

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

3:30 ~~xxx~~/p.m. on April 27, 1990 in room 527-S of the Capitol.

All members were present except: Senators Yost, Feleciano, Gaines, Oleen, Parrish and Rock  
who were excused.

Committee staff present:

Lynn Holt, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Representative Elizabeth Baker  
John Wine, Assistant Secretary of State  
Bob Frey, Kansas Trial Lawyers Association  
Robert T. Stephan, Attorney General  
Jonathan Small, Palmer Companies

The Chairman called the meeting to order by opening the hearing for HB 3064.

HB 3064 - enacting the Kansas limited liability company act.

Representative Elizabeth Baker explained HB 3064 to the committee. She stated that a great deal of time and study had been spent on the bill with input from corporate law experts. She supported the bill.

John Wine, Assistant Secretary of State, testified in support of HB 3064. (ATTACHMENT I)

Bob Frey, Kansas Trial Lawyers Association, stated that his organization had no position on HB 3064.

As no other conferees appeared, this concluded the hearing for HB 3064.

Senator Petty moved to recommend HB 3064 favorable for passage. Senator Kerr seconded the motion. The motion carried.

The Chairman opened the hearing for SB 798.

SB 798 - concerning crimes and punishment; relating to certain crimes committed involving minors and penalties therefor; creating the crimes of pandering obscenity involving a minor, pandering sexually oriented matter involving a minor and illegal use of minor in nudity-oriented material or performance.

Robert T. Stephan, Attorney General, testified in support of SB 798. (ATTACHMENT II)

Jonathan Small, Palmer Companies, stood to express their interest and concern regarding SB 798. He stated they neither supported nor opposed the bill, but requested additional time to examine the provisions and policy questions involved.

It was the consensus of the committee that SB 798 required a more thorough examination into the policy and technical questions. The Chairman suggested that staff examine the bill and explore the possible impacts that would occur with passage of the legislation. He also suggested the Attorney General's staff and other interested parties contact the committee staff with their comments and suggestions.

This concluded the hearing for SB 798.

The meeting was adjourned.

GUEST LIST

COMM: SENATE JUDICIARY COMMITTEE

DATE: APRIL 27, 1990

NAME (PLEASE PRINT) ADDRESS COMPANY/ORGANIZATION

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
J.P. Small	Topelca	Palmer Co.
Rich Hayse	"	"
<del>Non Smith</del>	"	K2 Bar
John Spive	"	Sec. of St. Legislature
Elizabeth Baker	"	
R.D. Frey	"	K.T.L.A.
Nancy Lindberg	"	A.G. office

Bill Graves  
Secretary of State



2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

**STATE OF KANSAS**  
**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE**  
**SUBSTITUTE FOR HOUSE BILL NO. 3064**

April 27, 1990

Substitute for House Bill No. 3064 would authorize the creation of limited liability companies in Kansas. Since the IRS has recently ruled that this form of business entity would be treated as a partnership for income tax purposes, limited liability companies offer an attractive, alternative form of organization for certain businesses. We encourage the committee to make this option available to Kansas investors.

Because only Florida and Wyoming now make this form of organization available, there is little guidance available and no uniform law to serve as the basis for our act. However, two distinguished tax attorneys, Alson Martin with Shook, Hardy & Bacon in Overland Park and Stan Andeel with Foulston & Siefkin in Wichita, provided the House committee with the advice that resulted in the substance of this substitute bill.

In addition, this office suggested the provisions that bring the limited liability company act into conformity with our limited partnership and corporate statutes and procedures. The bill now provides consistency in signature requirements, name availability, filing procedures, resident agents and terminology. It also includes parallel provisions for name reservation, restated articles, the authorization of foreign limited liability companies to do business in Kansas, filing fees, annual reports with franchise taxes, forfeiture, reinstatement and merger.

No fiscal impact is expected. It is unlikely that there will be any decrease in corporate income tax revenues since alternative structures for partnership taxation already exist. Administrative costs will be covered by the various filing fees. This bill would simply permit Kansas investors to utilize Kansas laws rather than forcing them to organize under the laws of some other state.

We encourage you to recommend Sub. HB 3064 favorably for passage.

John Wine  
Assistant Secretary of State

*Senate Judiciary Committee*  
*4-27-90*  
*Attachment I*  
*page 1 of 1*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

TESTIMONY OF  
ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY COMMITTEE  
APRIL 27, 1990  
RE: SENATE BILL 798

Mr. Chairman and Members of the Committee:

On Wednesday, April 18, 1990, the U.S. Supreme Court upheld an Ohio statute that makes possession or viewing of child pornography a crime. In Osborne v. Ohio the Court recognized that states can regulate this conduct on the basis of its interests in protecting the physical and psychological well-being of minors, and in destroying the markets for the exploitative use of children by penalizing those who possess and view the offending materials. Consistent with this opinion, I am asking you to make it a class D felony for anyone who commits this act. It would be a class C felony on all subsequent offenses.

This bill is not an attempt to regulate the personal literary taste of pedophiles, but it is an attempt to protect the children of Kansas from being victimized and to destroy the market that would perpetuate the victimization. It would also encourage the people who currently possess the material to destroy it and thereby end the permanent record of this abuse.

*Senate Judiciary Committee*  
*4-27-90*  
*Attachment II*      *page 1 of 3*

The Court recognized that the interests underlying child pornography prohibitions far exceed the interests justifying the privacy issues. The focus of this bill is to protect children and to eliminate the market for this material. It is not to regulate what people do in their own homes or minds.

It is a defense to a prosecution under Section 3 if the victim is the child or ward of the accused. We feel that this is adequately addressed by existing statutes, i.e. K.S.A. 21-3509, Enticement of a Child, which includes parents who invite, persuade, or attempt to persuade a child under 16 to commit an unlawful sexual act. This is a class D felony.

Existing law prohibits the sale of child pornography, but not its possession. Before last week's Supreme Court ruling, it appeared such laws were an unconstitutional infringement on privacy. The First Amendment as interpreted by prior U.S. Supreme Court decisions made such laws prohibitive. While the term pandering is new to Kansas law, it is essential to the constitutionality of this bill because of the historical consequences discussed in this testimony. The court has given guidelines for the constitutionality of such statutes which are incorporated in this bill.

Because of this ruling, I am able to come to you today to ask that you pass Senate Bill 798 so that we can join nineteen other states in prohibiting such actions. The language in this bill is consistent with the identical Ohio law which was declared constitutional. It was found not to penalize persons for viewing

4-27-90  
II 2/3

or possessing innocuous photographs of naked children. The state of nudity must be lewd or involve a graphic focus of the genitals of the minor who must not be the child or ward of the person charged for it to be a crime.

Thank you for considering this bill at such a late hour in the session. I would appreciate your support.

4-27-90  
II 3/3