

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 8, 2005, in Room 123-S of the Capitol.

All members were present.

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:

Ron Hein, Kansas Restaurant & Hospitality Association  
Marlee Carpenter, The Kansas Chamber  
Thomas Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas  
Terry Holdren, Kansas Farm Bureau  
Brent Haden, Kansas Livestock Association  
David Curotto, Kansas Trial Lawyers

Others attending:

See attached list.

Chairman Vratil called the meeting to order and asked if there were any bill introductions.

Senator Barnett introduced a bill relating to domestic battery, amending K.S.A. 2004 Supp. 21-3412a. Senator Allen moved, Senator Journey seconded, and the motion carried. (Attachment 1)

Chairman Vratil opened the hearing on **SB 75**.

**SB 75 Creating an immunity from liability for claims relating to obesity or weight gain**

Proponents:

Ron Hein, testifying on behalf of the Kansas Restaurant and Hospitality Association, stated that the Association originally requested introduction of the bill to stop frivolous claims of weight gain due to long-term consumption of food. Mr. Hein stated that there are 13 additional organizations listed in his written testimony that support the bill in Kansas. Additionally, 14 states have already passed this bill. (Attachment 2) Mr. Hein also provided written testimony on behalf of the Kansas Beverage Association. (Attachment 3)

Marlee Carpenter, testifying on behalf of the Kansas Chamber, stated the Chamber and its more than 10,000 members support passage of the bill. Ms. Carpenter shared recent poll results which support the legislation. (Attachment 4)

Tom Palace, testifying on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, stated the more than 300 members support the bill and believe that current labeling and nutritional content information guarantee that when a person chooses to buy a consumable product, that he or she is aware as to the calorie and nutritional value, and people have to take responsibility for their choices. (Attachment 5)

Chairman Vratil asked if Mr. Palace and Mr. Hein if they had any problem with section (g) that states, “the provisions of this section shall apply to all covered claims pending as of July 1, 2005, and all claims filed thereafter”. The concern is the effective retroactive application and the fact that the existence of a claim is a property right and this would be taking a claim without due process. Mr. Hein offered to check with the Board of the National Restaurant Association and see how it has been resolved in other states.

Terry Holdren, testifying on behalf of the Kansas Farm Bureau, stated the Bureau has 40,000 members across Kansas. The members have adopted a policy to support tort reform measures, including prohibiting claims based on weight gain, obesity, or related conditions caused by consumption of food. (Attachment 6)

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 8, 2005, in Room 123-S of the Capitol.

Chairman Vratil brought up a question about whether food is defined clearly in the bill. Mr. Hein stated that lines 17-18 of the bill use the federal definition of food, including alcoholic beverages. Chairman Vratil questioned whether definitions should be considered to define a manufacturer, producer, distributor, packer, carrier, etc. Mr. Hein stated in the national model act, those terms are not defined. The revisors will check the federal statutes to determine whether definitions currently exist. Senator Schmidt stated that, from discussing **SB 296** last year, some of the terms are defined in other places of Kansas law, and the revisors might want to look there.

Senator Bruce questioned what scenario would be applicable to lines 32-35 of the bill, with the standard of culpability raised to “knowingly and willingly” causing the injury, as opposed to simple negligence. Mr. Hein stated the intent is to address any misrepresentation of the labeling or manufacturing standard of safety.

Mr. Brent Hayden, assistant Counsel for the Kansas Livestock Association, testified that the Association was joining with the other producers and sellers to ask for help to prevent frivolous obesity lawsuits. Mr. Hayden stated it was the belief of the members that the burden of costs and consequences of obesity should be the responsibility of the individual. He stated one could see a trend had occurred in other areas of product liability, such as with cigarettes, firearms, pharmaceuticals, and now food. (Attachment 7)

Three testimonies were supplied in writing: Leslie Kaufman, Kansas Cooperative Council; Mr. Hal Hudson, National Federation of Independent Business; Duane Simpson, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association. (Attachments 8-10)

### Opponent:

David Curotto testified on behalf of the Kansas Trial Lawyers Association(KTLA) in opposition to the bill and stated that, although the KTLA is against all frivolous lawsuits, the bill is over broad and has far reaching potential for barring consumers from redress for negligence caused in the manufacturing, distribution, or sale of products to the retailers. (Attachment 11)

Chairman Vratil closed the hearing on **SB 75**.

Chairman Vratil distributed to the Committee a letter from the Kansas Supreme Court Chief Justice, Kay McFarland, on a topic that was the subject of legislation last year. The Court, through their rulemaking process, has clarified some details regarding judicial administrators. (Attachment 12)

Chairman Vratil opened the hearing on **SB 96**.

### **SB 96 Punitive damage awards; splitting awards**

### Proponent:

One written testimony was provided in support of the bill from Marlee Carpenter, The Kansas Chamber. (Attachment 13)

### Opponent:

David Curotto, Kansas Trial Lawyers Association, testified that punitive damages are a supplemental award to an injured person for the purpose of forcing the wrongdoer to take responsibility for his or her conduct. An attorney’s ethical duty is to represent a client and seek financial awards for all the damages the client is entitled to, and it would be improper to fund litigation against a party if the client was not going to benefit from the claim. Mr. Curotto stated that attachments provided with his written testimony summarize the punitive damages awarded in Kansas during 2000-2003, averaging \$4,500, and, on a pie-chart, show that the total tort cases involving punitive damages in Kansas in 2003 were less than 6 percent. (Attachment 14)

Three testimonies were submitted in writing: Mr. David Moss; Jim Clark, Kansas Bar Association; Sandy Barnett, Kansas Coalition against Sexual and Domestic Violence. (Attachments 15-17) Chairman Vratil closed the hearing on **SB 96**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 9, 2005.