

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 7, 2011, in Room 346-S.

All members were present except:  
Representative Colloton  
Representative Alford

Committee staff present:  
Jill Wolters, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Tamera Lawrence, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:  
Representative Kleeb, Forty-Eighth District, Overland Park  
Chris Appel, on behalf of American Tort Reform Association  
Dan Murray, State Director, National Federation of Independent Business  
John Donley, Kansas Livestock Association

Others Attending:  
See attached list.

Chairman Kinzer advised today was the last day for introduction of new bills requests. Chairman Kinzer proposed the Committee adopt the following requests for bill introductions without objection unless a specific request for a motion/vote is made:

Chairman Kinzer requested the following bills:

- 1) Restoration of spouse's former name after divorce; if divorced in another state, the court shall restore name if copy of authenticated divorce decree provided.
- 2) Modification to the terms and qualifications of the State Board of Indigents' Defense Services.

Representative Patton requested the following bills:

- 1) Repeal regulations that state agency, KDHE, has until December, 2011, to regulate carbon emissions.
- 2) Reveal public funds used for lobbying for tax increases
- 3) On behalf of Representative Goodman, restrict how funds can be used to lobby as relates to increasing of public funds.

David Hutchings, Kansas Bureau of Investigation (KBI), requested a bill regarding sexual exploitation of a child; increasing the penalty for certain offenses.

The Hearing on **HB 2106 - Concerning trespass and liability; exceptions**, was opened.

Matt Sterling, Assistant Revisor of Statutes, provided the committee with an overview of the bill. (Attachment 1)

Representative Kleeb, Forty-Eighth District, Overland Park, appeared before the committee as a proponent, stating the Trespasser Responsibility Act takes a legislative proactive approach to help protect Kansas' farmers and ranchers, homeowners, and businesses from frivolous lawsuits, expensive legal costs, large settlements and higher insurance premiums that may result from the legal actions taken by trespassers, their attorneys, and judges. (Attachment 2)

Chris Appel, Esq., Shook, Hardy & Bacon L.L.P. From Washington, D.C., addressed the committee

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on behalf of American Tort Reform Association (ATRA) in support of the bill. He explained that ATRA is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. He concluded that Kansas' present law regarding the duty of land possessors to trespassers is fair, predictable, and has worked well for many decades, however, the new Restatement Third of Torts: Liability for Physical and Emotional Harm, calls on courts to dramatically expand trespassers' rights to sue and would impose costly burdens on property owners. He stated Kansas should enact this bill to prevent activist judges from giving the green light to lawsuits by intruders that would subject private homeowners and other land possessors to broad new liability.

Included in his written testimony, Mr. Appel, on behalf of ATRA, recommends that the Committee adopt an amendment to include language that appears to have been inadvertently omitted from the bill. A key element of the law in Kansas and elsewhere regarding attractive nuisance cases is that "the possessor knows, or in the exercise of ordinary care should know, that young children are likely to trespass upon the land." PIK-Civil 4<sup>th</sup> 126.40. HB 2106, 2(c)(2) should be amended to include this requirement as a new paragraph (A) with the existing paragraphs to follow. (Attachment 3)

Much discussion followed regarding the Restatement and the definition of "children".

Dan Murray, Kansas State Director, National Federation of Independent Business (NFIB), spoke before the committee in support of the bill. He stated this bill does two positive things for the small business sector; limits business owners' liability exposure and also supports the NFIB Mission, "to promote and protect the right of our members to own, operate and grow their businesses." (Attachment 4)

John Donley, Assistant Counsel for the Kansas Livestock Association, addressed the committee as a proponent and is supportive of the general concept proposed by the bill, however, he also requested the committee to review several issues before going forward, as stated in his written testimony. He specifically requested "livestock and wildlife" be included on the list of things a "possessor shall not be liable for" in section 2(d) of the bill. (Attachment 5)

The following proponents submitted "written only" testimony in support of the bill:

Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber (Attachment 6)

Ron Seeber, Vice President of Government Affairs, Kansas Grain & Feed (KGFA) and Kansas Agribusiness Retailers Association (KARA) (Attachment 7)

Leslie Kaufman, President/CEO of the Kansas Cooperative Council (Attachment 8)

David Hanson, Kansas Association of Property and Casualty Insurance Companies (Attachment 9)

The hearing on **HB 2106** was closed.

The Hearing on **HB 2102 - Concerning open records; relating to nondisclosure of certain records**, was opened.

Matt Sterling, Assistant Revisor of Statutes, provided the committee with an overview of the bill that would amend the open records act and the list of records not subject to disclosure. (Attachment 10)

Representative Patton addressed the committee in support of this bill and attached a newspaper article from the Wichita Eagle reporting emails had been sent from two Sumner County school superintendents that included electronic attachments of a campaign advertisement. Although the Kansas Government Ethics Commission found no violations, this bill could be a possible solution to future situations. (Attachment 11)

There were no opponents.

The hearing on **HB 2102** was closed.

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**HB 2070 - Requiring plaintiff or plain attorney to notify defendants of payment of appraisers' award within 15 days.**

**Representative Kuether made the motion to report HB 2070 favorably for passage. Representative Bruchman seconded the motion. Motion carried.**

**HB 2071 - Inheritance rights; automatically.**

**Representative Bruchman made the motion to report HB 2071 favorably for passage. Representative Smith seconded the motion.**

**Representative Brookens made a substitute motion to amend the bill as follows: Page 2, line 17, insert a period, and delete Lines 18 and 19. Representative Meier seconded the motion. Motion failed.**

**Representative Brookens made a substitute motion to amend the bill, page 2, Line 40, after disclaimed, add "pursuant to K.S.A. 59-2291, or other lawful disclaimer." Representative Ward seconded the motion. Motion failed.**

**Back on the motion to report the bill for passage, motion carried.**

The next meeting is scheduled for February 8, 2011.

The meeting was adjourned at 5:08 p.m.