was seconded by Representative Solbach. The motion passed.

Representative Vancrum also requested the Committee introduce legislation amending K.S.A. 60-1610 relating to maintenance in divorce actions. Orders requiring payment of maintenance only would not be required to be made through the Clerk of the District Court or the Court Trustee, for good cause shown.

Representative Snowbarger moved and Representative Walker seconded to introduce legislation requested by Representative Vancrum regarding maintenance in divorce actions. The motion passed.

Representative Hochhauser requested the Committee introduce a bill concerning the hearsay rule in actions involving children.

Representative Hochhauser moved and Representative Gomez seconded to introduce the requested legislation. The motion passed.

Representative Snowbarger requested the Committee introduce legislation amending the durable power of attorney for health care.

Representative Snowbarger moved and Representative Solbach seconded to introduce the requested legislation as a Committee bill. The motion passed.

The Chairman explained the following bill requests:

Judge Buchele requested the Committee introduce legislation concerning extending probation.

Representative Sebelius moved and Representative Lawrence seconded to introduce the bill requested by Judge Buchele. The motion passed.

Paul Moore, Attorney, Wichita requested through Representative Foster, legislation be introduced proposing changes to civil remedies for getting worthless checks.

Representative Solbach moved and Representative Vancrum seconded to introduce the proposed legislation concerning worthless checks. The motion passed.

The Kansas Railroad Association requested a bill be introduced to amend K.S.A. 66-233 to change attorney fees in cases of fires from mandatory to permissive.

Representative Moomaw moved and Representative Shriver seconded to introduce the bill requested by the Kansas Railroad Association as a Committee bill. The motion passed.

Nick Tomasic, District Attorney, Wyandotte County, requested 1987 SB 110 be reintroduced. The bill would create a crime for harming or killing an unborn child.

A motion was made by Representative Snowbarger and seconded by Representative Vancrum to introduce as a Committee bill, legislation requested by the Wyandotte District Attorney. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on January 16, 1990.

Louis Pete Heaven, Attorney, requested through Representative Gene Amos, legislation amending the redemption statute by shortening the redemption period.

Representative Vancrum moved to introduce as a Committee bill legislation amending the redemption statute. Representative Snowbarger seconded the motion. The motion passed.

The Revisor of Statutes Office requested the Committee introduce five conflict bills to make technical changes in the statutes.

Representative Snowbarger moved and Representative Fuller seconded to introduce the conflict bills requested by the Revisor of Statutes Office. The motion passed.

Representative Solbach moved to introduce as a Committee bill legislation to keep the judgement on unpaid child support alive until two years after the child becomes an adult. Representative Whiteman seconded the motion. The motion passed.

BILLS REPORTED ADVERSELY:

Representative Sebelius moved to report adversely HB 2057, HB 2069, HB 2091, HB 2242 and HB 2508. Representative Lawrence seconded the motion. The motion passed.

Representative Solbach moved and Representative Snowbarger seconded to report adversely HB 2058. The motion passed.

Representative Sebelius moved to report HB 2336 adversely. Representative Solbach seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:30 p.m. The next meeting will be Wednesday, January 17, 1990 at 3:30 p.m. in room 313-S.



## JUDICIAL COUNCIL BILL REQUESTS

### 1. Pleading unliquidated damages

K.S.A. 60-208 currently requires that "Every pleading demanding relief for damages in money in excess of ten thousand dollars (\$10,000) shall, without demanding any specific amount of money, set forth only that the amount sought in damages is in excess of ten thousand dollars (\$10,000), except in actions sounding in contract." It is the recollection of members of the Civil Code Committee that a dollar amount was inserted in 60-208 to avoid publicity surrounding the filing of claims for large amounts of damages and that \$10,000 was selected as the amount to be consistent with the rule in federal diversity cases. As of May 18, 1989, the amount in controversy required for federal diversity of citizenship cases was raised from \$10,000 to \$50,000. The Judicial Council recommends amending K.S.A. 60-208 by substituting \$50,000 for \$10,000. Consequently, the pleading would indicate whether the amount in controversy requirement is met for removal to federal court.

### 2. Service of process by certified mail

The Judicial Council recommends a number of amendments to both chapters 60 and 61 to provide for the alternative of service of process by certified mail. The actual mailing would be done by the serving party's attorney or the serving party, if the party is unrepresented. Service would be complete upon delivery. If the certified mail is refused, service can be completed by subsequent mailing by first-class mail. Personal service by the sheriff or a process server would still be available upon request of the serving party. A prior attempt at certified mail service is not mandated. The primary purpose of the proposal is to lessen the service of process burden on sheriffs' departments. In recent years, proposals have been before the legislature which would mandate an attempt at mail service under 60-314 before personal service by the sheriff is available. The principal problem with such an approach is that service is not obtained unless, and until, the defendant executes an acknowledgment of receipt of the process. Other proposals before the legislature would have added a fee for service by the sheriff as an incentive to use other methods of service. It is anticipated that under the Judicial Council proposal, service by certified mail will become the primary method for service of process, but service by the sheriff will still be available where necessary.

### 3. Repeal of amendments to K.S.A. 58-2242a and 59-2249 made by 1989 Senate Bill 268 (L. 1989, Ch. 174)

Whenever court proceedings result in a decree or judgment which changes the ownership or the title to real estate, the clerk of the district court is required to file with the county clerk a certified copy of the decree or judgment for entry upon the transfer records of the clerk's office. 1989 Senate Bill 268 added the requirement that the judge of the district court cause

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Attachment I

to be recorded with the register of deeds a certificate of title, a form for which was set out in the legislation. The legislation was supported by the Registers of Deeds Association which indicated that the filing of certificates of title fills a hole in the chain of title as it appears in their offices. The Judicial Council was furnished with correspondence from a district judge and an attorney raising a number of concerns about the legislation. In addition to other concerns raised, the legislation does not appear to achieve its purpose of providing "one-stop shopping" for titles. In this regard, the Title Standards Committee of the Kansas Bar Association has felt it necessary to adopt a new title standard that the certificates of title required by the legislation,

"are not muniments of title as defined by K.S.A. 58-3402 of the Kansas Marketable Title Act. The title examiner should require that the abstract of title contain the original court proceedings which are the basis of any certificate of title. The title examiner should rely upon the original court proceeding and should disregard any inconsistencies between the court proceedings and the certificate of title".

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Att I  
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HOUSE BILL \_\_\_\_\_

AN ACT relating to attorney fees taxed as costs in certain actions involving negligent motor vehicle operation; amending K.S.A. 60-2006 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:  
Section 1. K.S.A. 60-2006 is hereby amended to read as follows:

60-2006 (a) In actions brought for the recovery of damages of less than ~~\$3,000~~ \$10,000 sustained and caused by the negligent operation of a motor vehicle, the prevailing party shall be allowed reasonable attorneys' fees which shall be taxed as part of the costs of the action unless:

- (1) The prevailing party recovers no damages; or
- (2) a tender equal to or in excess of the amount recovered was made by the adverse party before the commencement of the action in which judgment is rendered.

(b) This section shall apply to actions brought pursuant to the code of civil procedure and actions brought pursuant to the code of civil procedure for limited actions.

Section 2. K.S.A. 60-2006 is hereby repealed.

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

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L. J. J. Com  
Attachment II

HOUSE BILL \_\_\_\_\_

AN ACT relating to limitation of actions; amending K.S.A. 1988 Supp. 60-513 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 60-513 is hereby amended to read as follows: 60-513 (a) The following actions shall be brought within two years:

- (1) An action for trespass upon real property.
- (2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.
- (3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.
- (4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.
- (5) An action for wrongful death.
- (6) An action to recover for an ionizing radiation injury as provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.
- (7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract.

(b) Except as provided in subsection (c), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until ~~some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action.~~ or requires a scientific determination to identify the fact of the injury or its relationship to another person's wrongful conduct, then the period of limitation shall not commence until the injured party knew or should have known of the fact of the injury and its relation to the adverse party's conduct.

(c) A cause of action arising out of the rendering or the failure to render professional services by a health care provider shall be deemed to have accrued at the time of the occurrence of the act giving rise to the cause of action, unless the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than four years beyond the time of the act giving rise to the cause of action.

(d) The provision of this section as it was constituted prior to July 1, 1987, shall continue in force and effect for a period of two years from that date with respect to any act giving rise to a cause of action occurring prior to that date.

Section 2. K.S.A. 1988 Supp. 60-513 is hereby repealed.

Section 3. This action shall take effect and be in force from and after its publication in the statute book.

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Att II