

Approved January 27, 1987  
Date

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 26, 1987 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Richard Funk, Kansas Association of School Boards  
David Litwin, Kansas Chamber of Commerce and Industry and Kansas  
Coalition for Tort Reform  
Elizabeth Taylor, Kansas Association for the Education of Young Children  
Robert Runnels, Kansas Catholic Conference  
Richard Mason, Kansas Trial Lawyers  
Nancy Perry, Greater Topeka United Way  
Ron Smith, Kansas Bar Association

Senate Bill 28 - An act concerning civil procedure; limiting civil liability of volunteers of certain nonprofit organizations.

Richard Funk, Kansas Association of School Boards, testified they support the concept in the bill. He said a number of volunteers come into the building and they try to work with the schools to try to work out school policies set up by the board of education. He pointed out in the first section the bill excludes medical facilities. He explained we have organized classes and have a unit on aging and senior citizens. The students go into nursing homes and spend time with residents reading, visiting and wheeling them around in their wheelchairs.

David Litwin, Kansas Chamber of Commerce and Industry and Kansas Coalition for Tort Reform, testified this bill would extend to volunteers of charitable and educational organizations protection from liability similar to that which Senate Bill 27 would apply to their directors and officers. We do ask that that class of organizations that would be helped by this bill be expanded to include, in addition to 501(c)(3) charitable and educational organizations, labor, agricultural and business organizations/chambers of commerce, of the types described in sections 501(c)(5) and (6) of the Internal Revenue Code. A copy of his testimony is attached (See Attachment I).

Elizabeth Taylor, Kansas Association for the Education of Young Children, testified she is speaking on behalf of all organizations that she represents. They are all nonprofit organizations. She said in the nonprofit organization it is getting harder and harder to get insurance at all. She said she would like to see the 501(c)(6) organizations be included in the bill.

Robert Runnels, Kansas Catholic Conference, testified in support of the bill. He stated this bill reaches and serves a greater need than a similar bill, Senate Bill 27, which covers only Volunteer 501(c)(3) Board of Director members. A copy of his statement is attached (See Attachment II).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on January 26, 1987.

Senate Bill 28 continued

Richard Mason, Kansas Trial Lawyers, testified his organization supports the concept of the bill. They do not feel it is appropriate to give carte blanche to all organizations. He presented a proposed Substitute for Senate Bill 28 and explained the provisions. A copy of the proposed bill is attached (See Attachment III). Committee discussion with him followed.

Nancy Perry, Greater Topeka United Way, testified they do support the bill and feel if this bill is not passed it will be devastating to volunteerism not only to the state but to everyone.

Ron Smith, Kansas Bar Association, testified this legislation comes from the 1986 interim studies on Tort Liability. While the intent of the bill is clear and worthwhile, the language of the bill itself needs some work. His organization generally supports the bill's concept. Such immunity should be granted carefully. He explained the proposed amendments. A copy of his statement is attached (See Attachment IV). Considerable committee discussion was held concerning professionals doing volunteer work for particular organizations. A committee member stated doctors would do volunteer work except they have to carry malpractice insurance to do it.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-26-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bob Cukenthut	Topeka	KTLA
Bob Kelly	Topeka	KICA
BOB ROOKS	TOPEKA	VILLAGES
Bruce Limbo	Topeka	Villages
Bruce Welburn	Topeka	Dea Scouts
Craig Grant	Topeka	IT-WEA
Richard Mason	Topeka	KTLA
Richard Funk	Topeka	KAB
Danton B. Rice	Topeka	Secretary of State
Lola Farlay	Topeka	Assn. Retarded Citizens
David Hansen	Topeka	City of Topeka
L M CORNISH	"	Kansas P/C Cos
T.C. Andersen	Topeka	KSCRN
Ron Smith	"	KS Bar Assoc
Bob Runwell	KC. Mo.	Topeka Civic
Blair Malone	Topeka	K. of G.
Bryce Miller	Topeka	MHAR
Laura L. Moore ED	Three Rivers 810 45 - Wamego	HUMAN SERVICES Independent Living
Harold C. Pitts	Topeka	KCOA
Nancy Perry	Topeka	United Way of Greater Topeka
Lori Callahan	Topeka	Am. Inv. Assoc
Mike German	Topeka	Ks Railroad Ass'n.
Elizabeth E. Joyce	Topeka	Assoc. of Local Health Dep'ts KADHD/KAEK/KADADA
[Signature]	"	KCCF
Molly Daniels		Ks Dept on Aging

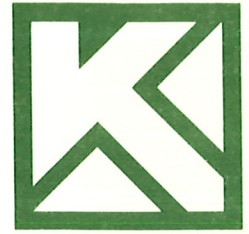
Attach. II  
 Senate Judiciary  
 1-26-89





1-26-87

# LEGISLATIVE TESTIMONY



## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 28

January 23, 1987

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Judiciary Committee

by

David Litwin

Mr. Chairman, members of the committee. My name is David Litwin, representing the Kansas Coalition for Tort Reform. We appreciate the opportunity to testify in support of SB 28.

The Kansas Coalition for Tort Reform is a federation of diverse groups that share the view that certain changes in our civil justice system are needed for two general purposes: 1) to make that system more efficient, more just, and less costly, and 2) 2) to provide, over the long term, a more stable environment that would permit the writing of high quality liability insurance at affordable rates.

The Coalition's memberships includes the following: Kansas Chamber of Commerce and Industry; Kansas Farm Bureau; Kansas Contractors Association; Independent Insurance Agents of Kansas; Kansas Railroad Association; Kansas Motor Carriers Association; Kansas Society of Architects; Kansas Medical Society; Associated General Contractors of Kansas; Kansas Association of Broadcasters; Kansas Grain and Feed Dealers Association; Kansas Association of Property and Casualty Insurance Cos., Inc.; Kansas Consulting Engineers; Kansas Lodging Association; Kansas Petroleum Council; Kansas Independent Oil and Gas Association; Kansas League of Savings Institutions; Wichita Independent Business Association; Western Retail Implement and Hardware Association; Alliance of American Insurers; Kansas Telecommunications Association; National Federation of Independent Business/Kansas; Merrell Dow Pharmaceuticals, Inc., Overland Park; Hutchinson Division, Lear Siegler, Inc., Clay Center; Becker Corporation, El Dorado; The Coleman Co., Inc., Wichita; FMC Corporation, Lawrence; Puritan-Bennett Corp., Overland Park; and Seaton Media Group, Manhattan.

*attach. I  
Senate Judiciary  
1-26-87*

SB 28 would extend to volunteers of charitable and educational organizations protection from liability similar to that which SB 27 would apply to their directors and officers. The two bills are complementary and, we feel, are an appropriate response to the increasing difficulty that nonprofit organizations are finding in attracting and retaining qualified people as board members and workers. This problem arises due to the spreading fear of lawsuits. Many solid citizens would like to donate their time and expertise to worthy nonprofit causes, but in our increasingly lawsuit-conscious society they often feel it's too much to ask that they also put their personal assets and income at risk. Adequate insurance is too often unavailable or unaffordable.

As I said in my testimony last week on SB 27, we do ask that that class of organizations that would be helped by this bill be expanded to include, in addition to 501(c)(3) charitable and educational organizations, labor, agricultural, and business organizations/chambers of commerce, of the types described in sections 501(c)(5) and (6) of the Internal Revenue Code. These organizations are increasingly finding similar difficulties in attracting and retaining qualified volunteer board members and other workers. Their missions may not be, strictly speaking, charitable or educational, but they are no less essential to the orderly and vigorous functioning of our society. If they are hobbled by inability to find the people needed to do their work on a volunteer basis, we are all, in the long run, the losers.

It's important to emphasize that we are not suggesting that the organizations themselves should be exempt from liability. To the contrary, as both SB 26 and SB 27 explicitly state, their liability would not be affected by these bills, and the negligence of a volunteer would be imputed to the organization for the purpose of apportioning liability under comparative fault principles.

Thank you again for this opportunity. If there any questions, I will be happy to answer them.

TESTIMONY  
KANSAS CATHOLIC CONFERENCE

SENATE JUDICIARY COMMITTEE  
S.B. 28 - January 26, 1987  
10:00 a.m.

Mr. Chairman, and members of the Senate Judiciary  
Committee:

My name is Bob Runnels. I am Executive Director of  
the Kansas Catholic Conference.

I come today to speak in support of Senate Bill 28.  
This bill reaches and serves a greater need than a similar  
bill (S.B. 27) which covers only Volunteer 501(c)(3) Board  
of Director members.

Voluntarism is unique to the United States ... no  
other country in the world has developed within its people  
the spirit of giving of time and money as in our country.  
Certainly this is a mark of the goodness of our people ...  
yes even more it is a sign of the greatness of our citizens ...  
it is a strong underpinning of our Republic.

Do people who give so freely to charitable organizations  
deserve a measure of protection under law ... protection from  
harassment suits ... I think so.

I ask that Senate Bill 28 be reported favorably for  
passage.

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*Attach. II*  
*Senate Judiciary*  
*1-26-87*

SUBSTITUTE SENATE BILL NO. 28

PROPOSED BILL NO. \_\_\_\_\_

By Special Committee on Tort Reform and Liability Insurance

Re Proposal No. 29

AN ACT concerning civil procedure; limiting civil liability of  
volunteers of certain nonprofit organizations.

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

Section 1. (a) As used in this section:

(1) "Charitable organization" means those charitable or educational organizations exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, and which maintains liability insurance in minimum limits of \$100,000/\$300,000, but does not include medical care facilities as defined in K.S.A. 65-425 and amendments thereto, medical facilities as defined in K.S.A. 65-424(a) and amendments thereto, adult care homes as defined in K.S.A. 65-3501 et seq. and 39-923 et seq. and amendments thereto and adult family homes as defined in K.S.A. 39-1501 et seq. and amendments thereto.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services that the volunteer performs for a charitable organization and that are reimbursed to the volunteer or otherwise paid.

(3) "Volunteer" means an officer, director, trustee or other person who performs services for a charitable organization but does not receive compensation, either directly or indirectly, for those services.

*Attch. III*  
*Senate Judiciary*  
1-26-87



(b) A volunteer is not liable in damages in a civil action for acts or omissions as such a volunteer unless such conduct constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the volunteer is not required to be insured by law or is not otherwise insured against such acts or omissions.

(c) A volunteer is not liable in damages in a civil action for the actions or omissions of any of the officers, directors, trustees, employees or other volunteers of the charitable organization unless the volunteer authorizes, approves, ratifies or otherwise actively participates in that action or omission which constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the volunteer is not required to be insured by law or is not otherwise insured against such acts or omissions.

(d) Nothing in this section shall be construed to affect the liability of a charitable organization for damages caused by the negligent or wrongful act or omission of its volunteer and a volunteer's negligence or wrongful act or omission, when acting as a volunteer, shall be imputed to the charitable organization for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(e) The provisions of this act shall apply only to causes of action accruing on or after July 1, 1987.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

1-26-87



January 26, 1987  
SB 28

**KANSAS BAR  
ASSOCIATION**

1200 Harrison  
P.O. Box 1037  
Topeka, Kansas 66601  
(913) 234-5696

Mr. Chairman. Members of the Senate Judiciary Committee. I am  
Ron Smith, KBA Legislative Counsel.

The Kansas Bar Association generally supports this  
legislation conferring limited civil liability on  
volunteers performing services for charitable organ-  
izations. The language of the legislation needs  
clarification, however.

This legislation comes from the 1986 interim studies on Tort Lia-  
bility. While the intent is clear and worthwhile, the language of the  
bill itself needs some work.

It should be pointed out that it is only the volunteer to which  
limited immunity for ordinary negligence is granted under the bill; the  
bill does not grant immunity to the charitable organization. In fact,  
the charitable organization must absorb the percentage of negligence  
charged to the immune volunteer. As such, this is an exception to the  
several liability rule of KSA 60-258a. The legislature does so, of  
course, to insure adequate volunteer services to certain 503(c)(3)  
corporations.

*Attch IV  
Senate Judiciary  
1-26-87*

KBA generally supports the bill's concept. Such immunity should be granted carefully. We suggest the following amendments in conceptual form:

1. The definition of "volunteers" in line 30 should not include professionals exercising independent professional judgment for the nonprofit corporation. This exclusion should include all licensed professionals included in the Professional Corporation Act. We offer two reasons:

(1) We fundamentally believe that professional services to a nonprofit corporation by a licensed professional should not alleviate that professional of the consequences of his or her negligence. Professionals' giving their time and talents to nonprofit organizations do so for a variety of reasons, but should not have lower standards of care for the professional work they do for the 503(c)(3) corporation. The nonprofit corporation itself can make agreements with professions for indemnification in certain instances which act as a form of immunity. However, we do not think state statutes should make that determination.

(2), this statute would make the nonprofit organization fully liable to third parties for any professional negligence, which is an improper placement of liability.

Example: If an architect negligently designs a building for the YMCA, and it falls down and hurts a customer, under the <sup>bill</sup>customer will sue the YMCA and the architect. Comparative negligence will apportion liability. Under SB 28, the YMCA would be fully liable for the architect's professional malpractice.

2. Auto liability claims against a volunteer driving his or her own automobile on business of the charitable organization ought not have full immunity under subsection (b). The immunity granted in such

situations ought to be for damages that exceed the limits of policies on the automobile involved.

3. Where insurance up to stated limits is mandatorily required by law, the volunteer should be liable to those limits.

4. Finally, where a 503(c)(3) nonprofit corporation voluntarily maintains insurance for the volunteers, or the volunteer maintains such insurance on their own, the volunteer should be immune for liability exceeding the limits of such voluntary insurance. This does not mean KBA advocates certain minimum insurance requirements; the decision to insure and limits of coverage ought to still be with the governing body of the entity, or the volunteer.

Finally, there is a cleanup considerations.

1. Why do lines 36 and 45 state there IS volunteer liability for willful or wanton misconduct or intentionally tortious conduct, but no liability if the same volunteer acts with malice or fraud? A volunteer director of the YMCA could be involved in fraudulent activity with another volunteer director, but is not liable under subsections (b) or (c) so long as the volunteer is not compensated by YMCA for their services. Is the YMCA liable to third parties for this fraudulent activity?