

Approved: 3-25-98  
Date

The meeting was called to order by Chairperson Tim Carmody at 10:45 p.m. on March 13, 1998 in Room 313--S of the Capitol

All members were present except: Representative Kline (excused)  
Representative Gilmore (excused)  
Representative Powell (excused)  
Representative Mayans (excused)  
Representative Presta (excused)  
Representative Adkins (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Jan Brasher, Committee Secretary

Conferees appearing before the Committee:

John Campbell, Senior Deputy Attorney General,  
Office of the Attorney General  
Brad Smoot, Kansas Civil Law Forum  
Bill Henry, Kansas Association of Defense Counsel  
Wendy McFarland, ACLU

Others attending: See attached list

The Chair called the meeting to order at 10:45 a.m. in room 313-S. The Chair noted that written testimony from Bruce Linhos of the Children's Alliance of Kansas on **HB 3006** had been distributed to Committee members. The testimony will be included in the minutes for March 12, 1998 the date that bill was heard.

**SB 640**                      **Enacting the Kansas drug dealer liability act.**

John Campbell, Senior Deputy Attorney General for the State testified in support of **SB 640**. The conferee stated that this bill was a very important piece of anti-drug legislation that has great potential as a weapon in the war against drugs. The conferee stated that this bill would allow those who have been harmed by illegal drugs to sue those responsible for that harm for money damages. The conferee stated that ten states have adopted similar laws. These laws replace the almost insurmountable barrier of proximate-cause liability with market-share liability. The conferee stated that if **SB 640** becomes law, the parent seeking recovery for wrongful death of their child from a drug overdose would not need to find the particular person who sold the actual drug that killed their child. Those persons in the child's community who were engaged in the sale of the type of drug which killed their child would be held liable. The conferee stated that statistics show that approximately 70% of those selling illegal drugs have full time employment. The conferee stated that the idea of this bill is to increase the risk to a person selling drugs by placing their assets in jeopardy. The conferee stated that under current law a civil suit is possible, but under forfeiture law there has to be the fruits or instruments of the drug sale present. The conferee stated that this bill provides for civil recovery and would apply pressure on drug dealers to shut down. (Attachment 1)

Conferee Campbell discussed several issues with Committee members including the possibility of abuse of this law and the use of this bill as a deterrent to drug dealers. The Committee members discussed with the conferee the "long-arm" statute amendment contained in the bill. The Committee members discussed the use of state representative districts and the ramifications of using those districts in this bill. The Committee members discussed what type of drug dealers would be affected by this bill and issues of comparative fault. During Committee discussion the revisor clarified that Sections one through fifteen should be labeled "New Section."

Brad Smoot, Kansas Civil Law Forum, testified in support of **SB 640**. The conferee stated that the intent of this bill is to discourage illegal drug dealers by making them responsible. The conferee noted, referring to Section 11, that the bill does not contain defenses for the spouse and children if the plaintiff requests an ex parte prejudgment attachment order against the assets of the defendant. (Attachment 2)

Bill Henry, Kansas Association of Defense Counsel, testified that this bill presents a policy issue that is not consistent with current theories. The conferee referred to the adoption of joint and several liability of the defendant(s). The entire judgment can be directed toward the one with lots of assets. The conferee discussed concerns with New Section 4, page 7, line 24 regarding the payment of attorneys' fees for the plaintiff only.

Wendy McFarland, ACLU, testified in opposition to **SB 640**. Conferee McFarland stated that this bill is contrary to the Fourth and Fifth amendments to the Bill of Rights. The conferee stated that this bill has been

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 10:45 p.m. on March 13, 1998.

called the "Archie Bunker bill" after actor Carrol O'Connor. The conferee stated that the user should bear the responsibility of the drug use. Conferee McFarland stated that this bill could be a vehicle for abuse in instances of revenge. The conferee stated that Kansas passed civil forfeiture in the 1970s. The conferee stated that the ACLU views this bill as unconstitutional, as it violates the Fifth amendment, and invokes double jeopardy. The conferee stated that this bill is bad law, on abuse of power, and will overburden the judiciary by adding civil judgments to civil forfeiture. The conferee stated that lawyers support this bill as they can make a great deal of money in civil suits. Conferee McFarland stated that there is no evidence that this law will stop people from using drugs.

The Committee members and conferee briefly discussed issues concerning the bill. The Chair closed the hearing on **SB 640**.

The Revisor distributed a Kansas Supreme Court Syllabus in the matter of B.M.B., No. 79,358. The court opinion will be included in the minutes of March 16, 1998 meeting when **HB 2717** will be heard.

Representative Shriver offered a conceptual motion to amend SB 640 to require that a person be convicted before the provisions of liability under this bill can be invoked. Representative Ruff second the motion. The motion carries with a vote of 8 to 5.

Representative Shriver made a motion to provide for division of assets for the spouse or children when a defendant is charged under this bill. Representative Shriver withdrew his motion.

Representative Shriver made a motion, second by Representative Garner to delete subsection (b) of New Section 11.

Representative Mays made a substitute motion, second by Representative Wilk to recommend the bill favorably as amended.

Representative Shriver withdrew his motion, Representative Garner withdrew his second.

Representative Mays withdrew his substitute motion, Representative Wilk withdrew the second.

Representative Garner made a motion, second by Representative Haley, to strike language on page 4, lines 26-30, concerning level 1 offenses, and to renumber the subsequent sections. The motion carries. Representative Mays, Representative Dahl and Representative Howell are recorded as voting no, per request.

The committee discussed the use of legislative districts in the bill.

Representative Garner made a motion to amend by changing the reference to legislative districts in the bill to judicial districts. Representative Kirk seconded the motion. The motion carries.

Representative Garner suggested a motion where comparative fault would still apply for persons who are not the drug dealer.

Representative Garner made a motion, second by Representative Pauls to delete lines 8 and 9 on page 9 so that comparative fault would apply. The motion fails.

Representative Garner discussed a balloon which would amend the bill to have the wrongful death statute apply and to change limit of the current wrongful death statute to \$350,000. Representative Garner stated that there are ten states that have this drug dealer liability act and of those ten states not one has any limit on wrongful death damages. The cap should be expanded to hold drug dealers responsible. (Attachment 3)

Representative Garner made a motion to adopt the wrongful death balloon. Representative Swenson seconded. The motion carries.

The committee discussed the impact this bill might have on the drug user.

Representative Haley made a motion for technical changes; on page 4, line 25 to insert a "t", and to add "new" to the appropriate sections in the bill. Representative Krehbiel seconded. The motion carries.

Representative Swenson made a motion to recommend the bill favorably for passage as amended. Representative Krehbiel seconded. The motion carries.

The Chair adjourned the meeting at 12:20 p.m.

The next meeting is scheduled for March 16, 1998.

HOUSE JUDICIARY COMMITTEE  
GUEST LIST

DATE: 3-13-98

NAME	REPRESENTING
Brod Smart	KCLF
Bill Denny	KANC
John Campbell	KS Ad
KEVIN R LAUDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Doreen M. Stabel	KTLA
Mahee Randall	Whitney Cameron, FA



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ATTORNEY GENERAL

THE HOUSE JUDICIARY COMMITTEE

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TESTIMONY IN SUPPORT OF SENATE BILL 640

BY JOHN W. CAMPBELL, SENIOR DEPUTY ATTORNEY GENERAL

March 13, 1998

Mr. Chairman, members of the Committee, my name is John Campbell. I am the Senior Deputy Attorney General for the State. Attorney General Carla J. Stovall has directed me to meet with you today to give testimony in support of Senate Bill 640.

SB 640 is a very important piece of anti-drug legislation that has great potential as a weapon in the war against drugs. It is not a continuation of the traditional means of fighting illegal drugs. It is not about more cops or teachers. It is about empowering parents, children, employers and governments to go after the very heart of the drug business. It turns the full force of civil law and lawyers against drug dealers.

SB 640 would allow those who have been harmed by illegal drugs to sue for money damages from those responsible for that harm. Parents who have had to pay for drug treatment therapy for their children would have a means to hold drug dealers responsible for payment. Employers who have lost time and money because of drug usage by employees would be able to

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sue the pushers who sold drugs to their employees. Local and state governments who have spent millions in treating crack babies and providing drug rehabilitation treatment could recover the tax money spent on those programs.

SB 640 is new but not unprecedented. Ten states have adopted similar laws. These laws replace the almost insurmountable barrier of proximate-cause liability with market-share liability. If SB 640 becomes law, the parent seeking recovery for wrongful death of their child from a drug overdose would not need to find the particular person who sold the actual drug that killed their child. Instead, those persons, who in the child's community, were knowingly engaged in the sale of the type of drug which killed their child would be held liable. This "market-share" liability recognizes the reality of the drug business and allows a real possibility for recovery.

These laws, commonly referred to as drug dealer liability acts, have resulted in judgments in other states. The first case that I am aware of took place in 1995. The full effect of the law has yet to be seen. I cannot promise what the impact of civil litigation will be on the illegal drug trade, but we all know of instances where numerous civil suits have shut down legitimate businesses, why not apply that same pressure to drug dealers?

In the war on drugs the criminal prosecution of drug dealers will, of course, remain the priority of our justice system. However, our courts have two hands, one criminal and one civil. Why should we continue to fight drug dealers with one hand tied behind our backs? Unleash the civil law on drug dealers. Pass SB 640.

KS  
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# KANSAS CIVIL LAW FORUM

A Coalition of Professionals and Businesses  
Interested in the Kansas Court System

Brad Smoot, Coordinator  
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(785) 233-0016 FAX (785) 234-3687

## STATEMENT OF BRAD SMOOT, COORDINATOR KANSAS CIVIL LAW FORUM

HOUSE JUDICIARY COMMITTEE  
1998 SENATE BILL 640  
March 13, 1998

Mr. Chairman and Members:

Thank you for this opportunity to appear regarding 1998 Senate Bill 640. I appear on behalf of the Kansas Civil Law Forum. Our membership includes numerous businesses, professionals and their associations. A listing of our membership is attached to the prepared statement for your reference.

We appreciate the opportunity to comment on Senate Bill 640, which creates a specific civil cause of action against illegal drug dealers. KCLF members endorse the efforts of law enforcement and Kansas legislators to address the current epidemic of drug abuse.

Senate Bill 640 is intended to discourage, make responsible and punish dealers of illegal drugs. Senators agreed that the bill was not intended to effect the manufacture and distribution of lawful pharmaceuticals otherwise regulated by federal and state law. To make this intention abundantly clear, the Senate Committee of the Whole added Section 3(c) and (d). Together, these provisions exempt pharmacy manufacturers, distributors and other health care professionals who work with medicines in the course of their lawful business. Such persons are not exempt, however, if they have been convicted of a drug crime and such conviction is *prima facie* evidence of civil liability. This language was prepared by the Kansas Attorney General's office and appears to us to accomplish its intended purpose.

Section 3(e) likewise focuses responsibility on the criminal by specifically removing the potential of insurer and third party liability. This language was borrowed by the Senate from the provisions of the shoplifting by minors bill recently passed by this committee. See H 2625.

Finally, after consideration of the issue, the Senate Judiciary Committee elected to keep the act limited to "knowing" criminal conduct rather than broadening the bill, as some had suggested, to include merely negligent acts. This decision is consistent with the purposes of the act and should remain a part of the bill. Thank you for consideration of our views.

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# **KANSAS CIVIL LAW FORUM**

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(785) 233-0016 FAX (785) 234-3687

## **KCLF MEMBERSHIP LIST - 1998**

American Family Insurance Group  
American Insurance Association  
American Tort Reform Association  
Beech Aircraft Corporation  
Farmers Insurance Group  
Kansas Association of Defense Counsel  
Kansas Association of Insurance Agents  
Kansas Hospital Association  
Kansas Insurance Associations  
Kansas Medical Mutual Insurance Company  
Kansas Medical Society  
Kansas Railroads  
KOCH Industries, Inc.  
Pfizer, Inc.  
Shook, Hardy & Bacon L.L.P.  
Southwestern Bell Telephone  
State Farm Insurance Companies  
The Boeing Company  
Western Resources, Inc.

SENATE BILL No. 640

By Senator Schraad

2-11

12 AN ACT ~~enacting the Kansas drug dealer liability act; amending K.S.A.~~  
13 ~~60-308 and repealing the existing section.~~

14  
15 *Be it enacted by the Legislature of the State of Kansas:*  
16 Section 1. This act shall be known and may be cited as the Kansas  
17 drug dealer liability act.

18 Sec. 2. The purpose of this act is to provide a civil remedy for dam-  
19 ages to persons in a community injured as a result of illegal drug use.  
20 These persons include parents, employers, insurers, governmental enti-  
21 ties and others who pay for drug treatment or employee assistance pro-  
22 grams, as well as infants injured as a result of exposure to drugs in utero.  
23 The act will enable such injured persons to recover damages from those  
24 persons in the community who have joined the illegal drug market. A  
25 further purpose of the act is to shift, to the extent possible, the cost of  
26 the damage caused by the existence of the illegal drug market in a com-  
27 munity to those who illegally profit from that market. The further purpose  
28 of the act is to establish the prospect of substantial monetary loss as a  
29 deterrent to those who have not yet entered into the illegal drug distri-  
30 bution market and to establish an incentive for drug users to identify and  
31 seek payment for their own drug treatment from those dealers who have  
32 sold drugs to the user in the past.

33 Sec. 3. The legislature finds and declares all of the following: (a)  
34 Every community in the country is affected by the marketing and distri-  
35 bution of illegal drugs. A vast amount of state and local resources are  
36 expended in coping with the financial, physical and emotional toll that  
37 results from the existence of the illegal drug market. Families, employers,  
38 insurers and society in general bear the substantial costs of coping with  
39 the marketing of illegal drugs. Drug babies and parents, particularly those  
40 of adolescent illegal drug users, suffer significant noneconomic injury as  
41 well;

42 (b) although the criminal justice system is an important weapon  
43 against the illegal drug market, the civil justice system can and must also

concerning liability; relating to wrongful death;

and 60-1903

sections

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3 *livered, date of delivery, and address where delivered. The party's*  
 4 *attorney or the party, if the party is not represented by an attorney,*  
 5 *shall execute a return on service stating the nature of the process,*  
 6 *the date on which the process was mailed, and the name and address*  
 7 *on the envelope containing the process mailed as certified mail re-*  
 8 *turn receipt requested. The party or the party's attorney shall file*  
 9 *the return on service and the return receipt or return envelope in*  
 10 *the records of the action. Service of process shall be considered*  
 11 *obtained under K.S.A. 60-203, and amendments thereto, upon the*  
 12 *delivery of the certified mail envelope. If the certified mail envelope*  
 13 *is returned with an endorsement showing refusal of delivery, the*  
 14 *serving party or the party's attorney may send a copy of the process*  
 15 *and petition or other document to be served to the defendant by*  
 16 *ordinary, first-class mail. The mailing shall be evidenced by a cer-*  
 17 *tificate of mailing which shall be filed with the clerk. Service shall*  
 18 *be considered obtained upon the mailing by ordinary, first-class*  
 19 *mail. Failure to claim certified mail service is not refusal of service*  
 20 *within the meaning of this subsection.*

19 *Sec. 18 [17]. K.S.A. 60-308 is hereby repealed.*

20 *Sec. 19 [18]. This act shall take effect and be in force from and after*  
 21 *its publication in the statute book.*

See attachment

and 60-1903 are

Section 17. K.S.A. 60-1903 is hereby amended to read as follows: 60-1903. (a) In any wrongful death action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances, but the damages, other than pecuniary loss sustained by an heir at law, cannot exceed in the aggregate the sum of ~~\$100,000~~ \$350,000 and costs.

(b) If a wrongful death action is to a jury, the court shall not instruct the jury on the monetary limitation imposed by subsection (a) upon recovery of damages for nonpecuniary loss. If the jury verdict results in an award of damages for nonpecuniary loss which, after deduction of any amounts pursuant to K.S.A. 60-258a and amendments thereto, exceeds the limitation of subsection (a), the court shall enter judgment for damages of ~~\$100,000~~ \$350,000 for nonpecuniary loss.

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

- (1) Nonpecuniary damages;
- (2) expenses for the care of the deceased caused by the injury; and
- (3) pecuniary damages other than those itemized under subsection (c)(2).

(d) Where applicable, the amounts required to be itemized pursuant 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.

(e) In any wrongful death action, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award.

And by renumbering remaining sections accordingly;