

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
1:30 p.m. on April 9, 1991 in room 313-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Gina McDonald, Kansas Association of Centers for Independent Living
Martha Gabehart, Kansas Department of Human Resources
Paul Klotz, Association of Community Mental Health Centers of Kansas
Roger Lovett, Commission on Civil Rights

Chairman Winter called the meeting to order by opening discussion on HB 2541.

HB 2541 - prohibiting discrimination based on disability.

Suggested alternative amendments to HB 2541, dealing with the so-call "Henry Block" amendment, were presented to the Committee. (ATTACHMENT 1) These alternatives were tied to striking language on page 3 to accommodate the amendments. It was further noted that the Civil Rights Commission suggested that adding specific definitions was the cleanest way to address the issue. Staff agreed.

Following extended discussion on the advisability of excluding gender from the discrimination listing, Senator Bond moved to remove the strike-out amendment of the House to HB 2541 on page 3, lines 14 and 15, and to add in the appropriate place "nonprofit fraternal or social associations or corporations may not discriminate in regard to membership by reason of race, religion, color, disability, national origin or ancestry". Senator Yost seconded the motion. The motion to amend HB 2541 carried.

The discussion turned to the possibility of group home placements of the dangerous mentally ill.

Gina McDonald, Executive Director of Kansas Association of Centers for Independent Living, offered testimony in opposition to further amendments of HB 2541. (ATTACHMENT 2)

Martha Gabehart, Executive Director of the Kansas Department of Human Resources Commission on Disability Concerns, presented comments in opposition to a mental illness amendment on HB 2541. (ATTACHMENT 3)

Paul Klotz, Association of Community Mental Health Centers of Kansas, explained the processes that must currently be followed in diagnosing mentally ill and "dangerous" individuals. He added, as stated in previous committee discussion, HB 2449, signed into law by Governor Finney earlier in the Session, changed the group home law to insure group home residents are not dangerous.

The discussion turned to the applicability of HB 2541 to limited holding landlords of rental properties.

Roger Lovett, Chief Legal Counsel of the Commission on Civil Rights, stated that landlords of four or less units to rent are exempt if the owner lives in one of the units. He added that HB 2541 does go further than the federal law which exempts the landlord of a given number of transactions if they are not advertised.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 1:30 p.m. on April 9, 1991.

Senator Morris moved to conceptually amend HB 2541 to not exceed federal requirements with respect to housing and the prohibition against family status discrimination as stated on page 17 beginning with line 31. Senator Moran seconded the motion. The motion to amend carried.

Senator Bond moved to recommend HB 2541 favorable for passage as amended. Senator Feleciano seconded the motion. The motion carried.

SB 18 - sexually violent offenders.

SB 19 - persons likely to commit sexual acts as mentally ill person under treatment act for mentally ill persons.

SB 20 - required supervision and treatment by mental health professional for sex offenders.

Senator Kerr, Chairman of the Subcommittee on Violent Sex Offenders, reported the Subcommittee had resolved all of the problems and questions of SB 18, SB 19 and SB 20 with the exception of implementation costs. He related that SRS has projected a significant fiscal impact to segregate this population. The Subcommittee recommends that the three bills be suggested for an interim study of the costs.

Senator Kerr moved to refer SB 18, SB 19 and SB 20 to interim study for the purpose of figuring out implementation. Senator Parrish seconded the motion. The motion carried.

HB 2397 - cap on damages in wrongful death actions; jury instructions.

Suggested amendments to HB 2397 from the Kansas Trial Lawyers Association were submitted to the Committee. (ATTACHMENT 4)

Senator Morris moved to recommend HB 2397 Be Not Passed. Senator Kerr seconded the motion.

Senator Parrish made a substitute motion to adopt the amendments to HB 2397 as offered in the KTLA balloon. Senator Martin seconded the motion. The substitute motion to amend failed.

Senator Yost made a substitute motion to amend HB 2397 to allow for a plaintiff to elect prior to filing if pecuniary or nonpecuniary damages and to limit nonpecuniary damages to a maximum of \$250,000. (The same as 1990 SB 524) Senator Oleen seconded the motion. The motion to amend carried.

Senator Martin moved to recommend HB 2397 favorable as amended. Senator Parrish seconded the motion.

Senator Kerr made a substitute motion to table HB 2397 to date uncertain. Senator Morris seconded the motion. The substitute motion to table HB 2397 failed.

Senator Morris made a substitute motion that the meeting be adjourned. Senator Kerr seconded the motion. The substitute motion to adjourn failed.

The question reverted to the original motion to recommend HB 2397 favorable as amended. The motion carried.

SB 269 - taking into protective custody certain abused, neglected or exploited adults.

Yo Bestgen, Kansas Association of Rehabilitation Facilities, submitted a written request that SB 269 be kept in Committee. (ATTACHMENT 5)

The meeting was adjourned.

Date 9 April 1991

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company

Name/Company

Jim Clark / KCOAA	
Roger Lovett / KCCR	
Paul Cox / Inter	
Dave O'Brien	SRS - Youth/Adult Services
Doug Bowman	Children & Youth Advisory Comm

MEMO TO: Sen. Wint Winter, Jr.
Sen. Richard Bond

FROM: David H. Goldstein

DATE: April 9, 1991

In regard to the language for HB2541, I suggest the following alternatives based upon keeping the current exemption:

1. Add the following language: However, any such association or corporation shall not be exempt from the application of this Act if it has the following characteristics: (1) it has a membership of 50 or more; (2) it provides regular meal service; and (3) it receives payment for dues, fees, use of space, facility, services, meals, or beverages directly or indirectly from or on behalf of non-members.

The above tracks the most recent Supreme Court decision on this matter, according to David Waxse, General Counsel of the local A.C.L.U.

2. In the appropriate place in the bill, add: Nonprofit fraternal or social associations or corporations may not discriminate in regard to membership by reason of race, religion, color, ~~sex~~ disability, national origin or ancestry.

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Senate Judiciary Committee
4-9-91
Attachment 1

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KANSAS ASSOCIATION OF CENTERS FOR INDEPENDENT LIVING

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

Gina McDonald
Executive Director

Presented to
Senate Judiciary
Senator Wint Winter, Jr. , Chairman

Member agencies:

By Gina McDonald
Executive Director

ILC of Southcentral Kansas
Wichita, Kansas
(316) 942-8079

Independence, Inc.
Lawrence, Kansas
(913) 841-0333

Independent Connection
Salina, Kansas
(913) 827-9383

LINK, Inc.
Hays, Kansas
(913) 625-2521

Resource Center for
Independent Living
Osage City, Kansas
(913) 528-3105

Resource Network
for the Disabled
Atchison, Kansas
(913) 367-6367

The WHOLE PERSON, Inc.
Kansas City, Missouri
(816) 361-0304

Three Rivers Independent
Living Resource Center
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(913) 456-9915

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KACIL opposes any amendments to HB 2541 that would infringe upon the rights of any disability group to enjoy the same freedoms and opportunities as their non-disabled counterparts. Specifically we are referring to the proposed amendment to require that persons who experience mental illness must be "evaluated/certified" prior to placement in a group home. Inclusion of this amendment is in itself discriminatory.

Group home zoning issues have already been dealt with in HB 2449. In addition to the group home zoning bill, regulations covering certification of a group home require evaluation of the individual prior to placement. These laws and regulations constitute appropriate safeguards against concerns raised by members of this committee.

KACIL can not support the amendments proposed. This act is not where the group home issues need to be addressed. This act is intended to promote the rights of minorities not to establish more barriers to their rights.

Senate Judiciary Committee
4-9-91
Attachment 2

**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

April 9, 1991

TO: Senator Wint Winter
Chair, Senate Judiciary Committee

FROM: Martha K. Gabehart *MKG*
Executive Director

SUBJECT: HB 2541 Proposed Amendment/Group Home
Residents

We have investigated the proposed amendment by Senator Bond concerning the requirement that people who have mental illness be certified by a licensed provider to not be dangerous to others and are suitable for group-home placement. This amendment would be worded as in HB 2449 (copy attached). Our feeling is that this language is discriminatory because it singles out a specific group of people without just cause and denies them their right to live in the residence of their choice. This is clearly contrary to the intent of the Fair Housing Amendments Act (FHAA).

We called Mr. John Jackson of the Regional U.S. Department of Housing and Urban Development office concerning the amendment language. After discussing the amendatory language he concurred with our opinion that the language is indeed discriminatory and is most probably in violation of the FHAA.

We recommend that this proposed amendment be rejected. If you desire further information or discussion on the provisions of the FHAA, please feel free to contact us or Mr. Jackson at (913) 236-3993.

Thank you for the opportunity to discuss this issue.

Senate Judiciary Committee
4-9-91
Attachment 3

- 1 combination of mental and physical impairments;
2 (B) is manifested before the person attains age 22;
3 (C) is likely to continue indefinitely;
4 (D) results in substantial function limitations in three or
5 more of the following areas of major life activity: (i) Self-care,
6 (ii) receptive and expressive language, (iii) learning, (iv) mo-
7 bility, (v) self-direction, (vi) capacity for independent living and
8 (vii) economic self-sufficiency; and
9 (E) reflects the person's need for a combination and se-
10 quence of special, interdisciplinary, or generic care, treatment
11 or other services which are of lifelong or extended duration
12 and are individually planned and coordinated; "*handicap*" dis-
13 ability means, with respect to a person:
14 (A) A physical or mental impairment which substantially limits
15 one or more of such person's major life activities;
16 (B) a record of having such an impairment; or
17 (C) being regarded as having such an impairment. Such term
18 does not include current, illegal use of or addiction to a controlled
19 substance, as defined in section 102 of the controlled substance act
20 (21 U.S.C. 802);
21 (4) "licensed provider" means a person or agency who provides
22 mental health services and is licensed by:
23 (A) The department of social and rehabilitation services pursuant
24 to K.S.A. 75-3307b or 65-425 *et seq.*, and amendments thereto; or
25 (B) the behavioral sciences regulatory board pursuant to K.S.A.
26 75-5346 *et seq.* or 74-5301 *et seq.*, and amendments thereto; or
27 (C) the state board of healing arts pursuant to K.S.A. 65-2801 *et*
28 *seq.*, and amendments thereto.
29 (c) (1) No mentally ill person shall be eligible for placement in
30 a group home unless such person has been evaluated by a licensed
31 provider and such provider determines that the mentally ill person
32 is not dangerous to others and is suitable for group-home placement.
33 A group home shall not be a licensed provider for the purposes of
34 evaluating or approving for placement a mentally ill person in a
35 group home.
36 (2) No person shall be eligible for placement in a group home
37 if such person is (A) Assigned to a community corrections program
38 or a diversion program; (B) on parole from a correctional institution
39 or on probation for a felony offense; or (C) in a state mental institution
40 following a finding of not guilty by reason of insanity pursuant to
41 K.S.A. 22-3428, and amendments thereto.
42 (d) No person shall be placed in a group home under this act
43 unless such dwelling is licensed as a group home by the department



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

April 5, 1991

Senator Wint Winter, Jr.
State Capitol, Rm 120-S
Topeka, KS 66612

RE: HB 2397

Dear Senator Winter:

KTLA remains strongly in support of HB 2397 as it came to the Senate Judiciary Committee. Since the cap on noneconomic damages in personal injury actions has been determined to be public policy and constitutional as well, we believe it is at least a matter of fairness that the caps on similar damages in wrongful death cases be no less.

As you know, some Committee members prefer to address this issue by establishing two different levels for the cap on nonpecuniary damages, depending on the type of case. While we do not feel this is appropriate, nor sound public policy, we do want to continue to be a participant in the debate.

If the Committee chooses to pursue alternative levels of caps, we want to offer our thoughts on how this may be accomplished in the most appropriate manner. To that end, I have attached a balloon of HB 2397. The affect of this language would be:

1. No change from the current law when pecuniary damages are awarded, i.e. the cap would remain \$100,000.
2. Allow for a maximum of \$250,000 in nonpecuniary damages if there is no award for pecuniary damages.
3. Clarify that the damages referenced in 60-1903(c)(2) are not considered pecuniary damages.

We stand ready to discuss this with you at your convenience, and at the same time encourage you and the Judiciary Committee to act favorably on HB 2397. Thank you.

Sincerely,

Richard H. Mason
Executive Director

Senate Judiciary Committee
4-9-91
Attachment 4

RHM/11

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RICHARD H. MASON
EXECUTIVE DIRECTOR

HOUSE BILL No. 2397

By Committee on Judiciary

2-19

9 AN ACT concerning civil procedure; relating to damages; amending
10 K.S.A. 1990 Supp. 60-1903, 60-19a01 and 60-19a02 and repealing
11 the existing sections.

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

13 Section 1. K.S.A. 1990 Supp. 60-1903 is hereby amended to read
14 as follows: 60-1903. (a) In any wrongful death action, the court or
15 jury may award such damages as are found to be fair and just under
16 all the facts and circumstances, but the ~~damages, other than pecu-~~
17 ~~niary loss sustained by an heir-at-law, cannot exceed in the ag-~~
18 ~~gregate the sum of \$100,000 and costs amount specified in K.S.A.~~
19 ~~1990 Supp. 60-19a02, and amendments thereto.~~

nonpecuniary

sum of \$100,000 and costs if a pecuniary loss is awarded,
or \$250,000 and costs if no pecuniary loss other than those
in subsection (c)(2) of this section, is awarded.

21 (b) If a wrongful death action is to a jury, the court shall not
22 [not] instruct the jury on the monetary limitation imposed by sub-
23 section (a) upon recovery of damages for nonpecuniary loss. If the
24 jury verdict results in an award of damages for nonpecuniary loss
25 which, after deduction of any amounts pursuant to K.S.A. 60-258a,
26 and amendments thereto, exceeds the limitation of subsection (a),
27 the court shall enter judgment for damages ~~of \$100,000 for non-~~
28 ~~pecuniary loss in the amount specified in K.S.A. 1990 Supp. 60-~~
29 ~~19a02, and amendments thereto.~~

of \$100,000 or \$250,000 as required in subsection (a) of
this section.

30 (c) In any wrongful death action, the verdict shall be itemized
31 by the trier of fact to reflect the amounts, if any, awarded for:

- 32 (1) Nonpecuniary damages;
- 33 (2) expenses for the care of the deceased caused by the injury;
- 34 and
- 35 (3) pecuniary damages other than those itemized under subsec-
- 36 tion (c)(2).

37 (d) Where applicable, the amounts required to be itemized pur-
suant to subsections (c)(1) and (c)(3) shall be further itemized by the
trier of fact to reflect those amounts awarded for injuries and losses
sustained to date and those awarded for injuries and losses reasonably
expected to be sustained in the future.

41 (e) In any wrongful death action, the trial court shall instruct the
42 jury only on those items of damage upon which there is some evi-
43

4-74

43/4

1 dence to base an award.

2 Sec. 2. K.S.A. 1990 Supp. 60-19a01 is hereby amended to read
3 as follows: 60-19a01. (a) As used in this section, "personal injury
4 action" means any action for damages for personal injury or death,
5 except for medical malpractice liability actions.

6 (b) In any personal injury action, the total amount recoverable
7 by each party from all defendants for all claims for pain and suffering
8 shall not exceed a sum total of \$250,000.

9 (c) In every personal injury action, the verdict shall be itemized
10 by the trier of fact to reflect the amount awarded for pain and
11 suffering.

12 (d) If a personal injury action is tried to a jury, the court shall
13 not [not] instruct the jury on the limitations of this section. If the
14 verdict results in an award for pain and suffering which exceeds the
15 limit of this section, the court shall enter judgment for \$250,000 for
16 all the party's claims for pain and suffering. Such entry of judgment
17 by the court shall occur after consideration of comparative negligence
18 principles in K.S.A. 60-258a, and amendments thereto.

19 (e) The provisions of this section shall not be construed to
20 repeal or modify the limitation provided by K.S.A. 60-1903 and
21 amendments thereto in wrongful death actions.

(e) The provisions of this section shall not be construed to
repeal or modify the limitation provided by K.S.A. 60-1903
and amendments thereto in wrongful death actions.

22 (f) (e) The provisions of this section shall apply only to personal
23 injury actions which are based on causes of action accruing on or
24 after July 1, 1987, and before July 1, 1988.

25 Sec. 3. K.S.A. 1990 Supp. 60-19a02 is hereby amended to read
26 as follows: 60-19a02. (a) As used in this section "personal injury
27 action" means any action seeking damages for personal injury or
28 death.

29 (b) In any personal injury action, the total amount recoverable
30 by each party from all defendants for all claims for noneconomic loss
31 shall not exceed a sum total of \$250,000.

32 (c) In every personal injury action, the verdict shall be itemized
33 by the trier of fact to reflect the amount awarded for noneconomic
34 loss.

35 (d) If a personal injury action is tried to a jury, the court shall
36 not [not] instruct the jury on the limitations of this section. If the
37 verdict results in an award for noneconomic loss which exceeds the
38 limit of this section, the court shall enter judgment for \$250,000 for
39 all the party's claims for noneconomic loss. Such entry of judgment
40 by the court shall occur after consideration of comparative negligence
41 principles in K.S.A. 60-258a, and amendments thereto.

42 (e) The provisions of this section shall not be construed to
43 repeal or modify the limitation provided by K.S.A. 60-1903 and

(e) The provisions of this section shall not be construed
to repeal or modify the limitation provided by K.S.A.
60-1903 and amendments thereto in wrongful death actions.

1 ~~amendments thereto in wrongful death actions.~~

2 (f) (e) The provisions of this section shall apply only to personal
3 injury actions which are based on causes of action accruing on or
4 after July 1, 1988.

5 Sec. 4. K.S.A. 1980 Supp. 60-1903, 60-19a01 and 60-19a02 are
6 hereby repealed.

7 Sec. 5. This act shall take effect and be in force from and after
8 its publication in the statute book.

4-7

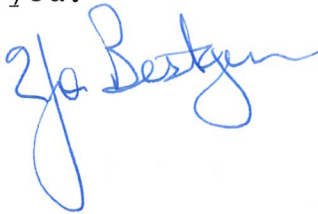
TO: Senator Wint Winter
FROM: Yo Bestgen
Kansas Association of Rehabilitation Facilities
RE: SB 269
DATE: 4-09-91

This bill relates to adjudicated adults being abused by a guardian. SRS opposed this bill in testimony before the Senate Judiciary Sub-Committee.

We have talked with Secretary Harder and Commissioner Carolyn Hill. They have agreed to re-visit this issue over the summer so that we can find language that would protect the adults and satisfy SRS.

I am requesting that you keep the bill in your Committee so that we can bring all parties together.

Thank you.



Senate Judiciary Committee
4-9-91
Attachment 5