

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 9, 2005 in Room 313-S of the Capitol.

All members were present except:

Jim Ward- excused
Michael Peterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Brette Hart, Student, Washburn School of Law
Randy Hearrell, Kansas Judicial Council
Brenda Noone, Citizen
Sandi Raines, MADD
Diann Windemeyer, Citizen
Shellie Parton, Citizen
Derek Casey, Kansas Trial Lawyers Association
Jim Scott, Retailer, Ft. Scott
Marge Roberson, Retailer, Newton
Ron Hein, Kansas Restaurant & Hospitality Association

The hearing on **HB 2114 - dram shop law; liquor licensee liability**, was opened.

Chairman O'Neal gave the committee a brief overview of the proposed bill (Attachment 1). Kansas is one of eight states who have not enacted dram shop statutes. The eight are: Delaware, Kansas, Louisiana, Maryland, Nebraska, Nevada, South Dakota and Virginia. The bill would create a reasonable form of potential dram shop liability in cases where a licensee is found to have breached the duties imposed by either the statute prohibiting underage service of alcohol or serving to an intoxicated person. However, the bill does not apply to social hosts (Attachment 2). He provided the committee with a Public Policy Clinic paper by a University of Kansas Law School student regarding Dram Shop Legislation (Attachment 3).

Brette Hart, Student, Washburn School of Law, also wrote a Public Policy Clinic paper. She informed the committee that common law provides no liability on a 3rd party but that 43 states and the District of Columbia impose some liability on licensee who dispense alcohol in violation of state law when their actions are found to have been a contributing cause to another's injury or death (Attachment 4).

The Kansas Supreme Court refused to impose civil liability upon dram shop owners and social hosts in *Ling v Jan's Liquors*. The Kansas Court of Appeals has issued several strong opinions urging the Kansas Legislature to take action on this issue. The Kansas Supreme Court recently heard arguments in the case of *Bland, et al v Scott, et al*. This is a social host liability case which the Court has not released its opinion on (Attachment 5).

Randy Hearrell, Kansas Judicial Council, stated that the Judicial Council has looked at the dram shop legislation twice in the past several years. They recommended this bill be introduced which would allow for civil liability in cases where a licensee is found by a trier of fact to have violated one of two criminal statutes. One prohibits furnishing alcoholic liquor or cereal malt beverage (CMB) to a minor and the other prohibits sale or service of alcoholic liquor or CMB to a person incapacitated by the effects of alcohol. The bill would not allow for an action to be brought by the person consuming the alcohol.

In 2000, drunk drivers in Kansas were involved in about 18,000 automobile accidents, 128 deaths and 5,600 injuries. In 2003, 44% of traffic fatalities were alcohol related. The National Highway Traffic Safety Administration estimates that if K.S.A. 21-3610 and K.S.A. 41-715 were enforced, the number of alcohol related fatalities would decrease by 11% (Attachment 6).

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 9, 2005 in Room 313-S of the Capitol.

He reminded the committee that the Kansas Supreme Court has changed since the *Ling* decision was handed down and that the *Bland* case was argued in March 2004 and that the decisions should be released anytime.

Chairman O'Neal told the committee that there have been many proposals to help with the issue of drunk drivers: mandatory serving training, and portable breathalyzers but the liquor industry has continually opposed both.

Brenda Noone's son, James, was killed by a drunk driver when the car he was riding in was struck from behind causing the corvette to go underneath the car exploding on impact. The drunk driver had spent the evening at the Chalet in Wichita where he was served and drank four 32 oz glasses of beer. She suggested that establishments are only concerned with making money and should be held liable in instances where they over serve a person (Attachment 7).

Sandi Raines, MADD, strongly supports any legislation that would help remove drunk drivers from the roads of Kansas. Almost 50 % of all drunk drivers drink in licensed establishments (Attachment 8).

Diann Windemeyer lost her husband two years ago to a drunk driver who was four times over the legal limit. She told about the financial burden she has had to deal with since her husband was killed (Attachment 9).

Shellie Parton is a survivor of a car wreck caused by a drunk driver and urged the committee to pass legislation to hold people responsible for their actions (Attachment 10).

Derek Casey, Kansas Trial Lawyers Association, was supportive of legislation that would hold accountable drunk drives in Kansas. The current criminal penalties are not sufficient to compensate victims and their family. He suggested an amendment stating "Breach of the duties imposed by K.S.A. 21-3610 & 41-715 shall be actionable by a civil right of action including, but not limited to suite under K.S.A. 60-1801 et seq or 60-1901 et seq." (Attachment 11).

Representative Kiegeal suggested that the committee needed to look at the criminal sentence and make it longer with fines being increased.

Chairman O'Neal announced that the bill would not apply to package liquor stores. Jim Scott, Retailer, Ft. Scott (Attachment 12), & Marge Roberson, Retailer, Newton (Attachment 13), didn't notice the exclusion language for liquor stores. They did request that it be more specific.

Ron Hein, Kansas Restaurant & Hospitality Association, while not unmindful of the problem that is out there, opposed the bill. There is the fear that licensees will have to spend large amounts of money or lose their business because of the costs of litigation (Attachment 14).

Mr. Hein suggested that there needs to be

- some type of safe harbor provision,
- the two year statute of limitations should be shortened or at least the notice of the suit should be around 60 days
- amendment that would prohibit the licensee from being liable to those who are in the company of the alcohol consuming purchaser if they seek to recover damages for injuries sustained as a result of the actions of the incapacitated person

Chairman O'Neal announced that the hearing on **HB 2114** would continue at tomorrow's meeting.

The committee meeting adjourned at 6:00 p.m. The next committee meeting was scheduled for February 10, 2005 at 3:30 p.m. in room 313-S.

Committee minutes from February 2, 7, & 8 were distributed via e-mail with the notification that if no changes were requested by February 16, 2005 they would stand approved.