

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on February 9, 1984 in room 514-S of the Capitol.

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

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Joan Strickler, Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.
Jim Lackey, Director, Kansas Advocacy & Protective Services
Michael J. Byington, Topeka Resource Center for the Handicapped
Senator Charlie Angell
Bernie Frigon, Dodge City Attorney
Mark Knackendoffel, Kansas Bankers Association
Jim Wright, Kansas Association of Defense Counsel

Senate Bill 573 - Small estates of disabled persons.

Joan Strickler testified KAPS assists developmentally disabled children and adults in gaining access to the rights and services to which they are entitled. A copy of her testimony is attached (See Attachment No. 1). She then introduced Dr. Jim Lackey, who is director of their program, who would be glad to answer any questions at the conclusion of her testimony.

The chairman recognized Dr. Lackey to respond to questions. Dr. Lackey explained the suggested language is patterned after a form book.

Michael Byington testified, even under present statutes and procedures in reference to guardianship/conservatorship, the Topeka Resource Center for the Handicapped is contacted by several persons every year who are or have been under guardianship/conservatorship and who believe that a parent, child, or other relative serving as guardian and/or conservator has misused or stolen money from them. A copy of his testimony is attached (See Attachment No. 2). Mr. Byington stated they could support the bill if Joan Strickler's amendment were accepted.

Senate Bill 142 - Gifts by conservator on behalf of incapacitated person.

Senator Angell, the sponsor of the bill, explained an attorney came to him to request the bill. A copy of a letter in support of the bill is attached (See Attachment No. 3).

Bernie Frigon testified he has found under K.S.A. 59-3019 it does not allow a conservator who has been appointed by the court for a disabled person to make gifts for that conservatee. He explained he has three families, with more than sufficient assets, and they had made gifts prior to becoming disabled. There is the problem now they cannot make gifts because the law will not allow it. This bill will allow the conservator to make gifts for the conservatee, which conservatee would have done if not disabled. Considerable committee discussion with him followed.

Michael Byington asked to be recognized to explain his one concern he wanted to bring to the attention of the committee. He stated he does personally believe the court needs to be given more direction within the context of the law in regard to making such a gift; whether they classically gave gifts throughout their lives or gave gifts to prevent paying taxes. Otherwise, this is some potential for abuse of the legislation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 9, 1984.

Senate Bill 142 continued

Mark Knackendoffel appeared to make a few comments concerning gifts for the purpose of not paying taxes; charitable gifts. He said the banks have customers who come in who give five, ten, fifteen dollars to their church or American Heart Association, and they assume people would like to continue that. They hope they have explicit power to make those gifts; most trust documents give them the power to make gifts. A committee member inquired, is it possible that person may have established a pattern to various organizations because it was consistent with that person's standing in the community? Maybe he wouldn't want that to continue when incapacitated.

This concluded the hearings on Senate Bill 142 and Senate Bill 573.

Jim Wright presented four proposals for introduction of committee bills. The first proposal related to civil procedure, concerning admissibility of evidence in a civil action of settlement made with others. The second proposal related to seat belt defense. The third proposal related to modifying the collateral source rule and repealing K.S.A. 60-471. The fourth proposal concerned the Kansas wrongful death act, providing for mitigation of damages awarded in the event of the re-marriage of the surviving spouse. A copy of the four proposals is attached (See Attachments No. 4,5,6,7). Senator Hein moved the proposed bills be introduced. Senator Mulich seconded the motion, and the motion carried.

The meeting adjourned.

2-9-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Joan Strubbe	Manhattan	KAPS
John Kell	Topeka	KACEH
Michael Byington	Topeka	Topeka Resource Center for Handicapped
M. White	Topeka	Kearney Assoc. Rep.
Bernie D. Frigon	Dodge City	Attorney
Jim Sackey	Manhattan	KAPS
Jim Wright	Topeka	Ks Assn of Def Counsel
MARK KNACKENDOFFEL	Topeka	TRUST DIVISION - Kansas Bankers Assn.
Mrs. Schom	Lawrence	Sen. Heisler
Stanley C. Cuyler		

Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.

2-9-84
Attach. # 1

KAPS

Suite 2, the Denholm Bldg.
513 Leavenworth
Manhattan, KS 66502
(913) 776-1541

Chairperson

*R. C. (Pete) Loux
Wichita*

TO: The Senate Judiciary Committee
Senator Elwaine F. Pomeroy, Chairperson

Vice Chairperson

*Robert Anderson
Ottawa*

FROM: Kansas Advocacy and Protective Services
for the Developmentally Disabled, Inc.
R.C. Loux, Chairperson

Secretary

*Marion Vernon
Topeka*

DATE: February 9, 1984

Treasurer

*Neil Benson
El Dorado*

RE: SB 573 Concerning Small Estates of
Disabled Persons

*Sen. Norma Daniels
Valley Center*

*Sen. Ross O. Doyen
Concordia*

*Mary Hohman
Topeka*

*Harold James
Hugoton*

*Rep. Ruth Luzzati
Wichita*

*James Magg
Topeka*

*Rep. Rochelle Chronister
Neodesha*

*Patrick Russell
Topeka*

*W. H. Weber
Topeka*

Liaison to the Governor
Robert Epps

Executive Director
Joan Strickler

KAPS assists developmentally disabled children and adults in gaining access to the rights and services to which they are entitled. We are a private non-profit corporation created specifically to meet the requirements of the Developmental Disabilities Act (PL 94-103 as amended by PL 95-602)

We also operate a program which is unique to Kansas called the Kansas Guardianship Program. This program is designed to serve adjudicated disabled adults who are unable to manage their lives, who are essentially indigent, and who are without families willing to or capable of assuring for their care.

Through the program KAPS recruits good caring people who want to help retarded, mentally ill and elderly individuals by volunteering to become guardians/conservators for those who need this level of protection and advocacy. The program has set some standards.

- Potential guardians/conservators have to apply and be approved.
- The guardian/conservator has to maintain ongoing personal contact with the ward conservatee and file monthly written reports with KAPS.
- The guardian/conservator has to participate in ongoing training.

Attach. 1

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Senator Elwaine F. Pomeroy, Chairperson
February 9, 1984
Page 2

- Guardians/conservators receive ongoing backup support when they have questions involving legal matters, services, federal and state programs and other concerns.
- Financial reimbursement (to cover expenses) to those volunteering to become guardians/conservators is paid through state funds rather than resources of the wards/conservatees.

KAPS guardians/conservators are volunteers. They become personally involved in the lives of their wards/conservatees. In return for their services KAPS provides \$20.00 a month to cover out-of-pocket expenses of the guardian/conservator and up to \$30.00 a year to cover cost of the annual conservator's bond, when a corporate surety is ordered by the court. This negates the need for money to come from the disabled person's resources, which may be as little as \$25 a month in Supplemental Security Income.

The program has provided the means by which some people have been maintained in the community who may otherwise be placed in nursing homes or institutions. It has been instrumental in preventing or stopping exploitation and abuse of some people.

It is our understanding that the intent of SB 573 is to make it possible for the conservator of a person adjudged to be a disabled person to manage money not exceeding \$5000 without having to purchase a bond. We have no problem with this intent.

We do, however, have concerns that the language beginning in line 39 (b) would appear to make it possible for a spouse, parent or child of a person adjudged to be disabled to manage the money of the disabled person without serving as conservator and,

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Senator Elwaine F. Pomeroy, Chairperson
February 9, 1984
Page 3

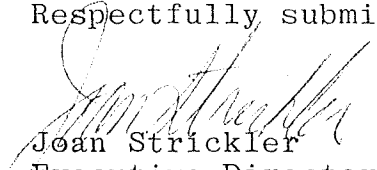
therefore, without the supervision of the court. We believe that any adult who has been determined by a court of law to be a disabled person and unable to manage his or her life and financial affairs should be entitled to a guardian/conservator who operates directly under the supervision of the court with statutory responsibility to the court.

Through our experience with the Kansas Guardianship Program, we are aware that, in numerous situations, courts do accept the signature of the conservator as principal with or without surety in lieu of the need to purchase a bond. This negates the need for purchase of a bond of conservator from a surety company licensed to do business in the state of Kansas.

It is our understanding that there may be some disagreement or confusion as to whether or not this practice is appropriate. We suggest, therefore, that language be added to the bill to clearly specify that the court has the discretion to either require the purchase of a bond or to accept a signed verification of surety.

We have attached a conceptual ammendment to SB 573 for your consideration.

Respectfully submitted,


Joan Strickler
Executive Director

0045 tor when appointed or to the disabled person on restoration to

0046 capacity; ~~or (2) the payment of the money to the spouse, parent~~

~~0047 or child of the disabled person, who shall have the right and~~

~~0048 duty to manage, invest or otherwise dispose of the money for the~~

~~0049 benefit of the disabled person.~~ If the disabled person is a

0050 conservatee, the court may authorize the payment of the money

0051 to the conservator of the disabled person ~~without requiring the~~

~~0052 giving of bond.~~

0053 Sec. 2. K.S.A. 59-3015 is hereby repealed.

0054 Sec. 3. This act shall take effect and be in force from and

0055 after its publication in the statute book.

delete

delete

add instead language to specify that the court has the discretion to either require the conservator to purchase a bond or to accept the conservator's signed verification of surety.



2-9-84
Attach. #2



TOPEKA RESOURCE CENTER FOR THE HANDICAPPED

West Tenth Professional Building
1119 West Tenth Topeka, Kansas 66604

MITCH COOPER, L.M.S.W.
Executive Director

Telephone
913-233-6323
TTY-233-6788

February 9, 1984

TO: Senate Judiciary Committee
FROM: Michael J. Byington, Outreach Advocate/Case Manager
SUBJECT: Senate Bill 573

Even under present statues and procedures in reference to guardianship/conservatorship, the Topeka Resource Center for the Handicapped is contacted by several persons every year who are or have been under guardianship/conservatorship and who believe that a parent, child, or other relative serving as guardian and/or conservator has misused or stolen money from them. Some of these claims are unfounded. Others, unfortunately, are not. This bill would basically destroy a tracking system which lends some accountability to the guardianship/conservatorship process. It is my contention that persons adjudged disabled under Kansas Guardianship statues should be afforded the protection of knowing that even amounts of monies under \$5,000.00 are handled for them in an accountable manner.

Atch. 2

2-9-84

Attach. #3

January 31st, 1984

Senator Charlie Angell
Statehouse
Topeka, Kansas, 66612

Dear Senator Angell:

I am writing this letter to urge your support for Senate Bill No. 142. An act concerning conservatorship and relating to powers of conservators.

My father passed away in 1975. My mother was in the process of gifting her estate to her children. She is currently 90 years old and with eight hundred acres of farm ground and not of sound mind and unable by lack of enabling state law to continue her gifting process.

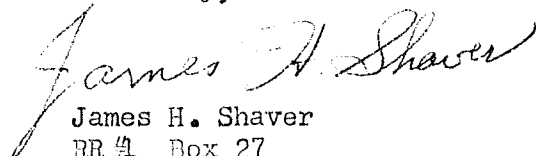
She has more property than the allowable deductible under the New Federal Estate Tax Law. With three married children she could gift \$20,000.00 per couple per year for a total of \$60,000.00 yearly with this Senate Bill 142. This would lower future estate taxes around \$20,000.00 yearly. This is Kansas value that will be permanently lost each year by the state of Kansas for each year the passing of this enabling legislation is delayed.

I believe that several families in each county of Kansas would be aided by the passage of this bill. I urge your support.

Little or no cost to the state of Kansas would be involved; only a gain, by keeping this economy within the state.

Thank you for your consideration.

Sincerely,



James H. Shaver
RR #1 Box 27
Goodland, Ks. 67735

cc: file
Ron Vignery, atty.
Ben Frigon, atty.
Don Crumbaker, St. Rep.

Attach. 3

PROPOSAL RELATING TO ADMISSION OF EVIDENCE CONCERNING
SETTLEMENT WITH ONE OR MORE PARTIES OR PERSONS
BY ONE OR MORE PARTIES TO A CIVIL ACTION

2-9-84

Attach. # 4

AN ACT relating to civil procedure; concerning
admissibility of evidence in a civil action of settlement
made with others; amending K.S.A. _____ and repealing
the existing sections.

Be it enacted by the Legislature of the State of
Kansas:

Section 1. In any civil action for damages any
party may present evidence to the trier of fact of the terms
and conditions of any agreement between any of the parties
and others relating to settlement of any or all issues in
such action, including but not limited to releases, covenants
not to sue or covenants not to execute or enforce judgments.
Evidence may be introduced showing the amount of money paid,
or to be paid, and/or any other consideration including but
not limited to furnishing of testimony or exhibits, agreements
to reimburse a settling party or person fees, costs, expenses
or amounts paid in settlement under certain conditions and
any other agreement entered into concerning the settlement.

Section 2. K.S.A. _____ are hereby repealed.

Section 3. This act shall take effect and be in
force from and after its publication in the statute book and
shall apply to all actions pending on its effective date and
all actions filed on or after its effective date.

Attch. 4 -

PROPOSAL RELATING TO SEAT BELT DEFENSE

AN ACT relating to civil procedure; concerning admission of evidence relating to non-use of seat belts in civil actions; amending K.S.A. _____ and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In all actions for damages evidence that the party or parties seeking damages were not using seat belts available for use will be admissible to establish that the person or persons would not have sustained any damages, or the severity of the damages would have been lessened, or the wrongful death would not have occurred if seatbelts had been used.

Section 2. K.S.A. _____ are hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book and shall apply to all cases pending on its effective date and all actions filed on or after its effective date.

Collateral Source

Attach. # 6

21377

_____ BILL NO. _____

By Committee on _____

AN ACT modifying the collateral source rule and repealing
K.S.A. 60-471.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In any action for damages for personal injury (including bodily harm, sickness, disease or death) or property damage, the court shall admit into evidence the total amount of all benefits received or entitled to be received by the claimant from any collateral source.

Section 2. In the event a party elects to introduce evidence of compensation from any collateral source, the court shall admit evidence of any amount which the claimant has paid or contributed to secure his or her right to any benefits concerning which evidence of collateral source compensation has been introduced.

Section 3. K.S.A. 60-471 is hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the statute book.



Attch. 6

SURVIVING SPOUSE

HOUSE BILL NO. _____
BY _____
Re Proposal No. _____

AN ACT concerning the Kansas wrongful death act; providing for mitigation of damages awarded in the event of the remarriage of the surviving spouse; amending K.S.A. 60-1903 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 60-1903 is hereby amended to read as follows: 60-1903(a) In any such action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances, but the damages, other than pecuniary loss sustained by an heir-at-law, cannot exceed in the aggregate the sum of twenty-five thousand dollars (\$25,000.00) and costs. (b) In all actions arising under the provisions of this act involving the death of a spouse the fact of the remarriage of a surviving spouse since the date of the decedent's death is admissible evidence in any action and may be considered by the court or jury.

Section 2. K.S.A. 60-1903 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.