

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on March 21, 19 79

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on March 22, 19 79

These minutes of the meeting held on March 20, 1979 were considered, corrected and approved.

JOSEPH J. HOAGLAND

Chairman

The conferees appearing before the Committee were:

Ernie Mosher, League of Municipalities

The meeting was called to order by Chairman Hoagland at 3:35 p.m. and the minutes of the last meeting were approved.

SB 110 was again taken up by the committee. A motion pending to amend SB 110 was withdrawn by Rep. Glover. He then briefly explained some proposed amendments to the committee. Rep. Glover moved to amend SB 357 in Line 359, by striking "other than marijuana," and by striking "other than marijuana," by striking all of Lines 364, 365, 366, 384, 385 and 386, and by striking all of New Sections 1 and 2 of SB 357, and including the amended SB 357 within SB 110. Motion seconded by Rep. Vic Miller. The motion carried.

Rep. Glover then moved to report SB 110 favorably as amended. Rep. Brewster seconded the motion. Motion carried. Representatives Frey and Harper are recorded as voting "no" on the motion.

Substitute SB 76, the Tort Claims Act, was discussed next. A suggested balloon amendment was passed out to the committee members and Art Griggs of the Revisor of Statutes office explained the amendments and compared them to the suggested amendments of conferees. Rep. Gillmore moved to adopt the proposed balloon amendments to Substitute SB 76. Seconded by Rep. Baker. Following lengthy discussion by the committee, the motion carried to adopt the amendments.

Rep. Stites moved to amend Sub. SB 76 on Line 175 by striking the words, "with the approval of the Legislative Coordinating Council" and adding (conceptually) the titles of the agency heads for "all claims under \$25,000.00, and with the approval of the State Finance Council on all claims over \$25,000.00." Seconded by Rep. Heinemann. Following a short discussion, the motion passed.

Rep. Stites moved to amend Sub. SB 76 on Page 4, Line 153 to read, "subject to the provisions of New Section 12." Seconded by Rep. Crow. Motion carried to adopt the amendment.

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Rep. Stites then moved to amend the bill on Page 10, Line 365, by inserting before the word, "judgement" the word, "final." Seconded by Rep. Gillmore. Motion carried.

Rep. Brewster made a motion to amend Sub. SB 76, by changing the liability of a governmental entity to "\$250,000.00 per claimant and \$1,000,000.00 aggregate per occurrence." Seconded by Rep. Baker.

A substitute motion was made by Rep. Matlack to change the liability of a government entity to "\$500,000.00 per claimant." Seconded by Rep. Stites. The substitute motion failed.

Another substitute motion was made by Rep. Matlack to change the figure to \$500,000.00 per claimant and \$1,000,000.00 aggregate per occurrence. Seconded by Rep. Stites. Motion failed by a vote of 8 to 7.

A vote was then taken on Rep. Brewster's original motion and the motion carried.

Rep. Stites moved to amend Sub. SB 76, by striking all of Lines 118 to 149, which would eliminate the mob action wording. Seconded by Rep. Roth. Motion failed by a vote of 8 to 5.

Rep. Brewster moved to amend Sub. SB 76 (SEE THE ATTACHED) with the health care provider act. Seconded by Rep. Glover. Art Griggs, Revisor's office, explained the proposed amendment. Motion carried to amend. Rep. Douville is recorded as voting "no" on this motion.

Rep. Miller moved to pass Sub. SB 76 favorably as amended. Seconded by Rep. Brewster. Following a short discussion, Rep. Brewster withdrew his second and the motion died for lack of a second.

Rep. Brewster then moved to amend on Page 14, Line 509, to say "except in the case of School Boards." Seconded by Rep. Martin. Motion carried.

Chairman Hoagland introduced Ernie Mosher, League of Municipalities, who suggested several exceptions the committee might consider before recommending Sub. SB 76.

The meeting adjourned at 6:05 p.m.

SUMMARY OF SUGGESTED AMENDMENTS FROM CONFEREES

League of Municipalities

1. Strike New Section 4 relating to intentional torts.
2. In Section 7 make an exception to liability of cities for street defects where another governmental entity is required to maintain the street. Also, require that city have reasonable notice of a defect before the city can be held liable.
- ✓ 3. In New Section 11, add "Subject to the provisions of subsection (c) of section 17," in line 153, after "(a)".
4. In New Section 21 relating to federal civil rights actions change "shall" to "may" in line 426.
5. Strike New Section 9 relating to mob liability.
6. Continue the six month notice requirement of K.S.A. 12-105.

Kansas Trial Lawyers

7. In New Section 5 strike "gross and wanton".
8. Make alternative provisions for highway and street defects, rather than as provided in K.S.A. 68-301 or 68-419.
9. In New Section 11 raise limitation to \$500,000.
10. In New Section 15, line 254, change "may" to "shall".
11. Hospitals operated by the state should be covered under the Health Care Provider Insurance Act.

Kansas Association of School Boards

12. Spell out how far in the appellate process entities must provide a defense.
13. Take school boards out of the provisions of K.S.A. 12-105b.

Hospital Association

14. See copy of letters to Mr. Gentry.

Independent Insurance Agents

15. Allow insurers to claim any defense that an entity itself could claim.

New Sec. _____. The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider or an employee thereof, when the health care provider is a governmental entity. Claims for damages against a health care provider that is a governmental entity, arising out of the rendering or failure to render professional services by such health care provider may be recovered in the same manner as claims for damages against a health care provider that is not a governmental entity. The term "health care provider," as used in this section, shall have the meaning ascribed thereto in K.S.A. 1978 Supp. 40-3401, and amendments thereto.

Also Amend the Health Care Provider Insurance Act, Subsection (f) of K.S.A. 1978 Supp. 40-3401, as follows:

(f) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment ~~excluding any medical care facility under the supervision and control of the state board of regents, within the department of social and rehabilitation services, or within the department of human resources~~, a health maintenance organization issued a certificate of authority by the commissioner of insurance, an optometrist licensed by the board of examiners in optometry, a podiatrist registered by the state board of healing arts, a pharmacist registered by the state board of pharmacy, a licensed professional nurse who is licensed by the board of nursing and certified as a nurse anesthetist by the American association of nurse anesthetists, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 1977 Supp. 65-2899, a physical therapist registered by the state board of healing arts, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services;