

Approved 3-30-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Rep. John M. Solbach at
Chairperson

12:15 a.m./p.m. on March 27, 1992 in room 526-S of the Capitol.

All members were present except:

Representatives Allen, Hamilton, Heinemann, Hochhauser and Snowbarger who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Mark Stafford, Assistant Attorney General
Daniel Herman, Southwestern Bell Telephone
Bernard Hurd, Chief Prosecutor, City of Topeka

The chairman called the meeting to order.

Hearing on SB 685, notification of refund provisions required before telemarketing, was opened.

Mark Stafford, Assistant Attorney General, testified in favor of SB 685. (Attachment #1)

Daniel Herman, Southwestern Bell Telephone, offered an amendment to SB 685. (Attachment #2)

Hearing on SB 685 was closed.

Hearing on SB 686, appeals from municipal courts, was opened.

Bernard Hurd, Chief Prosecutor, City of Topeka, testified in favor of SB 686. (Attachment #3)

Rep. Vancrum moved to amend SB 685 with the proposed amendment from S/W Bell, then report SB 685 as amended favorably for passage. Rep. Pauls seconded the motion. Motion carried.

The chairman called for discussion, amendment and action on the following bills: HB 3152, SB 627, SB 625, HB 2502, HB 3053, SB 358 & HB 2602.

Rep. Parkinson moved to amend HB 3152 to put the filing with the Register of Deeds office back into the bill. Rep. Macy seconded the motion. Motion carried.

Rep. Pauls moved to amend HB 3152 to limit to three years payment of franchise tax. Rep. Gregory seconded the motion. Motion carried.

Rep. Vancrum made a motion to report HB 3152 as amended favorably for passage. Rep. O'Neal seconded the motion. Motion carried.

Rep. Pauls moved to amend SB 627 as proposed by Delta Dental. Rep. Rock seconded the motion. Motion carried.

Rep. Pauls moved to report SB 627 as amended favorably for passage. Rep. Douville seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 12:15 ~~x~~m./p.m. on March 27, 1992

Rep. O'Neal moved to report SB 625 favorably for passage. Rep. Parkinson seconded the motion. Motion carried.

Rep. Rock made a motion to conceptually amend HB 3053 by striking "greater of" and inserting "unless the court finds such amount is inadequate to appropriately penalize the defendant, the court can look at up to 50% of defendant's net worth". Rep. Douville seconded the motion. Motion carried.

Rep. O'Neal moved to conceptually amend HB 3053 by stating that no original petition will contain any reference to a claim for punitive damages. Rep. Rock seconded the motion. Motion carried.

Rep. Rock moved to report HB 3053 as amended favorably for passage. Rep. Gomez seconded the motion. Motion carried.

Representative Douville moved to amend SB 358 by amending into SB 358 all criminal law bills passed out of the Judiciary Committee and stricken from the Calendar this session. Rep. Rock seconded the motion. Motion carried. (A list of these bills will be given to the Committee on 3/30/92 by the Revisor)

Rep. Rock presented an amendment to SB 358. (Attachment #4) Representative Rock moved to amend SB 358 per his request. Rep. Pauls seconded the motion. Motion carried.

Chuck Simmons, Department of Corrections, suggested the following amendments:

1. SB 556 be amended into SB 358.
2. Redefine definition of trafficking to be more inclusive of items that are contraband.

Rep. O'Neal moved to amend SB 556 (per balloon) into SB 358. Rep. Parkinson seconded the motion. Motion carried.

Rep. Garner moved to make it a Class A misdemeanor (per O'Neal's previous motion) and further amend SB 358. Rep. Douville seconded the motion. Motion failed.

Rep. O'Neal moved to amend SB 557 into SB 358. Rep. Pauls seconded the motion. Motion carried.

Rep. Everhart moved to amend Sub. HB 2426 into SB 358. Rep. Gomez seconded the motion. Motion carried.

Rep. Everhart moved to amend SB 358 by redefining trafficking and contraband. Rep. O'Neal seconded the motion. Motion carried.

Rep. Gomez moved to amend SB 358 making property damage under \$500 a Class B misdemeanor. Rep. Rock seconded the motion. Motion carried.

HB 2602 was taken up for consideration. The Revisor reviewed a balloon which included all suggested amendments. (Attachment #5)

Martha Gabehart, Commission on Disability Concerns, requested taking out the exemption for elevators if building is less than three stories or has less than 3,000 sq. ft.

Rep. Gomez moved to amend HB 2602 by taking out the elevator exemption. Rep. Everhart seconded the motion. Motion carried.

Rep. Pauls moved to accept the balloon amendments on HB 2602. Rep. Smith seconded the motion. Motion carried.

Rep. Everhart moved to recommend HB 2602 as amended favorably for passage. Rep. Pauls seconded the motion. Motion carried.

Meeting adjourned at 1:50 P.M.



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
ASSISTANT ATTORNEY GENERAL MARK W. STAFFORD
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
TO THE HOUSE JUDICIARY COMMITTEE

IN SUPPORT OF 1992 SENATE BILL NO. 685

MARCH 27, 1992

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I would like to thank this committee for the opportunity to support Senate Bill No. 685, as amended by the Senate Judiciary Committee. This clean-up bill was requested by our office to strengthen the telemarketing fraud statute which was enacted last session.

A telemarketer is a supplier who solicits by telephone, by postcard, or by similar written notice sent through the mail. A verbal agreement made pursuant to a telemarketer's solicitation is not binding unless the consumer signs and returns a written contract. The telemarketer may not make or submit a charge to the consumer's credit card account until the telemarketer has received the contract.

Exclusions from the telemarketing fraud statute appear at K.S.A. 1991 Supp. 50-673. Subsection (d) provides an exclusion

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for telemarketers who have a refund policy. This virtually nullifies the act. A telemarketer who, in passing, states that there is a full 30-day money back guarantee is excluded from the act, even if there is no likelihood that the consumer will actually receive the refund.

Initially, we requested that the exclusion not apply to telephone solicitations. Opposition arose from the legitimate telemarketing industry. The Senate committee chair requested that our office meet with those opposing the bill to explore alternatives. An alternative approach was presented to the Senate committee and was adopted. We support the bill in its present form.

The bill in its current form creates an implied warranty of satisfaction for those goods sold by a telemarketer who is exempted pursuant to K.S.A. 50-673. The consumer is given the option to cancel the sale. Pursuant to the implied warranty, the telemarketer must make a refund to the consumer. The bill further provides that collecting a fee or refusing to make a refund in violation of the act is per se unconscionable.

We ask for your support of Senate Bill No. 685.

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TESTIMONY OF DANIEL HERRMANN

My name is Daniel Herrmann. I am employed by Southwestern Bell Yellow Pages, Inc. ("SBYP") in the capacity of Division Manager. My office is located in Wichita, Kansas at 2024 North Woodlawn.

As Division Manager, I am responsible for the sale of yellow page directory advertising to business customers for the state of Kansas. A very substantial portion of SBYP's Kansas revenue is derived from its telemarketing operation. Many of the business customers we serve consist of small operations which heavily rely upon yellow page advertising.

Many of our telemarketing customers are "new connects" which have recently established business telephone service and with which SBYP has no existing relationship. It could be argued that there is no pre-existing business relationship with respect to new connects and also non-advertisers which do not purchase advertising.

SBYP is a proponent of Senate Bill 685 with the suggestion that for clarification a "business to business" amendment be incorporated into Sect. 2 (b).

At the present time our smaller telemarketing customers which purchase less than \$1,200.00 (annual) worth of advertising are not required to sign an agreement, although a confirmation copy of an agreement reflecting their purchase is sent to them. Senate Bill 685 if applicable to SBYP, could either force the cancellation of advertising for small

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customers who fail to return signed confirmations by canvass close or, on the other hand, put the Company in the position of printing advertising for uncollectible accounts.

It is also unclear that the present definition of "consumer" exempts business to business transactions. Although SBYP would take that position in the event of a dispute, it could also be argued that yellow page advertising is purchased because advertisers are aware that the directories will be widely distributed and used by the public primarily for such personal, family or household purposes as locating a plumber, auto dealer, grocer and so forth. Only a specific business to business exemption lends the needed clarity to the law which would prevent (a) unnecessary disputes with customers (b) large numbers of potentially uncollectible accounts (if the law was found applicable) (c) otherwise unnecessary cancellations of advertising for small business which fail to timely return signed confirmations (again, assuming applicability).

Thank you for your kind attention. It is appreciated.

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Handwritten notes: "C. H. W. 11-10-11" and "11-10-11" with a large "H" and "W" scribble.

chandise sent or services provided without such written ~~contract~~ confirmation shall be considered as unsolicited goods subject to the provisions of K.S.A. 50-617, and amendments thereto.

(d) No consumer shall be held liable for payment for any good or service provided by a telemarketer unless such telemarketer has first received the written consent of the consumer in the form of a ~~contract~~ confirmation as defined in this section.

(e) In the event that the consumer sends payment to the telemarketer in the form of a personal check, cash money, or any other form of payment other than credit card without having included a signed copy of such ~~contract~~ confirmation, the consumer shall have the right to choose at any time to cancel the sale by notifying the telemarketer in writing, provided the consumer returns to the telemarketer the goods sold in substantially the same condition as when they were received by the consumer. A telemarketer that has received such notice to cancel from a consumer shall then, within 10 business days of the receipt of such notice:

(1) Refund all payments made, including any down payment made under the agreement;

(2) return any goods or property traded in to the seller on account of or in contemplation of the agreement, in substantially the same condition as when received by the telemarketer; and

(3) take any action necessary or appropriate to terminate promptly any security interest created in connection with the agreement.

Sec. 2. K.S.A. 1991 Supp. 50-673 is hereby amended to read as follows: 50-673. The provisions of K.S.A. 1991 Supp. 50-671 through 50-674 and amendments thereto do not apply to a transaction:

(a) That has been made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a business establishment that has a fixed permanent location and where consumer goods or services are displayed or offered for sale on a continuing basis;

~~(b) in which the business establishment making the solicitation has made a prior sale to the consumer or has a clear, preexisting business relationship with the consumer, provided that relationship resulted in the consumer becoming aware of the full name, business address and phone number of the establishment;~~

(c) in which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, catalogue, or other mailing material of the telemarketer that contains:

(1) The name, address, and telephone number of the telemarketer;

34 has made a prior sale to the consumer, is establishing a business to business relationship or has a clear, preexisting



CITY OF TOPEKA

City Attorney
215 E. 7th Street Room 353
Topeka, Kansas 66603
Phone 913-295-3883

Consumer Protection Division
Room 353

Testimony before the House Judiciary
Committee on Criminal Law
March 27, 1992

Representative Solbach and members of the Judiciary Committee, my name is E. Bernard Hurd, Chief of Prosecution for the City of Topeka. I am here in support of Senate Bill 686.

On occasions when appeals are taken from the Municipal Court, there are requests for jury trials which often are made anywhere from the time the appeal is filed and up until 48 hours prior to the scheduled trial.

This has been a source of confusion in the District Court which hears Municipal Court appeals because K.S.A. 22-3404, pertaining to misdemeanor traffic offense and infraction cases was recently amended to require that a defendant request a jury trial "not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel".

This section, previously, had required a request by the defendant "...not later than 48 hours prior to trial".

While the legislature amended K.S.A. 22-3404, pertaining to cases originating in District Court, it failed to amend 22-3609(4) pertaining to cases appealed to District Court de novo, which has language that is almost identical to the previous language of K.S.A. 22-3404.

The City Attorney's office supports the provision of Senate Bill No. 686 that would require that a jury trial request be filed, "not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel".

This bill would (1) satisfy the need for uniformity of practice regarding cases in the District Court and (2) would allow adequate preparation of cases and also reduce the number of continuances due to delayed requests for Jury trials.

The existence of the present language of K.S.A. 22-3404 and K.S.A. 22-3609 has resulted in some confusion when the District Court has adhered to the standards of K.S.A. 22-3404, only to find that 22-3609 which controls, was not changed. Although the case is rescheduled, usually the witnesses are present and preparations have been made to try the case to the court. In such an instance, it is usually the witnesses of the prosecution that are inconvenienced.

The proposed amendment would reduce confusion and minimize delays caused by rescheduling.

I would be happy to stand for any questions.

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Attach #3

PROPOSED AMENDMENT TO SB 358, Based on Florida Law

New Sec. . (a) As used in this section, the term "police dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(b) Inflicting harm, disability or death to a police dog is knowingly and willfully and without lawful cause or justification inflicting great bodily harm, permanent disability, or death, upon a police dog.

(c) Inflicting harm, disability or death to a police dog is a class E felony.

Also make appropriate changes in the title.

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Attach # 4

KSA

58. Legislative intent. It intended to make all buildings and facilities covered by this act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space or facilities where the general public is concerned.

History: L. 1968, ch. 216, § 3; July 1.

prohibit discrimination on the basis of disability by public entities and public accommodations. All buildings and facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by persons with a disability.

(2) New and altered Public buildings or facilities shall be designed and constructed to be readily accessible to and usable by individuals as further defined in 28 CFR Part 36.

Supp.

58-1305. Application of act. The provisions of this act shall not apply to governmental or public buildings or facilities existing or under construction or renovation pursuant to a contract let prior to January 1, 1970, but such provisions shall be applicable to any such governmental buildings or facilities which are renovated pursuant to a contract let after December 31, 1978.

History: L. 1968, ch. 216, § 5; L. 1978, ch. 213, § 8; Jan. 1, 1979.

(1) Existing

(a) Public buildings or facilities shall remove architectural barriers where such removal is readily achievable as further defined in 28 CFR Part 36.

(1) Existing

(b) Governmental buildings or facilities shall conform to the provisions set forth in 28 CFR Part 35 except where it would result in a fundamental alteration in the nature of the program offered in said building, or facility or in undue financial and administrative burdens.

(c) Historic buildings or facilities shall conform to the provisions set forth in K.S.A. 58-1307 (b) where conformance with provisions set forth in 28 CFR Part 35 or 28 CFR Part 36 would threaten or destroy the historical significance of the building or facility.

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58-1306. Display of international symbol. The international symbol of access to the physically handicapped shall be permanently displayed at the entrance of buildings and facilities that are in compliance with the standards established pursuant to this act.

History: L. 1978, ch. 213, § 3; Jan. 1, 1979.

persons with a disability

(2) New and altered governmental buildings or facilities shall be designed and constructed to be readily accessible to and usable by individuals as set forth in 28 CFR Part 35.

(d) Design, construction, or alterations of public and governmental buildings or facilities shall be done in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Appendix A to 28 CFR Part 36, except that the elevator exemption contained at section 4.1.3(5) and Section 4.1.6(i)(j) shall not apply to governmental buildings or facilities.

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Sec. ____ . KSA 58-1309

58-1309. Violation of injunction; civil penalty. (a) An aggrieved ~~physically handicapped person~~ shall not be a required party in actions brought by the attorney general or a county or district attorney pursuant to this section.

with a disability

(b) Any willful violation of the terms of any injunction or court order issued pursuant to this act shall render the violator liable for the payment of a civil penalty in such amount as the court shall determine to be necessary and proper.

(c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(d) Any person, agency or governing body responsible for the enforcement of this act may refer evidence concerning violation of the standards established pursuant to this act to the attorney general or the proper county or district attorney, who may institute, with or without such a reference, proceedings under this section.

History: L. 1978, ch. 213, § 6; Jan. 1, 1979.

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~~PHYSICALLY HANDICAPPED ACCESSIBILITY STANDARDS; HOTELS, MOTELS AND APARTMENT COMPLEXES~~

architectural

^{Supp.}
58-1316. Standards for hotels, motels and apartment complexes; definitions. As used in this act:

multi-family dwellings

(a) ~~"Apartment complex" means a multi-family dwelling contained in one or more contiguous buildings;~~

"Multi-family dwellings" means any building or buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units, as per K.S.A. 44-1016(h)(5).

(b) "hotel" or "motel" means every building or group of buildings or other structure or group of structures which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a ~~cabin camp, tourist cabin~~ or other type of lodging unit;

resorts, group homes, dormitories

transient

(c) "person" means an individual, partnership, corporation or other association of persons;

persons with a disability

(d) "municipality" means any city or county of this state;

an alteration or a change in a building or facility that affects or could affect the usability of the building or any part thereof.

(e) ~~"physically handicapped person"~~ means any person having a physical handicap due to any nonambulatory, semiambulatory, sight, hearing or any disability of incoordination or aging;

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(f) ~~"renovate" means reconstruct or remodel in an amount equal to 25% or more of the replacement value of an apartment complex, hotel or motel but shall not include construction of an addition to an apartment complex, hotel or motel or acquisition and installation of insulation, as defined by K.S.A. 70-32,117, and amendments thereto, or of a solar system, as defined by K.S.A. 70-32,160, and amendments thereto.~~

(2) An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

History: L. 1986, ch. 205, § 1; July 1.

(g) A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function are those in which the activities of the entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are generally not areas containing a primary function.

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~~58-1317. Same; uniform building code standards. (a) All apartment complexes, hotels and motels which consist of more than one unit shall conform to the Uniform Building Code standards for making buildings and facilities accessible to, and usable by the physically handicapped, published May 1, 1985, by the International Conference of Building Officials, 5260 South Workman Mill Road, Whittier, California, 90601, and as may be modified by rules and regulations adopted by the secretary of administration in accordance with the provisions of K.S.A. 77-415 et seq., and amendments thereto. Any apartment complex, hotel or motel, or any addition to any such building, to which the provisions of K.S.A. 58-1301 et seq., and amendments thereto, were applicable prior to July 1, 1986, shall be governed by the provisions of K.S.A. 58-1301 et seq., and amendments thereto, which were in effect on the date the contract for the construction or renovation of apartment complex, hotel or motel, or addition thereto, was entered into.~~

architectural accessibility

shall conform to the following federal regulation: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 CFR Part 36, as required by the Americans with Disabilities Act of 1990, 42 USCA 12101 et seq. Such standards

provisions of K.S.A. 44-1016 et. seq.

and the

(b) All multi-family dwellings shall conform to the following federal regulation: Fair Housing Accessibility Guidelines, 24 CFR, Subchapter A, Appendix 2, as required by the Fair Housing Act of 1968, as amended, 42 U.S.C. 3601-3631 et seq. All multi-family dwellings, after July 1, 1992, shall be designed and constructed to ensure the following features are accessible.

~~(b) An apartment complex, hotel or motel for which a standard has been waived or modified pursuant to K.S.A. 1986 Supp. 58-1321, shall be deemed to conform to the standards established pursuant to this section if such apartment complex, hotel or motel conforms to all such standards which have not been waived or modified and to any modified standard approved for such apartment complex, hotel or motel pursuant to K.S.A. 1986 Supp. 58-1321.~~

History: L. 1986, ch. 205, § 2; July 1.

- ~~(1) A building entrance on an accessible route;~~
- ~~(2) The public and common use areas are readily accessible to and usable by persons with disabilities;~~
- ~~(3) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs;~~
- ~~(4) All premises within covered multi-family dwelling units contain the following features of adaptable design:

 - ~~(a) An accessible route into and through the covered dwelling unit;~~
 - ~~(b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;~~
 - ~~(c) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided; and~~
 - ~~(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.~~~~

Such standards may be modified by rules and regulations adopted by the secretary of administration in accordance with the provisions of K.S.A. 77-415 et seq., and amendments thereto.

(c) Establishments located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor are exempt from (a) and (b).

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(d) All accessible sleeping rooms or suites shall comply with the following federal regulations: Article 9 of Appendix A to 28 CFR Part 36.

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Sec. — . KSA 1991 Supp. 58-1322.

58-1322. Same; violation of injunction; civil penalty. (a) An aggrieved ~~(physically handicapped)~~ person shall not be a required party in actions brought by the city, county or district attorney pursuant to this section.

with a disability

(b) Any willful violation of the terms of any injunction or court order issued pursuant to this act shall render the violator liable for the payment of a civil penalty in such amount as the court shall determine to be necessary and proper.

(c) In administering and pursuing actions under this act, the city attorney or the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties sued for and recovered by the city attorney shall be paid into the general fund of the city. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(d) Any person or agency responsible for the enforcement of this act may refer evidence concerning violation of the standards established pursuant to this act to the city attorney or the proper county or district attorney, who may institute, with or without such a reference, proceedings under this section.

History: L. 1986, ch. 205, § 7; July 1.

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