

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 21, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Burke, Feleciano, Gaar, Gaines, Hein, Mulich, Steineger 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:

Bill Henry, Kansas Engineering Society
Jim Sutherland, Stormont-Vail Hospital
Pat Baker, Kansas Association of School Boards
Dr. James McHenry, SRS/Alcohol and Drug Abuse Services
Dr. Susan Voorhees, Kansas Psychological Association
Ron Wells, Kansas Engineering Society

Senate Bill 718 - Exempting professional engineers from licensure as private detectives.

Bill Henry testified in support of the bill. A copy of his testimony is attached (See Attachment No. 1). Following his testimony he introduced Ron Wells. Mr. Wells said he would be happy to respond to questions. He explained he works for industry prior to the involvement of the attorney. He also does work for insurance companies prior to retention of an attorney in the case. Considerable discussion was held regarding the language in lines 60, 61 and 62 of the bill.

Senate Bill 701 - Reporting suspected cases of children who are chemically dependent persons.

Senator Hein, the sponsor of the bill, explained the bill. He then introduced Jim Sutherland.

Mr. Sutherland testified in support of the bill and indicated their concern is that the bill extends further than what they originally had in mind and raises some questions that need to be addressed in regard to workability and feasibility.

Pat Baker testified in support of the concept of the bill, but their concern is to what extent the bill would overlap with reporting child abuse and neglect. She noted it may come under that definition as it stands now, House Bill 2514 was passed out of the House Education Committee yesterday, and it contained the same immunity section as this senate bill. They feel there are already referrals done now, and that is why they asked a bill be introduced as an immunity. Is this the route solely to SRS? They are concerned in regard to truancy; that they might get a quicker action than going through SRS. They want to continue the direct referrals where they use it. They have fears this bill could delay the direct referrals.

Dr. James McHenry testified in support of the concept of the bill. A copy of his testimony is attached (See Attachment No. 2). Following his testimony, a committee member inquired if he felt an interim study of this type of approach would be worthwhile having. Dr. McHenry replied, yes, I think that might be worthwhile. Their problem is with not having adequate facilities and training. The committee member inquired, do we need to put emphasis on early treatment and preventive type action by the state? Dr. McHenry replied, we have come a long way. A lot of good work is done with the school systems now. There is the problem of additional resources. Prevention is their top priority.

Dr. Susan Voorhees, testified in opposition to the bill. She stated in her opinion the requirement to report drug and alcohol abuse, as mandated by the bill, will

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 21, 1984.

Senate Bill 701 continued

be counterproductive to these purposes. A copy of her testimony is attached (See Attachment No. 3). A committee member inquired, what is your preference, somebody who has a problem and not seeking counseling, and have them reported; or let them go and not report them? She replied, if there is mandatory reporting; if the child fears they will be turned in, the child will not come and talk about the issues. This creates a problem in the treatment. The committee member explained the intent is to get people into treatment who are not receiving it. Dr. Voorhees replied, as long as the confidentiality is upheld.

Senator Hein moved the chairman be directed to request an interim study on the subject matter in Senate Bill 718. Senator Mulich seconded the motion, and the motion carried.

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

The chairman reviewed the bill. Following committee discussion, the consensus of the committee was to take up the bill later.

Senate Bill 720 - Assignment of duties to retired district magistrate judges.

The chairman reviewed the bill. Senator Feleciano moved to amend the bill in line 58 by inserting the language suggested by Marjorie Van Buren. Senator Mulich seconded the motion, and the motion carried. Senator Feleciano moved to report the bill favorably as amended. Senator Mulich seconded the motion, and the motion carried.

Senate Bill 718 - Exempting professional engineers from licensure as private detectives.

The chairman reviewed the bill. Senator Werts moved to amend the bill by inserting the same language in lines 60, 61 and 62 as appears in line 34. Senator Gaar seconded the motion, and the motion carried. Senator Werts moved to report the bill favorably as amended. Senator Mulich seconded the motion, and the motion carried.

Senate Bill 648 - Increased penalties for third conviction of theft under \$100.

The chairman reviewed the bill. Senator Hein made a conceptual motion to amend the bill to include convictions in municipal court for offenses that would be constituted as theft of property. Senator Mulich seconded the motion, and the motion carried. Senator Hein moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

House Bill 2585 - Real estate, barring rights under certain mortgages and deeds of trust.

Senator Hein moved to report the bill favorably; Senator Werts seconded the motion, and the motion carried.

Senator Hein moved to approve the minutes of February 6, 1984; Senator Werts seconded the motion, and the motion carried.

The chairman announced the committee dinner will be held March 7, 1984, at 6:30 P.M.

The chairman asked the committee to give consideration to what action they wish to take on the surrogate motherhood bill.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Wooden Wood	400 E 6 th Ellinwood	Student Page
Todd Fertig	300 E 2nd Ellinwood	Student Page
Rob BARNUM	2700 SW 8 th ST	SRS-Youth Svc
Michael Flyzily	Topeka	SRS/ADAS
Jim McHenry Jr	1416 Collins	SRS/ADAS
Ronald L. Wells	2804 Sykes Hutchinson	KES
Bill Henry	Topeka	KS Engineering Society
GARY L. SWANEY	Topeka	W.C.
Susan Voorhees	1101 Colburne Topeka	Honors ^{Honors} Psychological Ass
Richard B. Mayfield	Topeka	KS Psych Assoc
Cathy Hraneczek	Topeka	KS Pharmacists Assoc
Frenda L. Hoyt	Topeka	A 6
Ed Bullington	"	Budget Div.
KEITH R LANDIS	"	CHRISTIAN BIBLE COMMITTEE ON PUBLICATION FOR KANSAS
Pat Baker	"	KASB
J.C. Woody	Collinwood Falls	Nat'l Organization for Women
Barb Reibert	Topeka	KWPC
M. Kaava	"	capital-Journal
Jim Sunderland	Topeka	Storms-Weil
Arthur Sedney	"	ICRA
Kalke' Champion S.M.	"	UCS



2-21-84
Attach. # 1

Kansas Engineering Society, Inc.
216 West Seventh, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

February 20, 1984

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William M. Henry
Executive Vice President

Testimony for the Senate 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 any investigation for the purpose of obtaining information with reference to: ... the cause or responsibility for fires ... or securing evidence to be used for any court, board, officer or investigating 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 prosecutor said she would prosecute the engineer for non-licensure under the private investigators act.

Atch. 1

The engineer in that case had been hired by the defendant 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, testifies 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 his 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.

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.

2-21-84

Attach. # 2

To: Senate Committee on Judiciary
From: Dr. James A. McHenry, Jr., Commissioner
SRS/Alcohol and Drug Abuse Services
296-3925
Date: February 21, 1984
RE: SB 701

It is generally acknowledged that too many of our youth are having serious problems with the abuse of alcohol and other drugs. We all need to be attuned to the need of these persons and to do our best to provide assistance through prevention and treatment services.

Senate Bill 701 provides a new mechanism for the early identification and early intervention of youth who have a chemical dependency problem.

The intent of this bill is commendable in attempting to reach out in a timely fashion to troubled youth and provide them with the treatment services they desperately need.

This bill provides several distinct processes for the identification of these chemically dependent youth:

1. Most professional people (Doctors, Social Workers, Psychologists, Police Officers, etc.) must report any child they suspect of being chemically dependent to SRS or a local law enforcement agency.
2. SRS would have the primary duty to receive and investigate these reports to determine their validity. SRS would also decide whether any action is necessary to protect the health and welfare of the child, including referral to evaluation and treatment for the chemical dependency problem.

While this process is similar to others mandated in existing statutes which SRS utilizes to determine abuse and neglect of children, this bill does not give SRS specific powers to remove the child from the home and petition for custody of the child.

Additionally, SRS Youth Services workers do not, as a rule, have the training and experience to make the determination that youth are chemically dependent. At the minimum, these workers would need training in this area, and significant additional staff would be needed to investigate these reports of chemical dependency.

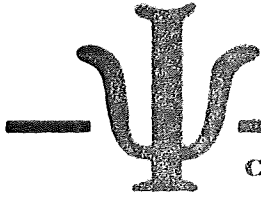
Another concern surrounds the referral of these chemically dependent youth to treatment programs. Kansas has relatively few treatment beds available for youth. With the passage of this bill, our present deficiency in residential treatment services for youth would be even more apparent.

It is the position of SRS that without additional resources the intended results of this bill could not be attained.

I would like to thank the chairman and the members of this committee for permitting me to share these views. I would be happy to answer any of your questions.

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Atch. 2



2-21-88
Attach # 3

KANSAS PSYCHOLOGICAL ASSOCIATION

Central Office • 1112 W. 6th St., Suite 114 • Lawrence, Kansas 66044 • (913) 841-2425

TESTIMONY CONCERNING SB 701

21, February, 1984

Mr. Chairman, Members of the Committee, thank you for the opportunity to give testimony regarding Senate Bill 701. I am Dr. Susan Voorhees. I am representing the Kansas Psychological Association, and I am a certified psychologist at the Menninger Foundation where I do clinical work with children and adolescents.

My concern about Senate Bill 701 does not lie with the importance it places on identifying and providing treatment for children and adolescents whose use of drugs and alcohol jeopardizes their ability to function and endangers themselves or others. It is my opinion, however, that the requirement to report drug and alcohol abuse as mandated by the Bill will be counterproductive to these purposes.

Psychological treatment hinges upon the patient's ability to establish a relationship of trust with the therapist within which they are able to share their thoughts and actions. This trust is built upon the confidentiality of the information shared by the patient with the therapist. This is particularly an issue for adolescents for whom a normal developmental struggle is one involving the questioning and affirmation of the trustworthiness of adults. It is my concern that requiring the therapist to report drug and alcohol abuses by the patient will seriously impair the working therapeutic relationship in the psychological treatment of adolescents, because of the adolescent's unwillingness to continue to share information with someone who, in their words, will "narc" on them. When this occurs and crucial information is withheld, the therapist is excluded from knowing the extent or seriousness of the drug and alcohol use and is no longer in the position of being able to help the youngster deal with the drug or alcohol abuse, the consequences of their actions, or the potential for serious danger to themselves or others by continued use. Additionally, it is my concern that the mandatory reporting of drug and alcohol use

Attach. 3

3

will be used as an excuse or a reason to avoid psychological treatment by youngsters who may under other circumstances be willing to become involved in a therapeutic process which would be able to help them modulate their drug and alcohol use.

Drug and alcohol abuse by adolescents is rarely an isolated event, but rather serves to mask other psychological symptoms, difficulties in functioning, or impairments in social interactions. The use of intoxicating substances frequently becomes a source of major conflict between parents and children which is often used as a rationale for distrusting adults. The confidential therapeutic relationship in which drug and alcohol use is an issue for discussion rather than the focus of conflict, punishment, or disapproval, provides the youngster with the opportunity to confront and resolve the underlying problems which lead to the need to abuse drugs and alcohol. Within the context of this relationship when drug or alcohol use is reported to the therapist, the therapist is in a position to assess the degree of impairment which this causes in the youngster's life. If the therapist determines that the youngster's use of drugs or alcohol seriously compromises their ability to function in their daily life and/or places the youngster at risk for hurting themselves or other people, these issues are dealt with within the context of the therapeutic relationship. In my practice, the issues of drug and alcohol use are dealt with by directly confronting the youngster, and if I determine that the drug and alcohol use are compromising the youngster's ability to function, I include the parents in the process and address their awareness of the extent of the problem for their child and responsibilities for their child's actions. The next step in the process is to consider placement of the youngster in a treatment facility in which the structure and focus of the treatment is able to deal more directly with both the actual drug and alcohol abuse as well as the underlying reasons for the abuse.

I would like to support the statements in Senate Bill 701 about ongoing educational opportunities concerning drug and alcohol use by children and adolescents for those professionals who are involved in their care and protection. Additionally, I

would encourage consideration of providing drug and alcohol counselors in the emergency rooms at the general hospitals and in the public school system so that they would be readily available to work with youngsters suspected of drug and alcohol abuse, and with their families. This would allow for monitoring and assessment of drug and alcohol use and intervention when necessary, without jeopardizing the psychological treatment and potential for forming working relationships with youngsters around these issues.

Thank you for your patience in hearing my testimony. I would be happy to attempt to answer any questions the Committee might have.