

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on January 22, 1987 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldton, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors.
Marjorie Van Buren, Office of the Judicial Administrator
John Smith, Department of Revenue
Jim Clark, Kansas County and District Attorneys Association
Ron Smith, Kansas Bar Association
Ralph Skoog, Kansas Trial Lawyers Association
T. C. Anderson, Kansas Society of Certified Public Accountants
John Frieden, Kansas Society of Certified Public Accountants
Richard Hayse, practicing attorney

Since there was not enough time to hear all of the conferees on Senate Bill 14 and Senate Bill 15 during the committee meeting yesterday, the bills were taken up first today.

Senate Bill 14 - An act concerning criminal procedure; relating to diversion of proceedings on a complaint.

Elizabeth Taylor, Kansas Association of Alcohol and Drug Program Directors, appeared in support of the bill. She stated they were supportive of the proposed amendment that would not allow the diversion program for those who refused the blood alcohol test, and no diversion program for those with a 0.15 BAC.

Marjorie Van Buren, Office of the Judicial Administrator, testified she wanted to call to the committee's attention the impact of this bill on judicial time. She said the impact is time not cost. A copy of her handout is attached (See Attachment I).

John Smith, Department of Revenue, reported in checking over figures the decrease for refusals to take the blood alcohol test was down from 1800 to 5,000 for calendar year 1986. He reported the arrests remain steady.

Senate Bill 15 - An act amending the Kansas juvenile offenders code; relating to dispositional alternatives.

Jim Clark, Kansas County and District Attorneys Association, stated the association supports this measure.

Marjorie Van Buren, Office of Judicial Administrator, testified the district magistrate judges are supportive of the bill. Several of the district judges and associate district judges around the state who handle juvenile matters felt comfortable with two additional alternatives in dealing with juvenile offenders.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 22, 1987.

Senate Bill 16 - An act concerning civil procedure; relating to exemptions from legal process.

Staff presented a brief overview of the bill. The bill is a product of the Interim Judiciary Committee on the topic of Bankruptcy and Exemptions. It was proposed by the Kansas Bar Association.

Ralph Skoog, Kansas Trial Lawyers Association, stated the association supports the bill. He said we believe that it is in the interest of justice to compile the various exemption statutes in one place in the Code of Civil Procedure, with references, for the benefit of the public. A copy of his statement is attached (See Attachment II).

Ron Smith, Kansas Bar Association, stated staff covered his remarks.

Discussion was held concerning whether the aggregate values mentioned in paragraphs (b) and (e) of the bill have changed. The chairman inquired when it was that those figures were set. Staff will get the information.

Senate Bill 25 - An act concerning tort liability for certain acts and omissions of persons and entities practicing as certified public accountants.

T. C. Anderson, Kansas Society of Certified Public Accountants, introduced John Frieden. He said Mr. Frieden will be available to respond to technical questions committee members might have about the bill. Mr. Anderson testified an area of particular concern to Kansas CPAs is a growing tendency by state courts to extend accountant's exposure to liability for negligence to an unlimited number of unknown third parties or non-clients with whom the accountant has no contractual or other relationship. In this respect the Kansas Society endorses the bill, which is designed to strike a balance between the appropriate liability of an accountant for his own negligence, which directly affects those to whom he has a duty, and the otherwise limitless exposure which would attach if liability is extended to all conceivable viewers or users of the accountant's report. A copy of his statement is attached (See Attachment III).

During committee discussion Mr. Frieden reported 22 states are basically adopting this provision that we are adopting. Twenty-six have not addressed it. He said states are beginning to erode the privity.

Ron Smith, Kansas Bar Association, testified the association is in opposition to the bill. He said he would like to reserve more time to discuss this bill in some detail. Commercial and banking type lawyers looked at the bill from the interim committee, and he would like the committee to hear their input. He then introduced Richard Hayse to discuss the bill.

Richard Hayse stated he was appearing in the role and capacity as a practicing attorney. He stated he would present status of Kansas law on the subject covered by this bill; in particular the case Koch vs. Vosko. He said we are codifying the existing law as demonstrated by the Vosko opinion. He stressed he doesn't think that the Vosko decision is any authority that the CPA can allow all privity of contract. Mr. Hayse discussed the case with the committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on January 22, 1987.

Senate Bill 25 continued.

Ralph Skoog, Kansas Trial Lawyers, testified it is the opinion of the association that the bill is not in the public interest. He stated while members of many professions within the state would feel more comfortable with similar immunities from protection as proposed by the bill for the certified public accountants, it is in our judgment from the injuries which may be suffered by citizens of the state by intentional or negligent acts of certified public accountants that such is not justified. (See Attachment IV).

The chairman announced he will grant the request from Ron Smith to have further input at a later date.

The chairman announced the committee will take action on bills previously heard on Monday, Tuesday and Wednesday of next week.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-22-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
R. Skoog	Topka	KTLA-wit.
Marjorie J. VanBuren	Topka	: OJA
John W. Smith	Topka	Dept of Revenue
Ron Smith	"	KBA
Kick Hayes	Topka	Ks Bar Ass'n.
Sue Ann V. Schultz	Quenemo, Ks.	BANK IN Topka, N.A.
WALTER DARLINS	TOPEKA	DIVISION OF BUDGET
Kevin B. Wickliffe	Lawrence	Senator Mullin
DENNIS E AUGUSTINE	RR 2, LARNED	SUNRISE INC
Jim Lidberg	923 INDIANA-Neodesha	Wilson Co. Hosp
John F. Gilbert, M.S.	Box 711, Newton, KS 67114	Mirror Inc. / F.A.M. House
May Lidberg	923 Indiana Neodesha	Wilson Co. Hosp.
Phyl Frye CAC	1524 N Broadway Larned	ISH - CDRP
Sten Monson	104 W 4 th Atchison	11 th Judicial Cirap
Mike Germond	Topka	Ks R/R Ass'n.
Dave Starn	Topka	K.I.C.I.F.
Kevin M Hill	TOPEKA	OJA
Bob Lubmeyer	Topka	KTLA
Theresa Shively	Topka	KANSAS NARAC
Mark A. Biberstein	Emporia	inter/sec Burke
Richard S Funk	Topka	KALB
Beth Walbin	Topka	D.S.C.
John C. Frieden	topka	Attg
Jan Vacek	Topka	KSCPN
William W. Sneed	TOPEKA	Ks Assn of Def Coun

Attach. to
 Senate Judiciary
 1-22-87



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(913) 296-2256

January 22, 1987

To: Gary Stotts, Acting Director of the Budget
From: Jerry Sloan, Budget and Fiscal Officer
Re: Senate Bill 14

This bill would make modifications to certain diversion proceedings in both district and municipal courts. Although the impact on both levels of court are comparable, I do not have any actual data on the impact in municipal courts.

One of the major impacts of this bill is that it would require the defendant to appear before the court and have the court accept the diversion agreement. In some cases, this is already being done, but it is estimated that in at least half of the diversion cases, the defendant does not make a court appearance. In information obtained by the Legislative Division of Post Audit, it was determined that in 1985 there were 5,807 diversions in which the defendant would have been under the jurisdiction of the district court. If we assume that even half of these would not have appeared before the court under existing statutes, this would require an additional 2,904 appearances. Assuming the average length of time for this appearance to be 15 minutes, this would require additional in-court time of 726 hours or the equivalent of 35% of a full-time judge in court time only.

Another impact of the courts of this bill is the changing of the responsibility of obtaining and transmitting revoked or suspended driver's license from the district or county attorney to the court. While I do not have a more refined breakdown, during 1986 there were a total of 67,156 suspensions and revocations. While I doubt if the assumption is true, if each defendant whose license is being suspended or revoked brings their license with them, there should be only minimal

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impact. There would be mailing costs, but they would be out of the court's operating budget, which is county funded and should be offset by a corresponding reduction in county and district attorneys' county budget.

One remaining potential impact of this bill is contained in New Section 9 where Court Services Officers could be used in monitoring defendants' compliance with diversion agreements. While the language is permissive any additional duties to this already short-staffed area would have a major impact.

SENATE BILL NO. 16

BEFORE SENATE COMMITTEE ON JUDICIARY

January 22, 1987, 10:00 A.M.

Testimony of Ralph E. Skoog on behalf of
Kansas Trial Lawyers Association

Mr. Chairman, Members of the Committee, the Kansas Trial Lawyers Association supports Senate Bill No. 16.

We believe that it is in the interest of justice to compile the various exemption statutes in one place in the Code of Civil Procedure, with references, for the benefit of the public.

In reference to K.S.A. 60-2304, (Section 3 of the Bill), the additional provisions in (f) fulfill the same purposes as the new Sections 1 and 2, and the modification in subparagraph (d) merely clarifies this exemption procedure.

We would bring to your attention that it has been many years since the aggregate values in Paragraph (b) and (e) were established, and that they represent by reason of inflation, a much smaller protection by way of the value of ones jewelry such as engagement rings, etc., or the trade or business property than was the original judgment of the legislature.

If we may be of aid to you in this matter, please advise us.

*Atch. II
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1-22-87*



Kansas Society of Certified Public Accountants

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

KANSAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

January 22, 1987

Re: Senate Bill 25

Mr. Chairman and members of the Senate Judiciary Committee. My name is T. C. Anderson. I am the Executive Director of the Kansas Society of Certified Public Accountants.

An area of particular concern to Kansas CPAs is a growing tendency by state courts to extend accountant's exposure to liability for negligence to an unlimited number of unknown third parties or non-clients with whom the accountant has no contractual or other relationship.

In this respect the Kansas Society endorses Senate Bill 25 which is designed to strike a balance between the appropriate liability of an accountant for his own negligence, which directly affects those to whom he has a duty, and the otherwise limitless exposure which would attach if liability is extended to all conceivable viewers or users of the accountant's report.

- (1) SB 25 would limit actions for ordinary negligence to those with whom the accountant is in privity or near privity of contract -- i. e., with whom there is a contractual relationship or a contemplated reliance upon accounting services to be rendered. It therefore allows the accountant to know to whom he is liable, and for what he is liable.
- (2) SB 25 does not in any way restrict suits against accountants for fraud or other willful or wanton acts. It merely imposes certain minimum requirements which must be fulfilled before a third-party may file suit for ordinary negligence.
- (3) The Kansas Supreme Court has not spoken on "third party liability" of accountants. However, since current Kansas case law supports the concept of privity, SB 25 would merely codify the current interpretation found in Koch Industries v. Vosko, 494 F 2d 713, 10th Cir. 1974. Renowned Justice Benjamin Cardozo of New York's highest court states, in the leading privity case decided over 50 years ago:

If liability for negligence exists, a thoughtless slip or blunder, the failure to detect a theft or forgery beneath the cover of deceptive entries, may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class. The hazards of a business conducted on these terms are so extreme as to kindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences. (emphasis added)

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The New York Supreme Court has recently upheld that state's concept of privity, but other states such as California, Wisconsin and New Jersey, have abandoned it. SB 25 is therefore a proactive measure designed to prevent judicial erosion of traditional liability concepts which has occurred elsewhere in recent years.

- (4) The liability of an auditor to investors and others injured by misleading financial statements stands on a different analytic footing from that of the product manufacturer or the doctor. The difference stems from the auditor's role of being a secondary, as opposed to a primary, participant in the circumstances giving rise to loss or injury. Unlike the manufacturer of a machine or appliance, the auditor does not have control over production or distribution of the defective article; that is the responsibility of the issuer of the financial statements. In addition, the auditor, even if negligent, is often himself a victim of the primary wrongdoer's conduct; and, unlike the manufacturer, whose income is directly related to the size of the transaction or the frequency of sales, the auditor's compensation is customarily based on the time devoted to rendering a service and does not reflect the size of the transaction or the growth of the client's business.

SENATE BILL NO. 25

BEFORE SENATE COMMITTEE ON JUDICIARY

January 22, 1987, 10:00 A.M.

Testimony of Ralph E. Skoog on behalf of
Kansas Trial Lawyers Association

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear here on behalf of the Kansas Trial Lawyers Association.

It is the opinion of the Kansas Trial Lawyers Association that Senate Bill No. 25 is not in the public interest.

While members of many professions within the State would feel more comfortable with similar immunities from protection as proposed by Senate Bill No. 25 for the certified public accountants, it is in our judgment from the injuries which may be suffered by citizens of the State by intentional or negligent acts of certified public accountants that such is not justified.

To some extent the provisions of the statute proposed to statutorily adopt the present general rule of law in Kansas. Under Paragraph (b) however, the breadth of the proposed immunity requested may very well be unreasonable.

It is the general view of the Kansas Trial Lawyers Association that legislative action to provide immunities to various groups within the State from the general responsibility that they would otherwise have with other citizens of the State for their violation of their duties should be very very cautiously exercised, and that there is no record to indicate the necessity for the extraordinary protections which are provided for certified public accountants in Senate Bill No. 25.

*Attach. IV
Senate Judiciary
1-22-87*