

Approved: 14 June 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on March 11, 1991 in room 514-S of the Capitol.

All members were present except: Senators Yost, Feleciano and Gaines who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

The Chairman opened the meeting by calling for consideration and action on bills heard by the Committee.

SB 211 - notice to victim prior to parole required in class A felony cases.

Senator Oleen moved to amend SB 211 on page 2, lines 33 and 35, deleting "victim's designated representative" and inserting in lieu of "victims' family", further amending on page 5, lines 36, 37, 41 and 43, by deleting "designated representative" and replacing with "victims' family, and further amending to keep victims files separate and not available to the inmates. Senator Bond seconded the motion. The motion to amend carried.

Senator Oleen moved to recommend SB 211 favorable for passage as amended. Senator Parrish seconded the motion. The motion carried.

SB 328 - proper court security to be provided.

Senator Rock reported the Subcommittee on Civil Procedure had received information from Judge Carpenter on SB 328. (ATTACHMENT 1) The Subcommittee recommended SB 328 be passed favorable.

After discussion by the Committee on the potential for differences of opinions in who determines the definition of "proper court security", Senator Rock moved to amend SB 328 to strike language beginning on line 17 after "district" through line 19 ending with "proper.", inserting a period (".") after "district", and to clarify that the Board of County Commissioners will determine what constitutes proper security and not the courts themselves. Senator Bond seconded the motion. The motion to amend carried.

Senator Rock moved to recommend SB 328 favorable for passage as amended. Senator Bond seconded the motion. The motion carried.

SB 75 - regulation of unsolicited telephone calls.

Senator Moran reported the Subcommittee on Criminal Law and Consumer Protection had no recommendation on SB 75. He identified two problems with the bill, telemarketers do not utilize local telephone books and most telemarketing solicitors are located out-of-state making KCC jurisdiction questionable.

Senator Moran moved to amend SB 75 on page 2 by striking all of (c), (d) and (e) which deal with telephone directory listings. Senator Rock seconded the motion. The motion to amend carried.

Senator Moran moved to amend SB 75 on page 2 line 19 to change "within 15 seconds" to "within 25 seconds". Senator Bond seconded the motion. The motion to amend carried.

Senator Feleciano moved to recommend SB 75 favorable for passage as amended. Senator Moran seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on March 11, 1991.

SB 133 - telemarketing fraud included in consumer protection act.

Senator Moran reported the Subcommittee on Criminal Law and Consumer Protection recommended SB 133 be amended by striking the exception for not-for-profit or charitable organizations and to include exceptions as described by Richard Shodorff (see Attachment 3 of report of the Judiciary Subcommittee on Criminal Law and Consumer Protection).

Senator Moran moved to adopt the Subcommittee report to amend SB 133. Senator Feleciano seconded the motion. The motion to amend carried.

Senator Feleciano moved to recommend SB 133 favorable for passage as amended. Senator Moran seconded the motion. The motion carried.

SB 103 - statute of limitation provision regarding 10-year limitation, does not affect liability claim.

William Sampson, Kansas Association of Defense Counsel, submitted additional information on SB 103. (ATTACHMENT 2)

Senator Rock moved to amend SB 103 by applying an absolute cap of 25 years and to add the suggestions of Professor Westerbeke. Senator Martin seconded the motion.

Senator Bond made a substitute motion to amend by applying an absolute cap of 20 years and to add the amendments suggested by Professor Westerbeke. Senator Morris seconded the motion. The motion to amend was declared lost, and on a call for a division, the motion was lost.

The question reverted back to the original motion by Senator Rock. Chairman Winter called for the vote and the motion to amend failed.

SB 356 - written policies for law enforcement officers regarding domestic violence calls.

Senator Moran reported the Subcommittee on Criminal Law and Consumer Protection discussed amending SB 356 to change some measures from mandatory to permissive but made no recommendation.

Senator Petty moved to amend SB 356 on line 18 changing "shall" to "may". Senator Rock seconded the motion. Committee discussion followed the motion.

Due to the lateness of the hour, the motion was continued to the next meeting of the Committee.

The meeting was adjourned.

District Court of Kansas
Third Judicial District

Shawnee County, Kansas

Chambers of
William Randolph Carpenter
Administrative Judge of the District Court
Division No. One
Shawnee County Courthouse
Topeka, Kansas 66603

March 7, 1991

Officers:
Carol A. Heggison, C.S.R.
Official Reporter
295-4351
Pamela S. Patton
Administrative Assistant
913-295-4365


Senator Richard Rock
Room 401 South
Statehouse
Topeka, Kansas 66612

Re: S.B. 328

Dear Senator Rock:

I am enclosing recent letters I have received from Judges Herbert Walton and Michael Corrigan in support of S.B. 328 and the provision for proper court security for district courts in the larger counties.

Best wishes,


William R. Carpenter
Administrative Judge

WRC:psp
Enclosures

Senate Judiciary Committee
3-11-91
Attachment 1



STATE OF KANSAS
TENTH JUDICIAL DISTRICT

HERBERT W. WALTON
DISTRICT JUDGE, DIVISION NO. 1
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS 66061

March 5, 1991

CYNTHIA S. NEWMAN
ADMINISTRATIVE ASSISTANT

AMY BLOSSER, C.S.R.
OFFICIAL COURT REPORTER

(913) 782-5000 EXT. 5460

The Honorable William R. Carpenter
Administrative Judge
Shawnee County Courthouse
200 Southeast 7th Street
Topeka, KS 66603

In re: S.B. 328, Security in the District Court.

Dear Judge Carpenter:

I write this letter in support of S.B. 328, that applies to counties with a population in excess of 100,000 citizens and which requires the county to provide security in the district court. Two years ago, our enlightened board of county commissioners approved a joint request of our court and the sheriff to provide such security. We had a sobering event in front of the courthouse that clearly brought security into focus.

Judge Janice Russell had just concluded a domestic hearing and the former husband of the plaintiff went to his car in front of the courthouse and obtained a 38 caliber revolver. When his wife came out of the courthouse, he shot and killed her and then committed suicide. As you know, we have many cases that present a highly charged emotional atmosphere. Thus, security is vital in courts that have a large volume of litigation. I fully support the basis of S.B. 328 and really appreciate the support from our sheriff and our board of county commissioners.

With kindest regards, I remain,

Sincerely yours,

Herbert W. Walton

HWW/csn

cc: Mr. Lewis R. Lewis, Court Administrator

ADMINISTRATIVE OFFICES OF THE DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
ROOM 1136 11TH FLOOR
525 N. MAIN
WICHITA, KANSAS 67203

Michael Corrigan
Administrative
Judge



(316) 268-7302

March 5, 1991

Honorable William R. Carpenter
Administrative Judge
Shawnee County Courthouse
200 Southeast Seventh Street
Topeka, KS. 66603

Dear Judge Carpenter:

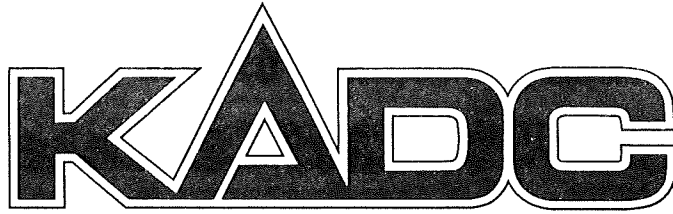
For some years I have been concerned about the lack of adequate security in our county courthouse for people involved in judicial proceedings. Except for prisoners escorted from the county jail, we have no courtroom security. Considering the volatility of much of our litigation, we have a very dangerous situation.

Sincerely,

A handwritten signature in cursive script that reads "Michael Corrigan".

Michael Corrigan
Administrative Judge

MC/er



March 9, 1991

VIA TELEFAX

Winton A. Winter, Jr.
Chairman
Senate Judiciary Committee
Post Office Box 189
Lawrence, Kansas 66044

Dear Senator Winter:

Prior to 1987, defendants in product liability claims in Kansas had several defenses available to them. If the injury were readily ascertainable, the claim had to be brought within two years of the date of the injury and was also subject to the statute of repose set out in the Kansas Product Liability Act, K.S.A. 60-3301 et seq. If the injury were not readily ascertainable, the pre-'87 statute of limitations required that that claim be brought within ten years of the act giving rise to the cause of action. The second provision had been a feature of the Kansas Statute of Limitations since 1968, long before the passage of the Product Liability Act.

Since 1987 there have been two events significant to you. First, the 1987 amendment imposed a 10-year cut off for all product liability claims. This 10-year bar applies not only to claims not readily ascertainable, which was the existing law, but also to claims that would be readily ascertainable. Therefore, after 1987, a person who had been suddenly and obviously injured more than ten years after the sale of the product could not bring a lawsuit.

The Tomlinson case, which everyone has spoke of at length, was in fact a response to the pre-'87 statute, as it dealt with injuries that were not readily ascertainable and claims brought more than ten years after that. As you are aware, the legislature amended the product liability law in 1990 to deal with latent disease claims of that type. That was the second significant change in the law since 1987.

You and your committee members have said to me on several occasions that you are not advancing the position of the KTLA on this matter and that your goal is only to restore the Kansas Statute of Limitations to what it was before the "accidental" amendment of

Kansas Association of Defense Counsel / 627 SW Topeka / Topeka, Kansas 66603 .

Senate Judiciary Committee
3-11-91
Attachment 2

Senator Winton A. Winter, Jr.
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1987. If that is your goal, then you will be opposed to both S.B. 103 and the textual amendment that Professor Westerbeke mentioned on Friday morning.

S.B. 103 in its present form does far more than return things to a pre-1987 status quo. Under its provisions, Kansas product manufacturers and sellers would be protected from a claim only if the "useful safe life" of their product had expired. As you are aware, that provision would make every statute of limitations defense a jury question and would eliminate any predictability from the existing statutory scheme. Even Professor Westerbeke is not advocating that.

Professor Westerbeke, you will recall, had two options. He said you could repeal the 1987 amendment and restore the pre-'87 status quo in that fashion, giving some thought to a separate statute of limitations for the housing industry. He also proposed amending language for S.B. 103.

We have obviously not seen any language that would repeal the '87 amendment. We have seen his suggested amendment to S.B. 103, however, and the essential purpose of this letter is to tell you that it does far more than restore things to where they were before 1987. That language, if accepted, would deprive Kansans of the important protection that they have had against old claims based on injuries that were not immediately ascertainable. Again, that protection had been part of the Kansas statutory framework for years prior to the enactment of the Kansas Product Liability Act, and it ought to be retained. We expect that you would want to retain it subject to the 1990 amendment, which we supported last year. But to go beyond that under the guise of "restoring things to where they were before 1987" would mean that the real goal here is to advance the KTLA agenda of scrapping the Kansas Statute of Limitations.

As we all agreed on Friday, this is not easy stuff. We told you on Friday that while we would prefer to retain the existing protections for Kansans, we would cooperate with you and your committee to draft language that, in fact, accomplishes your stated purpose of restoring things to where they were before 1987. The language that is proposed in the enclosure to this letter accomplishes that.

The enclosed draft does add one thing in § 1(d)(3) -- a 25-year cut-off for all product claims -- that was not part of the pre-'87 law. But such a "bright line" bar to products claims provides important predictability to our Statute of Limitations. And it does so consistent with Professor Westerbeke's suggestion of a "staged" statute of limitations, which allows claims for the

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first period (here, 10 years), provides a "useful safe life" defense for the next period (here, the next 15 years), and then bars claims after a certain distant date. Under existing Kansas law, that cut-off comes at 10 years, and you believe that is too short. But the concept is appropriate for any state, it is certainly appropriate for Kansas, and we believe 25 years is a fair place to draw the line.

We look forward to talking with you on Monday.

Respectfully submitted,

THE KANSAS ASSOCIATION OF DEFENSE COUNSEL

By: 

William R. Sampson

WRS/jlj
Enclosure
(Draft Revision to K.S.A. 60-513)

cc/Senator Richard R. Rock
Professor William E. Westerbeke

SENATE BILL No. 103

By Committee on Judiciary

1-31

8 AN ACT concerning civil procedure and civil actions; regarding stat-
9 ute of limitations; product liability claims; amending K.S.A. 1990
10 Supp. 60-513 and repealing the existing section.
11

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

13 Section 1. K.S.A. 1990 supp. 60-513 is hereby amended to read
14 as follows: 60-513. (a) The following actions shall be brought within
15 two years:

16 (1) An action for trespass upon real property.

17 (2) An action for taking, detaining or injuring personal property,
18 including actions for the specific recovery thereof.

19 (3) An action for relief on the ground of fraud, but the cause of
20 action shall not be deemed to have accrued until the fraud is
21 discovered.

22 (4) An action for injury to the rights of another, not arising on
23 contract, and not herein enumerated.

24 (5) An action for wrongful death.

25 (6) An action to recover for an ionizing radiation injury as pro-
26 vided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments
27 thereto.

28 (7) An action arising out of the rendering of or failure to render
29 professional services by a health care provider, not arising on
30 contract.

31 (8) A product liability claim, as defined in K.S.A. 60-3022.

32 (b) Except as provided in subsections (c) and (d), the causes of action
33 listed in subsection (a) shall not be deemed to have accrued until
34 the act giving rise to the cause of action first causes substantial injury,
35 or, if the fact of injury is not reasonably ascertainable until some
36 time after the initial act, then the period of limitation shall not
37 commence until the fact of injury becomes reasonably ascertainable
38 to the injured party, but in no event shall an action be commenced
39 more than 10 years beyond the time of the act giving rise to the
40 cause of action.

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1 (c) A cause of action arising out of the rendering of or the failure
2 to render professional services by a health care provider shall be
3 deemed to have accrued at the time of the occurrence of the act
4 giving rise to the cause of action, unless the fact of injury is not
5 reasonably ascertainable until some time after the initial act, then
6 the period of limitation shall not commence until the fact of injury
7 becomes reasonably ascertainable to the injured party, but in no
8 event shall such an action be commenced more than four years
9 beyond the time of the act giving rise to the cause of action.

(d)(1) A product liability claim will accrue when the act giving rise to the cause of action first causes substantial injury.

(d)(2) If the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall the period be extended more than ten (10) years beyond the time of the act giving rise to the cause of action, unless the product liability claim is one for a disease which is latent caused by exposure to a harmful material. In that event, the provisions of K.S.A. 60-3303(d)(1) and (2) shall apply.

(d)(3) No product liability claim shall be commenced more than 25 years beyond the time of the act giving rise to the cause of action.

10 (d) (e) The provisions of this section as it was constituted prior to
11 July 1, 1987, shall continue in force and effect for a period of two
12 years from that date with respect to any act giving rise to a cause
13 of action occurring prior to that date.

14 Sec. 2. K.S.A. 1990 Supp. 60-513 is hereby repealed.

15 Sec. 3. This act shall take effect and be in force from and after
16 its publication in the statute book.