

*mailed to Committee  
9/22/77*

MINUTES

SPECIAL COMMITTEE ON JUDICIARY - A

August 25 and 26, 1977

Room 532, State House

Members Present

Senator Elwaine Pomeroy, Chairman  
Representative Eugene Gastl, Vice-Chairman  
Senator Don Allegrucci  
Senator Paul Burke  
Senator Jim Francisco  
Representative Doug Baker  
Representative Ward Ferguson  
Representative Robert Frey  
Representative Joe Hoagland  
Representative Neal Whitaker

Staff Present

Paul Purcell, Kansas Legislative Research Department  
Art Griggs, Revisor of Statutes Office

Morning Session

The meeting was called to order at 10:00 a.m. by Chairman Pomeroy, who directed the Committee's attention to Proposal No. 29.

Proposal No. 29 - Product Liability

Mr. Harold Westberg, President of Wyatt Manufacturing Company, Salina, commented on the problem of securing adequate and affordable liability insurance. He stated that his company's insurance premiums have increased from \$4,500 (\$5 million coverage) in 1975 to \$210,000 (\$1 million coverage with \$25,000 deductible) in 1977. He stated that the statute of limitations is of the highest priority as far as he is concerned.

Mr. Larry E. Sanford, staff attorney for the Hesston Corporation, discussed product liability in general. He stated there are good reasons to codify the present case law to provide for certainty and predictability. With regard to Draft No. 1, Mr. Sanford explained that it amends K.S.A. 60-513 by providing a limitation on actions based on the theory of strict liability. He stated it would be desirable because it would be possible to determine a date after which the manufacturer or seller is no longer responsible unless there was negligence in production or design.

Mr. Don Vasos, representing the Kansas Trial Lawyers Association, said that he feels there has been no showing that the present law is unfair to business and that there is a healthy business climate in Kansas to substantiate this. He stated he does not believe there is a crisis with product liability insurance, and that if there is an increase in premiums it cannot be directly related to the law. He believes the proposed bill is not looking at where the problem arises, which is with the insurance companies, and that the Insurance Commissioner has concluded that this is the case. He stated that his organization opposes Draft No. 1.

A member of the Committee inquired if K.T.L.A. opposes all 12 of the bills, and Mr. Vasos stated they have major disagreement with some and marginal disagreement with others.

Mr. Dudley Smith of the Kansas Bar Association, said that the major concern seems to be the difficulty in obtaining insurance, and that if the drafts do not appear to make significant progress in this regard, they should not receive the Committee's approval. He stated that there are some good things about statutes of limitation but that the eight year limitation would cause problems. He explained that 95 percent of the products used in Kansas are manufactured outside the state, and the drafts would not affect them. On the basis of testimony heard from the insurance industry previously, Mr. Smith stated that any benefits from the passage of Draft No. 1 is speculative.

Mr. Sanford said new section 2 would increase the statutory time for bringing actions under the theory of strict liability. The Chairman inquired if it would clarify the section if on the second line of (a) everything was eliminated after the word "product" and "is" and "if" in the third line were eliminated. Mr. Sanford stated that this would reflect his intent. It was moved by Senator Burke and seconded by Senator Francisco that the section be amended in that fashion. Motion carried.

The Chairman asked members if they wished to deal with the proposed bills individually or consider them as a package. It was the consensus that the Committee preferred to hear all explanations before acting on any of the proposals.

The minutes from the previous meeting were approved.

#### Afternoon Session

#### Proposal No. 29 (Continued)

Mr. Sanford discussed the implications of Draft No. 2, which deals with alterations and modifications and explained that the proposal would allow recovery from the person who had authorized or allowed such modification, but not allow recovery against the manufacturer who had no knowledge that such alteration had been made.

Mr. Don Vasos stated that such a provision is not necessary and that under present law there is a defense available to the manufacturer. He said this would not accomplish what manufacturers want because many of the products are used outside the state; that there is no evidence the proposal will address the problem of rising insurance premiums; and that it cannot be shown that alteration is a significant problem.

Mr. Smith stated that this is the law already; that the problem is with what a "reasonable person" would do, and that this is a difficult problem. He stated that a foreseeable misuse such as this has been held actionable and this bill would take that right away. Mr. Smith explained that this proposal applies to all cases, not just strict liability, and that is one of the things wrong with it.

Mr. Sanford stated the term "foreseeable" had been left out intentionally; that it is reasonable that the consumer have some responsibility to keep a piece of equipment in the basic state it was in when received; and that if modification creates a hazardous situation, he should be responsible. He stated he would have no objection to making the proposal only to "strict liability actions."

A motion was offered by Senator Burke to amend Draft No. 2 to make it applicable only to strict liability. The motion was seconded by Representative Whitaker. After discussion, Representative Hoagland offered a substitute motion that the bill be redrafted to codify the case law. Motion was seconded by Representative Baker.

Upon vote, the substitute motion carried.

Mr. Sanford explained that Draft No. 3 makes the duty of the manufacturer clear as to the dangers and use of a product, and recognizes the duty of a user to recognize and guard against obvious dangers.

Mr. Vasos told the Committee that the courts have made a policy decision that the manufacturer is in a better position than anyone to know about dangers, and that is why the burden has been placed on the manufacturer.

Mr. Smith said that he has no problem with the basic idea of this proposal but that he does not feel it changes the current law, that there are not too many of these cases anyway and that this draft would not change the number of jury cases or the education of the user. He said that the bill would be better if it said something to the effect that the "operator must use reasonable care in using the product."

It was moved by Representative Ferguson and seconded by Representative Frey that the word "protect" be deleted where it appears in the proposal. Motion carried.

Mr. Sanford discussed Draft No. 4 explaining that if a product is manufactured in accordance with government standards and acceptable practices, the manufacturer could be confident that the product would not be considered defective.

A lot of standards are set by industry itself, and Mr. Sanford agreed that in many instances it is impossible to get information except from industry because no one else is knowledgeable enough to set standards. He pointed out that, under section 1(a), reference is made to "best standard."

Mr. Vasos noted that this kind of legislation would allow the manufacturer to insulate himself from liability, and that section 1 provides for "best standards" but if they are not put into effect, a lower standard is permitted. He suggested that many times the "best standards" are never adopted. He stated that generally the adoption of industrial standards is not in the best interest of the consumer.

Mr. Smith stated that he could not defend a case under this proposal and is surprised it has been requested by industry. Furthermore, it is not in the best interest of the consumer.

The Chairman pointed out that the Committee is getting into time problems; that there is a two-day meeting scheduled for both September and October and he is generally opposed to trying to schedule additional meetings. He expressed the hope that a final wrap up could be held at the end of October to review final drafts of bills. He suggested that discussion of these proposals not be continued on the 26th, but that the agenda as established be followed. He stated that more time could be devoted to these proposals in September.

August 26, 1977

Morning Session

Proposal No. 31 - Mental Illness Statutes

Mr. Frank Yeoman, assistant District Attorney of the third judicial district, commented on a number of issues addressed at previous meetings. The Chairman inquired if there are any statistics indicating the percentage of petitions coming before the District Attorney that results in commitment. Mr. Yeoman stated that there are periods of time when they must tell people they can do nothing for them; that probably 50 or 60 percent must resort to some other procedure. He explained that it appears individuals must hurt themselves or someone else before they can get help. The Chairman asked for suggestions in defining "dangerousness" or suggestions for other standards.

Mr. Yeoman stated he had given considerable thought to this but that sometimes specific definitions can cause more problems than they solve; his concern is with giving guidance to the courts so that evidence that a person is homicidal would not be the only thing required.

Mr. Yeoman noted that with regard to voluntary commitment, it is a complicated procedure and the requirement for three days notice before being able to leave is entirely meaningless. The Chairman inquired if "beyond a reasonable doubt" is the problem and Mr. Yeoman stated that courts are not willing to make that kind of a finding.

The Chairman said he did not think it was the intent of the Legislature that a "full blown hearing" be held but that he can understand how the statute can be interpreted differently. The Chairman pointed out that Judge Schowengerdt had suggested having a summary report and hearing every six months, which would cut down some of the workload.

Judge Matt Dowd, Associate District Judge, called attention to a letter which had previously been directed to the Chairman. He stated that the 48-hour hearings have caused problems and that they have been trying to carry out the legislative intent within the limits of their ability; that probably 90 percent of the hearings are held at the Topeka State Hospital and the Veterans Hospital. He suggested allowing a waiver of the time limit because of the difficulty in scheduling with so many people involved.

Judge Dowd said that "mental illness" and "dangerous to self and others" need defining.

The Chairman directed the Committee's attention to a checklist of items for Committee consideration.

A motion was made by Senator Burke to allow the same kind of procedure during court hours as now allowed during non-court hours.

The motion was seconded by Representative Hoagland, and after additional discussion, the motion was passed.

Attention was directed to the first six items in the checklist and it was noted that they relate to definitions.

Representative Ferguson offered a motion that staff develop a constitutionally clean phrase to cover the individual who could, without treatment, be reasonably expected to become dangerous. After discussion concerning various cases, motion was seconded by Senator Burke.

With regard to his motion, Representative Ferguson suggested that what he wanted could be accomplished in 59-2908. Upon vote, motion carried.

With regard to item No. 6, the Chairman explained there had been concern expressed that in some rural communities hospitals might not have a psychiatric section. It was moved by Senator Burke and seconded by Senator Francisco that the language in the statute be changed to make it clear that the treatment facility be defined as that portion of the facility dealing with psychiatric care. The Chairman noted there had been a question whether the statutes should be changed or whether the administrative changes were satisfactory. After discussion the Vice-Chairman offered a substitute motion that staff prepare an adaptation of the Pennsylvania law for Committee consideration. Motion was seconded by Representative Frey and carried.

The Chairman stated there had been several suggestions regarding item No. 22, such as excluding Saturday as well as Sunday, and extending the 48-hour period upon agreement. It was moved by Representative Whitaker and seconded by Senator Allegrucci that Saturday be excluded. The motion carried.

#### Afternoon Session

The Chairman announced that, after conferring with members, the next meeting would be changed to September 19 and 20.

#### Proposal No. 31 (Continued)

With regard to item No. 27, emergency treatment, the Chairman stated he does not interpret the law the way doctors have been doing, and that he feels if a person is admitted he could be given something to calm him down without adversely affecting his judgment.

Senator Francisco moved that psychiatrists be included in the Good Samaritan Law. Motion was seconded by Representative Ferguson and carried.

Representative Whitaker moved that a review be required every ninety days and a full hearing every six months. Motion was seconded by Representative Frey, and upon vote, the motion lost.

Senator Francisco moved that there be a clarification insofar as a full hearing is concerned. There was no second.

There was discussion concerning what occurs at such a hearing, and variance in different parts of the state was disclosed. It was moved by Representative Ferguson that the wording be changed to allow for "formal or informal review of the medical records." There was no second.

#### Proposal No. 36 - Initiative and Referendum

Staff noted that when there is a conflict in petitions other states generally put them all on the ballot and the petition which receives the highest number of votes prevails.

The Chairman called attention to the fact that there are some bills before the Committee which the Committee could consider or ask staff to draft something else.

It was moved by Senator Burke that staff be directed to draft legislation to provide for referendum on constitutional amendments with 10 percent, without geographical consideration, of those who voted for the Secretary of State at the last election. Motion was seconded by Representative Whitaker. Upon vote, motion failed.

Senator Burke made the same motion, but added "or 60 percent of the congressional districts -- three out of five." There was no second.

Senator Burke then made a motion requiring 10 percent of those voting for the Secretary of State at the last election, from 75 percent of the counties. Motion was seconded by Representative Whitaker, and died upon a tie vote.

Senator Burke then moved that the requirement be 10 percent of those voting for Secretary of State at the last election with a minimum of 10 percent of the voters in each of 75 counties. Motion was seconded by Representative Whitaker, and carried.

Senator Burke clarified that he was asking for this only with regard to Constitutional amendments.

Proposal No. 30 - Delegation of Legislative Authority

The Chairman noted that there had been no testimony. There was discussion to the effect that the Legislature makes a law and does not expect to leave matters to regulatory bodies.

It was moved by Representative Ferguson that language be drafted to the effect that the violation of a temporary rule or regulation is not automatically a misdemeanor. Motion was seconded by Senator Francisco, but lost upon vote.

Proposal No. 34 - Uniform Exemptions Act

It was moved by Representative Ferguson and seconded by Representative Frey that the Committee recommend that the Uniform Exemptions Act not be passed. The motion carried.

Proposal No. 35 - Uniform Simplification of Land  
Transfers and Land Sales Practices Acts

It was moved by Representative Frey and seconded by Representative Gastl that no action be taken on Proposal No. 35. The motion carried.

Staff inquired whether this action applied to the Land Sales Practices Act amendments and Representative Gastl suggested Representative Hohman should be contacted in this regard. The Chairman agreed with this. Staff noted the Securities Commissioner was unable to be present but was opposed to the bill because it eliminated certain protections. The Chairman stated the Committee should hear from both Representative Hohman and the Securities Commissioner.

Proposal No. 33 - Court Costs

It was moved by Senator Burke and seconded by Senator Allegrucci that a bill draft be recommended for introduction. The motion carried.

The Chairman inquired about the Ways and Means study, and staff noted that the study does not relate to the docket fee as such, but to total revenues and the funding system in general.

Proposal No. 31 - Mental Illness Statutes

The Chairman asked members to return to the mental illness proposal. Senator Burke suggested changing the not guilty because of insanity plea to "guilty by reason of insanity."

It was moved by Representative Frey that no further consideration be given to this matter. There was no second. Representative Frey then moved to provide for a review every six months instead of every 90 days after a finding of "not guilty because of insanity." The motion was seconded by Representative Gastl.

Senator Burke offered a substitute motion to require an annual review. The motion was seconded by Senator Francisco and it carried.

The Chairman suggested that Committee members continue to study the checklist to determine if any additional items should be addressed at the next meeting.

The Chairman adjourned the meeting at 4:45 p.m.

Prepared by Paul Purcell

Approved by Committee on:

October 18, 1977  
(Date)