

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on February 6, 2006, in Room 123-S of the Capitol.

All members were present,

Kay O'Connor arrived, 9:37 a.m.
Dwayne Umbarger arrived, 9:37 a.m.
David Haley arrived, 9:48 a.m.
Barbara Allen arrived, 9:50 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Others attending:

See attached list.

Final action on **SB 221--Mentally ill persons subject to involuntary commitment not allowed to possess a firearm; certification of restoration**

Senator Journey provided a balloon amendment (Attachment 1) and reviewed the provisions of **SB 221**. Senator Bruce moved, Senator Schmidt seconded, to adopt the balloon amendments proposed by Senator Journey. Motion carried.

Senator Donovan moved, Senator Bruce seconded, to add a docket fee of \$50.00 for the filing of a petition to restore rights, provided current statute does not already provide for a docket fee. Should the docket fee be less than \$50.00 increase the fee to \$50.00. Motion carried.

Senator Bruce moved, Senator Schmidt seconded, to recommend **SB 221** favorably as amended for passage. Motion carried.

Final action on **SB 352--Uniform commercial code; filing of financing statements**

Senator Vratil reviewed bill heard on January 26 and the proposed balloon amendment submitted by the Kansas Bankers Association, which clarifies the filing of financial statements and activates upon publication.

Senator Bruce moved, Senator Goodwin seconded, to adopt the balloon amendments proposed by the Kansas Bankers Association. Motion carried.

Senator Donovan moved, Senator O'Connor seconded, to recommend **SB 221** favorably as amended for passage. Motion carried.

Final action on **SB 398--Eminent domain; appeal perfected upon filing notice**

Senator Vratil reviewed the bill indicating the bill is intended to correct a situation where a party wanting to appeal an eminent domain award was denied the right to appeal because they did not pay the filing fee within thirty days after an appraiser's award was entered. This bill will clarify the intent of the committee and the legislature when this portion of the statute was changed two years ago.

Senator Donovan moved, Senator O'Connor seconded, to recommend **SB 221** favorably for passage. Motion carried.

Final action on **SB 338--Contracts; indemnification clauses and additional insured requirements in certain contracts void**

The Chairman explained that this bill was broken down into two separate bills as he had indicated would be done following the bills' hearing at the 1-25 meeting. The oil and gas interests have withdrawn their proposal for this year leaving the construction industry and the motor carriers. The Kansas Motor Carriers Association proposed a bill (Attachment 2) entitled **Senate Substitute for SB 149**. The bill includes a provision, Subsection (e), which would prohibit an additional insured clause in a contract.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 6, 2006, in Room 123-S of the Capitol.

Senator Journey moved, Senator Donovan seconded, to direct the Revisor to prepare a **Senate Substitute for SB 149** which would include the provisions on the draft provided and to recommend the bill favorably for passage. Motion carried.

The Chairman returned to **SB 338** providing a draft bill (Attachment 3) and briefing the committee on it. It is what the construction industry has already in law plus a few clean up procedural aspects. One controversial issue on the proposal is found in subsection (c) which would prohibit any construction contract from having an additional insured clause. The chairman contacted several people in the insurance industry and found that there is no standard policy. Only some liability policies will insure a general contractor for work beyond the scope of the general contractor, i.e. a sub-contractor. Therefore, depending on the policy purchased, there could be a gap in coverage. Senator Vratil also noted that these types of policies are evolving and a standard policy should be available within the next 12 to 18 months.

Following discussion on **SB 338** Senator Journey moved, Senator Haley seconded, to delete subsection (c). Motion failed.

Senator Journey moved, Senator Donovan seconded, to change the effective date to January 1, 2007. Motion carried.

Senator Bruce moved, Senator Betts seconded, requesting a substitute of SB 338 reflecting today's changes and recommend favorably for passage. Motion carried.

Senator Derek Schmidt voted no and requested his vote recorded.

Final action on **SB 408--Cruelty to animals; harming or killing certain dogs; nongrid felony; mandatory sentence**

Senator Goodwin moved, Senator Bruce seconded, on page 2, line 26, to delete the words "undergo psychological counseling or". Motion carried.

Senator Allen moved, Senator Schmidt seconded, an amendment to add on page 2, line 26 "complete a batters' intervention program and if not available, attend an anger management program". Motion failed.

Senator Journey moved, Senator Bruce seconded, to delete provisions concerning anger program and inserting substitute provisions regarding psychological evaluation to be used by the judge to determine appropriate sentencing. Motion carried.

Senator Journey moved, Senator Donovan seconded, to amend **SB 408** by removing the term "reckless" from page 1, line 17. Motion carried.

The Chairman announced that they were out of time and final action on **SB 408** will continue at a later date.

The meeting adjourned at 10:31 a.m. The next scheduled meeting is February 7, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-06

NAME	REPRESENTING
David W. Brader	Disabled American Veterans
Steven A. Henne	Disabled American Veterans
Lana Walsh	Office of Judicial Admin.
DANIEL MORGAN	K2102
Kathy Olsen	Ks Bankers Assn.
Chelsea Harris	Intern for Rep Kuethe
Beth Jones	Huff's Court Relations
Star Jones	JOHN PETERSON
John Duley	Kansas Dist. Assoc.
Jeff Bottenberg	Kansas Sher. & P's Ass'n
Natalie Gibson	Kansas Sentencing Comm.
Brenda Harmon	" " "
Whitney Damon	FS Bar Assn
Patrick Hurley	Humanity Network
Jane M. Eldridge	Westside Center
JIM CHARK	K B A
Ken Keller	Western Extral. Co
Bill Miller	AMERICAN SUBCONTRACTORS ASSOC.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-06

NAME	REPRESENTING
Sally Howard	KDOT
Heather Ansley	KDOT
Scott Heidner	ACEC Kansas
Corey Peterson	AGC of Kansas
Tom Whitaker	Ks Motor Carriers Assn
Michael White	KCDAA
Steve Bitt	KFSD
Tom Bruno	Bruno + Associates
Kathy Sachs	SOS
Stephanie Middelben	SOS
Brent Haden	KLA
TERRY HOLDREN	KFB
Tom Burgess	ASA
BRAD HARRELSON	KFB
Woody Moses	KAPA

SENATE BILL No. 221

By Committee on Judiciary

2-5

PROPOSED AMENDMENT
Senator Journey
February 2, 2006

Senate Judiciary
2-6-06
Attachment 1

9 AN ACT concerning mentally ill persons subject to involuntary commit-
10 ment for care and treatment; unlawful acts; restoration of certain
11 rights; amending K.S.A. ~~2004~~ Supp. 21-4207, 21-4204, ~~59-2948, 59-~~
12 ~~2966 and 59-2974~~ and repealing the existing sections.

59-2948, 59-2966 and 59-2974 and K. S. A. 2005

13
14 *Be it enacted by the Legislature of the State of Kansas:*

and

15 New Section. 1. (a) On or before September 1, ~~2005~~, every district
16 court shall review all files dated on or after July 1, 1998, concerning
17 mentally ill persons subject to involuntary commitment for care and treat-
18 ment as defined in K.S.A. 2004 Supp. 59-2946, and amendments thereto.

2006

19 (b) If the court ordered treatment pursuant to K.S.A. ~~2004~~ Supp. 59-
20 2966, and amendments thereto, the clerk of the court shall report such
21 order to the Kansas bureau of investigation.

22 (c) A copy of such orders shall be delivered by the clerk of the court
23 to the Kansas bureau of investigation on or before September 1, ~~2005~~.
24 The Kansas bureau of investigation shall immediately enter the order into
25 the national criminal information center and other appropriate databases.

2006

26 (d) The Kansas bureau of investigation shall ensure the accuracy of
27 the entries and the court shall ensure the validity of the orders.

28 (e) ~~The clerk of the court shall notify by first class mail the mentally~~
29 ~~ill person's legal counsel of record, at the address listed in the file or the~~
30 ~~current address of the legal counsel of record listed in such court's re-~~
31 ~~ords, of the compliance with this section. No notice shall be required to~~
32 ~~the involuntary patient.~~

Upon a finding that the mentally ill person is a danger to himself or others, the court shall notify the mentally ill person subject to involuntary commitment for care and treatment that it is a violation of the law to possess a firearm. Upon release, the state hospital shall notify the patient that it is a violation of the law for the patient to possess a firearm and provide information to the patient regarding the restoration procedure.

33 New Sec. 2. (a) A person who has been discharged pursuant to
34 K.S.A. ~~2004~~ Supp. 59-2973, and amendments thereto, may file a petition
35 in the court where treatment was ordered pursuant to K.S.A. ~~2004~~ Supp.
36 59-2966, and amendments thereto, for the restoration of the ability to
37 legally possess a firearm.

38 (b) Notice of the filing of such petition shall be served on the peti-
39 tioner who originally filed the action pursuant to K.S.A. ~~2004~~ Supp. 59-
40 2952 or 59-2957, and amendments thereto, or the petitioner's attorney
41 and the county or district attorney as appropriate.

42 (c) If the court finds the person is no longer likely to cause harm to
43 such person's self or others, the court shall issue a certificate of restoration

1 to the person. Such restoration shall have the effect of restoring the per-
2 son's ability to legally possess a firearm, and the certification of restoration
3 shall so state.

4 (d) The certificate of registration issued pursuant to this section shall
5 only apply to the possession of a firearm for the purposes of an alleged
6 violation of subsection (a)(7) of K.S.A. 21-4204, and amendments thereto.

On and after January 1, 2007,

7 Sec. 3. ~~K.S.A. 2004~~ Supp. 21-4203 is hereby amended to read as
8 follows: 21-4203. (a) Criminal disposal of firearms is knowingly:

2005

9 (1) Selling, giving or otherwise transferring any firearm with a barrel
10 less than 12 inches long to any person under 18 years of age;

11 (2) selling, giving or otherwise transferring any firearms to any person
12 who is both addicted to and an unlawful user of a controlled substance;

13 (3) selling, giving or otherwise transferring any firearm to any person
14 who, within the preceding five years, has been convicted of a felony, other
15 than those specified in subsection (b), under the laws of this or any other
16 jurisdiction or has been released from imprisonment for a felony and was
17 found not to have been in possession of a firearm at the time of the
18 commission of the offense;

19 (4) selling, giving or otherwise transferring any firearm to any person
20 who, within the preceding 10 years, has been convicted of a felony to
21 which this subsection applies, but was not found to have been in the
22 possession of a firearm at the time of the commission of the offense, or
23 has been released from imprisonment for such a crime, and has not had
24 the conviction of such crime expunged or been pardoned for such crime;

25 ~~or~~
26 (5) selling, giving or otherwise transferring any firearm to any person
27 who has been convicted of a felony under the laws of this or any other
28 jurisdiction and was found to have been in possession of a firearm at the
29 time of the commission of the offense; or

30 (6) *selling, giving or otherwise transferring any firearm to any person
31 who is or has been a mentally ill person subject to involuntary commit-
32 ment for care and treatment, as defined in K.S.A. 2004 Supp. 59-2946,
33 and amendments thereto, and such person has not received a certificate
34 of restoration pursuant to section 2, and amendments thereto.*

35 (b) Subsection (a)(4) shall apply to a felony under K.S.A. 21-3401,
36 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-
37 3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716,
38 65-4127a or 65-4127b, or 65-4160 through 65-4164 or K.S.A. 2004 Supp.
39 21-3442, and amendments thereto, or a crime under a law of another
40 jurisdiction which is substantially the same as such felony.

On and after January 1, 2007,

41 (c) Criminal disposal of firearms is a class A nonperson misdemeanor.
42 Sec. 4. ~~K.S.A. 2004~~ Supp. 21-4204 is hereby amended to read as
43 follows: 21-4204. (a) Criminal possession of a firearm is:

2005

1 accredited nonpublic school for student instruction or attendance or ex-
 2 tracurricular activities of pupils enrolled in kindergarten or any of the
 3 grades 1 through 12 or at any regularly scheduled school sponsored ac-
 4 tivity or event; ~~or~~

5 (6) refusal to surrender or immediately remove from school property
 6 or grounds or at any regularly scheduled school sponsored activity or
 7 event any firearm in the possession of any person, other than a law en-
 8 forcement officer, when so requested or directed by any duly authorized
 9 school employee or any law enforcement officer; or

10 (7) possession of any firearm by a person who is or has been a men-
 11 tally ill person subject to involuntary commitment for care and treatment,
 12 as defined in K.S.A. ~~[2001 Supp.]~~ 59-2946, and amendments thereto.

13 (b) Subsection (a)(5) shall not apply to:

14 (1) Possession of any firearm in connection with a firearms safety
 15 course of instruction or firearms education course approved and author-
 16 ized by the school;

17 (2) any possession of any firearm specifically authorized in writing by
 18 the superintendent of any unified school district or the chief administrator
 19 of any accredited nonpublic school;

20 (3) possession of a firearm secured in a motor vehicle by a parent,
 21 guardian, custodian or someone authorized to act in such person's behalf
 22 who is delivering or collecting a student; or

23 (4) possession of a firearm secured in a motor vehicle by a registered
 24 voter who is on the school grounds, which contain a polling place for the
 25 purpose of voting during polling hours on an election day.

26 (c) *Subsection (a)(7) shall not apply to a person who has received a*
 27 *certificate of restoration pursuant to section 2, and amendments thereto.*

28 (d) Violation of subsection (a)(1) or (a)(5) is a class B nonperson select
 29 misdemeanor; violation of subsection (a)(2), (a)(3) ~~or~~, (a)(4) or (a)(7) is a
 30 severity level 8, nonperson felony; violation of subsection (a)(6) is a class
 31 A nonperson misdemeanor.

32 Sec. 5 K.S.A. ~~[2001 Supp.]~~ 59-2948 is hereby amended to read as fol-
 33 lows: 59-2948. (a) The fact that a person may have voluntarily accepted
 34 any form of psychiatric treatment, or become subject to a court order
 35 entered under authority of this act, shall not be construed to mean that
 36 such person shall have lost any civil right they otherwise would have as a
 37 resident or citizen, any property right or their legal capacity, except as
 38 may be specified within any court order or as otherwise limited by the
 39 provisions of this act or the reasonable rules and regulations which the
 40 head of a treatment facility may for good cause find necessary to make
 41 for the orderly operations of that facility. No person held in custody under
 42 the provisions of this act shall be denied the right to apply for a writ of
 43 habeas corpus.

1 (b) There shall be no implication or presumption that a patient within
2 the terms of this act is for that reason alone a person in need of a guardian
3 or a conservator as provided for in K.S.A. ~~2004 Supp.~~ 59-3050 through
4 59-3095, and amendments thereto.

5 (c) *A person who is a mentally ill person subject to involuntary com-*
6 *mitment for care and treatment shall be subject to K.S.A. 21-4204, and*
7 *amendments thereto.*

8 Sec. 6. K.S.A. ~~2004 Supp.~~ 59-2966 is hereby amended to read as
9 follows: 59-2966. (a) Upon the completion of the trial, if the court or jury
10 finds by clear and convincing evidence that the proposed patient is a
11 mentally ill person subject to involuntary commitment for care and treat-
12 ment under this act, the court shall order treatment for such person for
13 a specified period of time not to exceed three months from the date of
14 the trial at a treatment facility, except that the court shall not order treat-
15 ment at a state psychiatric hospital, unless a written statement from a
16 qualified mental health professional authorizing such treatment at a state
17 psychiatric hospital has been filed with the court. *Whenever an involun-*
18 *tary patient is ordered to receive treatment, the clerk of the district court*
19 *shall send a copy of the order to the Kansas bureau of investigation within*
20 *five days after receipt of the order. The Kansas bureau of investigation*
21 *shall immediately enter the order into the national criminal information*
22 *center and other appropriate databases.* An order for treatment in a treat-
23 ment facility other than a state psychiatric hospital shall be conditioned
24 upon the consent of the head of that treatment facility to accepting the
25 patient. In the event no other appropriate treatment facility has agreed
26 to provide treatment for the patient, and no qualified mental health pro-
27 fessional has authorized treatment at a state psychiatric hospital, the par-
28 ticipating mental health center for the county in which the patient resides
29 shall be given responsibility for providing or securing treatment for the
30 patient or if no county of residence can be determined for the patient,
31 then the participating mental health center for the county in which the
32 patient was taken into custody or in which the petition was filed shall be
33 given responsibility for providing or securing treatment for the patient.

34 (b) A copy of the order for treatment shall be provided to the head
35 of the treatment facility.

36 (c) When the court orders treatment, it shall retain jurisdiction to
37 modify, change or terminate such order, unless venue has been changed
38 pursuant to K.S.A. ~~2004 Supp.~~ 59-2971 and amendments thereto and then
39 the receiving court shall have continuing jurisdiction.

40 (d) If the court finds from the evidence that the proposed patient has
41 not been shown to be a mentally ill person subject to involuntary com-
42 mitment for care and treatment under this act the court shall release the
43 person and terminate the proceedings.

1 Sec. 7. K.S.A. ~~2004-Supp. 59-2974~~ is hereby amended to read as
 2 follows: 59-2974. The head of the treatment facility shall notify, in writing,
 3 the patient, the patient's attorney, the petitioner or the petitioner's attor-
 4 ney, the county or district attorney as appropriate, and the district court
 5 which has jurisdiction over the patient of the patient's discharge pursuant
 6 to K.S.A. ~~2004-Supp. 59-2973~~ and amendments thereto. When a notice
 7 of discharge is received, the court shall file the same which shall terminate
 8 the proceedings, unless there has been issued a superseding inpatient or
 9 outpatient treatment order not being discharged by the notice. *Whenever*
 10 *a person who is involuntarily committed to a state psychiatric hospital is*
 11 *released by order of the court or termination of the case, the court shall*
 12 *review the case upon request of the patient, and may order the issuance*
 13 *of the certificate of restoration pursuant to section 2, and amendments*
 14 *thereto. If the court issues such release or termination and certificate, the*
 15 *court shall order the clerk of the district court to report the release or*
 16 *termination of the case and the certificate of restoration to the Kansas*
 17 *bureau of investigation within five days after the order.*

18 Sec. 8. K.S.A. ~~2004-Supp. 21-4202, 21-4203, 59-2948, 59-2966 and~~
 19 ~~59-2974~~ are hereby repealed.

20 Sec. 9. This act shall take effect and be in force from and after its
 21 publication in the statute book.

59-2948, 59-2966 and 59-2974 and K. S. A. 2005

July 1, 2007, and

and

SENATE Substitute for SENATE BILL NO. 149

By Committee on Judiciary

AN ACT relating to motor carriers; prohibiting requirements of indemnification from motor carriers for certain acts or omissions; exception.

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

Section 1. (a) Notwithstanding any other provision of law, a provision, clause, covenant or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend or hold harmless, or has the effect of indemnifying, defending or holding harmless, the contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the contract's promisee, or any agents, employees or independent contractors who are directly responsible to the contract's promisee, is against the public policy of this state and unenforceable.

(b) As used in this section with respect to a motor carrier as defined in K.S.A. 66-1,108, and amendments thereto, "motor carrier transportation contract" means a contract, agreement or understanding covering: (1) The transportation of property by a motor carrier; (2) the entrance on property by the motor carrier for the purpose of loading, unloading or transporting property; or (3) a service incidental to activity described in paragraphs (1) or (2) including, but not limited to, storage of property.

(c) Nothing contained in this section affects a provision, clause, covenant or agreement where the motor carrier indemnifies or holds harmless the contract's promisee against liability for damages to the extent that the damages were caused by and resulting from negligence of the motor carrier, its agents, employees or independent contractors who are directly responsible to the motor carrier.

(d) Notwithstanding the other provisions contained in this section, a motor carrier transportation contract shall not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North

America, as that agreement may be amended by the intermodal interchange executive committee.

(e) A provision in a motor carrier transportation contract which requires a party to provide liability coverage to another party, as an additional insured, for such other party's own negligence or intentional acts or omissions is against public policy and is void and unenforceable.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

By Committee on Judiciary

AN ACT concerning construction contracts; relating to indemnification provisions and additional insured parties; amending K.S.A. 2005 Supp. 16-121 and repealing the existing section.

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

Section 1. K.S.A. 2005 Supp. 16-121 is hereby amended to read as follows: 16-121. (a) When used in this section:

(1) "Construction contract" means an agreement for the design, construction, alteration, renovation, repair or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance or other improvement to real property, including any moving, demolition or excavation, except that no deed, lease, easement, license or other instrument granting an interest in or the right to possess property shall be deemed to be a construction contract even if the instrument includes the right to design, construct, alter, renovate, repair or maintain improvements on such real property.

(2) "Damages" means personal injury damages, property damages or economic loss.

(3) "Indemnification provision" means a covenant, promise, agreement, clause or understanding in connection with, contained in or, collateral to a construction contract that requires the promisor to hold harmless, indemnify or defend the promisee or others against liability for loss or damages.

(4) "Indemnitee" shall include an agent, employee or independent contractor who is directly responsible to the indemnitee.

(b) An indemnification provision in a construction contract or other agreement, including, but not limited to, a right of entry, entered into in connection with a construction contract, which requires the indemnitor to indemnify the indemnitee for the indemnitee's negligence or intentional acts or omissions is against public policy and is void and unenforceable.

(c) A provision in a construction contract which requires a party to provide liability coverage to another party, as an

additional insured, for such other party's own negligence or intentional acts or omissions is against public policy and is void and unenforceable.

(d) This act shall not be construed to affect or impair the contractual obligation of a contractor or owner to provide railroad protective insurance or general liability insurance.

(d) (e) This section applies only to indemnification provisions entered into after the act takes effect.

Sec. 2. K.S.A. 2005 Supp. 16-121 is hereby repealed.

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