

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 14, 2005 in Room 313-S of the Capitol.

All members were present except:
Tim Owens- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Kathy Porter, Office of Judicial Administration

The hearing on **HB 2377 - judicial administrator appointed by the Supreme Court and serves at the will of the court**, was opened.

Chairman O'Neal gave the committee background information of the bill. **HB 2880** was introduced during the 2004 legislative session which would have mandated that the judicial administrator be appointed by the court and not just the Chief Justice. The bill was controversial but it passed both houses and was vetoed by the Governor.

The Chairman received a letter from Chief Justice Kay McFarland stating that the Supreme Court amended its internal operating rules to provide that the judicial administrator be appointed by the Supreme Court and would serve at the will of the Supreme Court. In view of that fact, Chairman O'Neal requested a bill that would change statutory language to dovetail the internal operating rules.

Kathy Porter, Office of Judicial Administration, requested that the committee simply repeal K.S.A. 20-318 since the Supreme Court is doing the change internally. (Attachment 1)

Chairman O'Neal pointed out that if it was repealed then it would also delete the provision which divided the state into different sections as to what justice supervises what district.

Ms. Porter responded that the Court met last Friday in conference and decided to request that the statute be repealed. The Justices believe they can also assign sections to each justice by internal operating rules.

Chairman O'Neal pointed out that the Supreme Court could also probably set docket fees as they see fit by internal operating rules.

The hearing on **HB 2377** was closed.

HB 2016 - arbitration; validity of agreement; can apply to employer employee contracts and tort claims

Representative Kinzer made the motion to report HB 2016 favorably for passage. Representative Colloton seconded the motion.

Representative Pauls proposed an amendment that would have the employer paying the initial filing fee if there is any existing controversy (Attachment 2). She made a substitute motion to move the amendment. Representative Kelly seconded the motion.

Representative Davis questioned who the initial filing fee is paid too and what would that amount be? Representative Pauls was not sure of the amount but that the fee would be paid to the arbitrator. Representative Loyd believed the fee would be whatever the arbitrator set. Chairman O'Neal stated that K.S.A. 5-410 states that arbitration fees and expenses shall be provided out of the amount awarded. Representative Crow was concerned that the person paying the initial filing fee would also be the one hiring

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 14, 2005 in Room 313-S of the Capitol.

the arbitrator and could be a conflict of interest. Representative Pauls wanted to make sure that the employer is responsible for the initial cost. The motion carried 9-7.

Representative Jack made the motion to reinstate subsection (3) "any provisions of a contract providing for arbitration of a claim in tort." Representative Crow seconded the motion.

Representative Jack explained that by removing that section the right to a jury trial would be deleted and it would remove a personal right we have as citizens to be tried by our peers. The motion carried 9-8.

Representative Jack made the motion to report HB 2016 favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

HB 2168 - UCC; defining a new class of payment instrument, drawn on the customer's account without an authorized signature, called a demand draft

Representative Jack made the motion to report HB 2168 favorably for passage. Representative Kelly seconded the motion. The motion carried.

HB 2114 - Dram shop law; liquor licensee liability

Chairman O'Neal appointed the following members to a sub committee on **HB 2114**: Kinzer (Chair), Colloton, & Crow.

The committee meeting adjourned at 4:15 p.m. The next meeting is scheduled for February 15 at 3:30 p.m. in room 313-S.



The Supreme Court of Kansas

Kansas Judicial Center

Topeka, Kansas 66612-1507

House Judiciary Committee
Monday, February 17, 2005

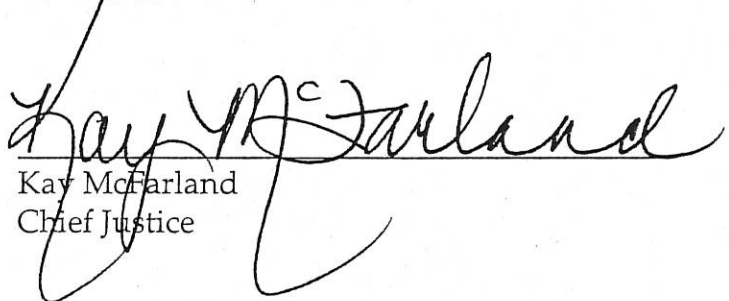
Kansas Supreme Court Statement on 2005 H. B. 2377

The Supreme Court has considered H. B. 2377 and takes the following position:

1. The Judicial Branch is a separate and co-equal branch of government;
2. The Kansas Constitution vests the Supreme Court with the duty and authority to administer the Judicial Branch;
3. K.S.A. 20-318, in its entirety, concerns administration of the Judicial Branch; and
4. Therefore, K.S.A. 20-318 should be repealed rather than amended.

For your further information, as I advised Chairman O'Neal and other legislative leaders in my letter of February 4, 2005, the Court has amended its administrative procedure to provide that the Judicial Administrator should be selected by and responsive to the Supreme Court rather than the Chief Justice. A copy of the O'Neal letter is attached hereto. Like letters were sent to Speaker of the House Mays, Senate President Morris, and Senate Judicial Committee Chairman Vratil.

For the Court


Kay McFarland
Chief Justice



Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(785) 296-5322

February 4, 2005

Representative Michael O'Neal
Chair, House Judiciary Committee
Room 170-W, Statehouse
Topeka, KS 66612

Re: Judicial Administrator

Dear Representative O'Neal:

The Supreme Court has recently amended its internal operating rules to provide:

A judicial administrator shall be appointed by the Supreme Court to serve at the will of the Supreme Court. The judicial administrator shall be responsible to the Supreme Court, shall implement the policies of the court under the supervision of the Chief Justice and shall perform such other duties as are provided by law or by the Supreme Court or the Chief Justice.

I want to let you know of the change the Court has unanimously adopted, which should satisfy any concerns on this matter.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Kay McFarland".

Kay McFarland
Chief Justice

KMcF:mr

HOUSE BILL No. 2016

By Representative Carter

12-27

Proposed amendment
Representative Carter
February 11, 2005

House Judiciary
2-14-05
Attachment 2

9 AN ACT concerning arbitration; relating to the validity of an agreement;
10 amending K.S.A. 5-401 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 5-401 is hereby amended to read as follows: 5-401.

14 (a) A written agreement to submit any existing controversy to arbitration
15 is valid, enforceable and irrevocable except upon such grounds as exist at
16 law or in equity for the revocation of any contract.

17 (b) Except as provided in subsection (c) ~~a provision in a written con-~~ and (d)
18 tract to submit to arbitration any controversy thereafter arising between
19 the parties is valid, enforceable and irrevocable except upon such grounds
20 as exist at law or in equity for the revocation of any contract.

21 (c) The provisions of subsection (b) shall not apply to: ~~(1) contracts~~
22 of insurance, except for those contracts between insurance companies,
23 including reinsurance contracts; ~~(2) contracts between an employer and~~
24 ~~employees, or their respective representatives; or (3) any provision of a~~
25 ~~contract providing for arbitration of a claim in tort.~~

26 Sec. 2. K.S.A. 5-401 is hereby repealed.

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

(d) In contracts between an employer and employee, or their
respective representatives, which provides by written agreement that
any existing controversy be submitted to arbitration, the employer
shall pay any initial filing fee required to submit a controversy to
arbitration. If the employer refuses or fails to timely pay such fee,
that portion of the agreement requiring the controversy to be
submitted to arbitration shall be unenforceable.