

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY-A

November 18, 1977  
Room 519 - State House

Members Present

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

Staff Present

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

The Chairman called the meeting to order at 9:30 a.m. and directed the Committee's attention to the bill drafts for Proposal Nos. 31 and 29.

Proposal No. 31 - Mental Illness Statutes

Staff reviewed bill draft 7 R.S. 1638. Representative Ferguson moved that subsection (5) on page 6 be written to the effect that a peace officer would have to name the person referred to. Senator Burke seconded the motion and it passed.

Staff then reviewed bill draft 7 R.S. 1711. There was discussion of the term "dangerous" as the criteria for requiring release under 7 R.S. 1711. After discussion, Senator Burke moved that the draft be adopted and introduced. Representative Whitaker seconded the motion and it passed.

Proposal No. 29 - Product Liability

Staff reviewed draft 7 R.S. 1694 and then the Chairman noted that Mr. Larry Sanford of the Hesston Corporation and the Kansas Association of Commerce and Industry had requested that he be allowed to speak to the Committee about certain aspects of the bill. None of the Committee members had any objections and Mr. Sanford was invited to comment on 7 R.S. 1694. A copy of the changes then suggested by Mr. Sanford are attached.

Senator Allegrucci commented that Mr. Sanford's draft had done in a short bill what the 12 bill drafts had earlier attempted to do. Mr. Sanford said that he did not believe this was the case and, at least, it was not intended. Senator Pomeroy asked why the term "strict tort liability" had been deleted. Mr. Sanford said the reason was that this term may have a meaning different from Section 402A (Restatement of Torts Second). Senator Pomeroy asked if the case law in Kansas changed so that it was broadened why would you want a narrower definition locked in. Mr. Sanford said the term "strict tort liability" can be expanded in ways that Section 402A does not intend and that the term "arise from the sale of a product in a defective condition and unreasonably dangerous" would not be subject to expansion. He said that the liability of a manufacturer may be greater under the term "strict tort liability" than under the other term. He said that the problem is with the future.

Representative Ferguson asked if worker's compensation would be changed if an individual is injured and is partly at fault. He also asked whether Mr. Sanford's draft would include fault of people not legally liable. Mr. Sanford said he was unable to answer that question for Kansas. Representative Ferguson said that worker's compensation would have to be changed if the Committee adopted this new proposal. Mr. Sanford said he did not think this would be needed although it would have a change in effect. Representative Ferguson said that 44-505 would have to be changed.

Senator Burke said that there was a need to address the issue of worker's compensation but that the Committee should look at each proposed change rather than summarily turn down all of the proposed changes.

Senator Pomeroy explained that the Committee was in somewhat of a procedural bind since bill draft 7 R.S. 1694 had already been approved by the Committee at the last meeting. He said that the Committee would first have to have a person on the prevailing side make a motion to reconsider and that if that motion passed and the matter was reconsidered the entire area would be open to change with the extreme possibility that no bill would be recommended by the Committee. After brief discussion, Senator Burke moved that 7 R.S. 1694 be recommended by the Committee to start in the House of Representatives. Representative Whitaker seconded the motion. After Committee discussion, Senator Burke withdrew his motion.

The Committee then reviewed the drafts of the Committee Reports for Proposal Nos. 33, 31 and 29.

Proposal No. 33 - Court Costs

Representative Ferguson moved that the Committee Report draft be adopted as written. Representative Gastl seconded the motion and it passed.

Proposal No. 31 - Mental Illness Statutes

Representative Ferguson moved that the Committee Report draft be adopted as written. Senator Burke seconded the motion and it passed.

Proposal No. 29 - Product Liability

By consensus, the Committee directed changes to the draft of the Committee Report. Senator Burke moved that the report be adopted as changed. Representative Ferguson seconded the motion and it passed.

The Committee then returned to Proposal No. 31.

Proposal No. 31 - Mental Illness Statutes

The amended language was reviewed and Senator Allegrucci moved that the language be inserted in a different place. Representative Ferguson seconded the motion and it passed. Representative Ferguson then moved that the bill draft be adopted as amended and Representative Frey seconded the motion which passed.

There being no further business, the Chairman adjourned the meeting at 12:00 noon.

Prepared by Paul J. Purcell

Approved by Committee on:

December 16, 1977  
(date)

PJP/dmb