

Approved: May 11, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Monday, February 13, 2012 in 346-S of the Capitol.

All members were present except:

Pat Colloton
Mitch Holmes

Committee staff present:

Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Eric Stafford, The Kansas Chamber
Eric Carter, Carter Attorneys, LLC
David Shay, Southwest Association of Farm Implement Dealers
Randy Stookey, General Counsel, Kansas Grain and Feed
and Kansas Cooperative Council
Emily Compton, Goodwill Association of Kansas
Daniel Murray, National Federation of Independent Business
Callie Denton, Kansas Association for Justice

Others in attendance:

See attached.

Chairman Kinzer advised there was one bill scheduled to be heard today and several he would like to take final action on if time permits. He noted other bills he would like worked through the week included **HB 2482**, **HB 2521**, **HB 2533**, and **HB 2569**.

Chairman Kinzer opened the hearing on **HB 2629—Relating to a product liability claim arising from an alleged defect in a used product**. Katherine McBride provided an overview of the contents of the bill.

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Continuation Sheet

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Eric Stafford testified in support of **HB 2629** and advised the bill was drafted in response to the *Gaumer v. Rossville Truck and Tractor Co.* Kansas Supreme Court decision last year. In the *Gaumer* decision, the Supreme Court decided re-sellers of used products are subject to strict liability where the product causes injury, which affirmed the Court of Appeals' decision that the seller was not negligent but was responsible for strict liability. Mr. Stafford advised the Kansas Chamber believes purchasers of used goods understand, as the product is not new, they are assuming some risk for the condition of a product. As long as the reseller does not significantly alter the product, the seller should not be held under strict liability for damages caused by the product. (Attachment 1)

Eric Carter testified in support of **HB 2629** and stated the *Gaumer v. Rossville Truck and Tractor Co.* case is an example of the expression in law, "Bad facts make for bad law." In the case, Mr. Gaumer bought a used piece of farm machinery from a used machinery dealer and the son got injured causing an amputation. Mr. Carter provided some background on the products liability law, advising in 1976, the Kansas Supreme Court for the first time recognized the theory of liability generally referred to as products liability. In *Brooks v. Dietz*, the court held there is the potential for products liability if one sells something that hurts someone. It was a growing area of law around the country in the 1970s. In 1981, the Kansas Legislature took the model bill that was circulating around the country, the model Uniform Products Liability Act, and put it in statute as the Kansas Products Liability Act. The Act is stated in the negative and says there is no liability if one meets these various criteria. When the Kansas Legislature used the model Act and passed the Kansas Products Liability Act, some things were left out. One of the items left out pertained to resellers of used items. There were no liability cases in Kansas until *Gaumer*. In the *Gaumer* decision, the Kansas Supreme Court tried to go back and determine what the legislative intent was in drafting the statute. The Supreme Court concluded there was language in the model Act not found in the Kansas Products Liability Act, and because it was not included, that evidenced some intent on the legislators' part to create liability for resellers of used items. **HB 2629** takes the missing language and puts it back into the Kansas Products Liability Act. (Attachment 2)

David Shay testified in support of **HB 2626**, on behalf of the Southwest Association, which is a trade association of farm equipment dealers, representing Kansas, Oklahoma, Missouri, Texas, and New Mexico. A number of the dealers sell used equipment. Mr. Shay stated **HB 2629** does not exempt the selling of any used equipment from any liability, it is only strict, or no-fault, liability. If the seller is negligent, breaches a warranty, engages in fraud, or conceals information, the seller is still liable, and those causes of action are preserved. Any fault-based remedy still exists. Mr. Shay spoke of UCC remedies and expressed if a warranty is given, it still exists unless it is disclaimed. By limiting the proposed defense contained in **HB 2629** to defective product cases, the other causes of action are preserved. (Attachment 3)

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Chairman Kinzer asked if Mr. Shay could discuss the policy reason for strict liability. Mr. Shay offered the concept regarded placing defective and harmful products into consumer commerce. With used equipment, it is not the case. The equipment has already been in consumer commerce and in strict liability, the primary responsibility lies with the manufacturer. The defense that exists in K.S.A. 60-3306 recognizes if the manufacturer of the equipment is available, even a seller of new equipment is not liable to pay for a judgment. A manufacturer controls the risk of whether equipment is harmful or not.

Randy Stookey testified in support of **HB 2629** advising his associations represent hundreds of diverse agricultural businesses in Kansas, many of whom are involved in the agricultural retail business. The recent Supreme Court decision will increase the cost of used equipment in the State of Kansas and decrease the supply, as those who participate in this market will find it more difficult and costly to do so. **HB 2629** seeks to amend Kansas law to protect the retailers of used agricultural equipment and used products, and it does so for those products that are sold in substantially the same way, as they are purchased by the reseller and then are resold. If the reseller participates in the market and then manipulates the equipment in some manner to create a nexus between themselves and the equipment, the liability may still be on the reseller. That is important, as it is not a free pass for anyone who participates in the market to buy equipment and resell it without liability, if they have manipulated the equipment in some way. Without **HB 2629**, Mr. Stookey advised the agriculture industry in the state of Kansas will suffer unnecessary and harmful litigation, and he encouraged passage of the bill. (Attachment 4)

Emily Compton testified in support of **HB 2629** and stated the 25 Goodwill stores in Kansas are used to raise money to support the programs and services provided to people with disabilities and barriers to employment. Ms. Compton stated a board member who is an attorney informed her of the *Gaumer* case and **HB 2629**, and the potential ramifications for their business. As a reseller of goods, Goodwill Industries of Kansas is careful not to sell damaged equipment, collapsible baby items, or any goods on the Consumer Product Safety Recall list. Goodwill encourages passage of **HB 2629** as it will relieve Goodwill and other similar resellers from being held under strict liability for damages caused by products not manufactured by Goodwill. Customers know they are buying used merchandise from Goodwill in an “as-is” condition and they are willing to take the small risk. In exchange, customers know they will pay less for a used item from Goodwill. (Attachment 5)

Dan Murray testified in support of **HB 2629** and advised the liability issue could have severe repercussions for many of the small business owners in Kansas who number about 4,100, including many resellers of goods. The businesses are very concerned about the precedent set by the Supreme Court’s decision and urge the passage of this bill. Mr. Murray also represents the

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Kansas Auctioneers Association. Although not testifying officially on their behalf, Mr. Murray expressed they were very concerned also about the Court's decision. (Attachment 6)

Callie Denton testified in opposition of **HB 2629** on behalf of the Kansas Association for Justice (KsAJ) and Trial Lawyers Association. Ms. Denton expressed she had hoped that Pedro Irigonigray would be able to come and speak with the Committee about the *Gaumer* case, as he was the attorney representing Mr. Gaumer. Ms. Denton acknowledged although he could not be present, she hoped something could still be worked out in the Committee's schedule for Mr. Irigonigray to address the Committee on a future date. (Attachment 7)

Ms. Denton stated the KsAJ's and Trial Lawyers' read on the *Gaumer* case was that the Supreme Court went back and affirmed what the Legislature did, which was to say sellers of new or used products are strictly liable if they put a dangerous or defective product in the market place and it causes harm. A bill is not necessary to restore the law to pre-*Gaumer*, it is just affirming what the law has always been. Ms. Denton stated all of us are consumers and purchasers. When we go out to buy a new or used item, or an "as-is" item, we have expectations of what those new and used goods are. Our expectation is not an unreasonable one: when purchasing the goods, the purchaser is not expecting to be maimed or killed. The Product Liability Act actually limits the rights of the consumer to recover and actually protects sellers. The Legislature limited the consumer's common law remedies by enacting the Product Liability Act.

Ms. Denton stated K.S.A.s 60-3303, 60-3305 and 60-3306 are statutes that now protect sellers of new and used products. The current law is a good balance that protects both sellers of used products and the purchaser, who has an expectation the used product purchased is not unreasonably dangerous. **HB 2629** would erode the Kansas consumer act and undermine the policy behind it. KsAJ respectfully requests no action be taken on **HB 2629**.

Chairman Kinzer closed the hearing on **HB 2629**.

Chairman Kinzer asked the Committee to consider final action on **HB 2530-Relating to the commitment procedure of sexually violent predators**. Katherine McBride provided a brief overview of the bill content.

*Representative Rubin moved, Representative Smith seconded, to recommend **HB 2530** favorably for passage.*

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Representative Brookens moved, Representative Ward seconded, to amend **HB 2530** to add in Section 1 (b) "On and after June 30, 2013, such persons shall be segregated at all times from any other patient in a facility or building under the supervision of the secretary of social and rehabilitation services." Motion carried.

Representative Rubin moved, Representative Brookens seconded, to recommend **HB 2530** favorably for passage as amended. Motion carried.

The next meeting will be held February 14, 2012.

The meeting was adjourned at 5:18 p.m.