

Approved March 31, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 25, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Crowell, O'Neal, Vancrum, Wagnon and Whiteman, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants
John Frieden, Attorney
Bob Arbuthnot, Kansas Trial Lawyers Association
Ron Smith, Kansas Bar Association

The Chairman reported the subcommittee on S.B. 258 met with proponents and opponents, and the decision of the subcommittee was not to hear S.B. 258 this year.

The Chairman also announced he has arranged a meeting in the State Office Building Cafeteria at 7:15 a.m. Thursday, March 26, 1987 with Social and Rehabilitation Services to review S.B. 264. Anyone that is interested in hearing about the technical and legal ramifications of S.B. 264 is invited to attend.

Hearing on S.B. 25 - Limitations on liability of certified public accountants.

T. C. Anderson testified there is a growing tendency by state courts to extend accountant's exposure to liability for negligence to an unlimited number of unknown third parties or non-clients with whom the accountant has no contractual or other relationship. He stated S.B. 25 would limit actions for ordinary negligence to those with whom the accountant is in privity or near privity of contract. The bill does not in any way restrict suits against accountants for fraud or other willful or wanton acts or for work negligently performed, (see Attachment I).

John Frieden explained this bill does not change existing law. This bill extends the Certified Public Accountant's liability to third parties, but only under the circumstances that the C.P.A. knows of the extension, knows he is going to be liable, and it is in writing. He said 15 states are discussing legislation at this time. Illinois passed legislation last year.

Bob Arbuthnot testified the Kansas Trial Lawyers Association no longer opposes this bill since it was amended by the Senate. He stated the bill should probably cover other professions as well.

Ron Smith testified the Kansas Bar Association is no longer opposed to this bill, however, he recommended the Committee consider other professions that have third party liability based upon opinion type work.

The hearing was closed on S.B. 25.

The following bills were considered for final action:

S.B. 16 - Exemptions from legal process

Representative Bideau moved to delete the Senate amendments in line 78 which changed the amount from \$500 to \$1,500, and in line 89 which changed the amount from \$5,000 to \$7,500. Representative Walker seconded and the motion passed.

Representative Sebelius moved to amend S.B. 16 to add a new subparagraph (11) on page 2 to the exemptions proposed by the Kansas Funeral Directors Association, "Any

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 313-S, Statehouse, at 3:30 ~~am~~ p.m. on March 25, 1987.

funds held in an account or trust established as a prearranged funeral agreement, plan or contract, and exempt from process pursuant to New Section 2(d) of S.B. 11, 1987 Session of the Kansas Legislature". The motion was seconded by Representative Peterson. The motion passed.

A motion was made by Representative Sebelius and seconded by Representative Peterson to report S.B. 16, as amended, favorable for passage. The motion passed.

S.B. 49 - Crime of hazing limited to student organizations

Representative Bideau moved to report S.B. 49 favorable for passage. The motion was seconded, and the motion failed, 4 yeas, 7 nays. Representatives Shriver, Bideau, Douville, and Buehler requested to be recorded as voting yea.

S.B. 97 - Probate procedure, allowance of demand without hearing.

Representative Fuller moved to reinsert lines 38 through 45 that were struck from the bill. Representative Douville seconded and the motion passed.

Representative Shriver moved and Representative Douville seconded to change the amount in line 46 to \$1,500. The motion passed.

Representative Sebelius moved and Representative Shriver seconded to report S.B. 97, as amended, favorable for passage. The motion passed.

S.B. 53 - Amendments to rules of civil procedure

Representative Kennard moved and Representative Fuller seconded to amend S.B. 53 by adding in line 76, after the word "hearing", "at which time the documents shall be filed". The motion passed.

Representative Buehler moved and Representative Bideau seconded to report S.B. 53, as amended, favorable for passage. The motion passed.

S.B. 273 - Crimes and punishments, fraud in obtaining accommodations

Representative Sebelius moved to report S.B. 273 favorably for passage. The motion was seconded by Representative Fuller.

Representative Douville moved and Representative Duncan seconded to amend Section 1, (b) by increasing the \$50 to \$150. The motion passed.

Representative Douville moved to strike "dwelling unit" from line 49. Representative Bideau seconded. The motion failed.

Representative Duncan moved and Representative Kennard seconded to report S.B. 273, as amended, favorable for passage. The motion passed. Representative Bideau and Representative Douville requested to be recorded as voting nay.

The Chairman announced the Committee would consider H.B. 2190 at the Committee meeting on Thursday, March 26, 1987.

The meeting was adjourned at 5:00 p.m.

The next meeting will be Thursday, March 26, 1987, at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE March 25, 1987

HOUSE JUDICIARY

NAME

ORGANIZATION

ADDRESS

John D. Mullin	AARP	5230 W. 24th Topeka
J. P. Anderson	KSCPA	Topeka
J. Friedman	CPTA - Atty	Topeka



Kansas Society of Certified Public Accountants

FOUNDED OCTOBER 17, 1932

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KANSAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

March 25, 1987

Re: Senate Bill 25

Mr. Chairman and members of the House Judiciary Committee. My name is T. C. Anderson. I am the Executive Director of the Kansas Society of Certified Public Accountants.

An area of particular concern to Kansas CPAs is a growing tendency by state courts to extend accountant's exposure to liability for negligence to an unlimited number of unknown third parties or non-clients with whom the accountant has no contractual or other relationship.

In this respect the Kansas Society endorses Senate Bill 25 which is designed to strike a balance between the appropriate liability of an accountant for his own negligence, which directly affects those to whom he has a duty, and the otherwise limitless exposure which would attach if liability is extended to all conceivable viewers or users of the accountant's report.

- (1) SB 25 would limit actions for ordinary negligence to those with whom the accountant is in privity or near privity of contract -- i. e., with whom there is a contractual relationship or a contemplated reliance upon accounting services to be rendered. It therefore allows the accountant to know to whom he is liable, and for what he is liable.
- (2) SB 25 does not in any way restrict suits against accountants for fraud or other willful or wanton acts. It merely imposes certain minimum requirements which must be fulfilled before a third-party may file suit for ordinary negligence.
- (3) SB 25 does not in any way restrict suits against accountants by their clients for work negligently performed.
- (4) The Kansas Supreme Court has not spoken on "third party liability" of accountants. However, since current Kansas case law supports the concept of privity, SB 25 would merely codify the current interpretation found in Koch Industries v. Vosko, 494 F 2d 713, 10th Cir. 1974. Renowned Justice Benjamin Cardozo of New York's highest court states, in the leading privity case decided over 50 years ago:

If liability for negligence exists, a thoughtless slip or blunder, the failure to detect a theft or forgery beneath

Attachment I
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the cover of deceptive entries, may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class. The hazards of a business conducted on these terms are so extreme as to kindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences. (emphasis added)

The New York Supreme Court has recently upheld that state's concept of privity, but other states such as California, Wisconsin and New Jersey, have abandoned it. SB 25 is therefore a proactive measure designed to prevent judicial erosion of traditional liability concepts which has occurred elsewhere in recent years.

- (5) The liability of an auditor to investors and others injured by misleading financial statements stands on a difference analytic footing from that of the product manufacturer or the doctor. The difference stems from the auditor's role of being a secondary, as opposed to a primary, participant in the circumstances giving rise to loss or injury. Unlike the manufacturer of a machine or appliance, the auditor does not have control over production or distribution of the defective article; that is the responsibility of the issuer of the financial statements. In addition, the auditor, even if negligent, is often himself a victim of the primary wrongdoer's conduct; and, unlike the manufacturer, whose income is directly related to the size of the transaction or the frequency of sales, the auditor's compensation is customarily based on the time devoted to rendering a service and does not reflect the size of the transaction or the growth of the client's business.