

Approved 6-27-90  
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./~~pm~~ on March 27, 19 90 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  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

The Chairman called the meeting to order by stating the scheduled hearings on the juvenile offender measures were postponed and the committee would continue to receive reports from subcommittees.

Senator Moran continued the Criminal and Uniform Commercial Code Subcommittee report.

HB 2920 - concerning civil procedure; relating to expedited appeal of habeas corpus proceedings involving extradition.

The Subcommittee recommended HB 2920 be reported favorably.

Senator Moran moved to adopt the subcommittee report to recommend HB 2920 favorable for passage. Senator Bond seconded the motion. The motion carried.

HB 3045 - concerning court fees.

The Subcommittee recommended HB 3045 be reported favorably.

Senator Moran moved to adopt the subcommittee report to recommend HB 3045 favorable for passage. Senator Kerr seconded the motion. The motion carried.

SB 370 - concerning tax information; relating to disclosure thereof.

Senator Moran stated the intent of the bill allows disclosure of sharing of current information of taxpayer's name, social security number and last known address for use in maintaining information records used by the division of motor vehicles. The Subcommittee recommended adoption of technical cleanup amendments and to report the bill favorable as amended.

Due to an error, the Senate Judiciary Committee Report had been submitted to the Secretary of the Senate prior to today's meeting. Therefore, the committee's discussion and actions addressed whether to ratify the Committee Report.

Senator Moran moved to ratify the Committee Report to amend SB 370 with technical cleanup and to recommend SB 370 favorable for passage as amended. Senator Petty seconded the motion. The motion carried. The Committee Report was ratified.

Senator Rock continued the Probate and Civil Procedure Subcommittee Report.

HB 2439 - concerning civil procedure for limited actions.

The Subcommittee recommended a technical amendment to HB 2439 by including on page 2, line 14, reference to "39-718b" and that HB 2439 be reported favorable as amended.

Senator Rock moved to adopt the Subcommittee report to technically amend HB 2439 and recommend the bill favorable for passage as amended. Senator Parrish seconded the motion. The motion carried.

HB 2689 - concerning civil procedure; relating to limitation of actions.

The Subcommittee recommended HB 2689 be amended by replacing subsection (e) and reported favorable. (ATTACHMENT I)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 27, 1990.

Senator Bond moved to adopt the Subcommittee report to amend HB 2689 and recommend the bill favorable for passage as amended. Senator Feleciano seconded the motion. The motion carried.

HB 3054 - concerning judges pro tem.

The Subcommittee recommended HB 3054 be reported favorable and placed on the Consent Calendar.

Senator Bond moved to recommend HB 3054 favorable for passage. Senator Rock seconded the motion. The motion carried. Senator Oleen objected to HB 3054 being placed on the Consent Calendar and the Chairman directed the bill not be placed on the Consent Calendar.

HB 2019 - concerning home equity protection.

The Subcommittee recommended adoption of amendments as suggested by Judge Joseph Pierron, Kansas Judicial Council, and report the bill favorable as amended. (ATTACHMENT II)

Senator Rock moved to adopt the amendments to HB 2019 as suggested by the Kansas Judicial Council. Senator Yost seconded the motion. The motion carried.

Senator Rock moved to recommend HB 2019 favorable for passage as amended. Senator Feleciano seconded the motion. The motion carried.

This concluded the Probate and Civil Procedure Subcommittee Reports.

Senator Rock turned the committee's attention to SB 616.

SB 616 - concerning crimes and punishments; relating to the displaying of obscene bumper stickers on motor vehicles.

Senator Rock moved to recommend SB 616 favorable for passage. Senator Morris seconded the motion.

The Chairman noted that SB 616 had been referred to the Judiciary Committee from the floor of the Senate with the purpose of obtaining an Attorney General opinion whether the existing obscenity laws already addressed this issue. That opinion was shared with the members. (ATTACHMENT III)

The Chairman noted the definition of obscene in SB 616 was different than the definition in current statutes. Therefore, the bill may need amending to reflect that definition. Committee discussion followed regarding whether the committee wanted to recommend passage of legislation that would restate what already exists in the statutes. It was further discussed that passage of the unamended bill would legalize pornography that is currently illegal; that is, if the print is small enough, it would be legal. It was further suggested that if the committee is interested in this legislation, the existing statute could be amended to clarify the displaying of obscenity includes putting a bumper sticker on a motor vehicle.

Senator Bond made a substitute motion to table SB 616. Senator Morris seconded the motion.

Senator Morris stated, in his opinion, the intent of the Senate would not be satisfied unless this bill were reported back with a recommendation of the committee. He added that even though, in the Attorney General's opinion, this obscenity is currently covered in the statutes, this bill should be passed to make it absolutely clear the display of obscene bumper stickers is not proper.

Due to the running of the Committee's meeting time, discussion was continued to the 12:30 meeting on this date, March 27, 1990. The meeting was adjourned.



AMENDMENT TO HB 2689

Strike all of lines 31 through 34 and add a new subsection to read as follows:

(e) Upon the effective date of this act through July 1, 1991, any person whose claim for latent disease accrued on or after March 3, 1987, or had filed a claim prior to March 3, 1989, in any court alleging an action for a latent disease, the provisions of this bill shall revive such cause of action. The intent of this section is to revive causes of action for latent diseases barred by interpretation of the statute in effect prior to this enactment.

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3-27-90 a.m.  
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[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1989

[ ] indicate deletions  
Approved by Judicial Council  
12/1/89

HOUSE BILL No. 2019

By Representative Vancrum

1-9

18

19

AN ACT concerning home equity protection.

20

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

21

Section 1. Any assignment or transfer of the rights of the defendant owner in relation to real property which is the subject of a pending action to foreclose one or more mortgages and which is the [domicile] of the owner is subject to the following requirements unless such transfer or assignment is made [to the mortgagee or its wholly owned subsidiary or] to a party who then [immediately] resides in and uses the property as the party's [domicile].

residence

unless the defendant owner or a member of the defendant owner's immediate family continues to reside in the property or

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26

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residence

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(a) All such transfers or assignments shall be in writing. All terms, conditions and agreements in consideration for the transfer or assignment shall be set out in detail in a written agreement, dated, and signed by all parties to the agreement. Copies of both the agreement and disclosure statement shall be provided to the transferor or assignor by the transferee or assignee.

34

(b) All such transfers or assignments, as described in subsection (a), are subject to rescission by the defendant owner within five calendar days [business days, as defined by K.S.A. 45-217, and amendments thereto,] of the date of the defendant owner's execution of the agreement. Such rescission, if made, shall be in writing, signed by the defendant owner, or by any one of the defendant owners if there be more than one, and mailed to the buyer by certified mail. This right of rescission may not be waived, sold or abrogated in any way.

44

(c) All such agreements, as described in subsection (a), to be effective, must contain a disclosure statement which shall be signed

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45 by all parties to the agreement and which shall be substantially in  
46 the following form:

47 NOTICE. READ ALL OF THIS DISCLOSURE STATEMENT CAREFULLY BE-  
48 FORE SIGNING IT. YOU HAVE A RIGHT TO CONSULT WITH AN ATTORNEY  
49 OR ANOTHER PERSON BEFORE SIGNING IT. YOU ARE SELLING OR GIVING  
50 UP IMPORTANT RIGHTS.

51 I, (owner's name), as the owner of (legal description of the property being foreclosed)  
52 commonly known as (address of such property), [enter] into an agreement with (buyer's  
53 name) for the sale of the above-mentioned property which is my [home]. I realize I  
54 have the following rights:

55 (1) Should this property be in foreclosure on any mortgage, I [may be] entitled to  
56 a period of redemption following the [end of] foreclosure proceedings during which  
57 [time] I [might be able] to redeem the residence. This period could be from six months  
58 to 12 months, depending on the amount of the mortgage and value of the house.

59 (2) During the period of redemption I have the right to remain in my residence  
60 or, if allowed by local ordinance, to make other uses of it, such as renting] it to  
61 others.

62 (3) I have the right to sell my rights to [the house]. [Following the signing of the  
63 agreement to sell, the buyer has the obligation to provide me with a copy of the  
64 sales agreement and this disclosure statement.]

65 (5) - (4) I ALSO HAVE THE RIGHT TO RESCIND [THIS] AGREEMENT WITH  
66 THE BUYER WITHIN FIVE DAYS [BUSINESS DAYS, AS DEFINED BY K.S.A.  
67 45-217, AND AMENDMENTS THERETO,] AFTER THE SIGNING OF THE  
68 AGREEMENT. I CANNOT AGREE TO GIVE UP OR SELL THIS RIGHT IN ANY  
69 WAY.

70 (6) - (5) Everything that is being promised to me or given to me for the purchase of  
71 my rights must be in the agreement signed by us. This includes the amount being  
72 paid me and any agreement concerning what efforts will be made by the buyer to  
73 bring the mortgage payments up to date and any promises concerning what will be  
74 done with any proceeds from the renting or selling of the property. Anything not in  
75 the written agreement is not might not be enforceable.

76 (7) - (6) IF I SELL MY RIGHTS AND THE HOUSE IS FORECLOSED UPON, I  
77 MAY STILL BE RESPONSIBLE FOR ANY AMOUNTS STILL OWED ON THE  
78 HOUSE IF ITS SALE DOES NOT RAISE ENOUGH TO COVER THE ENTIRE  
79 MORTGAGE AND THE FORECLOSURE COSTS. IF THE HOUSE IS FORE-  
80 CLOSED UPON, IT IS LIKELY THAT THIS WILL BE REPORTED TO THOSE  
81 WHO KEEP CREDIT HISTORIES AND THIS MIGHT INJURE MY CREDIT  
82 RATING.

83 (8) - (7) I realize this is a serious matter and that I may wish to consult with an attorney  
84 to make sure my important rights in my home are being protected before signing  
85 any agreement.

86 (9) - (8) This provision is not intended to deprive the homeowner of any other right  
87 under the law.

88 \_\_\_\_\_  
89 OWNER-SELLER  
90 \_\_\_\_\_  
91 OWNER-SELLER

92 I ACKNOWLEDGE THAT THE OWNER-SELLER'S RECISSION OF THE  
93 AGREEMENT IF MADE PURSUANT TO PARAGRAPH (4) ABOVE, MAY BE  
94 MAILED TO ME BY CERTIFIED MAIL AT THE FOLLOWING ADDRESS:  
95 (BUYER'S ADDRESS)

96 \_\_\_\_\_  
97 BUYER

98 (d) Failure to comply with the pertinent provisions of this section shall render  
99  
100

have entered

residence

am

sale in

period

have the right

, the unpaid balance thereof

rent

my residence

ANY SALES

OR DEED

(4) If I have paid mortgage insurance premiums, I have the right to the application of the mortgage insurance coverage to any deficiency arising from sale for less than the amount of the judgment.

under the terms of the insurance agreement or under applicable state or federal law

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II 2/3

Handwritten marks on the left margin, possibly "11/11/11" and "11/11/11".

101 the transfer or assignment voidable at the election of the transferor.  
102 Sec. 2. This act shall take effect and be in force from and after  
103 its publication in the statute book.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

March 16, 1990

MAIN PHONE: (913) 296-2215  
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Senator Wint Winter, Jr.  
Capitol Bldg., Room 120S  
Topeka, KS 66612-1594

Re: Senate Bill 616

Dear Senator Winter:

Attorney General Stephan has requested that I respond to your letter regarding Senate Bill 616 which deals with obscene bumper stickers.

You ask within the text of your letter whether the conduct which would be prohibited by Senate Bill 616 is already prohibited by K.S.A. 21-4301 which addresses the "presenting, exhibiting or advertising" of any obscene material or obscene device.

While there is apparently no case authority that would state that a bumper sticker would fall within the purview of K.S.A. 21-4301, common sense would dictate that placing a bumper sticker on a vehicle, when that bumper sticker contains material which is obscene as defined by K.S.A. 21-4301(3), would fall within the violation section of that statute.

It would appear that further legislative intent can be gleaned from the fact that K.S.A. 21-4301c specifically addresses the display of obscene materials in a commercial establishment, which is a lesser violation than the violation set forth in K.S.A. 21-4301. This would seem to indicate an intent to show a more specific violation in K.S.A. 21-4301c, which deals only with such publications or exhibitions in a commercial establishment, whereas K.S.A. 21-4301a merely adopts the wording of K.S.A. 21-4301 and applies such violations to children under the age of 18 years. Another problem would arise in that the display of obscene material on a bumper sticker would obviously be displayed to persons under the age of 18 years, and therefore such actions may be determined to be a violation of K.S.A. 21-4301a as well as K.S.A. 21-4301.

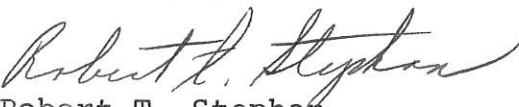
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Although K.S.A. 21-4301 or 21-4301a would prohibit the actions specified in Senate Bill 616, it is obvious that Senate Bill 616 is a more specific violation and would be the applicable violation in such situation if the legislation passes. Obviously this is a determination to be made by the legislature, whether or not a specific law is desired with regard to this conduct, however if so the definition of obscene as set forth within Senate Bill 616 could merely adopt the definition contained in subsection (3) of K.S.A. 21-4301 and include the language referring to K.S.A. 21-3516 as is presently done.

I hope this sufficiently answers the question you have presented with regard to this pending legislation, if this office can be of further assistance, please feel free to contact us immediately.

Very truly yours,

  
Robert T. Stephan  
Attorney General

RTS:EVP:cy

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III 2/2