Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach at
Chairperson

5:15 ~~a.m.~~/p.m. on March 27, 19 91 in room 313-S of the Capitol.

All members were present except:

Representatives Garner, Douville, Heinemann, Sebelius, Hochhauser, Carmody and Gregory who were excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Jim Clark, Executive Director, Kansas County and District Attorneys Association
Kevin Seik, representing the Kansas Commission on Disability Concerns
Ray Petty, representing Independence Incorporated
Gina McDonald, Executive Director, Kansas Association of Centers for Independent Living
Lt. Bill Jacobs, Kansas Highway Patrol
Reverend Richard Taylor, Kansans for Life at Its Best
Sydney Kaar, representing Kansas Action for Children, Inc.
Juanita Carlson, representing the American Civil Liberties Union
Chip Wheelen, representing Kansas Medical Society

The Chairman called for hearing on HB 2534, uniform controlled substances act; diversion agreements.

Jim Clark, Executive Director, Kansas County and District Attorneys Association, appeared in support of HB 2534. (See Attachment # 1).

There were no committee questions.

There being no further conferees, the hearing on HB 2534 was closed.

The Chairman called for hearing on SB 296, copy and retention of report by attorney for the State.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of SB 296. (See Attachment # 2).

There were no committee questions.

There being no further conferees, the hearing on SB 296 was closed.

The Chairman called for hearing on SB 298, enforcement of accessibility of public buildings law.

Kevin Seik, representing the Kansas Commission on Disability Concerns, appeared on behalf of Martha Gabehart, who could not be present, and summarized Ms. Gabehart's testimony in support of SB 298. (See Attachment # 3).

There were no committee questions.

Ray Petty, representing Independence Incorporated, appeared to testify in support of SB 298. (No written testimony was furnished.) Mr. Petty stressed that enforcement of the law is needed at the lowest level when a building is built.

There were no committee questions.

Gina McDonald, Executive Director, Kansas Association of Centers for Independent Living, appeared in support of SB 298. (See Attachment # 4).

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 5:15 ~~a.m.~~/p.m. on March 27, 1991

There were no committee questions.

There being no further conferees, the hearing on SB 298 was closed.

The Chairman called for hearing on SB 299, traffic citations for purchase or consumption of alcohol beverage by minor.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of SB 299. (See Attachment # 5).

Committee questions followed.

Lt. Bill Jacobs, Kansas Highway Patrol, appeared in support of SB 299. (See Attachment # 6).

There were no committee questions.

Reverend Richard Taylor, Kansans for Life at Its Best, submitted written testimony. (See Attachment # 7).

There being no further conferees, the hearing on SB 299 was closed.

The Chairman called for hearing on SB 303, violation of city ordinance which is a misdemeanor can be basis for adjudication of minor as juvenile offender.

Sydney Kaar, representing Kansas Action for Children, Inc., appeared to support the intent of SB 303 but to oppose its method. (See Attachment # 8).

Committee questions followed.

Juanita Carlson, representing the American Civil Liberties Union, appeared in opposition to Section (b), Page 1, Lines 17-23 of SB 303. See Attachment # 9).

There were no committee questions.

There being no further conferees, the hearing on SB 303 was closed.

The Chairman called for hearing on SB 335, relating to definition of charitable health care provider.

Written testimony in support of SB 335 was submitted by Richard Morrissey, Deputy Director, Division of Health, Department of Health and Environment. (See Attachment # 10).

Chip Wheelen, representing the Kansas Medical Society, appeared in support of SB 335. (See Attachment # 11).

There were no committee questions.

There being no further conferees, the hearing on SB 335 was closed.

The Chairman called for action on SB 299.

Representative Everhart made a motion that SB 299 be passed and placed on the Consent Calendar. Representative Macy seconded the motion.

Committee discussion followed.

A committee member raised a concern regarding the short form analysis called for by the bill and requested that committee action be delayed for a day.

Representative Everhart withdrew her motion with the consent of her second.

The Chairman called for action on SB 103.

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 5:15 ~~a.m.~~p.m. on March 27, 1991

The Chairman distributed to committee members copies of "House Judiciary Committee's Statement on SB 103" which he had drafted and suggested the statement might be incorporated into the meeting minutes to show committee intent. (See Attachment # 12).

A committee member objected to placing the statement in the minutes in lieu of amending SB 103 as the statement does not reflect the concensus of the committee.

A committee member expressed concern that minutes cannot be used as law and requested that the committee proceed taking action on the bill.

The Chairman called for committee amendments to SB 103.

Representative O'Neal made a motion that the balloon amendments proposed by the Kansas Medical Society on 3/26/91 be adopted. Representative Snowbarger seconded the motion. The motion carried.

Representative O'Neal made a motion that SB 103 be further amended on Page 2 in Lines 40 through 43 to include language submitted by the Homebuilders Association. Representative Snowbarger seconded the motion. The motion carried.

Representative Smith made a motion that SB 103 be passed as amended. Representative Everhart seconded the motion. The motion carried.

Representative Rock made a substitute motion that SB 103 be restored to its original unamended version. Representative Everhart seconded the motion. The motion failed.

The Chairman invited comments from representatives present at the meeting. Jerry Palmer, KTLA; Robert Frey, KTLA and Janet Stubbs, Kansas Homebuilders Association, indicated they had no objection to the committee's proposed amendments.

Representative O'Neal made a motion that SB 103 be further amended by striking Line 43 on Page 4 subsection (e) and all in Lines 1 through 13 on Page 5. Representative Hamilton seconded the motion. The motion carried.

Representative Smith made a motion that SB 103 be passed as amended. Representative Everhart seconded the motion. The motion carried.

The Chairman called for action on SB 335.

Representative Everhart made a motion that SB 335 be passed. Representative Smith seconded the motion. The motion carried.

The Chairman called for action on SB 298.

Representative Everhart made a motion that SB 298 be passed. Representative Smith seconded the motion.

Committee discussion followed.

A committee member requested that action on SB 298 be postponed for a day.

Representative Everhart withdrew her motion with the consent of her second.

The Chairman called for action on SB 303.

Representative Everhart made a motion that SB 303 be not passed. Representative Macy seconded the motion.

Committee discussion followed.

Representative Everhart amended her motion, with the consent of her second, to table SB 303. The motion carried.

The meeting adjourned at 6:30 P.M. The next scheduled meeting is March 28, 1991, 3:30 P.M. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/27/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO!
Gina McDonald	3258 S. Topeka Blvd 66604	KS Assoc. Centers for Ind. Living
Kevin Siek	Topeka	KCDC
Juanita Carlson	Lawrence, KS	ACLU re: SB 303
Lt. Bill Jacobs	TOPEKA	KS Highway Patrol
Laura Doole	Topeka	City of Topeka
Jim Clark	"	KCDAA
Sydney Karr	Lawrence	KS Action for children
Chip Wheelen	Topeka	KS Med. Soc.
Terry Scaachetti	TOPEKA	KDHS
Ray Petty	Lawrence	Independence, Inc.

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL NO. 2534

The Kansas County and District Attorneys Association appears in support of House Bill 2534. The bill simply borrows diversion procedures from the DUI statutes and applies them to drug offenses, specifically by requiring a stipulation of facts and treating a diversion as a conviction.

While granting diversion in drug cases may seem to defeat the purposes of cracking down on drug offenders, and it certainly is not the position of KCDAA to advocate granting diversion in drug cases, the facts of life are that even in drug cases an offender may be better served through diversion; diversion is being granted in drug cases in some jurisdictions because there has been no legislative determination to preclude it; and diversion is a much less expensive way to dispose of a case. Until such time as mandatory penalties for drug offenses are adopted by the Legislature, as they presently are in DUI cases, diversion is a viable option for disposing of cases. If, in the unusual event that diversion is granted in a drug case, this bill would ensure that if a defendant is subsequently convicted of another drug offense, he would be subjected to the enhanced penalties of a second-time offender.

H JUD
Attachment #1
3-27-91

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

SENATE BILL NO. 296

The Kansas County and District Attorney requested SB 296, and appears in its support. The initial purpose of the bill was to allow the prosecutor to make a copy of the pre-sentence report, instead of having to study it as part of the court file, and make decisions based on his/her memory. This situation is a problem in larger jurisdictions where a prosecutor may have several cases come on for sentencing at one time. The bill was amended by the Senate Judiciary Committee to also allow the defense attorney to copy the reports. This amendment raised some concern because of the sensitive nature of some of the information in the reports. However, because the statute still requires permission of the court before the information may be divulged to the defendant, we support the bill as amended.

HJUD
Attachment # 2
3-27-91

OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
535 N. MAIN
WICHITA, KANSAS 67203

NOLA FOULSTON
District Attorney

(316) 383-7281

OUTLINE OF TESTIMONY BEFORE
SENATE JUDICIARY SUB-COMMLITTEE OF
JAMES E. PUNTCH, JR.
March 7, 1991

My name is James E. Puntch, Jr. I am an Assistant District Attorney in Sedgwick County, Kansas, and I am here representing the Kansas County and District Attorneys Association and the District Attorney of the Eighteenth Judicial District. Both the Kansas County and District Attorney's Association and Sedgwick County District Attorney strongly support the proposed amendment which is contained in Senate Bill 296.

In the past two years the Sedgwick County District's Attorney's Office has filed more than 4,700 criminal cases. Most of those cases involved dispositions which required the preparation of pre-sentence investigation reports. Those reports contain information about the defendant's background, work, school history, and reports from third parties about the defendant including psychological reports, prior arrests and convictions. The report also contains the defendant's own statements about the circumstances of the crime and the defendant's feelings about the crime. It also includes the pre-sentence investigator's recommendations as to what type of sentence the defendant should receive. Defendants sentenced to the Secretary of Corrections have State Reception and Diagnostic Center reports prepared which contain not only the above information but much more detailed reports on the defendant's psychological background, his current mental status and recommendations for future treatment. Currently all pre-sentence and SRDC may be reviewed by the Prosecuting Attorney but may not be copied and retained.

Permitting the Prosecuting Attorney to copy and retain such reports will increase the efficiency and economy of the Administration of Justice here in the State of Kansas. This will occur in two ways.

2-2

Sedgwick County is a large judicial district with 27 District court judges. Although only a certain number are assigned to the criminal division at any one time most judges will be assigned criminal cases or may have criminal defendants they are supervising on probation or parole. It is not uncommon to have ten or more divisions of the district court conducting sentencing hearings, motions to modify or probation violation motions at the same time on any given day. Typically, more than one defendant will be appearing in each court and in some divisions, as many as 15 different defendants may be appearing on the same morning.

It has been the policy of the Sedgwick County District Attorney's Office to assign every criminal case to a specific attorney who is responsible for that case. This attorney, of course, becomes very knowledgeable about the facts of that case and about that particular defendant. Whenever possible the attorney assigned to that case is sent to cover any post-trial motions such as sentencing hearings, probation violation hearings and motions to modify. However, because of the large number of courts and defendant's involved it is usually impossible to assign the attorney responsible for the case to the post-trial hearing. The reason is the attorney may no longer be with the office or may be involved in court hearings in another division of the District Court which prohibit that attorney from appearing in that case.

As a result attorneys not familiar with a particular case or a particular defendant often have to appear at sentencing hearings, probation violation hearings or motions to modify. If the prosecuting attorney's office is permitted to copy and retain the reports then prosecutor's unfamiliar with the case can easily review the file, including these reports, and appear for the State at sentencings with full knowledge of all of the facts of the case. This permits the attorney who is, for example, assigned to a court where there are ten separate hearings to review the files, including these reports, at one time and at one location. This prevents needless duplication of effort. In addition, the presence of these reports in the District Attorney's file more easily allows the attorney familiar with the case to review them and give advice to the prosecutor attending the sentencing for the State about the appropriate actions and recommendations to take. This will save time and needless duplication of effort.

There will be no breach of confidentiality in permitting the District Attorney to retain copies of such reports because the District Attorney's records are already confidential in nature. Records kept in the District Attorney's files are not disclosed to the public and are kept in secure locations.

The requested change carries no fiscal note for the State of Kansas. Any reports which are copied are done at the expense of the office of the prosecuting attorney and not at the expense of the State of Kansas.

The second benefit to having the reports remain in the prosecutor's files is that it is not at all uncommon for defendants who are placed upon probation to violate that probation and again appear before the Court. If the prosecuting attorney has ready access to previous pre-sentence investigations in all of the defendants cases a clear picture of the defendant's criminal history record and success or lack thereof in prior cases can be made available to the Court. The prosecutor can get a complete picture of a particular defendant's prior record, and make more informed decisions on what actions to recommend to the Court. The Court can then make a more informed judgment as to the appropriate action to take in such probation violation hearings.

I thank you for the opportunity to testify on behalf of this matter today, and urge that this legislation be passed.

Respectfully submitted,

James E. Puntch, Jr.
Assistant District Attorney

KANSAS DEPARTMENT OF HUMAN RESOURCES

Commission on Disability Concerns
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice) -- 913-296-5044 (TDD)
913-296-4065 (Fax)

Joan Finney, Governor

Michael L. Johnston, Secretary

Testimony on SB 298 to the House Local Government Committee

by Martha K. Gabehart,
Executive Director
Kansas Commission on Disability Concerns
March 27, 1991

The opinions stated here are those of the Kansas Commission on Disability Concerns (KCDC) and do not necessarily reflect the opinions of the administration.

Thank you for the opportunity to testify in support of SB 298, the amendments to the Kansas Handicapped Standards law. The amendments give the Attorney General authority over the other enforcement authorities cited in the law.

For several years KCDC has received inquiries from individuals with disabilities who have concerns about inaccessible public buildings and enforcement authorities who will not take complaints when new buildings are built inaccessible. The reasons usually given by the enforcement authorities are that the law isn't clear concerning authority to handle complaints or that the complaint has to be filed before construction is completed for injunctive relief to be available. In answer to the later reason, a recent Attorney General's opinion indicates that mandatory injunctive relief is available and would require modifications to be made if the building was completed and was inaccessible.

HJUD
Attachment #3
3-27-91

Because there is hesitancy on the part of building inspectors and county attorneys to accept complaints and force compliance, it is necessary for there to be an oversight authority. The Attorney General has expressed his concern about the issue of accessibility and his desire to be able to enforce the law. However, he cannot without this change in the law.

The recently passed Americans with Disabilities Act (ADA) requires that new buildings be built so that they are accessible and that existing buildings be modified to allow access. Kansas is ahead of other states with our handicapped standards law, however, it needs to be more enforceable.

Access is a right, not a privilege.

KCDC urges your support for SB 298.

\sb298h

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T STEPHAN
ATTORNEY GENERAL

MAIN PHONE 913) 296-2215
CONSUMER PROTECTION 296-3751
TELECOPIER 296-6296

January 29, 1991

Copy to Katrich Ballchart

ATTORNEY GENERAL OPINION NO. 91- 7

Ray D. Siehndel
Secretary
Kansas Department of Human Resources
401 S.W. Topeka Blvd.
Topeka, Kansas 66603-3182

Re: Personal and Real Property--Public Buildings--Handicapped Accessibility Standards Responsibility for Enforcement; Injunction to Restrain Violation of Standards; Violation of Injunction; Civil Penalty

Synopsis: Mandatory injunctive relief may be sought pursuant to K.S.A. 1990 Supp. 58-1308 to remedy facilities built in violation of the Handicapped Accessibility Standards found in K.S.A. 58-1301 et seq. Cited herein: K.S.A. 58-1301 et seq.; K.S.A. 1990 Supp. 58-1304; 58-1308; K.S.A. 60-901; K.S.A. 1990 Supp. 60-906.

* * *

Dear Mr. Siehndel:

As secretary of the Kansas department of human resources you ask several questions about K.S.A. 1990 Supp. 58-1308 dealing with injunctive relief for the enforcement of the Kansas Handicapped Accessibility Standards. The act requires new public buildings be built using the 1980 ANSI standards in order to make them accessible to persons with disabilities.

You inquire "1. What does 'injunctive relief' mean in terms of existing facilities which should have been built according to

the 1980 ANSI standards as required by law, but were not? 2. Can a court order certain steps to be taken within a certain time-frame to bring facilities into compliance? 3. If so, who is responsible for paying for the needed alteration? 4. What procedure would be required to seek such relief?"

Your first question concerns the definition of injunctive relief. K.S.A. 60-901 in the Code of Civil Procedure defines an injunction as "an order to do or refrain from doing a particular act. It may be the final judgment in an action, and it may also be allowed as a provisional remedy." When an injunction is issued requiring affirmative action involving a change of existing conditions it is classified as mandatory in form. 42 Am.Jur.2d Injunctions §§ 9, 16, 17 (1969). Thus the issue presented by your questions is whether K.S.A. 1990 Supp. 58-1308 authorizes one to seek mandatory injunctive relief ordering that a building built in violation of this act be made to conform to the standards by providing accessibility to handicapped individuals.

K.S.A. 1990 Supp. 58-1308 provides:

> "The attorney general or any person, agency or governing body responsible for the enforcement of K.S.A. 58-1301 to 58-1309, and amendments thereto, may apply in the name of the state of Kansas to the district court for a temporary or permanent injunction restraining any individual, corporation or partnership from violating the standards established by K.S.A. 58-1301, and amendments thereto. Such court shall have jurisdiction upon hearing and for cause shown to grant such injunction."

This statute authorizes the attorney general or any person charged with its enforcement [see K.S.A. 1990 Supp. 58-1304] to apply to the district court for a temporary or permanent injunction to restrain any individual or entity from violating the act. The question becomes one of legislative intent; did the legislature intend the provision to authorize both prohibitory and mandatory injunctive relief?

Similar injunctive power was interpreted by the Supreme Court in State, ex rel., v. Ross, 159 Kan. 199 (1944) to provide for only preventive injunctive relief (as distinct

from mandatory [prohibitory] injunctive relief). However Ross, an appeal from the denial of a mandatory injunction to restore a stream to its unobstructed state, involved an order to require the restoration to a private landowner of what he claimed to have lost by the unauthorized acts of the defendant.

In our instance, the mandatory injunctive relief involves an order to restore to the public generally and to those citizens physically handicapped access to all public buildings and facilities covered by the act. The order would make operative legislative intent found in K.S.A. 58-1303:

> "It is intended to make all buildings and facilities covered by this act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space or facilities where the general public is concerned."

The circumstances involve a violation of a continuing nature wherein the injury will continue unless otherwise enjoined.

Furthermore, if the legislature had intended that only preventive or prohibitory injunctive relief could be obtained, all an individual would have to do to circumvent the act's application is to violate it. And, the only way those charged with the act's enforcement could seek injunctive relief would be to find out about its intended violation and enjoin it. Thus to find that only preventive or prohibitory injunctive relief was intended would be to render the act meaningless.

Therefore, it is our opinion that K.S.A. 1990 Supp. 58-1308 authorizes those charged with the acts enforcement to seek both prohibitory and mandatory relief from a district court. If the facts of a case clearly favor such a remedy the court, in accordance with principles of equity, may order a public building, built in violation of K.S.A. 58-1301 et seq. be brought into compliance by providing access for the handicapped. See American Carriers, Inc. v. Baytree Investors, Inc., 685 F.Supp. 800, 806 (D.Kan., 1988); 42 Am.Jur.2d Injunctions §§ 2, 16, 23 (1969).

Your third question involves liability. An injunction, be it prohibitory or mandatory in nature, is an equitable remedy, granted or denied in accordance with the justice and equity of each case. U.S.D. No. 503 v. McKinney, 236 Kan. 224,

226 (1984); Wichita Wire Inc. v. Lenox, 11 Kan.App.2d 459 (1986); 42 Am.Jur.2d Injunctions §§ 2, 20, 23, 24 (1969). Thus, the question of who would be responsible or liable for the necessary alterations will depend on how principles of equity apply to the facts of the case. The court will balance the equities and consider the benefit provided to handicapped individuals and the public good against the inconvenience and costs to the defendant. See 42 Am.Jur.2d Injunctions, § 21 (1969).

Your last question is what procedure would be required to seek such relief. Those charged with enforcement of the act may apply in the name of the state of Kansas to the district court. See K.S.A. 1990 Supp. 60-906 requirements of form and scope of order. See also K.S.A. 1990 Supp. 58-1308. Actions brought do not require that an aggrieved physically handicapped individual be party to the lawsuit. See K.S.A. 58-1309.

In our judgment, K.S.A. 1990 Supp. 58-1308 authorizes those charged with the act's enforcement to seek mandatory injunctive relief requesting that a public buildings, subject to the act and in violation thereof, be brought into compliance by making it accessible to the handicapped.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Guen Easley

Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm

KANSAS ASSOCIATION OF CENTERS FOR INDEPENDENT LIVING

3258 South Topeka Blvd. ~ Topeka, Kansas 66611 ~ (913) 267-7100 (Voice/TDD)

Gina McDonald
Executive Director

TESTIMONY

Presented to
House Judiciary Committee
by
Gina McDonald, Executive Director
03-27-91

The Kansas Association of Centers for Independent Living (KACIL) represents nine (9) Independent Living Centers across the state and the people they serve.

Among the activities KACIL sponsors is the Kansas Disability Caucus. This is a gathering of disability advocates from Kansas who meet to determine specific issues they will address in the legislative process annually. Among the priorities identified by the disability caucus delegates in September 1990 was the Kansas Accessibility statute. Our feeling is that the Americans with Disabilities Act of 1990, a landmark piece of federal legislation which will insure the civil rights of individuals with disabilities, was no good to persons covered if accessibility were not achieved throughout all communities. The Kansas Attorney General, Robert Stephan, in his presentation to the delegates committed his office to enforcing not only the Kansas statute but also the final regulations developed by the Architectural & Transportation Barriers Compliance Board.

Senate Bill 298 amends the Kansas Accessibility law to make clear that the Attorney General has the power to oversee enforcement. It further makes it clear that mandatory injunctive relief may be used to enforce the provision of the law. This bill simply supports the need for explicit regulations that do not tolerate non-compliance. As you continue to hear input from all sectors, business and the disability communities alike, keep in mind that THE priority for persons with disabilities in Kansas is free and equal access to all publicly used buildings, services, products, goods and facilities in all communities.

KACIL appreciates the opportunity to present this priority and to support SB 298 on behalf of the 1990 Kansas Disability Caucus.

HJUD
Attachment # 4
3-27-91

Kansas County & District Attorneys Association

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(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

SENATE BILL NO. 299

The Kansas County and District Attorneys requested this bill from the Senate Judiciary Committee and is appearing in its support. The purpose of the bill is to amend K.S.A. 1990 Supp. 8-2106, the notice to appear statute, by adding violations of K.S.A. 1990 Supp. 41-727, purchase or consumption of alcoholic beverage by a minor, to the list of offenses for which a notice to appear may be issued. The bill was initiated by the Chase County Attorney apparently because of the proliferation of violations of the statute by college students attending the Strong City Rodeo. Having to draft long-form complaints, complete with affidavits, causes a significant increase in Chase (and other) County's workload, and is inconsistent with the legislative trend toward allowing the notice to appear to be used for misdemeanor offenses. The omission of this particular statute from the notice to appear statute is especially unfortunate, since only a few short years ago, the prohibited acts were not even considered a crime for persons who had reached 18 years of age.

There may be some concern that since K.S.A. 41-727 also applies to persons less than 18 years of age, issuance of a notice to appear may cause them to be prosecuted as an adult. It is clear, however, that section (c) of the statute requires filing those cases under the juvenile offender code. The changes we are suggesting in this bill would apply only to those offenders between the ages of 18 and 21.

The bill was amended to add other offenses that were left off previous versions of K.S.A. 8-2106, and we support the amendment. We urge the House Judiciary Committee's favorable recommendation of this bill.

HJUD
Attachment # 5
3-27-91

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

March 27, 1991

Presented by the Kansas Highway Patrol

(Lieutenant Bill Jacobs)

Appeared in Support of Senate Bill 299

The Kansas Highway Patrol supports Senate Bill 299 because it amends K.S.A. 8-2106 to allow an officer to issue a Notice to Appear instead of filing a long form complaint for a violation of K.S.A. 41-727. K.S.A. 41-727 pertains to the purchase, possession, consumption or attempt to purchase alcoholic liquor or cereal malt beverage by a person under the age of 21 except as authorized by law. The issue of a Notice to Appear instead of filing a long form complaint will be far less time consuming for an officer and will provide additional time to perform other duties and services for the citizens of Kansas.

During review of this proposed legislation, it came to our attention that there was a problem of this same nature in other areas of the traffic law book. At present it is common practice to issue a Notice to Appear for violations of the Child Passenger Safety Act and the Safety Belt Use Act. It appears that there is no statutory authority to issue a Notice to Appear for those offenses.

Therefore, we requested that the Senate Judiciary Subcommittee amend Senate Bill 299 to include new subparagraphs (7) and (8) in K.S.A. 8-2106 paragraph (a).

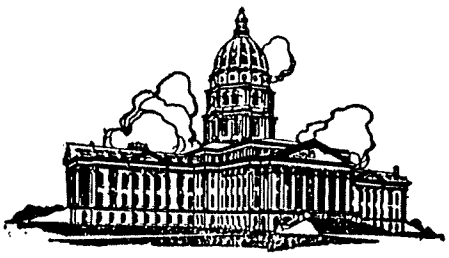
This amendment clearly authorizes the use of a Notice to Appear when citing for those offenses and would avoid any future conflict in that area.

HJUD
Attachment #6
3-27-91

KANSANS FOR LIFE AT ITS BEST !

Rev. Richard Taylor, Box 888, Topeka, Kansas 66601

Phone (913) 235-1866 Office 1273 Harrison
(3 Blocks South of Statehouse)



A Proud Land

March 27, 1991 3:30 p.m.
Hearing on SB 299 Alcohol & minors
House Judiciary Committee Rev. Richard Taylor, President

We are working hard to encourage every person under age 21 to JUST SAY NO to our most abused drug. But when education fails, law must step in to help persons make good choices.

We commend the Kansas County and District Attorney's Association for requesting this bill. When parents, teachers, pastors, and friends fail to win young people to a decision not to mess up their brain with alcohol, then law enforcement must help.

We also support child passenger restraints and the use of seat belts. In 1980, a driver ran a stop sign in the country and slamed into the side of my car. It was totaled, but my seat and shoulder harness prevented injury to me.

Please vote YES on SB 299.

Respectfully yours,

Richard Taylor

HJUD
Attachment # 7

3-27-91

"Of our political revolution of 1776 we are all justly proud," said Abraham Lincoln on Washington's birthday in 1842. He went on to say "how proud the title of that land" where persons declare their freedom from alcoholic beverages because they "shall find a stronger bondage broken, a viler slavery manumitted, a greater tyrant deposed. . .perfect liberty!" With per-person consumption at nearly half the national average, thousands of Kansans enjoy that perfect liberty. Concerned users and non-users are united in this R-E-A-L effort to prevent alcoholism, highway tragedy, and other suffering caused by our most abused recreational drug.

Rehabilitation — Help alcohol-dependent persons adjust to life without the drug.
Education — Inform children, youth & adults of effect of alcohol on mind & body.
Amount — Encourage persons to be non-users and encourage users to use less.
Law — Pass and enforce laws that reduce consumption and suffering.

Because all children need someone who cares . . .

Kansas Action for Children, inc.

A non-profit, tax-exempt organization.

715 SW 10th
P.O. Box 463
Topeka, Kansas 66601
(913) 232-0550

Johannah Bryant
Executive Director

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

MARCH 27, 1991

RE: SB 303

I am Sydney Karr, Advocacy Coordinator with Kansas Action for Children. KAC is a founding member of the Children's Coalition.

I appear today to support the intent of SB 303 but to oppose its method. KAC's concerns are as follows:

- Without adequate and effective interventions to help youths and their families, we are not serving them by declaring them "juvenile offenders" and bringing them under court jurisdiction.

- Any increase in caseloads (judges, CSO's, SRS, etc.) must be accompanied by additional funding in order to avoid overwhelming an already overburdened system.

- Municipal ordinances are diverse around the state. This bill creates state sanctions and remedies for infractions which are not uniform. Therefore, a young person can be declared a juvenile offender in this state because of where he or she lives and the specific ordinances in that community.

HJUD
Attachment #8
3-27-91

- This bill creates a low threshold for a potentially severe sanction. As long as municipalities have ordinances for minor infractions, there will be County Attorneys who will file J.O. petitions and judges who will adjudicate.

Having offered all of these objections, I'd like to offer KAC's support for the concept of holding young people accountable for their actions. We agree wholeheartedly with the District Attorney who requested this legislation that there must be consequences when juveniles violate laws or ordinances. We urge you to use other alternatives to do so.

SENATE BILL 303

I am writing on behalf of the American Civil Liberties Union. The ACLU is the only organization whose sole purpose is to uphold the Constitution of the United States.

The ACLU wishes today to state its opposition to section (b) of Senate Bill 303, at lines 17-23 of page 1. The primary basis of objection to this section is one based on basic due process found in the Fourteenth Amendment to the United States Constitution, which states:

> Nor shall any State deprive any person of ... liberty without due process of law...

By allowing this section to remain, there is an expansion of the juvenile offender in Kansas. This will have treatment and fiscal ramifications as this bill appears to increase the numbers of juvenile offenders in the state of Kansas. For example, bill does not appear to address the treatment ramifications if a juvenile is labeled a juvenile offender for thee added violations. Will the matter be heard in juvenile court where treatment geared to juveniles is available? Or, will the matter be heard in the regular municipal courts, along with its open hearings and adult-oriented treatment?

While I agree there may be problems with the juvenile justice system in Kansas, this approach, to expand the number of juvenile offenders, will not work; turning juveniles into adults by adding a new label legislatively defies a long history in Kansas of a juvenile oriented treatment focus.

Thankyou.

H JUD
Attachment #9
3-27-91

State of Kansas
Joan Finney, Governor

Department of Health and Environment
Division of Health

Stanley C. Grant, Ph.D.,
Acting Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

FAX (913) 296-6231

Testimony presented to

House Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill 335

Senate Bill 335 makes three amendments to the Kansas Tort Claims Act. One, the bill includes physicians who hold an exempt license as Charitable Health Providers. The Charitable Health Provider Act was initially proposed as a means to allow retired physicians with an exempt license to volunteer in indigent care clinics and be covered under the Tort Claims Act. Recently a review of the Act establishing the Charitable Health Provider Program discovered that it would not include exempt licensed physicians because they are currently not included in the definition of a health care provider. This bill will include exempt licensed physicians as Charitable Health Providers.

Second, it adds language suggested by the attorney general regarding the participation of charitable health providers who also have malpractice insurance to assure that claims against them while acting as charitable health providers will be covered by the Tort Claims Fund.

Third, it removes claims against a charitable health provider from consideration by an insurance company when determining rates or cancellation of coverage for a health care provider.

The Department of Health and Environment supports the passage of this bill to assure that the greatest number of physicians and other health professionals possible will be able to participate in the Charitable Health Provider program.

Testimony presented by: Richard Morrissey
Deputy Director
Division of Health
March 27, 1991

HJUD
Attachment #10
3-27-91

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 27, 1991

TO: House Judiciary Committee

FROM: Kansas Medical Society Chip Wheelen

SUBJECT: Senate Bill 335; Charitable Health Care Providers

Thank you for this opportunity to support SB 335 which amends the charitable health care provider law that was enacted by the 1990 Legislature. You will probably recall the unanimous passage of Senate Bill 736 last year.

During the eight months that have elapsed since that new law went into effect, a few questions have been raised about the provisions of that act. In one instance, a member of the Legislative Research Department pointed out that because of the unique characteristic of the exempt licensee under the Healing Arts Act, the so-called exempt licensee may not be defined as a health care provider pursuant to K.S.A. 65-4921. It is for this reason that we originally requested SB 335 with the amendment contained at lines 10 and 11 of page 2. More recently, Senator Winter has received correspondence from Mr. John Campbell, Deputy Attorney General, expressing concerns about liability exposure. It is for this reason that the Senate Committee adopted additional amendments to the law. A copy of Mr. Campbell's letter is attached as well.

We believe that these are important amendments to current law which should be enacted prior to implementation on the April 1 effective date of the administrative regulations. For this reason, SB 335 is to become effective on publication in the Kansas Register. We urge your immediate recommendation for passage of SB 335. Thank you for your consideration.

/cb

Attachment

HJUD
Attachment # 11
3-27-91

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 18, 1991

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

The Honorable Wint Winter, Jr.
Chairman
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Charles Konigsberg, Jr., M.D., MPH
Director, Division of Health
State of Kansas
Department of Health & Environment
Landon State Office Building
Topeka, Kansas 66612-1290

Re: Tort Claims Act Protection For Charitable Health Care Providers, 1990 Kansas Session Laws Chapter 329

Gentlemen:

In December of last year Dr. Konigsberg wrote the Attorney General requesting his comments concerning the above-referenced legislation. See Attachment 1. One of the issues raised in the letter dealt with the use of a charitable health care provider's malpractice insurance to pay for the defense, settlement or judgment necessitated by a suit brought by a medically indigent person.

On January 15, 1991, the Attorney General responded to Dr. Konigsberg's letter. His response was not an official Attorney General opinion. See Attachment 2.

On February 11, 1991, Senator Winter wrote asking for such an opinion. Work on that request is in progress.

11-2

However, in order to expedite a response to Senator Winter's concerns, I have written this letter.

An examination of 1990 Kansas Session Law Chapter 329 as now codified in the 1991 supplement provides the following:

1. K.S.A. 1991 Supp. 75-6102(d) defines the term "Employee" to include, ". . .a charitable health care provider."

2. K.S.A. 1991 Supp. 75-6102(f) defines the term "charitable health care provider." Said definition specifically provides that a charitable health care provider is to be, ". . .considered an employee of the state of Kansas. . ." when rendering professional services to medically indigent persons.

3. K.S.A. 1991 Supp. 75-6115 specifically exempts charitable health care providers from that provision of the tort claims act which removes most of the other health care providers from coverage of the act.

4. K.S.A. 1991 Supp. 75-6117 is that portion of the tort claims act which regulates the tort claims fund. Under this portion of the act, the general policy of the state is established by which the proceeds of insurance policies for defense, settlement and satisfaction of judgment are look to for funding prior to the expeduiture of public monies.

Subsection b of K.S.A. 1991 Supp. 75-6117 is the area of critical concern. It provides,

> Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any action or proceedings on those claims. Except for claims against the state arising from rendering or failure to

> render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereof. Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

It is noted that twice subsection b contains the phrase "Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person,. . . ." Based on that addition to K.S.A. 75-6117(b) there is no doubt that if the state, as defined in K.S.A. 1991 Supp. 75-6102(a), were sued insurance coverage would not preempt the obligation of the tort claims fund to pay for the costs of defense, settlement or satisfaction of judgment. However, in so much as a charitable health care provider is not the state, but an employee of the state, the question remains as to whether this exception applies to charitable health care providers.

In answering this question one must look for the intent of the legislature by several means including an examination of the tort claims act as a whole. Pending completion of that research, I am suggesting the following:

1. Consideration of amending that portion of K.S.A. 1991 Supp. 75-6117(b), which provides the exception to the general policy of insurance proceeds first, to provide,

> "Except for claims against the state or an employee of the state in any actions or proceedings arising from the rendering or failure to render professional services by a charitable health care provider to a medically indigent person,. . . ."

Such an amendment would remove any doubt whatsoever that the tort claims fund provides protection in the first instance for charitable health care providers. It would bring this exception into full accord with the other provisions of the tort claims act.

2. Consider amending K.S.A. 1991 Supp. 75-6102(f) which currently provides:

> "Charitable health care provider" means a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with the secretary of health and environment under K.S.A. 1990 Supp. 75-6120, and amendments thereto, who pursuant to such agreement, renders professional services to medically indigent persons gratuitously and who is considered an employee of the state of Kansas under K.S.A. 1990 Supp. 75-6120, and amendments thereto.

by adding the following,

> "Any health care provider, as defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with the secretary of health and environment under K.S.A. 1990 Supp. 75-6120 and amendments thereto, who pursuant to such agreement render professional services gratuitously to a person who provides information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person

shall be considered a health care provider for purposes of this act."

Such an addition would close another potential loop hole in the protection given to charitable health care providers. Under the current law, it is questionable as to whether a health care provider, who rendered professional services to a person who is not in fact a "medically indigent person," would be covered under the tort claims act, even if such services were rendered in good faith.

We will continue to work on Senator Winter's opinion request. I hope in the meantime, this letter will be of assistance.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

John W. Campbell
Deputy Attorney General
Chief, Litigation Division

JWC/mb
Enclosures
cc: The Honorable Robert T. Stephan
Chip Wheeler

11-6

STATE OF KANSAS

JOHN M. SOLBACH
REPRESENTATIVE, FORTY-FIFTH DISTRICT
DOUGLAS COUNTY
R.F.D. 1
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: JUDICIARY
MEMBER: APPROPRIATIONS

House Judiciary Committee's Statement on SB-103

Three conferees have appeared in opposition to the amendments of Senate Bill 103 -- the Kansas Homebuilders Assn., the American Institute of Architects and the Kansas Medical Society. Each of the groups has expressed concern that if amendments are not adopted to this bill that in some way their special interests will be jeopardized. It is the consensus of this Committee that the bill should not be amended further to address these concerns.

The reasons the Committee feels that SB-103 does not affect their interests are substantially as follow:

1. As to the Homebuilders' concern: the Homebuilders' concern is that contractors, homebuilders and others who install equipment and fixtures to real property may be held liable. We believe the language adopted by the Senate Committee as a whole sufficiently takes care of their major problem. They would urge us to adopt a definition of product which excludes houses, garages and storage sheds and like structures. The Committee feels that the concept of "product" as it is now embodied in K.S.A. 60-3301 et seq does not include structures, nor has the decisional law of Kansas indicated that structures are regarded as "products." Although the statute is significant for omission of a definition of "product" it is because of the broad range of things that might be considered "product" that a definition was not attempted.

H JUD
Attachment #12
3-27-91

2. As to the Architects' concern: the testimony indicates concern that since they are "specifiers" of products that they might be held liable. Persons who specify, such as architects, are not identified with the statute nor have they ever been so identified. No Kansas case cited to the Committee shows that this is actually happening.

3. The Kansas Medical Society is concerned by the deletion of the language on page 4, lines 21-23, if it will expose surgeons who install pacemekers or prosthetics to be considered "product sellers". In that status, the statute of limitations under K.S.A. 60-3303 will be held paramount to the ultimate four-year statute of repose under K.S.A. 60-513(c). However, no case is cited; and the Committee is not aware of any to support this proposition. The sense of the Committee is that K.S.A. 60-513(c) is much more specific dealing with "health care providers" than is K.S.A. 60-3303; and, although the Committee appreciates the expressed concern, the Committee believes that Kansas courts look to the more specific rather than the general in statutory interpretation and the concern expressed by Kansas Medical Society is not one that needs to be addressed by legislation at this time. It is not the Committee's intent to make the change Kansas Medical Society fears was made.

For the clarification of the legislative record, this Committee's understandings and intent as expressed in this memo are made part of the legislative record to assist courts in interpreting legislative intent as this bill amends K.S.A. 60-513 and K.S.A. 60-3303.

HOUSE JUDICIARY COMMITTEE

SB 103

MARCH 26, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director for the Home Builders Association of Kansas, appearing in opposition to SB 103 as amended by the Senate Committee of the Whole.

During the 1987 Session, HBAK strongly supported the remedial legislation which is now K.S.A. 60-513(b).

The reason this remedial legislation was then so important and remains important today is the decision of the Supreme Court of Kansas in Ruthrauff, Admistratrix v. Kensinger, 214 Kan. 185, 519 P.2d 661 (1974). The effect of Ruthrauff was to strip builders of any statute of limitations protection which meant a claimant could sue a builder for 50, 75 or more years after the work is completed, as long as the claimant did so within two years of the date of any injury.

The complexity of this issue is exceeded only by its importance to the many individuals and groups who will be impacted by your decision. HBAK questions the need for any change in current law. However, if the Legislature determines that a change must be made in the product liability law of Kansas, HBAK requests and amendment which would exclude construction claims from the definition of product liability. This was the intent of the Senate Judiciary Committee with their amendment.

CROCKETT, KEELEY & GILHOUSEN
ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING
A PROFESSIONAL ASSOCIATION:
DAVID G. CROCKETT, P.A.
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WICHITA, KANSAS 67214-2971
(316) 263-8662

FAX: (316) 263-7220

March 25, 1991

Ms. Janet Stubbs
Home Builders Association of Kansas
Merchants National Bank Building
Suite 803
Topeka, Kansas 66612

Via Fax No. (913) 233-9876

Dear Janet:

At your request, I have analyzed Senate Bill 103 from the perspective of the Kansas home builders.

As you know, the Bill provides that the 10 year limitation will not apply to a product liability claim.

Unfortunately, the Kansas Product Liability Act contains no definition of "product." It does contain a definition of "manufacturer," and that definition includes one who "constructs" the product in question. It is highly probable that enactment of the Bill will deprive home builders of the protection of the 10 year limitation, since a claimant could defeat the 10 year limitation by claiming that his or her suit is a product liability claim.

For this reason, we recommended an amendment to the definition of "product liability claim" which would clearly exclude home builders. The Senate adopted the following language:

> "It [a product liability claim] does not include any claim or action relating to the improvement of real property or of any fixtures affixed thereto, except that it does include any claim or action brought for harm caused by the manufacture, production, making or design of the relevant product which is affixed to the real property."

12-4

This language does not solve the problem, because it specifically includes as a product liability claim any claim relating to the manufacture or design of a product which is affixed to real property. As mentioned above, "manufacturer" includes one who constructs. "Design" could encompass architectural drawings, as well as floor plans and elevations prepared by lay persons. A "product which is affixed to the real property" must include a house, garage, and storage shed.

Therefore this language makes any lawsuit against a home builder a potential product liability claim. The result is that the home builder will no longer be protected by the 10 year statute of limitations. Enactment of this Bill would signal a return to the pre-1987 era in which home builders were exposed to liability claims indefinitely.

If I may furnish any further information, please do not hesitate to contact me.

Very truly yours,

David G. Crockett

DGC/cd

12-5

SUMMARY OF Ruthrauff, Administratrix v. Kensinger, 214 Kan. 185, 519 P.2d 661 (1974)

This lawsuit arose from a gas explosion and fire. The plaintiff sought damages from the defendant construction company and others, claiming that the construction company had negligently constructed the property thereby allowing the explosion to occur. The important dates are as follows:

1. May, 1959; all work completed by defendant
2. May, 1960; defendant sold property to Hall
3. December, 1969; Hall sold property to Smith
4. September 17, 1970; explosion
5. September 15, 1972, suit filed

The trial court concluded that the plaintiff's claim was barred by the same language which then appeared as K.S.A. 60-513(b), because the suit was filed more than thirteen years after the alleged negligent act.

The Supreme Court, however, after seven pages of reasoning, reversed the trial court and held that:

1. The period of limitation does not begin to run until the date on which substantial injuries result; and
2. The ten-year provision refers only to injuries which are not reasonably ascertainable until some time after the initial act.

In other words, the Supreme Court concluded that the 10 year limitation did not apply to sudden and immediately ascertainable injuries such as those caused by the gas explosion. Such claims were not barred if a suit were filed within two years of the date of the injury, regardless when the injury occurred. Therefore the plaintiff in Ruthrauff was permitted to proceed, even though the plaintiff was seeking damages for an act which had occurred more than thirteen years before the lawsuit was filed.

AIA Kansas

A Chapter of The American Institute of Architects

March 26, 1991

TO: Representative Solbach and Members of the House Judiciary Committee

FROM: Trudy Aron

RE: Opposition to SB 103

Mr. Chairman and Members of the Committee, I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas). Thank you for this opportunity to testify in opposition to SB 103.

We believe that as SB 103 is written, it may extend the statute of limitations for architects and others in the design and construction industry beyond the current ten-year statute.

Architects and others in the building industry are not the designer, manufacturer and/or constructor of products. However, architects do specify the products which make up the component parts of a building project.

The language in SB 103 is unclear as to the status of the designer and/or builder as it relates to improvements to real property. A building has never been construed to be a "product". In addition, the designer and/or builder of the project have never been construed to be liable as the seller, designer, manufacturer or constructor of the individual products. We are concerned that the language in this bill could be interpreted to impose an extension to the current ten-year statute of limitation. We oppose any extension of the present law.

We, further, agree with the Home Builders Association of Kansas. If the Committee is interested in the extension of the statute of limitations on product liability claims, a study should be undertaken to determine the need for changes and any potential harm these changes may have to those in the building industry.

We ask that you do not pass this bill. If you have questions, I'll be happy to answer them.

700 SW Jackson, Suite 209
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Telephone: 913-357-5308
800-444-9853
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12-7

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 26, 1991

TO: House Judiciary Committee

FROM: Kansas Medical Society Chip Wheelen

SUBJECT: Senate Bill 103; Statute of Limitations

Although we recognize that the purpose of the Senate in passing SB 103 is to deal specifically with product liability claims based on latent defects, we must oppose SB 103 in its current form. You will note that on page 4 at lines 21-23 the exemption from product liability claims in K.S.A. 60-513 is repealed. That is the law which establishes the statute of limitations in professional liability actions against health care providers. Obviously, this causes us significant concern.

The amendments to the product liability law contained in SB 103 would mean that a surgeon or other physician who implants or otherwise installs state of the art medical technology could be defined as a "product seller" and could, therefore, be subject to product liability actions for as long as 20 years after the medical procedure was performed. We believe that this is a significant departure from long-established public policy which has withstood the constitutional test of Supreme Court scrutiny. Furthermore, we do not believe it was ever the intent of the Senate to subject health care providers to a new 20-year statute of limitations.

For these reasons, we respectfully request that SB 103 be amended in a fashion that would retain the longstanding statute of limitations for medical malpractice actions. Attached to this statement is a draft amendment to SB 103 which would re-insert a reference to K.S.A. 60-513 in a fashion that would exclude health care providers from the prolonged statute of limitations in product liability cases. We believe that this language would be consistent with the intent of the Kansas Senate.

Thank you for considering our concerns. We urge you to adopt our amendment or reject SB 103 entirely.

CW/cb

Attachment

12-8

of repose, after which the presumption created in paragraph (1) of this subsection arises, shall be extended according to that warranty or promise.

(B) The ten-year period of repose established in paragraph (1) of this subsection does not apply if the product seller intentionally misrepresents facts about its product, or fraudulently conceals information about it, and that conduct was a substantial cause of the claimant's harm.

(C) Nothing contained in this subsection shall affect the right of any person liable under a product liability claim to seek and obtain indemnity from any other person who is responsible for the harm which gave rise to the product liability claim.

(D) The ten-year period of repose established in paragraph (1) of this subsection shall not apply if the harm was caused by prolonged exposure to a defective product, or if the injury-causing aspect of the product that existed at the time of delivery was not discoverable by a reasonably prudent person until more than 10 years after the time of delivery, or if the harm caused within 10 years after the time of delivery, did not manifest itself until after that time.

(c) ~~Except as provided in subsections (d) and (e), nothing contained in subsections (a) and (b) above shall modify the application of K.S.A. 60-513, and amendments thereto. Except~~ *for actions described in subsections (d) and (e), no action pursuant to this section shall be commenced more than 20 years beyond the time of the act giving rise to the cause of action.*

Nothing contained in this section shall modify the application of subsection (c) of K.S.A. 1990 Supp. 60-513 and except

(d) (1) In a product liability claim against the product seller, the ten-year limitation, as defined in K.S.A. 60-513, and amendments thereto, shall not apply to the time to discover a disease which is latent caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause.

(2) The term "harmful material" means any chemical substances commonly known as asbestos, dioxins, or polychlorinated biphenyls, whether alone or as part of any product, or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal toxic substances control act, 15 U.S.C. § 2601 et seq., or the state of Kansas, and because of such risk is regulated by the state or the environmental protection agency.

(e) Upon the effective date of this act through July 1, 1991, the