

Approved: March 24, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:13 a.m. on March 19, 1998 in Room 514S of the Capitol.

All members were present except: Senator Bond (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor
Mary Blair, Committee Secretary

Conferees appearing before the committee: Kelly Stammer, Labette County Sheriff's Department
John Eichkorn, Kansas Highway Patrol
Sargeant Daryl Reece, Johnson County Police Department
Representative David Huff
Steve Kearney, Kansas State Troopers' Association
Captain Tim Lynch, Overland Park Police Department
Captain John Meier, Lenexa Police Department
Captain Mark Goodloe, Kansas Highway Patrol
Ron Smith, Kansas Bar Association
Mark Stafford, Kansas Board of Healing Arts

Others attending: see attached list

The minutes of the March 18 meeting were approved on a motion by Senator Gilstrap and a second by Senator Schraad. Carried.

HB 2312 - An act concerning crimes and punishment; relating to battery against a law enforcement officer

All of the following conferees are proponents of **HB 2312**. There were no opponents to the bill.

Conferee Stammer reviewed his work history as a law enforcement officer (LEO) including his achievements and awards. He stated that "historically, the charge of battery against a LEO, being a misdemeanor crime, was one of the first charges bargained away in an effort to expedite the judicial process." This, he stated, sent a message to the criminal that there were no consequences for fighting the police, and, for the LEO's, fear of legal repercussions for doing their job. He noted the turnover rate in LE and cited the cost to local government budgets in training new officers. He stated that **HB 2312** will help lessen the demands on local budgets and at the same time restore pride and integrity to LE as well as send a message to the criminal element that battery against an LEO will no longer be tolerated. (attachment 1) Brief discussion followed.

Conferee Eichkorn testified on behalf of Patrol Superintendent Lonnie McCollum on **HB 2312**. He reviewed the bill stating that "it would amend penalties for the crime of battery against any LEO to a severity level 6 person felony" from a class A misdemeanor and discussed the effect this would have on LEOs. He urged passage of the bill. (attachment 2)

Conferee Reece, a LEO, reviewed the role and responsibility of his profession. He stated that when an "officer is battered, the criminal justice system and its citizens have been battered." He pointed out that K.S.A. 21-3413 states battery of correctional officers is a felony; this, however, doesn't apply to LEOs. He cited KBI statistics on the number (819) of assaults on LEOs in Kansas in 1996. He urged support of **HB 2312**. (attachment 3)

Written testimony in favor of **HB 2312** was submitted by Sergeant Lane Ryno, Emporia Police Department. (attachment 4), James Pritchard, Emporia Police Department (attachment 5) and Randy Rogers, Coffey County Sheriff. (attachment 6)

HB 2744 - Fleeing or attempting to elude a police officer in a willful manner with disregard for the safety of others

Conferee Huff briefly reviewed the progress of **HB 2744** and stated that this bill changes the penalty for fleeing a police officer from a misdemeanor to a severity level "9". He stated this will enable LEOs to "get a fleeing felon back from across state lines" which is not possible when a crime is simply a misdemeanor. He discussed the infractions the fleeing vehicle must be committing. He also requested verbiage be added on page 2, line 6 inserting the word, "moving" between "more" and "traffic". He reviewed efforts to assure public awareness of this bill at driver's license renewal time, and through the use of brochures, pamphlets, etc. (attachment 7)

Conferee Kearney testified in support of **HB 2744**. He stated that “over the years there have been measures introduced to create a felony out of the traditional fleeing and attempting to elude. This bill takes a completely different approach in that it creates an aggravated attempting to elude adding more elements to take it to a felony level versus someone who runs a few blocks and then pulls over.” (no attachment) Brief discussion followed.

Conferee Lynch described pursuit scenarios he or his officers have experienced in the line of duty and described the supervisory decision-making burden he carries when making a judgement call as to whether or not to continue or abort a pursuit. He blames film and television for portraying pursuits as exciting and without harm, “the good guys and the bad guys crash and everyone walks away”. He described the more realistic scenario of risk and death. He stated **HB 2744** would better define the crime of fleeing or attempting to elude a police officer and would adjust the penalty to more properly fit the level of danger and risk such a crime poses. He urged favorable consideration of the bill. (attachment 8)

Conferee Meier’s testimony was similar in content to that of Conferee Lynch. He added that **HB 2744** would serve a two-fold purpose: the potential perpetrator might reconsider committing the crime if there were strict consequences, and the punishment would fit the crime. He urged passage of the bill. (attachment 9)

Conferee Goodloe testified on behalf of Patrol Superintendent Lonnie McCollum on **HB 2744**. He presented a detailed review of what the bill would do including the violations which would qualify the pursuit as a severity level 9, person felony. He stated that the current statute graduates in severity based on previous convictions. He pointed out that with these pursuits there is a threat to safety of others and stated that the “liability issues facing the governmental agency are enormous.” He noted that the Kansas Highway Patrol (KHP) has instituted stringent policies limiting the actions of the pursuing troopers for safety’s sake. He stated that the use of tire deflating devices has had some success. He cited an attachment which covers statistical data concerning pursuits that the KHP has encountered since February, 1995. (attachment 10) Discussion followed.

Conferee Reece reiterated the same comments expressed by the preceding conferees testifying on **HB 2744**. (attachment 11)

Conferee Smith expressed several concerns regarding the bill itself, **HB 2744**. He raised several policy questions which would require an amendment. (no attachment)

The Chair inquired of Barbara Tombs, Kansas Sentencing Commission, if there were impact statements available on both **HB 2312** and **HB 2744**. Ms. Tombs offered to make them available later in the day. The Chair stated that since he had some questions regarding **HB 2312**, where there was a need to balance the difference in penalties between battery on a LEO and aggravated battery on a LEO, and in consideration of Conferee Smith’s expressed concerns he decided to close the hearing on both bills and revisit them later.

Subcommittee Reports

HB 2789-Amendments to the crime victims compensation act

Senator Scraad reviewed **HB 2789**. He stated this bill dealt with an increase in allowable expenses for crime victims and that all the funds come from the Crime Victims Compensation Fund (CVCF). Committee discussed the 1997 revenue report of the CVCF. Senator Oleen requested the bill require an annual report which lists the monies that criminals put into the fund. Staff indicated that K.S.A. 74-7316 requires this annual report. Brief discussion followed (attachment 12). Senator Oleen moved to pass the bill out favorably as recommended by subcommittee, Senator Schraad seconded. Motion carried.

HB 2126 - Permitting a limited liability company to exercise the powers of a professional corporation or professional association

Senator Schraad reviewed **HB 2126** stating that the bill deals with procedures by which licensed professionals are able to form limited liability companies (LLCs). Senator Goodwin discussed a report from a member of the Kansas Bar Association who is familiar with LLCs. There was apparent confusion regarding what the bill does. Senator Schraad stated that the subcommittee’s concern was that the present language will allow a non-licensed personal company to effectively control a Kansas LLC sworn to render professional services. He invited a previous Conferee, Mark Stafford, who was present, to clarify the thrust of the bill. Conferee Stafford stated that the bill “does not change the substantive law regarding any profession, but merely amends the procedure by which licensed professions form LLCs.” He further stated the bill would delete the existing reference to professional practice by an LLC and create new language. (attachment 13) Following discussion Senator Schraad moved to adopt the technical amendment and pass the bill out favorably as amended, Senator Goodwin seconded. Motion carried.

HB 2860 - Creating the crime of giving a check drawn against a closed account; penalties; giving a worthless check

Senator Pugh stated that **HB 2860** provides for the creation of a new law which is: giving a bad check on an account closed; stopping payment on a check with an attempt to defraud and, upon request, authorizes \$30 instead of \$10 for the county or district attorney who handles these cases; and making a level 9 felony on a person who uses fictitious identification to open a checking account. He stated that a "giving a check statute already covered the account closed matter" and any prosecution could be done under that, and an increase of \$20 would give further incentive to prosecute crime. He stated that members of the subcommittee were ambivalent about the bill. There was consensus to let the bill remain in subcommittee.

HB 2867 - Sexual exploitation of a child; age change from under 16 to under 18; not a real child but a visual depiction of a child; sexually explicit conduct to include lewd exhibition of female breasts

SB 583 - Increasing penalty for lewd and lascivious behavior in the presence of child under 16 years of age

Following a brief synopsis of **HB 2867**, Senator Pugh stated that the committee recommended the bill be passed out to the committee of the whole. Following discussion, Senator Harrington moved to amend SB 583 into HB 2867 and recommend the issues be joined to be recommended favorably and, with a severability clause in HB 2867, pass the bill out favorably as amended. Senator Gilstrap seconded. Carried.

SB 616 - An act concerning Kansas code for care of children; regarding post-termination dispositional alternatives following voluntary relinquishment of parental rights

Senator Petty summarized **SB 616** which she stated was promoted by the Permanency Planning Council. She further stated that with the voluntary relinquishment of parental rights, this bill provides a mechanism for continued contact between parent and child, to benefit the child. She stated the subcommittee recommended the bill favorably for passage. Senator Petty moved to pass the bill out favorably, contingent upon it's amendment into HB 2820 on the Senate floor. Senator Goodwin seconded. Carried.

Meeting adjourned at 11:06. The next scheduled meeting is Monday, March 23.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/19/98

NAME	REPRESENTING
JOHN EICKORN	KHP
Mark Goodloe	KHP
Kathy Porter	OJA
Vicki Lynn Hessel	DOB
Daryl Preece	Johnson CO Sheriff
Gary Robbins	KOA
Ladene Lee	Indian Sm. Tyson
KELOV GREEN JR.	Wyandotte SHERIFF
Kelley Kuetala	City of Overland Park
Barb Sims	KSC
Kevin A. Shaha	Ks. Sent. Comm.
Timothy A. Lynch	Overland Park Police Department
John M. Meier	Lenexa Police Dept.
Helen Stephens	KPOA / KSA
Mark Stafford	Bd of Healing Arts
Whitney Dameron	KS Bar Assn.
Roslyn James-Martin	SRS- Children & Family Services
STEVE KEACNEY	KSTA / FOP
DON SNODGRASS	KFDA TOPEKA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/19/98

NAME	REPRESENTING
Mike Wilkerson	KDOT
Connie Stupka	Farm Bureau
Jessie Bryant	Farm Bureau

SJub
3-19-98
att 1

Good morning ladies and gentlemen. I want to thank you for allowing me the privilege of speaking to you here today. I consider it an honor and take pride in the fact that you have allowed me to have even a small part in these proceedings. The subject we are dealing with today is one that is known to me since I have been involved in numerous situations where this particular crime was committed.

I began my law enforcement career in 1981 while working for the police department in Parsons Kansas. I was a street officer and had always wanted to be one. My job was about the same as the rest of the men and women I worked with as we all shared the daily duties of answering calls having to do with everything from lost pets to crimes in progress.

I had the opportunity to participate in a number of special assignments given out by Police Chief Tom Barrett. These assignments included full time DUI and alcohol task force duties to a special armed robbery response team where we were the first team dispatched to calls of armed criminal action and also armed robbery interdiction. In other words our job was to patrol for these types of crimes and if not prevent them then interrupt them and arrest the perpetrators by whatever means necessary.

In 1983 I received a commendation from the Federal Bureau of Investigation for the arrest of a bank robbery suspect and also a commendation from the city of Parsons for capturing an armed robbery suspect after robbing a convenience store and assaulting the clerk. In 1984 I was awarded the Gold Award from the Kansas Association of Chiefs of Police for Valorous Police Service and a commendation and citation of bravery from the city of Parsons for saving the life of a fellow officer during a gun battle and most unfortunately having to take the life of another human being in the process. I now hold the rank of Detective for the Labette County Sheriff Department and share in some of the administrative duties associated with the daily operation of law enforcement.

Law enforcement officers in this country are given the daily task of protecting society. We are called upon to take care of the jobs that not many people care to do themselves. All too frequently officers are involved in situations where hand to hand combat occurs. In these instances the officers must feel that society as a whole will back them up and offer some protection in return. House Bill No. 2312 will do just that.

Senate Judiciary
3-19-98
att 1

Historically, the charge of Battery Against a Law Enforcement Officer, being a misdemeanor crime, was one of the first charges bargained away in an effort to expedite the judicial process. Unfortunately however, this also sent a message to the criminal on the street. That message being that if you fight the cops more than likely you will not have to pay for it with more jail or prison time. Since Law Enforcement Officers deal with a great number of repeat offenders this message gets driven home often more than once. I have personal knowledge of people arrested by officers of my department who show a pattern of this type of behavior and when their crimes are not serious enough to land them in prison they usually get to serve a concurrent jail sentence to cover all charges involved.

This pattern of revolving door justice is very disheartening to all Law Enforcement Officers especially when an officer has to deal with the fear of being dragged into court and sued just for doing his or her job. This is one of the reasons there is such a great turnover rate in law enforcement today. And consequently causes the local departmental budgets to be strained even more due to the added costs of training new officers.

Training new officers will, on the average, cost the typical department the equivalent of about eight months salary. This will include two months at the Law Enforcement academy and approximately six months of on the job training where the new recruit will be shadowed by a training officer who will attempt to teach the best and most efficient way of actually doing the job.

House Bill 2312 will go a long way toward helping to lessen the demands on local budgets and at the same time restoring pride and integrity to law enforcement since it will send the message to the officer on the street that there are lawmakers who care about them and are willing to do what is necessary to help protect them in the line of duty. And perhaps equally important it will also send a message to the criminal element of society that this type of crime will not be taken lightly nor will it be tolerated any longer.

In closing let me say that I admire and respect each one of you in your ongoing efforts to govern this fine state and I urge you to continue to do so by allowing this very important piece of legislation to become law.

Thank you,
Detective Kelly D. Stammer
Lafayette County Sheriff Department

35 Jul 98
att 2

**Kansas Highway Patrol
Summary of Testimony
1998 House Bill 2312
before the
Senate Judiciary Committee
presented by
Sergeant John Eichkorn
March 19, 1998**

Good morning Mr. Chairman and members of the committee. My name is John Eichkorn and I appear before you on behalf of Patrol Superintendent, Lonnie McCollum, to comment on House Bill 2312.

HB 2312 would amend penalties for the crime of battery against any law enforcement to be a severity level 6 person felony. Currently, the penalty for battery against a uniformed or properly identified state, county or city law enforcement officer is a class A misdemeanor. The existing law currently makes an exception for instances when the battery is against specifically outlined correctional officers and employees and raises the penalty for these violations to a severity level 6 person felony. HB2312 simply makes the penalty for the crime of battery against ANY law enforcement officer, equal, fair and just.

As the law enforcement field continues to become more dangerous, it is only appropriate that those individuals who choose to resist law enforcement efforts by battering an officer, be shown that this type of behavior will not be tolerated. For those who feel the current penalty is worth the fight, HB2312 will send a strong message that it certainly is not. For ALL of the dedicated law enforcement officers across this great state, HB2312 also sends a message that Kansas understands and appreciates the work they perform in protecting the citizens they serve.

With these considerations in mind, the Patrol respectfully ask you to favorably consider HB2312 for all Kansas law enforcement officers.

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Senate Judiciary
3-19-98
att 2

Testimony of Sergeant Daryl Reece
Johnson County Sheriff's Office
Concerning HB 2312
March 19, 1998

5Jub
3-19-98
att 3

Mr. Chairman and members of the committee, thank you for your time and the opportunity to speak before you today.

Thirteen years ago I was hired as a law enforcement officer and was given the responsibility of maintaining the peace and enforcing the law. Law enforcement officers are often called upon to do those things that others will not or cannot do. A law enforcement officer accepts the challenge to defend the innocent, protect the weak, and aid the distressed, and to do so without the fear of being battered.

A law enforcement officer is part of the representative arm of the people. When a law enforcement officer is battered, the criminal justice system and its citizens have been battered. Over the last thirteen years I have seen many changes regarding criminals. Many criminals do not respect law enforcement or the criminal justice system as a whole. Criminals are not afraid to flee, resist arrest, or batter a law enforcement officer. With the passage of this bill criminals will become aware that battering a law enforcement officer is a serious crime with serious penalties.

Currently Kansas Statutes Annotated 21-3413 states battery of correctional officers is a felony, however, this does not apply to law enforcement officers. Kansas Bureau of Investigation statistics indicated 819 assaults on law enforcement officers in the State of Kansas in 1996. House Bill 2312 would correct this so that battery of any law enforcement officer is a level 6 person felony. The law enforcement community would seek your support of the passage of House Bill 2312.

Senate Judiciary
3-19-98
att 3

MEMBERS OF THE JUDICIARY COMMITTEE

IN REFERENCE TO HB 2744

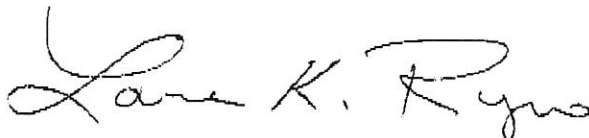
The Kansas Peace Officer's Association would encourage you to pass this bill on with a favorable recommendation. We feel passage of this bill would assist Law Enforcement in providing a safer environment for the members of the community.

As it is now, violation of this particular law, simply means another charge being added to several other charges through a notice to appear, or a ticket. At the worst being charged with Attempting to elude a Police Officer could result in a night in jail. More times than not there are multiple charges involved in this type of incident, and results in several of them being dismissed when the incident comes to court. Certain violators have little incentive to stop. If or when they are caught, and charged there is a good chance the charge will be plead or dismissed by the court. The simple fact is, a lot of drivers who Attempt to elude a Police Officer will pay no price for their actions.

On those occasions when a violator is prosecuted and found guilty, the result is a simple, a relatively inexpensive traffic fine.

We think the seriousness of this violation needs to be considered. The potential consequences for this act are certainly life threatening. As I am sure you are aware the act of Eluding a Police Officer not only puts the violator and the Officer in a high risk situation, but the public as well. More and more we read of instances, or see them on television where innocent citizens are injured and killed as the result of someone attempting to Elude a Police Officer. It is felt an action this serious and with the potential for far reaching tragedy should be a felony. Other crimes with this potential for injury or death already are.

Thank you for your consideration:



Sgt. Lane K. Ryno
KPOA Legislative Committee
Emporia Police Dept.

Senate Judiciary
3-19-98
att # 4

Wright
9-78
att 5

March 17, 1998

MEMBERS OF THE JUDICIARY COMMITTEE
IN REFERENCE TO HB 2312

I would like to lend my support to House Bill 2312 which deals with the proposed change from a misdemeanor to a felony on the crime of battery on a law enforcement officer.

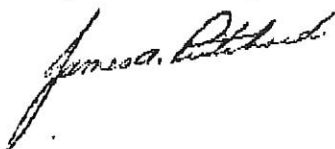
Many law enforcement officers are injured each year after being struck by violent offenders who do not respect the authority of the police. It is important to remember that law enforcement officers are merely upholding the laws that we, as a society, have deemed important and necessary for the safety of our citizens.

I believe that increasing the severity of the crime will deter people from battering law enforcement officers. For those that do not pay attention to the increased severity, the possibility of longer jail sentences and/or fines may become a deterrent.

I believe that passage of this bill will be a positive action towards reducing the number of offenders who batter police officers and that this will also let the law enforcement community know that crimes against its police officers will be dealt with in a more severe manner.

Thank you for your consideration of this bill.

Officer James A. Pritchard
Emporia Police Dept.



Senate Judiciary
3-19-98
att 5

*return
3-19-98
att 6*

COFFEY COUNTY SHERIFF'S OFFICE
 505 NEOSHO ST., PO BOX 226
 BURLINGTON, KANSAS 66839
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 FAX (316) 364-5758
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LAW ENFORCEMENT BEYOND 2000

RANDY L. ROGERS
 SHERIFF
 KENNETH RONEY, UNDERSHERIFF
 JOHN LIDDELL, CHIEF DEPUTY

Friday, March 13, 1998

TO: State Legislators

RE: HB2312, Battery against a Law Enforcement Officer(FELONY)

As our society advances and changes take place one topic that has become apparent is that of violence against law enforcement. We see incident after incident in the news where a police officer has been assaulted, which has resulted in serious injury. I believe that there are several arguments for this, perhaps the violence on television, music lyrics, availability of weapons, or a lack of respect for police officers. One thing that stands out to me is the fact that currently under Kansas Law to Batter a police officer is a misdemeanor, which normally results in little or no punishment. Thus it creates an illusion that perhaps it's no big deal to batter a police officer.

Being a Sheriff in a rural area of Kansas I have a small department in which many times I have an officer on duty by himself. He must deal with situations that normally would require 2 officers for officer safety. Over the years I have seen an increase in which an officer ends up in an altercation with a subject wither it be in an attempt to arrest the subject, remove a subject in Domestic situations, or perhaps it is because the officer is alone and an Individual is willing to take a chance because it is common knowledge on the street that there is not a severe punishment for those that choose to batter a police officer.

One thing that I would ask that the Legislators keep in mind is that many times an officer when getting into an altercation with an Individual must think of many things 1) WILL THE INDIVIDUAL TAKE HIS WEAPON, 2) WILL THE INDIVIDUAL HARM OTHERS IF NOT STOPPED, AND 3) WILL THE OFFICER LOSE HIS LIFE.

I truly believe that if we were to make the crime of BATTERY ON A LAW ENFORCEMENT OFFICER a felony with there being severe consequences there would be many incidents that would not occur. We would be able to make it common knowledge on the street that if a person chooses to batter a police officer then there will be a big price to pay.

To reiterate what I said earlier we are dealing with a more violent society and it

Senate Judiciary
 3-19-98
 att 6

COFFEY COUNTY SHERIFF'S OFFICE
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LAW ENFORCEMENT BEYOND 3000

RANDY L. ROGERS
SHERIFF
KENNETH RONEY, UNDERSHERIFF
JOHN LIDDELL, CHIEF DEPUTY

appears that it will continue to be violent. Therefore we must enact laws with severe penalties to let those that are committing the violence know that we as a society and good citizens of Kansas will not tolerate there actions any longer and that we support law enforcement and respect the many dedicated officers that are committed to serving and protecting the citizens of this great state and that we value there safety.

If I can be of any further assistance feel free to contact me.

Sincerely,

Randy L. Rogers
Coffey County Sheriff

53-998
att 7

DAVID HUFF

REPRESENTATIVE, 30TH DISTRICT
CITY OF LENEXA, KANSAS
10458 CAENEN LAKE RD.
LENEXA, KANSAS 66215
(913) 888-7730



TOPEKA

HOUSE OF
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GOVERNMENTAL ORGANIZATION
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STATE CAPITOL—RM. 174-W
TOPEKA, KANSAS 66612-1504
(913) 296-7668

Senate Judicial Committee Presentation
March 19, 1998
Presenter: Representative David Huff

Mr. Chairman and Fellow Legislators:

It is a real pleasure and honor to testify on HB-2744. This bill has been through the House Judiciary subcommittee, and the Judiciary Committee. The bill passed the House, 116 to 5. Although this bill has my name on it, this was brought to me for introduction from police agencies in Lenexa and others I have talked to. This bill could save lives and property that result from a major problem in police pursuit, of a felonious driver. I would like to thank the law enforcement agencies that came to testify today.

HB 2744, which makes a high speed pursuit of a motor vehicle, where there is no regard for life or property, a felony with a severity level "9." Currently fleeing a police officer is a misdemeanor. This bill will enable a law enforcement agency to get a fleeing felon back from across state lines, where now this is not possible as a misdemeanor. The fleeing vehicle must commit one of the following infractions: A.) Fail to stop at a police roadblock. B.) Drive around tire deflating devices. C.) Engage in reckless driving. D.) Commits 3 or more moving traffic infractions. E.) Be involved in a motor vehicle accident or property damage. F.) Exceeds speed limit by over 20 miles an hour. G.) Is attempting to elude capture from the commission of any felony.

One word should be added to this bill on page #2, line 6. the word, "moving" should be added between "more" and "traffic".

The public will be made aware of this bill when applying or renewing their drivers license.

Representative David Huff

Senate Judiciary
3-19-98
att 7

5 JTB
3-17-98
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Testimony before Senate Judiciary Committee

March 19, 1998

Prepared by: Timothy C. Lynch, Captain, Overland Park Police Department

I appreciate the opportunity to address you today on the legislative amendments which you are considering regarding the fleeing and attempting to elude a police officer statute. The proposed amendments are reflective of changes which seem to have occurred in our society in recent years. Those changes within our society, which often appear to include a declining regard for our fellow human beings, a disregard for lawful authority and a general expectation of being responsible for one's actions, appear to be nourished by an attraction for the exciting and daring portrayals of the car chases on the 5, 6, and 10 o'clock news, the nightly cop shows and on the big screens in our movie theaters. This mixture of attitude and the perception of reality for many create a highly volatile environment for the remainder of the driving and pedestrian traffic on our streets and highways.

I appear before you today as a police officer with over 24 years experience. During that time I have been behind the wheel operating a police car with emergency equipment attempting to get violators to stop while trying to warn other motorists of the pending and ever increasing danger. I have had to make the decision to continue or discontinue pursuits of violators. I have been a supervisor of other officers as they gave pursuit to fleeing motorists, often assuming a mere traffic violator but never being sure. I have had to make the decision to allow these officers to continue or discontinue the pursuit. I have been an instructor involved in training officers on how to operate police vehicles at a high speed in response to an emergency or if a violator flees. I have tried to instill in new officers, the decision making and ability to judge when a pursuit should be continued or discontinued. I currently serve as an administrator who reviews officers actions when involved in pursuits of violators who flee and attempt to elude officers. I have had to make the decision whether their actions were appropriate in continuing the pursuit of violators.

This pursuit scenario goes on daily and frequently throughout this country. A large percentage of the driving public see these scenarios presented in film and television as exciting and one where the good guys crash and the bad guys get away or sometimes the bad guys get caught after crashing and everybody walks away. The reality of this scenario, however, is all too often, the good guys, the bad guys and many times, the innocent guys are carried away, either by an ambulance crew or a crew from the morgue. The risks associated with people trying to get away are very high and rarely diminished. The dangers are real and increase significantly with each additional second a pursuit continues.

With law enforcement, the courts and civil litigants reviewing and revising their policies, procedures and interpretations, it is only prudent and right that the other half of the equation, those who elect to disregard the laws of our society by fleeing or attempting to elude police officers, are subject to a penalty that is commensurate with the risk and danger they create from their voluntary decisions and actions. Only the violator knows why he or she chose to ignore the police lights and siren.

To better define this crime and to adjust the penalty to more properly fit the level of danger and risk to innocent parties is important and critical to the continuation of an orderly society. Driving is a privilege and all those who accept this privilege, MUST accept the obligation to do so safely and in accordance with our laws. To place the rest of us, the remainder of the motoring and pedestrian public at risk and in harms way is an action for which all drivers must recognize, accept and be held accountable.

I encourage your favorable consideration of this legislation.

Senate Judiciary
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att 8

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Testimony before Senate Judiciary Committee

March 19, 1998

Prepared By John M. Meier, Captain Lenexa Police Department

In recent years the law enforcement community has imposed tighter guidelines on their officers pertaining to police pursuits. This has been a result of court rulings, public outcry, and the realization among officers and administrators that in some situations the danger the public faces is greater in pursuing than in letting the suspect get away. While law enforcement agencies have taken measures to lessen the danger the public faces, more needs to be done. Under present Kansas law an individual who flees from the police is charged with a class B nonperson misdemeanor. When you consider the injury and damage a person fleeing can and often does cause this does not seem to be a case where "the punishment fits the crime." Every year in this country hundreds of people die and thousands are injured as a result of police pursuits. Very often it is the vehicle being pursued that is involved in an accident. A 2000-pound vehicle being driven in a dangerous manner should be viewed as dangerously as any other weapon carelessly used. An individual who exposes the general public to this high level of danger should be held accountable for their actions. This bill would raise the punishment threshold to a level 9 person felony, provided certain criteria were met. It has been proven in reviewing thousands of police pursuits that the longer the chase continues the greater the probability that it will end in a crash. This bill attempts to make the streets and highways of Kansas safer by holding individuals accountable for their actions. The decision to flee from the police is a formulated, voluntary decision and just as police agencies must now consider the consequences of engaging in a pursuit, the drivers who flee must also consider the same consequences. Just as law enforcement has been held accountable for their actions, the person initiating the pursuit must also be held accountable. What this bill does is put the citizens of Kansas on notice that fleeing from the police is viewed as both a dangerous and serious act.

Television and movies have portrayed police pursuits as exciting and adventurous but seldom as tragic. Unfortunately, in the real world people die and are injured as the result of chases. This bill would serve a two-fold purpose: first it might cause a person who is considering running from the police to reconsider that action based upon the consequences, and secondly it would charge someone who does flees, with a crime that is comparable to the danger they have created. You might expect that most people who flee from the police are wanted felons, but in my experience, that is not usually the case. The individual who decides to flee is often someone who is wanted on a traffic or misdemeanor warrant, is driving with a license that is suspended or revoked, or just does not want another ticket. It would be this group of people who would have too seriously consider the consequences if they decided to flee. In reality a person who has just committed a robbery or burglary will not be frightened into not fleeing by the threat of being charged with a felony. But hopefully, the average citizen who has a traffic warrant or a revoked license will realize that they are only compounding their problems by fleeing. As I said earlier, what this legislation does is send a message that fleeing from the police is viewed as a serious action and the punishment for that act is comparable to the danger created. I would urge you to consider passage of this legislation, and I thank you for opportunity to speak to you today.

Senate Judiciary
3-17-98
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**Kansas Highway Patrol
Summary of Testimony
1998 House Bill 2744
before the
Senate Judiciary Committee
presented by
Captain Mark A. Goodloe
March 19, 1998**

Good morning Mr Chairman and members of the committee. My name is Mark Goodloe and I appear before you on behalf of the Patrol Superintendent, Lonnie McCollum, to comment on House Bill 2744.

HB2744 would amend penalties for the crime of fleeing or eluding a police officer, from a class B misdemeanor to a severity level 9, person felony, when violation of subsection (a) of K.S.A. 8-1568 occurs and the violator commits any of the following during a police pursuit:

- (A) Exceeds the posted speed limit by more than 20 miles per hour;
- (B) fails to stop for a police roadblock;
- (C) drives around tire deflating devices placed by a police officer;
- (D) engages in reckless driving as defined by K.S.A. 8-1566, and amendments thereto;
- (E) is involved in any motor vehicle accident or causes any intentional property damage; or,
- (F) commits three or more traffic infractions; or (2) is attempting to elude capture for the commission of any felony...

The bill also provides that the Division of Motor Vehicles will be required to promote public awareness of the new provision when individuals apply for or renew a driver's license.

The current statute graduates in severity based on previous convictions of K.S.A. 8-1568(a), IE, for the first offense, class B misdemeanor; second offense, class A misdemeanor; and for the third or subsequent offense, a severity level 9, person felony. The passage of HB 2744 would send a strong and clear message to those that would choose to flee or elude a police officer. That Message? **The citizens of the state of Kansas will not tolerate the irresponsibility and dangerous driving behavior precipitated by the fleeing suspect.**

As a member of the law enforcement community, and having personally been involved in a number of high speed chases, I cannot emphasize enough, the danger element, not only to the law enforcement officer, but to the innocent motorists and pedestrians that find themselves in the path of the fleeing suspect, who, most often, exhibits a total lack of regard for the safety of others. The liability issues facing the governmental agency are enormous.

Senate Judiciary
3-19-98
att 10

The Kansas Highway Patrol, in recognition of the danger factor resulting from such pursuits, has enacted some stringent policies limiting the actions of the pursuing Troopers in an effort to bring some sense of rationale and safety to the pursuit. Additionally, the patrol employs the use of tire deflating devices on a regular basis, which has enhanced our ability to bring most of the pursuits to a successful close.

As legislators, you have within your authority to create law that has the potential to level some severe consequences to those who choose to flee from police officers. This also sends a message to the public that their concerns are being addressed.

With these considerations in mind, the Patrol respectfully asks that you favorably consider HB 2744 for the citizens and all Kansas Law Enforcement Officers.

Attached for your edification is some statistical data concerning pursuits that the Patrol has encountered since February, 1995.

#####

Kansas Highway Patrol
Pursuit Statistics For: 2/01/1995 To 12/31/1995

Run Date: 3/11/1998
Run Time: 8:55:38

Total Number of Pursuits: 83

Sex of Individuals Involved in Pursuits: Males - 75 Females - 4 (Not Recorded - 4)
Average Age of Suspects Involved: 26

Total Number of Miles Driven in Pursuits: 828 Average Number of Miles: 10 Average Length: 8 Min.
Highest Speed: 147 Lowest Speed: 35 Average Speed 89
Predominant Roadway: Urban 41 Rural 42

Days of the Week Pursuits were Initiated (From greatest to least):

18 - Saturday
17 - Sunday
13 - Wednesday
12 - Tuesday
10 - Friday
7 - Thursday
6 - Monday
0 - Not Recorded

Reason for Initiation (From greatest to least):

45 - Traffic Violation
9 - Misdemeanor Crime
9 - DUI
6 - Other Reasons
5 - Felony
5 - NCIC Hit
4 - Suspicious Activities
0 - Not Recorded

Reason for Flight (From greatest to least):

17 - Driving Stolen Vehicle
16 - Avoid DUI Arrest
14 - Avoid Traffic Summons
10 - Avoid Felony Arrest
10 - Avoid Misdemeanor Arrest
6 - Other
4 - Unlicensed
3 - Mental Case
2 - Drugs/Contraband involved
1 - Fear of Police
0 - Parental Discipline
0 - Uninsured

Parties Involved in Accidents:

63 - Accident Did Not Take Place
10 - Suspect Only
8 - Suspect and 3rd Party
2 - Police and Suspect
0 - Police Only
0 - Police and 3rd Party
0 - Third Party Only
0 - Police & Suspect & 3rd Party

Total Number of Accidents 20

Type of Accident:

12 - Property Damage
8 - Personal Injury
0 - Fatality

16-3

Kansas Highway Patrol
Pursuit Statistics For: 1/01/1996 To 12/31/1996

Run Date: 3/11/1998
Run Time: 8:48:50

Total Number of Pursuits: 103

Sex of Individuals Involved in Pursuits: Males - 87 Females - 11 (Not Recorded - 5)
Average Age of Suspects Involved: 27

Total Number of Miles Driven in Pursuits: 1,084 Average Number of Miles: 10 Average Length: 10 Min.
Highest Speed: 130 Lowest Speed: 30 Average Speed 87
Predominant Roadway: Urban 50 Rural 51

Days of the Week Pursuits were Initiated (From greatest to least):
16 - Tuesday
16 - Wednesday
15 - Saturday
15 - Monday
14 - Thursday
14 - Friday
10 - Sunday
3 - Not Recorded

Reason for Initiation (From greatest to least):
62 - Traffic Violation
12 - Felony
8 - DUI
8 - Other Reasons
6 - NCIC Hit
3 - Suspicious Activities
3 - Misdemeanor Crime
1 - Not Recorded

Reason for Flight (From greatest to least):
23 - Driving Stolen Vehicle
15 - Other
15 - Avoid Traffic Summons
14 - Avoid DUI Arrest
13 - Avoid Felony Arrest
11 - Avoid Misdemeanor Arrest
3 - Mental Case
3 - Drugs/Contraband involved
2 - Fear of Police
2 - Parental Discipline
2 - Unlicensed
0 - Uninsured

Parties Involved in Accidents:
85 - Accident Did Not Take Place
14 - Suspect Only
4 - Police and Suspect
2 - Suspect and 3rd Party
1 - Police Only
0 - Police and 3rd Party
0 - Third Party Only
0 - Police & Suspect & 3rd Party

Total Number of Accidents 18

Type of Accident:
14 - Property Damage
3 - Personal Injury
0 - Fatality

10-4

Kansas Highway Patrol
Pursuit Statistics For: 1/01/1997 To 12/31/1997

Run Date: 3/11/1998
Run Time: 8:56:04

10-5

Total Number of Pursuits: 108

Sex of Individuals Involved in Pursuits: Males - 97 Females - 8 (Not Recorded - 3)
Average Age of Suspects Involved: 25

Total Number of Miles Driven in Pursuits: 1,110 Average Number of Miles: 10 Average Length: 9 Min.
Highest Speed: 140 Lowest Speed: 30 Average Speed 88
Predominant Roadway: Urban 53 Rural 54

Days of the Week Pursuits were Initiated (From greatest to least):
16 - Monday
16 - Not Recorded
15 - Friday
14 - Saturday
13 - Sunday
13 - Tuesday
12 - Thursday
9 - Wednesday

Reason for Initiation (From greatest to least):
60 - Traffic Violation
18 - Felony
11 - DUI
8 - Suspicious Activities
5 - Other Reasons
3 - Misdemeanor Crime
2 - NCIC Hit
1 - Not Recorded

Reason for Flight (From greatest to least):
22 - Avoid Traffic Summons
20 - Driving Stolen Vehicle
17 - Avoid DUI Arrest
15 - Avoid Felony Arrest
13 - Avoid Misdemeanor Arrest
8 - Other
5 - Mental Case
4 - Drugs/Contraband involved
3 - Fear of Police
1 - Unlicensed
0 - Parental Discipline
0 - Uninsured

Parties Involved in Accidents:
80 - Accident Did Not Take Place
17 - Suspect Only
8 - Suspect and 3rd Party
2 - Police and Suspect
1 - Police Only
1 - Police & Suspect & 3rd Party
0 - Third Party Only
0 - Police and 3rd Party

Total Number of Accidents 28

Type of Accident:
18 - Property Damage
8 - Personal Injury
1 - Fatality

Kansas Highway Patrol
Pursuit Statistics For: 1/01/1998 To 3/11/1998

Run Date: 3/11/1998
Run Time: 8:57:25

10-6

Total Number of Pursuits: 16

Sex of Individuals Involved in Pursuits: Males - 14 Females - 1 (Not Recorded - 1)
Average Age of Suspects Involved: 23

Total Number of Miles Driven in Pursuits: 219 Average Number of Miles: 13 Average Length: 13 Min.
Highest Speed: 130 Lowest Speed: 60 Average Speed 91
Predominant Roadway: Urban 9 Rural 7

Days of the Week Pursuits were Initiated (From greatest to least):

4 - Saturday
3 - Wednesday
3 - Sunday
2 - Friday
2 - Thursday
1 - Monday
1 - Tuesday
0 - Not Recorded

Reason for Initiation (From greatest to least):

6 - Traffic Violation
3 - DUI
2 - Misdemeanor Crime
2 - NCIC Hit
2 - Other Reasons
1 - Felony
0 - Suspicious Activities
0 - Not Recorded

Reason for Flight (From greatest to least):

5 - Driving Stolen Vehicle
3 - Avoid DUI Arrest
3 - Avoid Felony Arrest
3 - Avoid Traffic Summons
2 - Other
0 - Avoid Misdemeanor Arrest
0 - Fear of Police
0 - Unlicensed
0 - Drugs/Contraband involved
0 - Parental Discipline
0 - Mental Case
0 - Uninsured

Parties Involved in Accidents:

9 - Accident Did Not Take Place
4 - Suspect Only
2 - Police Only
1 - Suspect and 3rd Party
0 - Third Party Only
0 - Police and 3rd Party
0 - Police and Suspect
0 - Police & Suspect & 3rd Party

Total Number of Accidents 7

Type of Accident:

6 - Property Damage
1 - Personal Injury
0 - Fatality

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3-12-98
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11

Testimony of Sergeant Daryl Reece
Johnson County Sheriff's Office
Concerning HB 2744
March 19, 1998

Mr. Chairman and members of the committee, thank you for your time and the opportunity to speak before you today.

Over the last several years our department and many others have limited the types of police pursuits we will be involved in. Many police pursuits throughout the country have ended in injury or death. Citizens, police officers, and administrators have realized in some situations it is not worth pursuing the suspect. A person who is fleeing from the police has no regard for the safety of the community and presents a very real danger to your family and mine. A vehicle is just as dangerous as a gun or other type of weapon.

Currently an individual who flees from the police is charged with a Class B non-person misdemeanor. According to House Bill 2744, certain criteria must be met before someone can be charged with fleeing or eluding a level 9 person felony. The following factors apply:

- Exceeds posted speed limit by more than 20 miles per hour
- Fails to stop for a police roadblock
- Drives around tire deflating devices placed by police officers
- Engages in reckless driving as defined by K.S.A. 8-1566 and amendments thereto
- Is involved in any motor vehicle accident or causes any intentional property damage
- Commits three or more traffic infractions
- Is attempting to elude capture for the commission of any felony

Good, law abiding juveniles and adults do not run from the police, criminals do. We as law enforcement officers are tired of putting our lives on the line for those criminals who choose not to stop. We realize that this bill will not affect criminals trying to escape from serious crimes, but will affect those criminals trying to escape from less serious crimes such as traffic violations and misdemeanors. Throughout the country a majority of police pursuits start out as traffic violations. We believe by passing this legislation criminals will think twice about fleeing from the police and committing a felony.

I would be happy to stand for questions.

Senate Judiciary
3-19-98
att 11

5-10-98
alt 12

SUBCOMMITTEE REPORT

TO: Chairman Tim Emert
Senate Judiciary Committee

FR: Senator Keith Schraad
Senator Les Donovan
Senator Greta Goodwin

RE: Subcommittee Report

DT: 03/19/98

Your subcommittee met on Tuesday, March 17th, and make the following recommendations:

HB2789 - A bill concerning allowable expenses for crime victims.
Testimony was received from Frank Henderson of the Attorney General's office.
Subcommittee recommends the bill favorably.

HB2126 - A bill concerning limited liability companies.
Testimony was received from Randall Forbes, attorney for the Kansas Board of Examiners in Optometry and from Mark Stafford, General Counsel for the Board of Healing Arts. Both supported and amendment to the bill
Subcommittee makes no recommendation pending input from the Bar.

HB2233 - A bill allowing cities and counties to assess court costs for fingerprinting.
Testimony was received from Helen Stephens of the Kansas Sheriffs Association and a representative of the Wyandotte County Sheriff's office.
Subcommittee recommends the bill favorably.

HB2282 - A bill that would require process servers to show proof of service by an affidavit rather than a signed return of service.
Testimony was received from Dave Debenham with the Attorney General's office. Elwaine Pomeroy representing the Kansas Credit Attorney's Association offered an amendment that would add the contents of HB2206 which enumerates those items allowable as costs when judgment is rendered.
Subcommittee recommends the bill, with the Pomeroy amendment, favorably.

Senate Judiciary
3-19-98
alt 12

KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor



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MEMORANDUM

To: Senate Committee on Judiciary
From: Mark W. Stafford, General Counsel
Date: March 17, 1998
Re: House Bill No. 2126

On behalf of the Kansas State Board of Healing Arts, thank you for the opportunity to appear before you today and speak in support of House Bill No. 2126. The Board requested this bill to address concerns which arise when licensed professionals practice as limited liability companies (L.L.C.s). The proposal does not change the substantive law regarding any profession, but merely amends the procedure by which licensed professionals form L.L.C.s. The procedure parallels the procedure for forming a professional corporation.

The rule has long been established that only licensed persons may practice certain professions. As a result of professional licensure requirements, non-licensed organizations such general corporations may not engage in professional practices. This common-law doctrine against corporate practice was recently discussed in *Early Detection Center, Inc. v. Wilson*, 248 Kan. 869 (1991) and in *St. Francis Regional Med. Center, Inc. v. Weiss*, 254 Kan. 728 (1994). These cases recognize that the Legislature created an exception to the "corporate practice" doctrine with the professional corporation act, K.S.A. 17-2701, *et seq.* This act allows licensed professionals to form professional corporations, which are also known as professional associations (P.A.s). Generally, only persons who are licensed to practice a profession may form P.A.s. Licensed professionals use this form of professional corporate practice to shield personal assets from professional liability claims.

The advent of L.L.C.s created a preferred business organization form. However, L.L.C.s are separate legal entities, and thus the common-law doctrine prohibiting corporate professional practice would apply unless otherwise provided by statute. The original L.L.C. act, adopted in 1990, did not authorize an L.L.C. to engage in a professional. The following year, language was added to the statutes specifically allowing L.L.C.s to be organized for the same purpose as P.A.s. This new language appeared at K.S.A. 17-7608(q). Thus, professional practice through L.L.C.s is a second though related exception to the corporate practice doctrine.

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR

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Senate Judiciary
3-17-98
att 13

The Legislature did not intend to allow the unlicensed professional practice, however the amendments gave no assurance that only qualified licensed professionals would form professional L.L.C.s. The Board believes that the public should be protected from non-licensed persons using this form of business structure to invade the practice of such professions. House Bill No. 2126 would create those safeguards.

House Bill 2126 would delete the existing reference to professional practice by an L.L.C. and create new language as follows:

- New Section 1 - re-authorizes L.L.C.s to exercise powers available to P.A.s, just as the current law allows. However, the new language limits this authority to “qualified persons”. The definition of a “qualified person” is drawn from the professional corporation act, K.S.A. 17-2707(d). Representatives of the optometry profession suggest amendments to section 1(c)(4), appearing on page 2, lines 5-9. Their balloon is attached. The Board does not object to the requested amendment.
- New Section 2 - retains authority of licensing boards over licensed individuals who form L.L.C.s. This language parallels K.S.A. 17-2716.
- New Section 3 - vests civil enforcement power in the appropriate licensing board, the attorney general, and county or district attorney.
- New Section 4 - provides for updating documentation on L.L.C.s previously organized by professionals.
- Section 7 - requires that profession to be practiced by the L.L.C. be identified in the articles of organization.
- Section 8 - amends K.S.A. 17-7608 to require that professionals forming L.L.C.s obtain a certificate from the appropriate licensing board documenting qualification to form a professional L.L.C. This same type of certification is now required to form P.A.s.

I urge you to favorable recommend House Bill 2126 for passage as a means of protecting the public from unauthorized professional practice. Once again, thank you for the opportunity to appear before this committee. I will be happy to respond to questions.

1 trustee of such trust and such trust does not continue to hold title to
2 membership in the limited liability company following such natural per-
3 son's death for more than a reasonable period of time necessary to dispose
4 of such membership; or

5 (4) a professional corporation, ~~a Kansas limited liability company or~~
6 ~~foreign professional corporation in which at least one member or share-~~
7 ~~holder is authorized by a licensing body, as defined in K.S.A. 1996 1997~~
8 ~~Supp. 74-146, and amendments thereto, to render in this state a profes-~~
9 ~~sional service permitted by the articles of organization.~~

organized under the professional
corporation law of Kansas

10 New Sec. 2. Nothing in this act shall restrict or limit in any manner
11 the authority and duty of any licensing body, as defined in K.S.A. 1996
12 1997 Supp. 74-146, and amendments thereto, for the licensing of indi-
13 vidual persons rendering a professional service or the practice of the pro-
14 fession which is within the jurisdiction of the licensing body, notwith-
15 standing that the person is an officer, manager, member or employee of
16 a limited liability company organized to exercise powers of a professional
17 association or corporation. Each licensing body may adopt rules and reg-
18 ulations governing the practice of each profession as are necessary to
19 enforce and comply with this act and the law applicable to each profes-
20 sion.

21 New Sec. 3. A licensing body, as defined in K.S.A. 1996 1997 Supp.
22 74-146, and amendments thereto, the attorney general or district or
23 county attorney may bring an action in the name of the state of Kansas
24 in quo warranto or injunction against a limited liability company engaging
25 in the practice of a profession with complying with the provisions of this
26 act.

27 New Sec. 4. A limited liability company organized to exercise powers
28 of a professional association or professional corporation under the Kansas
29 limited liability company act prior to July 1, 1997 1998, shall file with the
30 secretary of state at the time of making an annual report for the calendar
31 year 1997 1998 a certificate by the licensing body, as defined in K.S.A.
32 1996 1997 Supp. 74-146, and amendments thereto, of the profession
33 involved that each of the members is duly licensed to practice that pro-
34 fession, and that the proposed company name has been approved.

35 New Sec. 5. Sections 1 through 5 shall be part of and supplemental
36 to the Kansas limited liability company act.

37 Section 6. K.S.A. 17-7604 is hereby amended to read as follows:
38 17-7604. Each limited liability company organized and existing under the
39 Kansas limited liability company act may:

- 40 (a) Sue or be sued, or complain or defend, in its name;
- 41 (b) purchase, take, receive, lease, or otherwise acquire, own, hold,
42 improve or use, or otherwise deal in or with, real or personal property,
43 or an interest in real or personal property, whenever situated;