

Approved: June 22, 2012  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 a.m. on March 6, 2012, in Room 548-S of the Capitol.

All members were present.

### Committee staff present:

Jason Thompson, Office of the Revisor of Statutes  
Katherine McBride, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Bob Allison-Gallimore, Kansas Legislative Research Department  
Theresa Kiernan, Committee Assistant

### Conferees Appearing before the Committee:

Kyle Smith, KBI  
Chad Austin, Kansas Hospital Assn.  
Christopher Joseph, Attorney  
Jennifer Roth, Kansas Assn. of Criminal Defense Lawyers  
Callie Jill Denton, Director of Public Policy, Kansas Assn. for Justice  
Eric Stafford, The Kansas Chamber  
Eric Carter, Attorney  
Randy Stookey, General Counsel, Kansas Grain and Feed Assn., Kansas Agribusiness Assn. and  
Kansas Cooperative Council  
Daniel Murray, State Director, National Federation of Independent Business  
Emily Compton, President/CEO Goodwill Industries of Kansas  
David Shay, Southwestern Assn.  
Lance Fullerton, Kansas Auctioneers Assn.

### Others in Attendance:

See Attached List

The Chairman opened the hearings on **HB 2568–Amendments to the Kansas offender registration act**.

Mr. Thompson reviewed the bill. He stated the bill would make several amendments to the Kansas Offender Registration Act. The amendments would: Require courts to register offenders at conviction or adjudication; revise offender registration responsibilities of correctional facilities, law enforcement agencies and treatment facilities; adjust specific registration requirements for sexual battery, aggravated human trafficking and any offense ordered by the court; and require registration to continue after expungement, although registration will not be public information.

Kyle Smith testified, on behalf of Nicole Dekat, in support of **HB 2568**. He stated community notification is

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required in order to comply with the federal Adam Walsh Act. The bill would clarify duties of each registering entity and make technical changes to the act. The bill is intended to protect children by providing a more consistent and comprehensive interstate system of managing sex offenders. Mr. Smith requested the Committee to make several amendments to the bill. ([Attachment 1](#)).

Christopher Joseph testified in support of two amendments to **HB 2568**. Mr. Joseph expressed concerns that without the proposed amendments to K.S.A. 22-3717 and 22-4906, the bill could have ex post facto application. ([Attachment 2](#)).

Written testimony in support of **HB 2568** was submitted by Chris Mechler and Chad Austin. ([Attachments 3 and 4](#)).

Jennifer Roth testified in opposition to **HB 2568**. She expressed concerns with the bill, including the retroactive application of the bill, access to employment information and the application of the bill to offenders other than sex offenders. ([Attachment 5](#)).

The Chairman closed the hearings on **HB 2568**.

The Chairman opened the hearings on **HB 2629—Relating to a product liability claim arising from an alleged defect in a used product.**

Mr. Thompson reviewed the bill. He stated the bill would provide that a retail seller of used products would not be liable for claims arising from an alleged defect in a product if the seller establishes the product was resold after use by a consumer or other product user and was sold in substantially the same condition as when it was acquired for resale. The bill would not provide protection from claims arising out of intentional misrepresentation, intentional concealment or intentional nondisclosure of a condition known to the seller.

Eric Stafford testified in support of **HB 2629**. He stated the bill was introduced in response to the Kansas Supreme Court opinion, *Gaumer v. Rossville Truck and Tractor Co.* (2010). He stated the Court held that resellers of used products are subject to strict liability if the product causes injury. ([Attachment 6](#)).

Eric Carter testified in support of **HB 2629**. He stated the bill would amend the Kansas Product Liability Act (KPLA) by reinserting language from the model act into the KPLA. He expressed concern with the House amendment to the bill on pages 1 and 2 relating to express and implied warranties. ([Attachment 7](#)).

Randy Stookey testified in support of **HB 2629**. He stated the bill would prohibit strict liability actions against retailers of used products if those products are sold in substantially the same condition as when they were acquired for resale. The bill would remove liability from a retailer of a used product unless the retailer has somehow manipulated the condition of that product before resale, or otherwise intentionally failed to disclose a known defect in the product. ([Attachment 8](#)).

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Daniel Murray testified in support of **HB 2629**. He stated the bill will provide clarity to the KPLA and would redress a court decision, which will have disastrous consequences for small businesses. (Attachment 9).

David Shay testified in support of **HB 2629**. He stated the bill would balance the interplay between common law enactment of strict liability and the statutory limitations contained in K.S.A. 84-2-316(3)(a). (Attachment 10).

Lance Fullerton testified in support of **HB 2629**. He stated the bill would be in the best interest of the members of his association. (Attachment 11).

Emily Compton testified in support of **HB 2629**. She stated the bill would help Good Will and similar resellers from being held strictly liable for damages caused by products not manufactured by such resellers and which are sold "as is." (Attachment 12).

Callie Jill Denton testified in opposition to **HB 2629**. She stated the bill, as amended by the House, would eliminate virtually all accountability for retail sellers of used products to purchasers. (Attachment 13).

The Chairman closed the hearings on **HB 2629**.

The Chairman opened the hearings on **HB 2253–Private rights of action; restrictions**.

Mr. Thompson reviewed the bill. He stated the bill would create the Transparency in Lawsuits Protection Act, stating the Legislature's intent that, unless expressly provided, no statute, rule, regulation, ordinance or other enactment of the state creates a private right of action. The bill would require any legislation creating a private right of action to contain express language providing for the right and, absent that language, would prohibit courts from construing a statute to imply a private right of action.

Eric Carter testified in support of **HB 2253**. He stated the bill would require any legislation creating a private right of action to contain express language providing for the right and, absent that language, would prohibit courts from construing a statute to imply a private right of action. (Attachment 14).

Written testimony in support of **HB 2253** was submitted by Eric Stafford. (Attachment 15).

The Chairman closed the hearings on **HB 2253**.

The next meeting is scheduled for March 7, 2012.

The meeting was adjourned at 10:30 a.m.