

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~xxx~~/p.m. on March 14, 1984 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud, Duncan, Vancrum, and Justice were excused.
Representatives Matlack and Ediger were absent.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Pat Goodson, Right to Life of Kansas
Lt. Lee Sipes, Topeka Police Department
Rick Fahy, Supervisor of the Scientific Investigation Unit and the Crime and Search Team
of Topeka Police Department
Phil Magathan, Legislative Chairperson for the Kansas Association of Court Services Officers
Marjorie Van Buren, Office of the Judicial Administrator
Bill Henry, Kansas Engineering Society

The Chairman announced that three subcommittees would be requested to study 12 bills (see Attachment No. 1) and report to the full Committee by March 22, 1984.

Hearings were held on SB 81, SB 371, SB 639, SB 499, SB 718, and SB 717.

SB 81 - Uniform determination of death act.

The Chairman said the bill was passed out of Committee in 1983 and re-referred. Senator Pomeroy, sponsor, supports its passage.

Pat Goodson, Right to Life of Kansas, said, although her group still objects to the brain death concept, they support the bill as it strengthens the law. Her statement is attached (Attachment No. 2).

SB 371 - Crime of threatening to contaminate food, drink or drugs.

No conferees appeared on the bill. The Chairman said, since the bill had been heard in 1983, this would constitute the hearing on the bill.

SB 639 - Admissability of forensic examiner's report.

Lt. Lee Sipes said the bill was introduced by Senator Parrish and the Shawnee County Delegation at the request of the Topeka Police Department. The bill was a cost- and time-saving measure.

Rick Fahy, Supervisor of the Scientific Investigation Unit and the Crime and Search Team of the Topeka Police Department, explained the functions of his groups which include fingerprinting, document examinations, photography, and polygraph tests performed in and out of Shawnee County for different agencies. The bill would allow him to submit forensic reports for preliminary hearings without attending the hearings in person and was needed because of the large caseload and lack of personnel. He said the exemption for the KBI and the Johnson County Laboratory has been working well and has alleviated their caseloads.

SB 499 - Court services officers duties.

Phil Magathan, Legislative Chairperson for the Kansas Association of Court Services Officers, supported the bill which would clear up confusion by eliminating use of the term, "probation officer", which is no longer used very often in practice, and inserting "court services officer". His statement is attached (Attachment No. 3). Mr. Magathan noted the difference between parole officers, who work with the Department of Corrections, and court services officers who work with the Judicial Administration.

Marjorie Van Buren said the Office of the Judicial Administrator supports SB 499.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 14, 1984.

SB 718 - Exempting professional engineers from licensure as private detectives.

Bill Henry, representing the Kansas Engineering Society, gave a statement (Attachment No. 4) supporting the bill which creates an exemption for licensed professional engineers when they are performing duties of their profession. His statement outlines the situation that prompted introduction of the bill where a county attorney warned an engineer that if he testified in an arson case he would be functioning as a private detective without a license. Mr. Henry noted the case never came to trial for a decision, but he questioned what the prosecutor could do since there is no penalty in the private investigator act. He said engineers do not want to become private detectives, and he and Representative Erne, who objects to the bill, had attempted to work out a definition that would say this. The engineer in the case would get a license if necessary.

SB 717 - Foreign corporation's application to do business and name used.

Staff said the bill changes statutes dealing with foreign corporations to make it easier for them to operate in Kansas by extending the time frames regarding a certificate of good standing and for filing statements of assets and liabilities of the corporation. It also adjusts requirements on corporations with the same name. Staff noted the supporting conferee in the Senate Committee hearing was a person who assists in the formation and filing of corporations.

The Committee took action on several bills.

SB 191 - Enforcement of child visitation and custody rights.

Representative Schweiker moved to report the bill favorably, seconded by Representative Wagnon. Motion carried.

SB 573 - Small estates of disabled persons.

Representative Wagnon moved to report the bill favorably, seconded by Representative Whiteman. Motion carried.

SB 719 - Garnishment forms for limited actions updated.

Representative Knopp moved to report the bill favorably, seconded by Representative Whiteman. Staff noted the title needed amending to delete line 17 regarding limited action because it now applies to Chapter 60 of the Kansas statutes as well. Representative Miller made a substitute motion to incorporate this amendment with the attached amendment (Attachment No. 5) to the bill which would allow for garnishment at each pay period as opposed to each month. He noted this concept has been introduced before but was defeated in the Senate. There have been occasions where employees and employers have cooperated in changing pay periods to monthly so less money would be garnisheed. Representative Douville seconded the substitute motion. In discussion, Representative Miller said creditors would be paid much quicker. The additional paperwork that may result from the amendment was questioned and the point made that court clerks would probably oppose the amendment. Representative Miller believed more leverage would result in the garnishee making arrangements to avoid garnishment. The vote on the substitute motion carried. Representative Miller moved to report SB 719, as amended, favorably, seconded by Representative Patrick. Motion carried.

SB 639 - Admissability of forensic examiner's report.

Representative Patrick moved to report the bill favorably, seconded by Representative Erne. Motion carried.

SB 717 - Foreign corporations.

and placed on the Consent Calendar,
Representative Harper moved to report the bill favorably, seconded by Representative Knopp. Motion carried.

SB 81 - Uniform determination of death act.

Representative Douville moved to update the supplement citation to 1983 and report SB 81, as amended, favorably, seconded by Representative Knopp. Motion carried.

The meeting was adjourned at 4:30 p.m.

14

ROBERT G FREY
REPRESENTATIVE 125TH DISTRICT
SEWARD AND MEADE COUNTIES
412 N WASHINGTON
LIBERAL, KANSAS 67901
316 624 8138
316 624 7515



TOPEKA

COMMITTEE ON JUDICIARY
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STEVE SCHWEIKER, CLERK
CLARENCE WAINWRIGHT, CLERK

Attachment # 1

HOUSE OF
REPRESENTATIVES

MEMORANDUM

To: Subcommittee Members, House Judiciary Committee
From: Chairman Bob Frey *RGF*
Re: Subcommittee assignments
Date: March 14, 1984

Because of the large number of bills in Committee and the limited amount of time available, I am requesting the following members to serve on subcommittees to consider the bills listed and make recommendations to the full Committee on Thursday, March 22:

Subcommittee A

Bob Wunsch, Chairman
Frank Buehler
Clifford Campbell
Steve Ediger
Ardena Matlack

Subcommittee B

Art Douville, Chairman
Richard Harper
Steve Schweiker
Larry Erne
Donna Whiteman

Subcommittee C

Kerry Patrick, Chairman
Bob Vancrum
Joe Knopp
Gary Blumenthal
Joan Wagnon

Subcommittee A Bills

SB 262
SB 759
SB 762

Subcommittee B Bills

SB 644
SB 669
SB 677

Subcommittee C Bills

SB 615
SB 674
SB 794

It will be appreciated if each subcommittee Chairman will make arrangements for meeting times and places. If you need Secretary Nedra's help with this or in notifying conferees, call her at 7662.

RGF/ns

Atch. 1

2
D-14

Mr. Chairman, members of the committee. My name is Pat Goodson. I represent Right To Life of Kansas, Inc. I thank you for the opportunity to speak in support of senate bill 81. We believe this is an important and needed bill.

Attachment # 2

Our support of senate bill 81 in no way alters our opposition to the concept of statutory brain death. I won't spend a lot of time on it but do want the committee to understand clearly our position. As long as we are dealing with cessation of function we are dealing with a living patient. cessation of function does not imply destruction of the brain, or death of the patient, however the converse is true. Death of the patient involves the destruction of the brain and at the same time if the brain has been destroyed the cessation of brain function is irreversible.

A Doctor Safar writing in Critical Care Medicine in 1978 reported on forty patients who were treated with barbiturates. Twenty-two of these had an arrest time lasting between five and twenty-two minutes. The expected neurological recovery would be less than 10 %. However, fourteen of the twenty-two or 64 % made complete neurologic recovery. The reason that recovery is possible is because there was cessation of brain function and not destruction.

Right to Life opposes declaring anyone dead unless the circulatory and respiratory systems and the entire brain have been destroyed. We are not saying that you have to go in and pound on the chest of a 90 year old cancer ridden patient to resuscitate him every time. We do not oppose organ transplants. We do oppose removing a vital organ from someone who, if he or she is not yet dead, will surely be dead after such removal.

We support senate bill 81 because the present definition of death is so wide open that we believe it is imperative that it be tightened up. The definition of brain death in senate bill 81 is immensely preferable to the present language of the law, which is merely the absence of spontaneous brain function. This definition enacted in 1970 at the request of those who wanted to use it for the purpose of organ transplants has been widely criticized. It is time that Kansas quit playing the avant garde role in anti-life legislation, and begin restoring some protection in the law to the individuals right to life. Mr. Chairman although we are not in total agreement with defining death as the irreversible cessation of all functions of the entire brain including the brain stem, because this does not necessarily mean that the brain has been destroyed, we nevertheless believe it to be a tremendous improvement of the present law, and a necessary alternate at this time. We urge the adoption of senate bill 81.

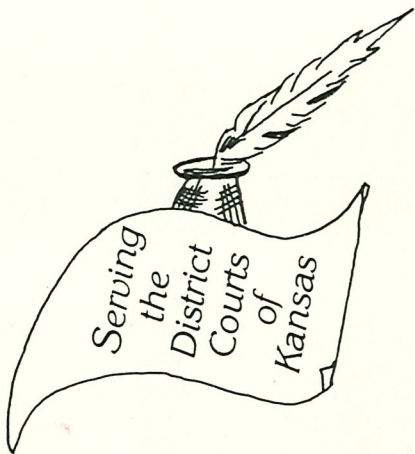
Thank You.

Atch. 2

3
3-14

Attachment # 3

Kansas Association of Court Services Officers



TESTIMONY PRESENTED BY PHIL MAGATHAN

Our association represents professionals throughout the State of Kansas. We work with adult and juvenile offenders in providing presentence investigations, pre-disposition investigations, probation supervision, restitution for crime victims and many other services for the Court, clients and the community that we serve.

We fully support Senate Bill #499 and believe that it will clear up some of the possible confusion that has occurred since court unification when a majority of our position titles changed from Probation Officer to Court Services Officer.

As you can see by this bill, Court Services officers are charged with tremendous responsibilities in their day-to-day activities. Current probation populations in the State of Kansas exceed 18,000 plus, and over 1,000 formal reports per month are prepared to aid judges in determining the most appropriate sentence and correctional plan for the criminal offender.

PM/gm

Atch. 3



Kansas Engineering Society, Inc.

216 West Seventh, P.O. Box 477

Attachment # 4

Topeka, Kansas 66601 (913) 233-1867

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William M. Henry
Executive Vice President

Testimony for the House Judiciary Committee
RE: S.B. 718

Mr. Chairman, members of the committee I am Bill Henry, Executive Vice President, Kansas Engineering Society. I am appearing on behalf of the Society today as a proponent of S.B. 718.

The purpose of S.B. 718 is to exempt Engineers from the coverage of the Private Investigator's Act when the engineer is performing his licensed role as defined in K.S.A. 74-7003. (a copy of that definition is attached as exhibit A).

Currently there are a dozen such exemptions already in the act. These exemptions include attorneys, licensed collection agencies, insurance agents, brokers, insurance investigators, non-profit organizations, financial rating agencies, and banks.

The engineers of our 1400 member organization do not seek this exemption because they intend to become private detectives. The reason for the exemption is that there is language in K.S.A. 75-7b01(a) which could lead to a conflict with the current general rules of civil and criminal procedure which allow engineers, if qualified, to testify in cases relating to the establishment of responsibility for fires.

The language with which we are concerned is attached as exhibit B.

In that particular section, where detective business is defined, the current language states detective business is: "the furnishing of, making of or agreeing to make an investigation for the purpose of obtaining information with reference to...the cause of responsibility for fires...or securing evidence to be used for any court, board, officer or investigation committee."

Last fall in Southwest Kansas a County Attorney involved in the prosecution of an alleged arson warned one of our members that if he testified for the defense in that case that the engineer would be functioning as a "private detective" pursuant to the preceding statutory language and the

Atch. 4

prosecutor said she would prosecute the engineer for non-licensure under the private investigators act. The engineer in that case had been hired by the defendent and had provided a report based upon his analysis of the Fire Marshall's findings in the case.

In this particular case the engineer did not even testify but had simply prepared an analysis and returned it to the defense counsel who in turn submitted it to the prosecutor.

As fate would have it the case never went to trial so we were unable to get a judicial ruling on the prosecutor's threat.

The Kansas Engineering Society feels when an engineer, acting in his area of expertise, testifys in a judicial proceeding or appears before a board or panel that he should be subjected to the rules of civil and criminal procedure and the rules of procedure of the particular board or panel. The proper weight to be given to this opinion should be based upon his qualifications as determined by the court, board or panel.

We do not believe that when an Engineer prepares a report, investigates the cause of the fire he is doing private detective work. Yet because of the choice of language in K.S.A. 75-7b01(a) this conflict has occurred.

We believe that the cleanest method of preventing this problem from occurring again is to include within the current exemption list a new exemption covering the Professional Engineer.

Finally, we would emphasize that we do not wish this change so that engineers can perform private detective work. Members of our Society do not wish to get into this area and that is why the language that has been prepared on S.B. 718 states that the Engineer is only exempt where he is acting in his professional capacity as a Licensed Engineer.

We thank the committee for its attention to this matter and we hope that the Judiciary Committee will recommend S.B. 718 favorable for passage.

William M. Henry
Executive Vice President
Kansas Engineering Society

WMH;mg

Exhibit A

✓(h) "Professional engineer" means a person who, by reason of his or her special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified as provided in this act to engage in the practice of engineering and who is licensed by the board.

✓(i) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, teaching engineering in a university offering an approved engineering curriculum of four (4) years or more by a person who is a licensed professional engineer, engineering surveys and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering.

Exhibit B

75-7b01. Definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Detective business" means the furnishing of, making of or agreeing to make any investigation for the purpose of obtaining information with reference to: Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person; the location, disposition or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer or investigating committee.

PROPOSED REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Judiciary

Recommends that Senate Bill No. 719
(As Amended by Senate Committee)

"AN ACT concerning civil procedure for limited actions; relating to garnishment forms; amending K.S.A. 60-718 and repealing the existing section; also amending Form No. 8a in the appendix of forms following K.S.A. 61-2605."

Be amended:

On page 5, following line 251, by inserting:

"Sec. 2. K.S.A. 60-2310 is hereby amended to read as follows: 60-2310. (a) Definitions. As used in this act and the acts of which this act is amendatory, unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them:

(1) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise;

(2) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from such earnings of any amounts required by law to be withheld;

(3) "Wage garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and

(4) "Federal minimum hourly wage" means that wage prescribed by subsection (a)(1) of section 6 of the federal fair labor standards act of 1938, and any amendments thereto.

(b) Restriction on wage garnishment. Subject to the provisions of subsection (e) of this section, only the aggregate disposable earnings of an individual may be subjected to wage garnishment. The maximum part of such earnings of any wage earning individual which may be subjected to wage garnishment for any workweek or multiple thereof may not exceed either (1)

twenty-five percent of the individual's aggregate disposable earnings for that workweek or multiple thereof, or (2) the amount by which the individual's aggregate disposable earnings for that workweek or multiple thereof exceed an amount equal to 30 times the federal minimum hourly wage, or equivalent multiple thereof for such longer period, whichever is less. No one creditor may issue more than one garnishment against the earnings of the same judgment debtor during any one month pay period, but the court shall allow the creditor to file amendments or corrections of names or addresses of any party to the order of garnishment at any time. Nothing in this act shall be construed as charging the plaintiff in any garnishment action with the knowledge of the amount of any defendant's earnings prior to the commencement of such garnishment action.

(c) Sickness preventing work. If any debtor is prevented from working at the debtor's regular trade, profession or calling for any period greater than two weeks because of illness of the debtor or any member of the family of the debtor, and this fact is shown by the affidavit of the debtor, the provisions of this section shall not be invoked against any such debtor until after the expiration of two months after recovery from such illness.

(d) Assignment of account. If any person, firm or corporation sells or assigns an account to any person or collecting agency, that person, firm or corporation or their assignees shall not have or be entitled to the benefits of wage garnishment. The provision of this subsection shall not apply to assignments of support rights to the secretary of social and rehabilitation services made by applicants for or recipients of aid to families with dependent children under subsection (b) of K.S.A. 39-709 and amendments thereto, the assignments of support rights to the secretary of social and rehabilitation services made pursuant to K.S.A. 39-756 and amendments thereto, or to the assignments of accounts receivable or taxes receivable to the director of accounts and reports made under K.S.A. 75-3728b and amendments thereto.

(e) Exceptions to restrictions on wage garnishment. The restrictions on the amount of disposable earnings subject to wage garnishment as provided in subsection (b) shall not apply in the following instances:

(1) Any order of any court for the support of any person, including any order for support in the form of alimony, but the foregoing shall be subject to the restriction provided for in subsection (g);

(2) any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act; and

(3) any debt due for any state or federal tax.

(f) Prohibition on courts. No court of this state may make, execute or enforce any order or process in violation of this section.

(g) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(1) If the individual is supporting a spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50% of the individual's disposable earnings for that week;

(2) if the individual is not supporting a spouse or dependent child described in clause (1), 60% of such individual's disposable earnings for that week; and

(3) with respect to the disposable earnings of any individual for any workweek, the 50% specified in clause (1) shall be 55% and the 60% specified in clause (2) shall be 65%, if such earnings are subject to garnishment to enforce a support order for a period which is prior to the twelve-week period which ends with the beginning of such workweek.";

By renumbering sections 2 through 4 as sections 3 through 5;

On page 8, in line 429, by striking "is" and inserting "and 60-2310 are";

In the title, in line 17, by striking "for limited actions";

in line 18, before "and" by inserting "and 60-2310"; in line 19,
by striking "section" and inserting "sections";

And the bill be passed as amended.

_____Chairperson