

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on February 7, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Senator Robert Talkington
Roland Wiebe, Kansas Natural Resource Council
John Crofoot, Kansas Grain and Feed Dealers Association
Dan Ramlow, Kansas Contractors Association
Ed DeMoss, Clarkson Construction Company
Thomas Kelly, Kansas Bureau of Investigation
Sergeant William Jacobs, Kansas Highway Patrol

Senate Bill 107 - Statement of damages from application of pesticides.

Senator Talkington, the sponsor of the bill, explained the reason for the bill. He said what bothers him is to have a 60-day statute of limitations. He said he doesn't mind the giving of notice within 60 days, but he thinks failure to give notice shouldn't completely bar action placed on that. It is too strict a penalty. Committee discussion with him followed.

Roland Wiebe testified the Kansas Natural Resource Council is in support of the bill. A copy of his statement is attached (See Attachment #1).

John Crofoot testified in opposition to the bill. He explained this applies to pesticides on a commercial basis. He felt there should be a provision in the bill that the damage be filed while evidence is still available. He said he was not against striking line 22 of the bill. The chairman referred to the frivolous lawsuit bill; if a frivolous lawsuit was filed, the defendant would recover filing and attorneys fees.

Senate Bill 104 - Destruction of identification symbols in construction equipment.

Senator Hein, the principal sponsor of the bill, explained the bill to the committee. He pointed out in line 48, the penalty should be a C or D felony; he would check

Dan Ramlow appeared in support of the bill. He stated in the construction industry the theft of heavy equipment and material is very close to the one billion dollar mark. They feel this bill is a step in the right direction to rid the state of Kansas of the problem of someone removing the serial number with the intention of selling it. He read the list of organizations in Kansas who are in support of the bill. Committee discussion with him followed

Ed DeMoss testified in support of the bill. He stated he was formerly on the Missouri Highway Patrol, and there is a problem. The state of Missouri has passed a law similar to this one. Committee discussion with him followed.

Tom Kelly testified he agrees with the concept of the bill and supports it but has reservations about it. He explained the KBI, Kansas Sheriffs Association and the Farm Bureau have been active in an identification program. The Future

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
 room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on February 7, 1983

Senate Bill 104 continued

Farmers of America chapter stamp the numbers into the metal of the equipment. This service is available to the farmers and the contractors. He said it is one way you can identify this equipment. It is extremely difficult to identify material you recover that has been stolen, or it has been left some place; there is no central registry to identify the equipment. He explained with the NCIC identification system every law enforcement agency has an identifying number. Mr. Kelly reported they had a lot of trouble in Elwood, Kansas. The only way they could trace it was through the manufacturer; they identified most of it, not all of it. He said we need a program for personal identification. Mr. Kelly stated he had problems with section (4) of this bill. This section needs clarifying. Mr. Kelly reported Mexico is a big consumer of stolen equipment, and this bill does not address the problem of moving equipment to another state or on the highways of this state, as does the oil field equipment bill passed last year.

Sergeant William Jacobs appeared in support of the bill. A copy of his statement is attached (See Attachment #2). A committee member inquired if it was a possibility of having the patrol apply the new number rather than the manufacturer. Sergeant Jacobs replied, they don't have the manpower to set up some sequence numbering system. They would be duplicating the system the KBI already has. Committee discussion with him followed.

Senator Feleciano made a motion to approve the minutes of February 3, 1983; Senator Hein seconded the motion, and the motion carried.

Senator Feleciano presented a proposal concerning the powers conferred upon a district court in an inquisition proceeding (See Attachment #3). Following his explanation, Senator Hein moved that the bill be introduced; Senator Burke seconded the motion, and the motion carried.

Senator Feleciano presented a proposal to the committee that deals with the problem of employment agencies that are springing up in Sedgwick County who put together a list of employment opportunities right out of the want ads and are charging for this. The proposed bill would contain a licensing type provision. Senator Burke moved that the bill be introduced; Senator Gaines seconded the motion, and the motion carried.

The meeting adjourned.

2/7/93

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Glenn Coulter

Topeka

Ks. Contractors Assn.

ED DEMOSS

K.C. MO.

CLARKSON CONST Co.

DAN KAMLOW

TOPEKA

Ks. Contractors Assn.

Poland Wiebe

Topeka

Ks. Natural Resource Council

Thomas S. Kelly

Topeka

KBJ

SGT WILLIAM A. JACOBS

TOPEKA

KHP

John Confort

Marion

Kansas Grain Feed Dhs

Jim [unclear]

Wichita

Ks. Cr Union League

Jim Helt

Valley Center

KCU

Robert [unclear]
Larry D. HUMES

STAFF

State Sen - SB107
STEINER

M. Haave

Topeka

Capital Journal

Kenneth M. Welke

Topeka

Board of Agriculture



Kansas Natural Resource Council

Testimony before the
Senate Judiciary Committee
Presented by Roland Wiebe
February 7, 1983

5130 Mission Road
Shawnee Mission, Ks 66205
913 362-5933

Re; Support of SB107

Good morning, I would like to voice the support of the Kansas Natural Resource Council for SB107.

There have been many cases of farmers and others being adversely affected by careless or misdirected pesticide application. Under current law it is often difficult and in some cases impossible to file suit.

KSA2-2457 unfairly discriminates against farmers. Out of fourty states which have records of pesticide laws only one state other than Kansas requires that a pesticide damage report be filed in order to maintain a civil suit. This is evidence enough that applicators are not being hurt.

The plaintiff will still have to prove that the damage was caused by the pesticide, therefore it does not unduly penalize the applicator.

The primary advantage of this amendment is that it will make it easier for the farmer to recover his losses.

Pesticides are dangerous poisons and we feel that utmost care should be taken in their use. Indiscriminant and careless use is a crime against those people affected as well as our environment.

Atch. 1

SUMMARY OF TESTIMONY
BEFORE THE SENATE JUDICIARY COMMITTEE
1983 LEGISLATIVE SESSION

SENATE BILL 104

PRESENTED BY THE KANSAS HIGHWAY PATROL
(Sergeant William Jacobs)

February 7, 1983

IN SUPPORT OF SENATE BILL 104

Senate Bill 104 is an act that concerns crimes, punishments and procedures relating to identification symbols on certain construction equipment. It prohibits certain acts involving identification symbols on construction equipment, as defined, and prescribes penalties for violations.

The Kansas Highway Patrol supports this bill for the following reasons:

Construction equipment is high-dollar equipment and a frequent target for thieves because it is very easy to sell used equipment that has no identifying marks due to the high cost of new equipment. Mandatory marking of this type of equipment would aid law enforcement officers in locating and identifying stolen equipment. Mandatory marking would increase the risk in these types of operations and would deter the theft of this type of equipment and the possession of stolen equipment.

Construction equipment, self-propelled and hauled, is often moved upon the highways of this state and could easily be checked by identification symbols during routine truck inspections by Patrol members. This would also deter the possession or transportation of this type of equipment. The Highway Patrol inspected 54,566 trucks in calendar year 1982.

The Kansas Highway Patrol respectfully submits two recommendations:

1. In section 2, paragraphs (a), (b), and (c), provide penalties for any person who is in violation of any one of the acts described. It appears that there could be instances where a person could possibly become unknowingly involved with misrepresented equipment and would then automatically be guilty of a violation. We, therefore, ask consideration to insert the word knowingly into those paragraphs to make any person who knowingly commits these acts guilty of a violation.
2. Section 4, paragraph (a), indicates immediate arrest of alleged owners or custodians of certain equipment. The Patrol respectfully recommends that arrest would be indicated upon establishment of reasonable cause to believe that the individual knowingly committed the offense.

In summation, we feel that a law requiring the marking of this type of equipment would result in more efficient inventory by owners and sales representatives, a deterrent to thieves, and an aid to law enforcement officers in recovery of the stolen equipment.

2-7-83

3

SEDGWICK COUNTY DISTRICT ATTORNEY

18th Judicial District

Sedgwick County Courthouse
Annex — Second Floor
535 North Main
Wichita, Kansas 67203

CLARK V. OWENS
District Attorney

(316) 268-7281

February 4, 1983

HENRY H. BLASE
Chief Deputy

Honorable Paul Feleciano, Jr.
State Senator
State Capitol Building
Topeka, Kansas 66612

Re: Proposed changes to K.S.A. 22-3101(1)

Dear Senator Feleciano:

Our county has recently experienced a problem in regard to the powers conferred upon a district court in an inquisition proceeding pursuant to K.S.A. 22-3101(1). Our Court has interpreted the statute quite literally and ruled that its only power in an inquisition is to compel a witness to appear and testify. This position rules out the power to compel a witness to produce physical characteristic evidence or documents.

The Kansas Court of Appeals in the case of Southwestern Bell Telephone Company v. Miller, Kan. (1978) ruled that a district attorney had the power in a prosecutorial inquisition to issue a subpoena duces tecum to compel production of unprivileged documents. The Court also found that the legislature expected subpoena powers granted to grand juries, judicial inquisitions and prosecutorial inquisitions to be the same.

With the question of documents being answered by the Court of Appeals, the question of physical characteristic evidence remains. Many courts across the country up to and including the United States Supreme Court have determined that grand juries have the power to compel the production of such evidence. However, that same power has never judicially been determined to be available through the processes of an inquisition. This office attempted to get the question before an appellate court as a result of our recent problem, however, the evidence was otherwise obtained and the Court of Appeals would not then entertain the question.

I am sure that we could wait until the next problem arises and then spend the time and money to try to get the case before the Appellate Court again. On the other hand, that would mean that the suspected criminal would be on the loose in the meantime

Atch. 3

Honorable Paul Feleciano, Jr.
February 4, 1983
Page 2

and innocent people could suffer.

If the Court of Appeals was correct in its assumption that the legislature expected that all powers of subpoena of an investigative nature be the same, it stands to reason that the legislature would be the proper party to turn to to solve this problem. I would propose that K.S.A. 22-3101(1) be amended by adding the following underlined phrase to the existing statute:

"to appear and testify concerning the matters under investigation and to produce such documentary or physical characteristic evidence as the court deems proper in the circumstances."

With this addition to the statute, the Courts would be clear to compel the production of fingerprints, handwriting exemplar, voice exemplar, hair sample, fingernail scrapings or the person for photographing. All of these tools are now available as investigative tools of the grand jury and should be available for use in judicial inquisitions as well.

I would appreciate your consideration of this problem and taking whatever action you deem appropriate to effect this statutory change. If I can be of any assistance to you in such effort, please advise.

Thank you for your time and attention to this matter.

Sincerely,



HENRY H. BLASE
Chief Deputy District Attorney

HHB/pm

cc: Mr. Jim Clark, Executive Director
KCDAA