

Approved: Feb. 5, 1997  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:00 a.m. on February 4, 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: Randy Hearrell, Ks. Judicial Council  
Paul Shelby, Judicial Administration  
Sherlyn Sampson, Clerk of Douglas Co. Dist. Ct.  
Pam Moses Clerk of Reno Co. Dist. Ct.

Others attending: See attached list

Senator Oleen moved to adopt the minutes of the February 3 meeting. Senator Harrington seconded. Motion carried.

**SB 66 - Payment of demands and medical assistance by conservators**

Conferee Randy Hearrell appeared as a proponent of **SB 66** - payment of demands and medical assistance by conservators. He stated that this bill proposes amending K.S.A. 59-3026 and K.S.A. 39-709 (e). (Attachment 1) A motion was made by Senator Feleciano to approve SB 66 and place it on the consent calendar. Senator Emert seconded. Motion carried.

**SB 87 - Cigarette or tobacco infractions; classification and trials**

Conferee Sherlyn Sampson, a proponent representing the Kansas Association of District Court Clerks & Administrators (KADCCA), introduced **SB 87** as a clean up bill stating that the bill cleans-up 1996 House bill No. 2544 which provided for cigarette or tobacco infractions. **SB 87** amends various sections and makes infraction cases tried, to the court, not to a jury. (Attachment 2) On inquiry by Senator Oleen, Ms. Sampson clarified that the infractions addressed refer to a minor. On inquiry by Senator Harris regarding where an appeal would be heard, Ms. Sampson stated there would be a new trial with a different district court judge. Paul Shelby testified in favor of **SB 87** explaining the events which led up to a need for a clean up bill. (Attachment 3) After further discussion Senator Oleen moved **SB 87** favorably for passage. Senator Petty seconded. Motion carried.

**SB 89 - Limited actions, approval of judge related to claims for property**

Conferee Pam Moses appeared as a proponent of **SB 89** on behalf of the Legislative Committee of the KADCCA, requesting changes on four forms used by the court. (Attachment 4) Paul Shelby testified in favor of SB 89. (Attachment 5) Senator Bond moved to approve **SB 89** favorably and place it on the consent calendar. Senator Emert seconded. Motion carried.

The Chair adjourned the meeting at 10:25 a.m. The next scheduled meeting is Wednesday February 5, 1997.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-4-99

NAME	REPRESENTING
Kathy M. Heanue	Judicial Council
Wayne Blecker	District Ct.
Kay Talley	KA DCCA
Pat Moses	KA DCCA
Shelby Sampson	KA DCCA
Paul Shelby	OTA
Mary Anne Hellebrand	KS KT, JUC
Diana Kettle	ACS
Amy Bollig	ACS
Larue Ann Brown	KHA
Doug + Mary Kohls +	Farm Bureau
Nathan, Kevin, Jaud, Miranda	
Joyce Clark	KCPAA
Judy Sloman	SAS/ADA S
Michelle Stetler	AG

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**JUDICIAL COUNCIL TESTIMONY  
ON 1997 SB 66  
SENATE JUDICIARY COMMITTEE  
FEBURARY 4, 1997**

K.S.A. 59-3026 authorizes the court to order the conservator of a deceased conservatee to pay appropriate funeral expenses and expenses of last illness. If payment of those expenses deplete the assets of the estate, the court can discharge the conservator and the surety and close the case.

K.S.A. 39-709 (e) authorizes SRS to file a claim against a conservatorship estate of a decedent for medical assistance provided after June 30, 1992. This claim will usually include some expenses of last illness and some expenses for long-term nursing home care.

It is not unusual to have a conservatee die intestate with no known heirs, a very modest estate and no unpaid claims except that of SRS. It is a common interpretation of the present statute by judges of the district court that because SRS claims are not specifically named in the statute that SRS must petition to administer the estate before it can recover. Some estates are not large enough to justify the costs of administration and they remain open. By amending the statute as proposed by the Judicial Council a number of these conservatorships could be closed.

*Senate Judiciary  
Attachment 1  
2-4-97*

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**SENATE BILL NO. 87**  
**Senate Judiciary Committee**  
**February 3, 1997**

Testimony of Sherlyn Sampson  
Clerk of District Court, Douglas County  
for the Kansas Association of District Court Clerks & Administrators

Mr. Chairman and members of the committee:

This bill is being introduced by the Kansas Association of District Court Clerks & Administrators as a clean up bill. This bill cleans-up 1996 House bill No. 2544 which provided for cigarette or tobacco infractions.

Prior to the passage of 1996 HB 2544, KSA 22-3404 provided for jury trials for felonies, misdemeanor and traffic offenses but specifically stated that trials of traffic infractions shall be to the court. With the passage of 1996 HB 2544, the word "offense" in Section 1, 2 and 4 of KSA 22-3404 was changed to "infraction" implying that infraction cases could be tried to a jury. However, section 5 still specified that trials on infraction cases shall be to the court.

SB 87 amends those sections and makes infraction cases tried to the court not to a jury. Section 3, 4 and 5 of this bill also amends KSA 22-3409, KSA 22-3412 (a) (1) (d) and KSA 22-3609a (5) by deleting the words infraction and cigarette or tobacco infraction and adding the word offense. This would ensure trials for traffic and cigarette or tobacco infractions are tried to a court and not a jury.

Thank you for allowing me the opportunity to speak to the committee on behalf of the District Court Clerks & Administrators in Kansas. I urge your support of this bill. If you have any questions, I would be happy to answer them.

*Senate Judiciary*  
*Attachment 2*  
*2-4-97*

Senate Bill No. 87  
Senate Judiciary Committee  
February 4, 1997

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear before the committee in support of Senate Bill No. 87 which relates to criminal procedure and specifically to cigarette or tobacco infractions.

This bill is a very important clean-up measure to 1996 Houe Bill No. 2544. It was introduced on behalf of the Kansas Association of District Court Clerks and Administrators.

Prior to the passage of 1996 H.B. 2544, K.S.A. 22-3404 provided for jury trials for felonies, misdemeanors and traffic offenses and specifically stated that trials of traffic infractions would be only to the court.

However, when K.S.A. 22-3404 was amended and when jury trials were addressed in paragraphs (2) and (4), the word "offense" was changed to "infraction," giving us conflicting law since paragraph (5) still specified that trials on infraction cases shall be only to the court.

This conflicts extends to other statutes noted in 1997 Senate Bill No. 87.

Due to the nature of an "infraction" as created by the legislature, it appears the intent was not to provide jury trials for these non-criminal violations. 1997 Senate Bill No. 87 follows that intent.

We urge your favorable consideration for Senate Bill No. 87.

*Senate Judiciary  
Attachment 3  
2-4-97*

SENATE BILL 89

Pam Moses  
Clerk of the District Court  
Reno County  
Hutchinson, KS

DATED: February 4, 1997

I am here on behalf of the Legislative Committee of the KADCCA and appreciate the opportunity to state our views on SB89.

We are requesting K.S.A. 61-2605 forms 11, 20, 22, & 23 to reflect a judges signature in lieu of the clerks signature.

Changing the signature line from the clerk to the judge on Form 11- a "General Execution and Return" and Form 23 an "Execution on Foreclosure of secured Interest and Return" would make these forms parallel to Form 16 that was changed a couple of years ago.

Changing the signature line from the clerk to the judge on Form 20, an "Order for Delivery of Property in Replevin and Return" will conform with 61-2401b stating, "the judge may enter or cause to be entered an order for the delivery of property to the plaintiff".

Changing the signature line from the clerk to the judge on Form 22, an "Order for Possession of Property and Foreclosure of Secured Interest and Return" will conform with 61-2402b stating "a judge may enter or caused to be entered an order for the delivery of the property as provided in subsection (c)".

The changing of these forms 11, 20, 22 and 23 in K.S.A. 61-2605 would be consistent with the statutes and other forms, therefore, eliminating confusion of our clerks and the attorneys as to who are to sign these particular forms.

We are also requesting K.S.A. 61-2401b to substitute judge for clerk in the area "if the bond shall be found to be sufficient," the judge shall approve the same and note the judges approval thereon. This is to correspond with other bond approvals by judges such as K.S.A. 61-2402.

Thank you for taking the time to listen to our views on these four forms.

*Senate Judiciary  
attachment 4  
2-4-97*



att # 5

Senate Bill No. 89  
Senate Judiciary Committee  
February 4, 1997

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee:

We appreciate the opportunity to appear in support of Senate Bill No. 89 which relates to the code of civil procedure for limited actions.

This bill was introduced on behalf of the Kansas Association of District Court Clerks and Administrators.

The bill amends K.S.A. 61-2401, which relates to procedures that the plaintiff, in an action to recover possession of specific personal property, files a bond with the clerk of the district court in not less than double the amount of the value of the property as stated in the affidavit or verified petition, or as found by the court at a hearing, with one or more sufficient sureties. Current language has the clerk approving the bond. We feel that the judge should approve the bond and sureties and not the clerk.

This amendment is found on Page 2, line 17.

In 1994, the legislature amended Form 16 of K.S.A. 61-2605 to require a judge's signature for a writ of restitution and execution. Forms 11 and 23 are also executions, but currently the forms provide for the Clerk to sign them. Our amendment would make the forms for executions consistent. The changing of forms 20 and 22 would make them consistent with this proposal.

We urge your favorable consideration for Senate Bill No. 89.

*Senate Judiciary  
Attachment 5  
2-4-97*