

Approved January 30, 1990
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 January 16, 1990 in room 514-S of the Capitol.

All members were present except: Senator Gaines who was excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Eric Witkoski, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee
Conferees appearing before the committee:

Chip Wheelen, Kansas Psychiatric Society
Randy Hearrel, Kansas Judicial Council
Bob Frey, Kansas Trial Lawyers Association
Representative Anthony Hensley
Representative George Gomez
Representative Bill Roy, Jr.
Harry F. "Butch" Felker, Mayor of Topeka
Amy Rose Herrick, Secretary of Central Highland Park Neighborhood Improvement Association,
Topeka resident
Hilary Luna, Topeka Dairy Queen franchise owner
Charles Kent Pomeroy, Topeka, Shawnee County Landlord Association
Ed Jaskinia, The Associated Landlords of Kansas
Vaughn Flora, President, Topeka Landlords Association
Gordon Hahn, Topeka landlord
Ray Bloxsom, Topeka Police Department

The Chairman opened the meeting by inviting those with bill introduction requests to address the Committee.

Chip Wheelen, Kansas Psychiatric Society, appeared to request a change in the Kansas Code for Care of Children regarding considerations in termination of parental rights. (ATTACHMENT I)

Senator Bond moved to introduce the bill affecting K.S.A. 38-1583 as requested, Senator Petty seconded the motion. The motion carried.

Randy Hearrell, Kansas Judicial Council, presented bill introduction requests on behalf of the Supreme Court:

- (1) regarding the powers of assignment, Justices and Judges; and (ATTACHMENT II)
- (2) amendments to the judgment dormancy statutes. (ATTACHMENTS III and IV)

Senator Parrish moved to introduce the two bills as requested by Mr. Hearrel. Senator Bond seconded the motion. The motion carried.

Bob Frey, Kansas Trial Lawyers Association, requested introduction of a bill to allow prejudgment interest. (ATTACHMENT V)

Senator Parrish moved to introduce the bill as requested. Senator Petty seconded the motion. The motion carried.

Mr. Frey also requested introduction of a bill to increase the award amounts relating to wrongful death. (ATTACHMENT VI)

Senator Bond moved to introduce the bill as requested. Senator Parrish 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 January 16, 1990.

The Chairman opened the hearing for HB 2347.

HB 2347 - concerning certain common nuisances; party shacks described as common nuisances.

Representative Anthony Hensley, one of the original Shawnee County delegation sponsors of the legislation, testified in support of the bill. He stated the bill addresses the habitual violators in addition to the problem with violations of the cigarette tax and liquor laws in addition to other violations.

Representative George Gomez testified in support of HB 2347. He stated that in addition to the violations of the controlled substances laws, violence increases in the neighborhoods causing problems for the legitimate neighbors.

Representative Bill Roy, Jr., testified in support of HB 2347 (ATTACHMENT VII) and offered amendments to address the concerns stated by off-premise landlords. (ATTACHMENT VIII)

Harry F. "Butch" Felker, Mayor of Topeka, testified in support of HB 2347. He stated the law enforcement community needs the assistance of this legislation to help with the problem of the "party shacks" continual "bouncing around" from location to location. He also stated he supports the proposed amendments of Representative Roy.

Amy Rose Herrick, Secretary of the Central Highland Park Neighborhood Improvement Association in Topeka, testified in support of HB 2347. She shared her neighborhood's experiences of living with a "party shack" in action and the multitude of problems that face the neighborhood's residents. She detailed the problems that occurred with parking, violence, property valuation, noise, retaliations, and other illicit activities.

Hilary Luna, Topeka Dairy Queen franchise owner, testified in support of HB 2347. He explained his fears for his teenage employees and elderly customers dealing with such a "nuisance" in close proximity.

Charles Kent Pomeroy, Topeka, representing the Shawnee County Landlord Association, testified in support of HB 2347 with the proposed amendments. He stated the landlords were hopeful that with the amendments the legislation would help even things out. Landlords also face retribution and retaliation when they attempt to prosecute or remove this type of tenant.

Ed Jaskinia, The Associated Landlords of Kansas, testified in opposition to HB 2347. He stated that the "party shacks" also hurt the individuals who own the property but when the property is padlocked it is the property owner who is punished, not those running the illegal establishment. His organization's problem is with the "should have know" attitude in the legislation.

Gordon Hahn, Topeka, testified in opposition of HB 2347. (ATTACHMENT IX)

Ray Bloxsom, Topeka Police Department, testified in support of HB 2347 and the proposed amendments. He shared his concern in too narrowly defining the habitual violator reference of the bill. He requested that the criteria be left flexible enough to allow the law enforcement entities the latitude necessary to enforce the intent of the law. He also stated he felt the property owner should be notified when a raid is made on his property.

The hearing was continued to Wednesday, January 17, 1990 at 10:00 a.m. and the meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: January 16, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tamara Edwards	2435 S. 12 th KCKS	Pages
Kami Klemmauer	1033 Locust KCKS	Pages
Curtis Perry	1001 New Jersey	Ks. Peace Officers Assn.
HARRY FEYKEN	3325 RANDOLPH	CITY OF TOPEKA
Bandy Nearrell	Topeka	Ks Judicial Council
Phil Williams	"	KCTA
<i>Kevin Kelly</i>	<i>OP</i>	<i>Sun</i>
Raymond A. Blossom	204 S.W. 5th, Topeka	Topeka Police Dept
Frank M. DAVIS	204 SW 5th	Topeka Police Dept
Rep Denise Ewerhart	4332 SE Hedden //	House Rep.
Chip Wheelen	Topeka	Ks Psychiatric Soc.
Rep. Bill Roy	Topeka	House of Reps
Ony Rose Herrick	1919 Indiana 66607	E.I.A.P. Central H.P. MIA
Vaughn L. Horan	431 Woodland	Shawnee Co. Landlord Assn. & Assn of Hous. Owners
B. J. Jordan	3418 Skyline Pkwy	Shawnee County Landlord Assn.
Lawrence W. Johnson	4845 NW Potomac TOROLE	Private Cit
Judy L. Stevens	500 Van Buren	Topeka P.D.
Rick Sabel	204 W. 5 th	F.O.P.
Jack West	512 1/2 W. 6 th Topeka	Dept. of Revs ABC
Mike Miller	215 E 7 th Topeka	City of Topeka
Carol Unruh	827 Topeka Blvd	Ks Cov Dist Athl Assn
Charles Gonzalez	935 Western Topeka	Topeka Attorneys
ED JASKINIA	7310 Parkview KCK	The Assn. Landlords of Ks (Topeka)
JAMES PRESTON TRICE	2147 S-12 MADISON TOPEKA	RETIRED
<i>M. Truett</i>	<i>Topeka</i>	<i>NP</i>

January 16, 1990

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-16-90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Anthony Hensley	Topeka, KS	State Rep., 58th Dist.
Jim Kauf	Topeka	League of Municipalities
Berry Bank & Pollock	Topeka "	Legis. KCTV 5
Dale Cushmanberry	Topeka	NIA Coordinator
Ed Ware	"	KSAT-TV
Carol Wheeler	Topeka	KS. 108-TV
Mary Luna	Topeka	EAST TOPEKA NIA
James C. Dunn	Lawrence	Landlords of Lawrence
Manay R. Dunn	"	"
XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
William Schulis	Topeka	State Rep
Raf A. Iler	Topeka	Cap-Jour.
Don Brown	TOPEKA	WIBW-TV
Ken Evans	TOPEKA	WIBW-TV

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**38-1583. Considerations in termina-
tion.** (a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights when the court finds by ~~clear and convincing~~ evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

(b) In making a determination hereunder the court shall consider, but is not limited to, the following, if applicable:

(1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child;

(2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;

(3) excessive use of intoxicating liquors or narcotic or dangerous drugs;

(4) physical, mental or emotional neglect of the child;

(5) conviction of a felony and imprisonment;

(6) unexplained injury or death of a sibling;

(7) reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family; and

(8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child.

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, in proceedings concerning the termination of parental rights, shall also consider, but is not limited to the following:

(1) Failure to assure care of the child in the parental home when able to do so;

(2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into the parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

(d) The rights of the parents may be terminated as provided in this section if the court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

(e) The existence of any one of the above standing alone may, but does not necessarily, establish grounds for termination of parental rights. The determination shall be based on an evaluation of all factors which are applicable. In considering any of the above factors for terminating the rights of a parent, the court shall give primary consideration to the physical, mental or emotional condition and needs of the child.

History: L. 1982, ch. 182, § 54; L. 1983, ch. 140, § 27; July 1.

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(9) a statement from a person licensed to practice medicine and surgery that the physical, mental, or emotional needs of the child would be better served if parental rights are terminated.

20-2616. Designation and assignment of retired justices and judges to perform judicial

service and duties; revocation; powers; compensation and expense allowances, limitation.

(a) Any retired justice of the supreme court, retired judge of the court of appeals, retired district judge or retired associate district judge may be designated and assigned to perform such judicial service and duties as such retired justice or judge is willing to undertake. Designation and assignment of a retired justice or judge in connection with any matter pending in any court, including any court located within the judicial district in which the justice or judge resides, or to perform any other judicial service or duties shall be made by the chief justice of the supreme court. Any such judicial service or duties shall include necessary preparation and other out-of-court judicial service for hearings or for deciding matters or cases in conjunction with the judicial services and duties assigned under this section. Any designation and assignment may be revoked in the same manner and all such designations and assignments and revocations shall be filed of record in the office of the clerk of the court to which such assignment is made.

(b) A retired justice or judge so designated and assigned to perform judicial service or duties shall have the power and authority to hear and determine all matters covered by the assignment, ~~but as to any matter pending in the supreme court the retired justice or judge shall act in an advisory capacity only.~~

(c) Except as otherwise provided in this section, each retired justice or judge who performs judicial service or duties under this section shall receive (1) per diem compensation at the rate of per diem compensation in effect under K.S.A. 46-137a, or amendments thereto, (2) a per diem subsistence allowance at the per diem subsistence allowance rate in effect under K.S.A. 46-137a, or amendments thereto, (3) a mileage allowance at the rate fixed under K.S.A. 1980 Supp. 75-3203a, or amendments thereto, and (4) all actual and necessary expenses for other than subsistence or travel, including necessary stenographic assistance, as may be incurred in performing such service or duties.

(d) No retired justice or judge shall be entitled to receive per diem compensation under this section for any day in a fiscal year after the date that the total of (1) the amount of per diem compensation earned under this section during that fiscal year and (2) the amount of the retirement annuity payable to such retired justice or judge for that fiscal year under the

retirement system for judges, becomes equal to or more than the amount of the current annual salary of a district judge paid by the state under K.S.A. 1980 Supp. 75-3120g, or amendments thereto, but such retired justice or judge shall receive the subsistence allowance, mileage allowance and actual and necessary expenses as provided under this section after such date.

History: L. 1967, ch. 191, § 1; L. 1972, ch. 109, § 1; L. 1976, ch. 145, § 94; L. 1980, ch. 94, § 2; L. 1981, ch. 137, § 1; July 1.

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58-2314. Unenforced foreclosure judgment; entry as cancellation and release of mortgage. Whenever real estate mortgages have been, or shall be, foreclosed by judgment of the district court in any county in the state of Kansas, and no renewal affidavit shall have been filed or no execution or orders of sale shall have been issued thereon within five (5) years and no proceedings have been instituted in accordance with the provisions of K.S.A. 60-2404 to revive such the judgment and no appeal has been taken for a period of seven (7) years from the date of the rendition thereof entry of the judgment of foreclosure then it shall be the duty of the clerk of said the court, on application of any parties party in interest, to record in the office of the register of deeds in which said the mortgage is recorded, an instrument giving the date of the entry of the judgment of foreclosure with the page of the journal or microphotograph number in which said the judgment is recorded, together with the statement that no renewal affidavit was filed, nor execution nor or order of sale was issued within five (5) years, nor were any proceedings to revive said the judgment have-been instituted within seven (7) years from the date of said the entry of the judgment. Such The recorded instrument shall operate as a cancellation and release of such the mortgage.

A "renewal affidavit" is a statement under oath, signed by the judgment creditor or the judgment creditor's attorney, filed in the proceedings in which the judgment was entered and stating the remaining balance due and unpaid on the judgment.

either

The five-year period specified in this section shall not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.

NOT the 7 year period

60-2403. Judgment, when dormant; release of record. (a) If a renewal affidavit is not filed or if execution, including any garnishment proceeding, income withholding proceeding or proceeding in aid of execution, is not issued, within five years from the date of the entry of any judgment rendered in any court of record in this state, including judgments in favor of the state or any municipality in the state, or within five years from the date of any order reviving such the judgment or, if five years have intervened between the date of the last renewal affidavit filed or execution issued proceedings undertaken on such the judgment and the time of filing another renewal affidavit or issuing-another-writ-of undertaking execution proceedings on it, such the judgment, including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the real estate of the judgment debtor. Except as provided in subsection (b), when a judgment becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.

A "renewal affidavit" is a statement under oath, signed by the judgment creditor or the judgment creditor's attorney, filed in the proceedings in which the judgment was entered and stating the remaining balance due and unpaid on the judgment.

(b) (1) If a judgment for the support of a child becomes dormant before the child's emancipation, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so only if the judgment has remained dormant for the period prior to the child's emancipation plus two years. When, after the child's emancipation, a judgment for the support of a child becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.

(2) The provisions of this subsection shall apply only to those judgments which have not become void as of July 1, 1988.

(c) The time within which action must be taken to prevent a judgment from becoming dormant does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.

SENATE BILL _____

AN ACT relating to interest on judgments; amending K.S.A. 16-201 and repealing the existing section.

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

Section 1. K.S.A. 16-201 is hereby amended to read as follow:

16-201 (a) Creditors shall be allowed to receive interest at the rate of ten percent per annum, when no other rate of interest is agreed upon, for any money after it becomes due; for money lent or money due on settlement of account, from the day of liquidating the account and ascertaining the balance; for money received for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; for all other money due and to become due for the forbearance of payment whereof an express promise to pay interest has been made; and for money due from corporations and individuals to their daily or monthly employees, from and after the end of each month, unless paid within fifteen days thereafter.

(b) In any cause of action which arises on or after the effective date of this act and for which a verdict is rendered or a decision made for unliquidated damages, and such verdict or decision exceeds the last written demand for payment of a claim or offer of settlement of a claim sent by certified mail prior to the start of the trial to the party, parties or their representatives, there shall be added by the clerk of the district court to the amount of damages, and included in the judgment therein, interest at the rate described in subsection (e) of K.S.A. 16-204 and amendments thereto from the date the cause of action arose to the date of judgment. This section shall not apply until entry of judgment or to any contractual obligation where interest is otherwise provided.

Section 2. K.S.A. 16-201 is hereby repealed.

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

SENATE BILL _____

AN ACT relating to wrongful death; amount of damages; amending K.S.A. 1988 Supp. 60-1903 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:
Section 1. K.S.A. 1988 Supp. 60-1903 is hereby amended to read as follows:

60-1903 (a) In any wrongful death action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances, but the damages, other than pecuniary loss sustained by the heir at law, cannot exceed in the aggregate the sum of ~~\$100,000~~ \$250,000 and costs.

(b) If a wrongful death action is to a jury, the court shall not instruct the jury on the monetary limitation imposed by subsection (a) upon recovery of damages for nonpecuniary loss. If the jury verdict results in an award of damages for nonpecuniary loss which, after deduction of any amount pursuant to K.S.A. 60-258A and amendments thereto, exceeds the limitations of subsection (a), the court shall enter judgment for damages of ~~\$100,000~~ \$250,000 for nonpecuniary loss.

(c) In any wrongful death action, the verdict shall be itemized by the trier of fact to reflect the amounts, if any, awarded for:

- (1) nonpecuniary damages;
- (2) expenses for the care of the deceased caused by the injury; and
- (3) pecuniary damages other than those itemized under subsection (c) (2).

(d) Where applicable, the amounts required to be itemized pursuant to subsections (c)(1) and (c)(3) shall be further itemized by the trier of fact to reflect those amounts awarded for injuries and losses sustained to date and those awarded for injuries and losses reasonable expected to be sustained in the future.

(e) In any wrongful death action, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award.

Section 2. K.S.A. 1988 Supp. 60-1903 is hereby repealed.

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

WILLIAM R. ROY, JR.
REPRESENTATIVE, FIFTY-THIRD DISTRICT
STATE CAPITOL
TOPEKA, KANSAS 66612



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: RULES AND JOURNAL
MEMBER: FEDERAL AND STATE AFFAIRS
JUDICIARY
TAXATION

January 16, 1990

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE

Substitute for HB 2347 -- PARTY SHACKS

Mr. Chairman and Members of the Committee:

Three short years ago there was a party shack here in the downtown Topeka business district, only a block from the Capitol grounds. After the legally operated taverns and private clubs had closed for the night, a party shack would come alive in the early morning hours in the 1000 block of Kansas Avenue, across the street from a high rise building of senior citizens' apartments.

Beginning between 2 and 3 a.m., persons gathered to party until dawn. They fueled their nocturnal activities with drugs and alcohol that were being illegally sold in and around the building. Both in the building and around the building people would carry on in a loud and raucous manner -- music blasting, yelling obscenities, relieving themselves, and threatening any local residents who would dare to challenge their fun or behavior.

The cars of local residents were broken into and vandalized, with stereos and CB radios stolen, and glove compartments ransacked. Cars were also stripped of batteries, alternators and other parts.

Sitting in their cars parked on public streets, persons would engage in sexual activities and -- to state it politely -- would perform acts that were neither modest nor subtle.

Often threats were made. Weapons were brandished. Gunshots were fired. The advice of police to residents in order to avoid being hurt was for residents to stay back from their apartment windows.

This went on every Friday and Saturday night for over six months -- residents being harassed, threatened and unable to sleep -- before law enforcement officials were able to close the place down.

But closing down this or any other location does not always eliminate the problem. It only causes the problem to move to a new location.

Substitute for House Bill 2347 is designed both to provide immediate remedies to shutting down these types of operations and to avoid simply having them relocate elsewhere. It builds upon current laws by taking the profit and the means to making a profit out of what are really commercial businesses.

KSA 22-3901 lists what activities constitute a nuisance under current law. Section 1 of the bill adds to this list by clarifying that unlicensed commercial enterprises dealing in the sale or exchange of alcoholic liquors or cereal malt beverages [subsection (h)] or tobacco products [subsection (i)] are declared to be common nuisances. Further, references to personal property that may be seized are expanded to clarify that appliances and musical instruments may be included (sections 1, 2 and 3). By authorizing seizure of all fixtures, musical instruments and other personal property designed for and used in conducting or maintaining the nuisance, items that are needed for carrying on the nuisance elsewhere are no longer immediately available to the operator of the nuisance.

Section 3 aims at the taking the profitability out of what frequently are really commercial enterprises by allowing assessment of a civil penalty of up to \$25,000.

Section 3(3) lists how the proceeds of any sale of personal property are to be applied.

Section 4 is current law (KSA 41-805) addressing illegal sales of alcohol. Again, this proposal amends the law to allow the levy of a \$25,000 criminal fine to take the profitability out of such businesses (as compared to the current penalty as an unclassified misdemeanor of up to 90 days in jail or a fine up to \$500).

Last, in section 5 the bill proposes recognizing that maintenance of such common nuisances shall be a misdemeanor crime, subject to up to 90 days in jail or a fine up to \$25,000.

The bottom line of this bill is to get at not only the owners of real property where nuisances exist, but also at operators of nuisances such as lessees, tenants or occupants.

On the other hand, the current law may go too far in penalizing the innocent owner of real property. Where a nuisance is being operated on a property without the consent of the landowner, the law must be changed to encourage the landowner to work with law enforcement officials to see that the nuisance is shut down -- without the landowner being in fear of losing the use of his property as may happen under current law.

Recognizing that current law may unfairly jeopardize the real property of unknowing owners, the following series of amendments are proposed:

1. That the owner of real property be subject to penalties and the property subject to a lien only in those instances where that owner knew or should have known about the nuisance and made no attempts to abate the nuisance.
2. Eliminate the current three month minimum time period (found in section 3) for which a court shall padlock property if a nuisance is found to exist. Instead, allow such minimum time to be set by the court with due consideration given to what knowledge the landowner may have had about the nuisance and efforts made to abate it.
3. Require that the landowner be given notice -- after the fact -- of any raids on real property where such a nuisance is alleged.

You will recognize that the advantage to law enforcement under this bill is the lesser burden of proof required for civil actions versus the stricter burden required to establish criminal wrongdoing. The plaintiff's burden is to show by a mere preponderance of the evidence that a public nuisance exists versus the requirement of "beyond a reasonable doubt" in a criminal matter.

This bill reminds landlords about their responsibilities as property owners, encouraging them to take an interest in how their property is utilized and improving neighborhood stability.

Our nation's drug problems have many sources. While this bill is not a magic wand to eliminating the problems of drugs or party shacks, it provides still another new and better tool to law enforcement to combat these problems.

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ATTACHMENT VIII

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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 ~~not~~ 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 ~~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

strike bracketed language

if the court finds that the owner of the property knew or should have known of the maintenance of a common nuisance on the property and did not make a bona fide attempt to abate such nuisance

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1 closed.

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

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

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

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

any defendant who was maintaining the common
nuisance

11 Sec. 4. K.S.A. 41-805 is hereby amended to read as follows: 41-
12 805. (1) Any room, house, building, boat, vehicle, airplane, structure
13 or place of any kind where alcoholic liquors are sold, manufactured,
14 bartered or given away, in violation of this act, or any building,
15 structure or boat where persons are permitted to resort for the
16 purpose of drinking ~~same~~ alcoholic liquors, in violation of this act,
17 or any place where such liquors are kept for sale, barter or gift, in
18 violation of this act, and all such liquors, and all property kept in
19 and used in maintaining such a place, are each and all of them
20 hereby declared to be a common nuisance; ~~and~~. Any person who
21 maintains or assists in maintaining such common nuisance ~~shall be~~
22 ~~guilty of a violation of this act. If it shall be is guilty of a~~
23 ~~misdemeanor punishable by imprisonment for not more than one~~
24 ~~year or by a fine not exceeding \$25,000, or by both. If it~~ is proved
25 that the owner of any building or premises has knowingly suffered
26 the same to be used or occupied for the manufacture, sale or pos-
27 session of such liquors, contrary to the provisions of this act, such
28 building or premises shall be subject to a lien for, and may be sold
29 to pay all fines and costs assessed against the occupant of such
30 building or premises for any violation of this act; and such lien shall
31 be immediately enforced by civil action, in any court having juris-
32 diction, by the county or district attorney of the county wherein
33 such building or premises may be located, or by the attorney for
34 the director, when ordered by the director. If a tenant of any building
35 or premises uses the ~~same~~ building or premises, or any part thereof,
36 in maintaining a common nuisance as hereinbefore defined, or know-
37 ingly permits such use by another, such use shall render void the
38 lease under which ~~he or she~~ the tenant holds, and shall cause the
39 right of possession to revert to the owner or lessor, who may make
40 immediate entry upon the premises, or may ~~avail himself or herself~~
41 ~~of invoke~~ the remedy provided for the forcible detention thereof.

if the court finds that the owner of such property
knew or should have known of the maintenance of
the common nuisance on the property and did not make
a bona fide attempt to abate such nuisance

the court finds that the owner of real property knew
or should have known of the maintenance of a common
nuisance on such property, contrary to the liquor
laws of this state, and did not make a bona fide
attempt to abate such nuisance, such property

42 (2) Upon the filing of a complaint or information charging that
43 a vehicle or airplane is a common nuisance as above declared, a
44

1 against him or her on appeal he or she is entered against the
2 claimant on appeal, the claimant will satisfy the judgment and costs,
3 and no bond shall be required for an appeal by the state, and such
4 appeal shall stay the execution of the judgment.

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

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

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

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

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

New Sec. 6. If a search warrant is executed which authorizes a search of real property based upon an alleged offense involving gambling, obscenity, prostitution, controlled substances or liquor, a copy of the warrant shall be delivered to the last known address of the owner of the property within two business days after execution of the warrant if such address is different from the address of the property for which the warrant was issued.

Mr Chairman, Members of the Committee, Ladies and Gentlemen

I am Gordon Hahn an owner of Rental Real Estate in Topeka.

I am not opposed to the intent to change obsolete Statutes, I am opposed to legislation that is incomplete and that is not directed at the problem.

This proposed Statute was drafted in such haste that an adequate evaluation of the problem or the ramifications that will result in its implication was not considered.

This is evident by the fact that the drafting legislators must follow their proposal to the Senate even after it has cleared the House.

This piece of Legislation is nothing more than a blatant attempt to confiscate Real Property.

The intent as told to me was to control Drug traffic, however this is not mentioned other than page 1 line 27 as controlled substances. Hereafter highlighted as alcohol and tobacco.

The proposal to confiscate property from a owner for the illegal activities of a tenant or lessee is ludicrous in that the Landlord Tenant Act dose not allow the Landlord but limited rights in the eviction of a Tenant. The Privacy Act does not permit an extensive back ground check and the Discriminatory Law is a bait to torment Landlords if the Tenant Wishes.

This proposal does not give the Landlord an action to take to terminate the Nuisance if he becomes aware of it. The Landlord can not proceed with an eviction as the burden of proof is upon the accuser and with out a Police report the Landlord is harassing the tenant and will lose. With a Police Report the Landlord now is knowledgeable of the situation and his property will be Seized.

Let this Legislation show an action that a landlord may take if any of this activity is found to be taking place. A report to the Police is not possible as this acknowledges knowledge and your property will now be padlocked.

This proposed legislation only promotes Cannon Fodder for the courts and a source of revenue for the Attorneys one must hire to protect himself from the State of Kansas. We are guilty and must prove innocence under this Statute. WHY!

Why are not Farms that are found to have Marijuana growing on them not padlocked for up to three years. Why are not Public housing units not padlocked. Why are not Airports that have narcotic traffic padlocked.

Why is this not a felony instead of a misdemeanor when it carries this high a Fine. Being the landlord must pay the prosecution attorney fees why does not the State, County or City pay the Defendants Attorneys fees if found innocent.

Lets take the time to coin a piece of legislation that will face the problem and make the persons who patronize an run these establishments responsible for their own actions.

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I suggest that all reference to Real Property be DELETED and an addition to Page 4 Lines 20-24 be entered stating that if the Real Property owner is found to be a partner or assists in the operation that the Real Property may be seized for the Padlock duration.

I suggest that to prevent unnecessary prosecution attempts that if the Real Property owner is found not liable the State, County or City bring action pay the defense Attorneys fees.

I suggest that if the Real Property owner is to fall responsible for the Tenant, Resident or lessee's activities that there be an Immediate legal action that the Real Property owner can take under this law to remove the nuisance before becoming liable for prosecution.