

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 23, 1995 in Room 313-S-of the Capitol.

All members were present.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Representative Gary Haulmark
Terry Morgan, Kansas Bureau of Investigation

Ron Smith, Kansas Bar Association, appeared before the committee with a bill request that would suspend the effect of the Elective Share Statute between the effective date of the new legislation and July 1, 1996; re-implement the Elective Share Statute of Kansas in effect as of December 31, 1994; and on or after July 1, 1996 re-implement the 1994 Elective Share Statute. (Attachment 1)

Representative Nichols made a motion to have the bill request introduced as a committee bill. Representative Yoh seconded the motion. The motion carried.

Hearings on HB 2075 - prohibiting certain amusement and carnival games, were opened.

Representative Gary Haulmark appeared before the committee as the sponsor of the proposed bill. He commented that Kansas currently lacks a statute to punish operators or owners who knowingly and intentionally rip off customers. The proposed bill is copied from a Oklahoma statute which has been proven to be effective. (Attachment 2)

Chairman O'Neal asked an alibi game or a flat store was where the rules change during the game and the player gets cheated. Representative Haulmark replied that this was his understanding.

Terry Morgan, Kansas Bureau of Investigation, appeared before the committee as a proponent of the bill. He stated that he has witnessed operators changing the rules of the games. (Attachment 3)

Chairman O'Neal asked whether in these cases the person who is being ripped off could bring a charge against the game operators. Mr. Morgan responded that it could be charged under the theft by deception statute. The Chairman then asked why the proposed bill was necessary. Mr. Morgan responded that it specifically addresses illegal carnival games and mandates the posting of rules for the consumer. Chairman O'Neal asked what a flat store game was. Mr. Morgan replied that it is played on a board which has numbers on it. The player drops balls onto the numbers and the operator counts them. The operator usually gives a false count. He usually lets the player win four or five times and then they begin to lose. The Chairman asked what an alibi game was. Mr. Morgan responded that he didn't know. The Chairman explained that one of the things the legislature tried to do when they did the recodification of the criminal code was to take special types of crimes found in various statutes and put them together into a more generic statute.

The Chairman stated that the only difference between this proposed bill and the theft by deception is that the proposed bill requires the posting of the rules to the game. Since the crime is already included in the criminal code, it would be easier to add the additional provision, the posting of rules, to the Kansas Consumer Protection Act.

Mr. Morgan stated that the main goal was to protect the people of Kansas from illegal carnival manager, owners and operators of carnival games.

Hearings on HB 2075 were closed.

Representative Candy Ruff appeared before the committee with a bill request that would provide that those age 18 and under who are convicted of a DUI would have the car that they were driving at the time impounded for a period of seven days.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on January 23, 1995.

Chairman O'Neal commented that there would be a DUI bill on underage drivers in the Judiciary Committee and it would be possible to have this request amended into the other bill. Representative Ruff decided to offer this as an amendment at a later time.

Representative Doug Mays appeared before the committee with several bill requests. The first would allow special deputies to be paid for services rendered and to have general law enforcement authority throughout the county if they have satisfactorily completed the course of instruction for law enforcement officers. The second request would allow municipal judges to conduct weddings.

Representative Mays made a motion to have these bill requests introduced as committee bills. Representative Graeber seconded the motion. The motion carried.

Chairman O'Neal had received several bill requests. The first was to establish a bi-partisan commission to look at judicial salaries and benefits.

Representative Graeber made a motion to have this bill request introduced as a committee bill. Representative Adkins seconded the motion. The motion carried.

The second request was from an attorney who is a Uniform Law Commissioner and noted that Kansas Uniform Durable Power of Attorney Act that was passed in 1980 does not have the sentence that was added by the National Conference in 1987. This would amend Uniform Probate Code Section 5.502 by adding the language "unless the instrument states the time of termination the power is exercised notwithstanding the lapse of time since the execution of the instrument."

Representative Adkins made a motion to have this bill request introduced as a committee bill. Representative Spangler seconded the motion. The motion carried.

Representative Adkins appeared before the committee with a bill request that would give the City of Leawood limited extra jurisdictional authority to stop individuals on highways adjacent to their jurisdiction.

Representative Adkins made a motion to have this bill request introduced as a committee bill. Representative Graeber seconded the motion. The motion carried.

HB 2003 - criminal possession of a firearm

Chairman O'Neal explained that this was an amendment to a bill that was passed last year, which brought together the statutes of criminal possession of a firearm. The proposed bill would include those who commit a nonperson felony but are found to possess a weapon at the time of the crime.

Jill Wolters, Revisors of Statute, stated that the bill was in need of an amendment which would change the language in Sections (a) (2), (a)(3) and (a)(4)(B), to "under the laws of Kansas, or a felony under the laws of another jurisdiction which is substantially the same as such felony". This would make the language uniform with the Sentencing Guidelines language.

Representative Adkins made a motion to report **HB 2003** favorably for passage as amended. Representative Graeber seconded the motion. The motion carried.

HB 2002 - mitigating circumstances shall not include physical health

Chairman O'Neal explained that this bill would set forth that mitigating circumstances shall not include physical health of the defendant.

Representative Pugh commented that this bill would be bad policy. The public should trust the judges and their sentences.

Representative Edmonds stated that it shouldn't matter what the health or age is of the perpetrator because he did the crime and the person shouldn't have been a victim in the first place.

No interest was shown at this time to work the bill.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for January 24, 1995.



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January 23, 1995

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TO: House Judiciary Committee
FROM: Ron Smith, General Counsel
SUBJ: 1994 Elective Share law

The Board of Governors of the Kansas Bar Association would like to request legislation that does the following:

1. suspends the effect of the 1994 Elective Share law (1994 HB 2430) between the effective date of the new legislation and July 1, 1996;
2. reimplements the elective share laws of Kansas in effect on December 31, 1994;
3. on or after July 1, 1996, reimplements the 1994 Elective Share Act as the law governing elective share.

We would like the bill to be effective on publication in the State Register. We do not intend that the bill affect vested rights accruing as of January 1st, to the effective date of this proposed modification.

The Reviser's office says there are two bills already introduced which accomplish similar results, one being SB 59 which fixes the recent case law regarding appointment of the Workers Compensation Appeals Board.

The Elective Share Law was effective January 1, 1995, and was put back to that date in order to give lawyers time to understand its ramifications. Our rank and file are finding the law may implicate other areas of law, such as divorce and estate planning, in unforeseen ways. By putting the concept's new effective date back to July 1, 1996, it gives the Real Estate, Probate and Trust law and Family Law sections time to ensure they can fully implement its provisions for their clients.

We realize it is an unusual request. We appreciate the opportunity to hold hearings on this concept in the very near future.

House Judiciary
1-23-95
Attachment 1

GARY HAULMARK
REPRESENTATIVE, 30TH DISTRICT
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TOPEKA

HOUSE OF
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SUB-COMMITTEE
BUDGET REFORM & GOVERNMENTAL IMPACT
SUB-COMMITTEE

Mr. Chairman and members of the committee,

Thank you for the opportunity to testify in favor of H.B. 2075.

To some this legislation may seem silly or trivial, but it is certainly not. Each year Kansans lose thousands of dollars playing carnival games that they can not win. The deck has been stacked against them. I would imagine that some of us here today have been taken once or twice in our lifetime.

Currently in Kansas we lack a statute to effectively punish operators or owners who knowingly and intentionally rip off their customers. This situation was brought to my attention by my friend and constituent Terry Morgan. Terry is a K.B. I. agent and is here today to testify in favor of this bill. This legislation was based on a new law in Oklahoma.

Mr. Chairman, this is a serious matter and sometimes no matter how hard you try you cannot win the big teddy bear.

Thank you for your consideration.



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION
DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS



CARLA J. STOVALL
ATTORNEY GENERAL

January 23, 1995

Mr. Chairman and Committee Members,

Thank you for the opportunity to testify in favor of House Bill #2075. My written testimony is on this page.

Terry L. Morgan

Terry L. Morgan

Special Agent

Kansas Bureau of Investigation

House Bill #2075

Mr. Chairman and Committee Members, on 07-30-94, KBI Special Agents received information that illegal carnival games would be operating at the Miami County Fair, Paola, Kansas. Investigation revealed a "Flat Store Game" was in operation. Special Agent MORGAN was talking with the carnival manager when two males approached individually and reported losses of \$150.00 and \$160.00 in cash. The carnival manager voluntarily refunded their money. The two males declined criminal prosecution.