

MINUTES

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

October 17, 2007
Room 313-S—Statehouse

Members Present

Representative Arlen Siegfried, Chairperson
Senator Anthony Hensley, Ranking Minority Member
Senator Roger Reitz
Representative Owen Donohoe
Representative Oletha Faust-Goudeau
Representative Annie Kuether
Representative Jene Vickrey

Members Excused

Senator Pete Brungardt, Vice-Chairperson
Representative Mike O'Neal

Staff

Mike Heim, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Jeannie Dillon, Committee Assistant

Conferees

Steve Zink, Director, Kansas Department of Labor, Division of Safety and Health
Denny Stoecklein, General Manager, Kansas State Fair
Patrick Clark, Producer, Haas and Wilkerson Insurance Company
Mike Hutfles, Schlitterbahn Vacation Village
Ron Seeber, Restaurant and Hospitality Association

Written Testimony

Representative Tom Sloan

Morning Session

The meeting was called to order by Chairperson Siegfried at 10:00 a.m., October 17, 2007, in Room 313-S, Statehouse.

The LCC charge:

- Study the need for state regulation and oversight of amusement rides; and
- Review the need to establish minimum safety standards for the installation, assembly, repair, maintenance, use, operation, disassembly, and inspection of amusement rides at carnivals, fairs, and theme parks.

Kathie Sparks, Kansas Legislative Research Department, presented the written testimony submitted by Representative Tom Sloan regarding amusement ride safety inspection. Representative Sloan attached copies of the 1999 bill (HB 2040) that he introduced after reviewing legislation from other states. He noted that he was unable to pass the bill over the objections of a former state senator who believed that small towns would not be able to attract carnival rides if such requirements were in place. He stated in his testimony that he continues to believe that safety should be of greater importance ([Attachment 1](#)).

Mike Heim, Office of the Revisor of Statutes, presented an overview of KSA 40-4801. He explained the current law regarding amusement rides and gave a comparison of the Pennsylvania law to the bill request from Representative Sloan. Mr. Heim gave testimony regarding surrounding states and the policies they have adopted concerning oversight of amusement rides ([Attachments 2 and 3](#)).

The Chairperson asked, if the Committee adopted either the Sloan bill or the Pennsylvania law, what would be the major changes to what we are doing now.

Mr. Heim answered by saying there is no inspection required now. There is the ability for cities and counties to require inspections but no state regulation is in effect at this time regarding inspection.

The Chairperson asked Mr. Heim if the certified inspector has to be a member of government.

Mr. Heim stated that he thinks that the industry has their own people that would be certified inspectors. Staff also noted that if the Chairperson was specifically talking about the Pennsylvania law, those inspectors are required to be certified by the Department of Agriculture.

Staff stated that the insurance would change from current requirements because it is based on classification set up by the system.

Responding to a question regarding insurance, Mr. Heim cited KSA 40-4803, which says, "The governing body of any city or county may establish and enforce safety standards for amusement rides and may require insurance in an amount which exceeds the amount required by KSA 40-4802, and amendments thereto. The governing body of any city or county may allow, in lieu of an insurance policy, an owner or operator to be self-insured." He noted that is the only leeway there is in the law and that the insurance requirement is there.

A Committee member asked if there would be an inspection because of the liability to which they are exposed and, secondly, would the city buy the insurance for its own protection.

Mr. Heim responded by saying he did not think the city would be liable unless somebody would argue that the entity that was providing the amusement rides were somehow an agent of the city. There would have to be an argument made that the city was somehow responsible for the mishap.

The Chairperson welcomed Steve Zink, Director, Kansas Department of Labor, Division of Industrial Safety and Health, to the Committee. Mr. Zink provided a color coded map of the states and noted that Kansas was one of nine states that has no regulations or inspection requirements for fixed site amusement rides. Additionally, Kansas is one of six states that has no regulations or inspection requirements for mobile amusement rides. He stated that he was here today to offer the Department's services if the Legislature should choose to proceed with the regulation of the amusement industry. He cited many safety and health programs offered by the Department of Labor which include:

- Boiler safety;
- Safety consultation; and
- Health consultation.

Mr. Zink continued by saying that the Division has Certified Safety Professionals (CSP) and Certified Industrial Hygienists (CIH) and offers OSHA 10 and 30-hour General Industry Safety courses. In summary, he stated that the Kansas Department of Labor stands ready to administer any new safety regulation for the amusement industry if the Legislature seeks to pursue this policy (Attachment 4 and 5).

In response to a question regarding cost of inspection fees, Mr. Zink responded that the fees would change according to the inspection type and there would be a broad range of charges.

A Committee member asked as far as the inspection is concerned, is there a time specification for location change inspection and how would he envision that would work.

Mr. Zink responded that some states inspect every 28 to 30 days and that someone comes back to do an inspection on those rides. He also suggested that they could allow self inspections after the additional inspection and the parties involved would have to show that they are doing those inspections.

After all questions of a general nature were answered, Mr. Zink was thanked for appearing before the Committee.

Denny Stoecklein, General Manager, Kansas State Fair, was welcomed to the Committee. Mr. Stoecklein submitted a letter from North American Midway Entertainment outlining its policies toward ride safety (Attachment 6). The information included policies on safety training for newly hired operators, proficiency programs, inspections at time of each set-up and periodic contract with independent ride inspection firms to perform final pre-opening inspections.

A Committee member asked who assumes liability for the rides at the Kansas State Fair. In response, Mr. Stoecklein said that North American Midway Entertainment provides the insurance and the Kansas State Fair is an additional insured on its policy. The additional insured process is an additional step the Fair takes not only with Midway, but with every commercial exhibitor and concessionaire or anyone that rents the facilities throughout the year.

Responding to a question asked by staff regarding insured status, Mr. Stoecklein said that as the State Fair relies on the self insured status.

Patrick Clark, Producer, Haas and Wilkerson Insurance, was welcomed to the Committee. Mr. Clark gave information on specific carnivals domiciled in the state of Kansas that are covered by Haas and Wilkerson Insurance. He stated that the company participated very actively on behalf of amusement operators with Representative Sloan when he introduced legislation in 1999 and 2001. He noted that the final product was a big disappointment to everyone in that all of the safety issues were removed by amendments and the final product only contained an insurance requirement. He submitted a list of Haas and Wilkerson underwriting and loss control standards that should be a part of amusement ride/safety/insurance regulation (Attachment 7).

A Committee member asked if there is a policy that after the aging of a ride that it be replaced rather than repaired. Mr. Clark responded that American Society for Testing and Materials (ASTM) standards would come into effect and this is something that the inspectors would examine.

A Committee member asked what is to prevent a person from going back and falsifying the log, or whether it is left to the honesty of the owner after an accident. Mr. Clark said that the inspectors will go back and inspect the ride. He stated that the people with whom they do business are trustworthy. He explained that most of the owners that they deal with have been insured by them for years. They are families. It is passed on through the generations.

A Committee member asked if there is anything that could be put in place to substantiate that they log inspections every day. Mr. Clark said that the inspectors that they hire and send out review the logs and that it was possible that they could make them send logs in on a weekly basis.

The Chairperson asked if the standards that are in HB 2040, Representative Sloan's bill, were implemented today, would they be adequate. Mr. Clark stated that yes, it would be adequate.

After all questions from the Committee were answered, Mr. Clark was thanked for his testimony.

The Chairperson recognized Mike Hutfles. Mr. Hutfles reported that the Schlitterbahn Vacation Village, a water park larger than 300 acres, would be opening in approximately 18 months in Wyandotte County. He stated that he did not foresee any problems but wanted to let the Committee know that they would be offering any assistance that they can. He stated that the company is based out of Texas and they have what he would call a "Disney exception" where they are outside the law because there are over 1,000 employees.

The Chairperson asked if they require a higher standard of insurance with a "Disney exception." Mr. Hutfles responded that he would assume so.

The Chairperson asked staff to get the specifics of that exception (Attachment 8).

Ron Seeber, representing the Restaurant and Hospitality Association, spoke briefly to the Committee and said that it is the Association's hope that McDonalds and other similar establishments with playgrounds be exempted from the bill.

The Chairperson opened the meeting for discussion.

After discussion by the Committee, *Representative Vickrey moved to redraft 1999 session bill 2040 and update as needed and to introduce the bill to the Legislature as a House bill. Representative Donohoe seconded the motion. Motion passed.*

The Chairperson recessed the Committee until 1:30 p.m.

Afternoon Session

Committee Discussion of Late Term Abortions

LCC charge: Review the recent U. S. Supreme Court ruling on late term abortions. Study the impact of the U. S. Supreme Court ruling on late term abortions on Kansas law and receive a briefing from the Kansas Attorney General regarding Kansas' law and receive a briefing from the Kansas Attorney General regarding Kansas' abortion law. Review the proviso attached by the House to the Omnibus Appropriation Bill regarding late term abortions. Examine the original intent of the Kansas late term abortion statutes to determine if any additional clarifying language is necessary.

Chairperson Siegfroid recovened the meeting and opened the topic for discussion.

Representative Vickrey stated that it appears that the state has a problem; that the law should be enforced. KDHE stated that it needs more rule and regulation authority in order to change that form so that it could include a diagnosis. At this point the law says that it is illegal to have a late term abortion in Kansas unless there is permanent and irreversible harm to a bodily function. Representative Vickrey stated he would like to consider expanding rule and regulation authority for KDHE. He stated the Attorney General needs authority to do what the Attorney General needs to do.

Representative Vickrey moved to recommend a bill draft to give additional rule and regulation authority to KDHE so that it can modify the reporting form for late term abortions to include the addition of a section designed to specify a clinical diagnosis including the reason and basis for that diagnosis.

Representative Kuether stated that she thought that there was some confusion about whether or not KDHE already has sufficient rule and regulation authority. She stated her interest in getting the Attorney General's opinion.

The Chairperson commented that, if he remembered correctly, their statement was that they did not believe under the present law they had the rule and regulation authority. Since they created the form, Chairperson Seigfreid said that he assumed that they did have the authority.

Senator Reitz stated, "I would like to think of myself as following the law to its fullest intent. If the fullest intent needs to be made clear, I think that ought to be pursued. I think that this second person who is supposed to make a judgment call on this issue is supposed to be completely divested to any relationship to the first physician who is performing the abortion. It is this second person that has to make this judgment call that I want to be clear that they are following the dictates of the law. Are they making a judgment call based on a permanent condition that will be lasting after the fact? If that is the case, then I am willing to say that is their call. The physician making that call has to be held accountable to the fact that they are going on a mental aberration that is going to be permanent with this person having an abortion. I think that is the intent of the law. I do not think that we need to tweak the law. We just need to see that somehow this is being done."

The Chairperson asked Senator Reitz, when you are talking about being certain that we are talking about permanent and irreversible damage to a bodily function, do we need a diagnosis and a reason for that diagnosis?

Senator Reitz responded by saying that is what he would want. He stated that he thought that is what the law is saying.

Representative Donohoe stated that we know that the law was written and we know the intent of the law. Based upon the testimony of Michelle Arnesto Berg, conferee from September meeting, we know that the law was not followed. She stated that the intent of the law was to prevent abortions of viable babies. We have to make sure that KDHE has that understanding and regulations in place to enforce the intent of what the law is.

Moved by Representative Vickrey and seconded by Representative Donohoe to recommend a bill draft that would give authority to KDHE to modify late term abortion forms, including adding to that form a section for a specific clinical diagnosis and a reason and basis for that diagnosis.

The Chairperson asked the Committee for discussion on the motion.

A Committee member asked if it is clarification of the form that he was discussing or was it to be used as evidence thereafter.

A Committee member stated the point is accountability and discussed ways that could be done.

A Committee member asked Representative Vickrey if his motion is to introduce a bill and asked him to clarify the motion.

In response to the Chairperson's question regarding when the Attorney General could look at the files, staff thought that when the Attorney General has some type of evidence that the law has been broken or some kind of a complaint and also referred the Chairperson to KSA 65-445 C.

After discussion, the Chairperson called the question. Motion passed.

The Chairperson noted that in response to a question that he asked, Julie Burkhart had the Thompson Law Firm, who represents Dr. Tiller, respond to the questions. He asked them to review the letter (Attachment 9).

The Chairperson further commented, "For the minutes I would like to note that we still have two definitions for viability in the law and I think that we ought to study that. I don't know if that is going to require a bill or if it has a major consequence, but I think that we should try to find out. I am not proposing a bill at this time."

Moved by Representative Vickrey and seconded by Representative Donohoe, the minutes from August 30 and August 31, 2007, be approved. Motion carried.

Moved by Representative Donohoe and seconded by Senator Reitz the minutes of September 6-7, 2007 be approved. Motion carried.

Chairperson Siegfroid said that he has gained great respect for the Committee and thanked the Committee members for their support. The Chairperson adjourned the Committee.

Prepared by Jeannie Dillon
Edited by Kathie Sparks

Approved by Committee on:

November 30, 2007
(Date)