

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on March 21, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Burke, Feleciano, Gaar, Hein, Hess, 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:

Representative Robert Frey
Jim Clark, Kansas County and District Attorneys Association
Charles Simmons, Department of Corrections

House Bill 2714 - Requiring at least one judge of the district court in each county.

Representative Robert Frey, the sponsor of the bill, explained the bill will clarify current law. Committee discussion with him followed.

House Bill 3077 - Duties of county counselors in certain counties.

Representative Robert Frey explained this bill was requested by a county counselor in his district, and this will clarify duties of county counselors and county attorneys and reduce possible friction.

House Bill 2687 - Qualifications for district attorneys.

Jim Clark testified his association does not have a position on this bill. This bill allows anyone with a little less experience to run for office. The association favors the requirement for district judges being similar to district attorneys. Committee discussion with him followed.

House Bill 3077 - Duties of county counselors in certain counties.

Jim Clark testified his organization supports the concept behind this bill.

House Bill 2781 - Meritorious good time credit.

Charles Simmons testified the Department of Corrections supports this bill. It provides for meritorious good time credit when recommended by the institution; for instance, when an inmate saves an inmate's life. A committee member inquired, is the House amendment to the bill their language? Mr. Simmons replied, yes, the House committee members indicated they wanted to know what they were voting for, so the department proposed the language, and the committee adopted it.

This concluded the hearings on House Bills 2714, 3077, 2687, and 2781.

House Bill 2781 - Meritorious good time credit.

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

House Bill 3077 - Duties of county counselors in certain counties.

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

House Bill 2714 - Requiring at least one judge of the district court in each county.

Following committee discussion, Senator Mulich moved to report the bill favorably; Senator Burke seconded the motion, and the motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~noon~~ on March 21, 19 84

House Bill 2687 - Qualifications for district attorneys.

Following committee discussion, Senator Mulich moved to report the bill favorably; Senator Werts seconded the motion, and the motion carried.

Senator Burke moved to approve the minutes of March 1, 1984; Senator Mulich seconded the motion, and the motion carried.

The chairman called the committee's attention to the draft of a letter to the Attorney General requesting an opinion of Kansas Insurance Department regulation 40-1-20 (See Attachment No. 1).

The meeting adjourned.

3-21-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Nancy Kluwe	Topeka	OJA
Shawn Taylor	Minn	MHS
Maureen Smith	Minn	MHS
Jeff Brumbaugh	Minn	MHS
Walt Lynch	Topeka	Judicial Council
Charles Simmons	Topeka	Dept. of Corrections
Joan Clark	"	KC DAA
Ed Speer	"	Ks Assn. of Realtors
Pat D. Troy	Liberia	
Jim Nelson	Lawrence	Topeka KS
Tom Fritch	Lawrence	Sen Hess
Barry Massey	Topeka	Press

3-21-84

Attach #

ELWAIN F. POMEROY
SENATOR, EIGHTEENTH DISTRICT
PRIVATE OFFICE:
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TOPEKA, KANSAS 66612
PHONE 357-0311

STATE OF KANSAS



TOPEKA

STATEHOUSE

ROOM 143-N

PHONE 296-7359

COMMITTEE ASSIGNMENTS
CHAIRMAN JUDICIARY
VICE-CHAIRMAN LEGISLATIVE AND CONGRESSIONAL
APPORTIONMENT
MEMBER COMMERCIAL AND FINANCIAL
INSTITUTIONS
FEDERAL AND STATE AFFAIRS
INTERSTATE COOPERATION COMMISSION
ORGANIZATION, CALENDAR AND RULES

MEMBER: KANSAS JUDICIAL COUNCIL
COMMISSIONER: NATIONAL CONFERENCE
OF COMMISSIONERS ON
UNIFORM STATE LAWS

March 19, 1984

The Honorable Robert T. Stephan
Attorney General
Second Floor
Kansas Judicial Center
Topeka, Kansas 66612

Dear General Stephan:

On behalf of the Senate Judiciary Committee, I am seeking your opinion as to the legality of a Kansas Insurance Department regulation (K.A.R. 40-1-20) which prohibits insurance companies from issuing medical, surgical, hospital, or funeral expense insurance policies containing subrogation clauses.

Enclosed is a letter from Mr. Ron Todd, Assistant Insurance Commissioner, which outlines the Department's justification for promulgating the regulation. The letter cites K.S.A. 40-103 which gives the Commissioner general rule making authority to make all reasonable rules and regulations necessary to enforce the state's insurance laws. The letter further justifies the rule by stating it reflects the common law rule prohibiting subrogation in the above insurance contracts.

It is the Senate Judiciary Committee's concern that the above regulation is not based on specific statutory authority and is therefore void. The regulation appears to be an attempt by the Insurance Commissioner to legislate rather than administer insurance laws.

A related concern has come to our attention regarding a provision contained in Blue Cross-Blue Shield health insurance policies. One of the benefit exclusions provides:

"Health services resulting from accidental bodily injuries arising out of a motor vehicle accident to the extent such services are payable under any medical expense payment provision (by whatever terminology used — including such benefits mandated by law) of any automobile insurance policy. The excluded expenses cannot be used for any purpose under this certificate."

The provision is apparently based on K.A.R. 1983 Supp. 40-4-34, a copy of which is enclosed. Our concern is that if the Insurance Commissioner's regulation prohibiting subrogation clauses in health insurance contracts is valid, then the above Blue Cross policy exclusion is a violation of that regulation. The exclusion appears to be a back door method of subrogation.

Attch. 1

Your prompt attention to this matter will be appreciated.

Sincerely,

Senator Elwaine F. Pomeroy, Chairman
Senate Judiciary Committee

MH/jsf