

Approved: Feb. 4, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:06 a.m. on February 3, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Helen Stevens, Ks. Sheriff's Asso.
Paul Shelby, Jud. Adm.
Senator Barbara Lawrence

Others attending: See attached list

Minutes of January 28, 29, & 30 meetings were approved on a motion by Senator Emert, seconded by Senator Steffes. Motion carried.

Bill Introduction:

Senator Petty moved to introduce bills: to clarify the confidential medical records in ADA compliance on workman's compensation; for local building inspection enforcement in ADA compliance; alternative placement in foster care issues; and length of time a case sits in district court after first action has occurred regarding termination of custody, Senator Bond seconded. Motion carried.

Senator Goodwin moved to introduce a keg registration bill to help give law enforcement investigatory authority in the registration of kegs, Senator Bond seconded. Motion carried. Senator Goodwin moved to amend the Worthless Check Collection Act to clear up problems with loopholes in the law, Senator Emert seconded. Motion carried.

Senator Schraad presented a request from Overland Park City Attorney to amend K.S.A. 22-2902 to eliminate the need for lab technicians to appear in person at certain hearings; (Attachment 1) he presented two bill proposals from the Interim Committee Task Force on the Regulation of Residential Building Contractors: the first refers to merchantability and habitability and allows for the prevailing party in a suit to recover attorney's fees; (Attachment 2) the second limits the enforcement of oral contracts requiring a notice of intent contract between property purchasers and sellers. (Attachment 3) Senator Schraad moved to introduce these bills, Senator Feleciano seconded. Motion carried.

Senator Harris moved to amend K.S.A. 17-2710 to allow the addition of one professional service which may incorporate and associate with other professionals. This would allow licenses Social Workers to affiliate with licensed psychologists and psychiatrists. Senator Bond seconded. Motion carried.

Conferee Helen Stevens, representing the Kansas Sheriff's Association requested a bill that would allow sheriffs to design their own uniforms. (Attachment 4) Senator Emert moved to introduce the bill, Senator Bond seconded. Motion carried.

Senator Lawrence requested a bill that strengthens adoptive parents' rights. Senator Emert moved to introduce the bill, Senator Harrington seconded. Motion carried.

Conferee Paul Shelby from Judicial Administration representing the Kansas Supreme Court and the Kansas State Board of Law Examiners requested a bill to authorize collection of fingerprints from those applying for regular admission to practice law in Kansas and authorization to obtain criminal history background checks on all applicants. He stated this specific legislation is necessary because Section 902 of Public Law 92-184 has certain requirements not currently addressed by Kansas Statute. (Attachment 5) Senator Bond made a motion to introduce the bill, Senator Emert seconded. Motion carried.

The Chair adjourned the meeting at 10:58 a.m. The next scheduled meeting is Tuesday February 4, 1997



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January 29, 1997

Kelly Kultala
Public Relations
2843 N. 102nd St.
Kansas City, Kansas 66109

RE: Legislation Concerning Forensic Examiner Reports

Dear Kelly:

We would like to introduce legislation that would amend the language of K.S.A. 22-2902a, to add the City of Overland Park to those agencies authorized to introduce forensic examiner reports at preliminary examinations. This would eliminate the need for lab technicians to appear in person at these hearings. The proposed language would be as follows:

22-2902a. Preliminary examination; admissibility of report of forensic examiner. At any preliminary examination in which the results of a forensic examination, analysis, comparison or identification prepared by the Kansas Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury, the State Secretary of Health and Environment, the sheriff's department of Johnson, Shawnee or Sedgwick county, the police department of the cities of Topeka, Overland Park and Wichita, the Sedgwick County Regional Forensic Science Center, the Drug Enforcement Administration, the Air Force of the United States, the Navy of the United States, the Army of the United States or Bethany Medical Center Inc., located in Kansas City, Kansas are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

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Attachment 1

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PROPOSED BILL NO. _____

By

AN ACT concerning residential building contractors; creating implied warranties of habitability and workmanlike construction.

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

Section 1. (a) When used in this act:

(1) "Residence" means any: (A) Single family house; or (B) unit in a building containing living quarters occupied or intended to be occupied by not more than four families living independently of each other; or (C) unit in a multiunit residential structure of five stories or less in which title to the individual units is transferred to owners under a condominium or cooperative agreement. Such term does not include mobile or manufactured homes. Such term shall not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the residence, landscaping, fences, nonpermanent construction materials, off-site improvements and all similar items.

(2) "Contractor" means any person who undertakes, with or for another, to build or construct a new residence or alter, repair, remodel or renovate an existing residence.

(3) "Person" means any individual, corporation, partnership, association or other legal entity.

(b) (1) An implied warranty of habitability and an implied warranty of workmanlike construction shall attach to every contract or agreement for the sale or construction of a new residence or the alteration, repair, remodeling or renovation of an existing residence in this state.

(c) Under the implied warranty of habitability, the contractor represents and warrants each of the following:

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(1) The work performed and materials used comply with any architectural or other plans and specifications contained in or incorporated into the contract or agreement;

(2) the work performed and materials used comply in all material respects with applicable building codes and other public requirements or regulations establishing standards of quality and safety which have been adopted by statute, city ordinance or county resolution or by rule or regulation adopted to implement such statute, ordinance or resolution;

(3) the roof, supporting walls, floors, windows, doors, insulation and foundation of the residence shall be in safe working order and structurally sound;

(4) the electrical, plumbing or mechanical systems shall be in safe working order and condition; and

(5) the residence, or the affected part of the residence in the event of alteration, repair, remodeling or renovation, shall be reasonably suited for its intended use.

(d) Under the implied warranty of workmanlike construction, the contractor represents and warrants that the work performed was done using due care and skill according to generally accepted industry practices.

(e) No civil action directed to a breach of any warranty contained in this section shall be commenced until after the contractor has been reasonably notified in writing of the breach or defect and the contractor (1) denies the claim or (2) fails to cure, correct or remedy the breach or defect in a timely manner. The contractor shall have 30 days after receipt of the notice to cure, correct or remedy any breach of warranty or defect that has made the residence unsafe to occupy, and 90 days after receipt of the notice to cure, correct or remedy any other breach of warranty or defect. If the contractor is not reasonably available to notify as required by this subsection, a civil action directed to a breach of any warranty contained in this section may be commenced at any time. Any action brought pursuant to paragraph (1), (2) or (3) of subsection (c) shall be

commenced within three years of the date of closing in the case of a new residence or three years from the date of final payment to the contractor in the case of alteration, repair, remodeling or renovation of an existing residence or it shall be forever barred. Any action brought pursuant to paragraph (4) or (5) of subsection (c) or pursuant to subsection (d) shall be commenced within one year of the date of closing in the case of a new residence or one year from the date of final payment to the contractor in the case of alteration, repair, remodeling or renovation of an existing residence or it shall be forever barred. If compliance with the notice provisions of this subsection would result in the barring of an action, such time shall be extended by the time period required for compliance with the provisions of this subsection.

(f) Any disclaimer or limitation of any warranty contained in this section shall be void.

(g) In any action brought under this section, the court may award to the prevailing party costs and reasonable attorney fees, including those on appeal.

(h) The remedies provided in this section shall not be construed to limit, impair or exclude any other common law or statutory remedies or claims for relief.

(i) Any warranty created by this section shall not supersede any express warranty and shall be in addition to any express or other implied warranty provided by law.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

By

AN ACT concerning civil procedure; relating to subcontractors' liens; amending K.S.A. 1996 Supp. 60-1103b and repealing the existing section.

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

Section 1. K.S.A. 1996 Supp. 60-1103b is hereby amended to read as follows: 60-1103b. (a) As used in this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM

"I _____

(name of supplier, subcontractor or contractor)

of _____

(address of supplier, subcontractor or contractor)

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do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by _____ and having the legal (name of property owner) description as follows: _____

_____."

RELEASE OF NOTICE OF INTENT TO PERFORM NO.

_____ AND WAIVER OF LIEN

"I _____ (name of supplier, subcontractor or contractor) of _____ (address of supplier, subcontractor or contractor) do hereby acknowledge that I filed notice of intent to perform no. _____ covering _____ property owned by _____ (name of property owner) and having the legal description as follows:

In consideration of the sum of \$ _____, the receipt of which is hereby acknowledged, I hereby direct the clerk of the district court of _____, Kansas, to release the subject notice of intent to perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above-described real estate under the statutes of the state of Kansas."

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such

claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

(g) A claimant may not enforce, in equity or law, an oral contract unless a notice of intent has been filed as required by this section.

A claimant may not enforce, in equity or law, a written contract in excess of the amount expressed in such contract.

Sec. 2. K.S.A. 1996 Supp. 60-1103b is hereby repealed.

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

19-824. Same; uniform to be distinguishable from others; ~~attorney general's duties~~, designated by the Sheriff.

~~The uniform required herein shall be readily distinguishable from the uniform of other law enforcement agencies in the state of Kansas. The attorney general shall designate the color and design of such uniforms on or before January 1, 1970. Subsequent to such designation, all uniforms newly purchased or furnished by counties to sheriffs and their deputies shall conform with the attorney general's designation and no uniform that does not conform with such designation shall be worn after January 11, 1971. Each Sheriff shall designate the color and design of the uniforms to be worn by his/her department.~~

"b"

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Bill Introduction

Senate Judiciary Committee

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Request from the Kansas Supreme Court and the State Board of Law Examiners.

This bill request authorizes the collection of fingerprints from those applying for regular admission to practice law in Kansas from local and state law enforcement agencies. It also authorizes the Kansas Bureau of Investigation and the Federal Bureau of Investigation to provide criminal history information concerning the applicants, upon request by the Kansas Supreme Court or the State Board of Law Examiners.

The Disciplinary Administrator of the Kansas Supreme Court, who initially reviews every application for the board of law examiners, requested permission to take fingerprints in order to: 1) provide a positive means of identification of applicants, should that be necessary; and, 2) to conduct a criminal history background check on all applicants. The state board of law examiners recommended such action to the Supreme Court and the Court has authorized the proposed legislation be submitted.

The State Board of Law Examiners, appointed by the Supreme Court, already conducts a general background check in connection with the Court's determination of an applicant's character and fitness to practice law. However, until now that background check has been based primarily on information furnished by the applicant on an application to take the bar examination. It has not included a criminal history background check.

Specific legislation is necessary because Section 902 of Public Law 92-184 permits the exchange of federal criminal history information with state and local governments for purposes of employment and licensing if authorized by state statute and approved by the Attorney General of the United States.

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Since Kansas does not presently have a state statute authorizing the collection of fingerprints and the request of the Federal Bureau of Investigation for criminal history information for licensing of prospective lawyers, specific legislation to that effect is required. This legislative proposal is submitted to satisfy that requirement.

In addition to the above requirement, more and more of the applicants are from out-of-state and from foreign countries.

This language proposed is drawn, in principal part, from Alaska Statutes, Sec. 08.08.136 and 137 and has been approved by the Chief Justice, Kansas Bureau of Investigation and the Federal Bureau of Investigation.

The cost of the finger printing and background check will be borne by the applicants.

The Kansas Bureau of Investigation advises that these criminal history background requests can and will be handled in the ordinary course of business.

We urge your favorable consideration to this request.

9 AN ACT authorizing the taking of fingerprints from those applying for regular
10 admission to practice law in Kansas and authorizing local and state law enforcement
11 agencies to assist the state Board of Law Examiners by providing criminal history
12 information concerning said applicants, upon request by the Kansas State Board of
13 Law Examiners.

14

15 *BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:*

16 New Section 1. (a) The supreme court may require all applicants for regular
17 admission to practice law in this state to be fingerprinted. The fingerprints shall be
18 used to identify the applicant and to determine whether the applicant has a record of
19 criminal arrests and convictions in this state or other jurisdictions. The supreme
20 court and the state board of law examiners are authorized to submit the fingerprints
21 to the Kansas Bureau of Investigation and to the Federal Bureau of Investigation for
22 a state and national criminal history record check. The state board of law examiners
23 and the supreme court may use the information obtained from fingerprinting and
24 the criminal history only for purposes of identification of any applicant and in its
25 official determination of character and fitness of the applicant for regular admission
26 to practice law in this state.

27 (b) Local and state law enforcement officers and agencies shall assist the
28 supreme court in the taking and processing of fingerprints of applicants seeking
29 admission to practice law in this state and shall release all records of an applicant's
30 arrests and convictions to the supreme court and the state board of law examiners.

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