

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 7, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Helen Pedigo, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Representative Eric Carter

Will Larson, Legal Counsel, Kansas Association of Insurance Agents

Jim Clark, Kansas Bar Association

Toni Wellshear, AARP of Kansas

Ruth Benien, Attorney

Representative Bob Bethell

Cindy D'Ercole, Kansas Action for Children

Others attending:

See attached list.

Chairman Vratil opened the meeting and the hearing on **HB 2109**.

**HB 2109 Child passenger safety, seat belts, manufactured after 1968**

Proponents:

Representative Bob Bethell stated he has an interest in antique vehicles, and the bill clarifies Kansas law. The clarification will allow owners of vintage vehicles to operate them on the highways of Kansas with out fear of being cited for not having seatbelts in the vehicle. (Attachment 1)

Senator Donovan questioned what the law would be for vehicles that were manufactured with seatbelts prior to 1968, such as the 1966 Ford Mustang. Representative Bethell stated his understanding was that the passengers would be required to use them. However, Representative Bethell agreed that may be something that requires further clarification in the bill.

Chairman Vratil requested that revisors review the law. Jill Wolters suggested adding, "unless such motor vehicle was assembled or manufactured with seatbelts". Chairman Vratil requested that Ms. Wolters take a look at the law, answer Senator Donovan's question, and, if necessary, include vehicles prior to 1968 that were manufactured with seatbelts and prepare an appropriate balloon.

Cindy D'Ercole, Senior Policy Analyst for Kansas Action for Children, testified that the organization supported the bill. Ms. D'Ercole stated that motor vehicle crashes remain the leading cause of unintentional injury-related death among children 17 and under in Kansas. Ms. D'Ercole stated there are three specific amendments to the child passenger safety law that will immediately save lives of Kansas children: extend primary enforcement of seat belt usage to children ages 14-18; require mandatory use of booster seats for children until they are age 8 or taller than 57 inches; increase the fine to bring it in line with other traffic fines in the state. Ms. D'Ercole requested that the Committee amend the bill to include these changes, and stated she included in her written testimony suggested language, which was mostly the same language as in **SB 329** which passed out of the Senate last year. (Attachment 2)

Senator Donovan stated that he strongly in favored this amendment. He had carried **SB 329** on the Senate floor last year and it passed 29-11. It went to the House and got within eight votes of passing. Senator Donovan stated **HB 2109** was moved into this Committee on purpose, for this amendment. Senator Donovan stated he would be glad to speak to Representative Bethell and let him know that his language could be put

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into another transportation bill and be supported.

Chairman Vratil closed the hearing on **HB 2109** and opened the hearing on **HB 2016**.

**HB 2016 Arbitration; validity of agreement; can apply to employer employee contracts and a tort claim**

Proponents:

Representative Eric Carter testified that Kansas adopted the Uniform Arbitration Act in 1973 which included a prohibition on the use of arbitration agreements in tort claims and employment agreements. However, in 1987, the law was amended to clarify that arbitration was permitted for existing tort claims. In 1995 the law was amended to allow arbitration agreements between insurance companies. Representative Carter stated since that time, federal legislation has become involved in arbitration. The Kansas courts have held that, to the extent that interstate commerce is implicated, the Federal Arbitration Act preempts contrary state law.

Representative Carter briefly stated the history of **HB 2016**, following its passage through the house, and requested the Committee favorably pass the bill. (Attachment 3)

Will Larson, legal counsel for the Kansas Association of Insurance Agents, stated his written testimony in support of the bill would provide adequate information to the Committee. (Attachment 4)

Written testimony was submitted by: Wes Ashton, Overland Park Chamber of Commerce; Leslie Kaufman, Kansas Cooperative Council; Marlee Carpenter, The Kansas Chamber (Attachments 5-7)

Opponents:

Jim Clark, Kansas Bar Association (KBA) Legislative Counsel, testified that the KBA is opposed to the bill because it seeks to eliminate the exceptions to written arbitration agreements now contained in the Kansas version of the Uniform Arbitration Act. If one is required to buy insurance, standard insurance companies contain arbitration agreements, and an individual is not able to bargain to strike that agreement. (Attachment 8)

Toni Wellshear, AARP of Kansas, stated that AARP is opposed to the bill because it would limit consumers' rights through the Kansas court system. (Attachment 9)

Chairman Vratil stated to the Committee members that it was important to know that the Kansas rules of civil procedure and the Kansas rules of evidence do not apply in arbitration actions. Whether or not discovery is even permitted is largely at the discretion of arbitrators. Arbitrators are not required to follow the law in making their decision, and the reason they can do this is because, in most cases, there is no appeal on an arbitrator's decision. Only in the event of fraud and certain other specified reasons can there be an appeal to a court.

Ruth Benien, Attorney, appeared on behalf of the National Employment Lawyers Association (NELA), in opposition to the bill. On behalf of the organization, Ms. Benien asked the Committee to not take away the rights which have been given by K.S.A. 5-401 and individuals are entitled to by the Constitution of the State of Kansas, including the right to a jury trial. Ms. Benien provided an example of an employee who signed a Master Employee Agreement and described the series of events and costs that occurred to try and obtain the employee's rights. Ms. Benien also provided the basic commercial Arbitration Rules and Mediation Procedures to the Committee. (Attachments 10-12)

Written testimony was provided by Callie Denton, Kansas Trial Lawyers Association. (Attachment 13)

Chairman Vratil closed the hearing on **HB 2016**.

Chairman Vratil handed out a revised bed space impact on **SB 179**, which deals with enhancing penalties for offenses against children. The Chairman asked the Committee to review before the bill is worked for final action. (Attachment 14)

Chairman Vratil announced that regarding **SB 38**, which deals with public records made subject to subpoena,

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discovery or other process, the original sponsor has worked with the Board of Healing Arts and come up with a proposal that drastically changes the bill. Everything has been stripped out of the bill except one provision for discovery and subpoena of records pertaining to the Board of Healing Arts. Chairman Vratil stated that copies of the new balloon would be made available for anyone that would like to have one. The Chairman encouraged all interested parties to look at the proposed substitute bill, stating that it would most likely change their testimony. (Attachment 15)

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 8, 2005.