Approved: May 23, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 12:45. on March 3, 1994 in Room 313-S of the Capitol.

All members were present except:
Representative Tim Carmody - Excused
Representative Gilbert Gregory - Excused
Representative Judith Macy - Excused
Representative Joan Wagnon - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

HB 2328 - Plea or verdict of guilty but mentally ill.

Chairman O'Neal stated that in having hearings and discussing this legislation the idea was hit upon that maybe the Committee shouldn't be looking at adding an option of guilty but mentally ill but instead consider eliminating the verdict of "not guilty by reason of insanity." A balloon draft was handed out that would eliminate this option, (see attachment 1).

Dean Raymond Spring explained that this same direction has been taken by four other states. He had heard that today Colorado had approved this type of legislation, but hasn't had time to look into whether it's true or not. The idea under any justice system is that we do not hold people criminally responsible for their conduct, when they are not mentally capable of understanding what they are doing. The idea of a separate defense of insanity grew out of the courts trying to define for juries what insanity meant. The McNaughten Rule, which is used in Kansas, states that a person is not guilty of a crime by reason of a mental illness because they do not know what they are doing. This focuses on the fact that if a person had criminal intent they are guilty of the crime but if they were so incapacitated that they could not have criminal intent, they would not be guilty of a crime.

The reasonable approach would be to abolish any reference to a separate defense of insanity but still permit the evidence as to the condition of the persons mind at the time of the act. This puts the focus where it should be; on whether or not they had criminal intent when the act was committed. There would not be a separate instruction of insanity. The jury simply finds the defendant "guilty" or "not guilty" and returns the verdict. If the jury finds the defendant "not guilty" then they are asked to answer a special question; "did you find the defendant not guilty solely because they lacked the capacity to form criminal intent". In which case, would trigger the mental hospital treatment. This would change the focus and be easier for the public and juries to understand that the focus is on the criminal intent.

Chairman O'Neal questioned if this would change the prosecutors focus, in that, there is a high incidence of pleas where the prosecutor accepted a report that stated that the defendant had a mental defect at the time of the act, so they accepted a plea of not guilty by reason of insanity. Under this approach they might be more likely to look at it in terms of the traditional concept of mens rea. Mr. Spring stated that the focus is on "can I get a conviction." This proposal isn't saying that someone can't be suffering from a mental illness and not have criminal intent. There is a likely result the State may see more cases in which there are convictions of lessor offenses rather than a finding of not guilty.

The Chairman questioned what the jury instructions would look like. Mr. Spring stated that there would be no instructions at all, based upon mental illness, mental defect or mental condition.

Representative Everhart questioned if this is the way that other states are doing their jury instructions. Mr. Spring replied that it is to the best of his knowledge. Utah is different because they have retained the verdict of guilty by reason of insanity, but they say that not guilty by reason of insanity only means lack of criminal intent.

Chairman O'Neal stated that the mention of mental disease or defect was mentioned in the bill and questioned if it was defined. Mr. Spring stated that it is not defined and suggested not including a definition because the McNaughten Rule address the language. The Chairman then questioned if the PIK committee would suggest something similar to the language we currently have on mental illness or defect. Mr. Spring stated that they might. The only definition for mental disease he has seen tells what it isn't - not what it is.

Chairman O'Neal requested that Mr. Spring go over the main points of the bill with the Committee. Mr. Spring stated that New Section 1 was the key section that abolishes the insanity defense. New Section 2 triggers the post-verdict requirements. Mr. Spring had several proposed amendments to the bill and suggested changing the effective date so the Kansas Bar Association and courts could have time to get use to the change, (see attachment 2).

Representative Garner stated that this proposal does not eliminate the defense of insanity but eliminates the verdict option from the jury.

Chairman O'Neal stated that the House had sent to the Senate twice a "Guilty but Mentally Ill" version and they have rejected it each time. This proposal appears to represents a better approach. The idea that the juries won't be confused, the concept of the basic elements of criminal intent wouldn't be lost and refocused on the crime, not whether or not there was mental competency, makes good public policy.

Representative Adkins made a motion to adopt the balloon draft with Mr. Springs proposed amendments. Representative Robinette seconded the motion.

Representative Garner stated that this may be the best idea in this area but he doesn't feel comfortable voting in favor of the bill because there hasn't been enough opportunity to discuss this and see how it is working in other states. Representative Wells stated that this issue has been studied for the past seven years. She stated that this is the year of crime and it should be addressed. Representative Plummer commented that since the guilty but mentally ill bill has been sent to the Senate twice and they have failed to enact on it both time, this would be a better option to send to them. The motion carried.

Representative Adkins made a motion to change the effective date to January 1, 1995. Representative Wells seconded the motion. The motion carried.

Representative Wells made a motion to report **Substitute HB 2328** favorably for passage. Representative Adkins seconded the motion. The motion carried.

HB 2222 - Kansas equine activity liability act.

Chairman O'Neal explained that this was a bill that had hearings last year, but needed some work. No action was taken on the bill as it was currently worded and requested that those proposing the bill rework it, (see attachment 3).

Representative Mayans explained that the real concern was that in 1996 The Championship Endurance Race will be held at Ft. Riley and if this bill doesn't pass the State could lose a lot of money. The amendments to the bill should satisfy most members of the Committee and the bill was broadened to include 4-H'ers and domestic animals, (see attachment 4).

Representative Plummer stated that the original proposal was drafted after Colorado law. The total focus was changed. This is a Kansas proposal, not like anything in any other state. It recognizes that our Constitution states that one cannot take away a cause of action and this proposed bill does not do that.

Jill Wolters explained that the proposed balloon draft gets away from immunity and goes with an affirmative assumption of the risk. The first section defines terms and what a domestic animal & domestic animal activities are. It does not include being a spectator. However, it does cover spectators who places themselves in an unauthorized area and in immediate proximity to animal activity. It also allows the sponsor or professional to plead assumption of the risk by the participant. Section 4 requires that signs be posted which contain warnings of what the Kansas law says.

Representative Bradley made a motion to report **Substitute HB 2222** favorably for passage. Representative Mayans seconded the motion.

Representative Adkins made a motion to insert on page 5 after the indented section, "(c) Inherent risk of domestic animal activities includes,... and the contract in subsection(a) should contain the following language." He explained that this would make it clear that this would be a subsection and not required to be placed on the posted sign. The only portion that would be placed on the sign is that portion that is indented. Representative Wells seconded the motion. The motion carried.

Representative Plummer made a motion that the warning sign contain a reference to the statutory section. Representative Mayans seconded the motion. The motion carried.

Representative Mayans made a motion to change, on page 1, section 1(a) , the word "and" to "or". Representative Scott seconded the motion. Chairman O'Neal stated that this change would mean that a person is engaged in a domestic animal activity simply by being in an unauthorized area. The whole concept of this bill is that the injury be directly associated with ones contact and activity with the animal. With permission of the second Representative Mayans withdrew his motion.

Representative Adkins made a motion to report **Substitute HB 2222** favorably for passage. Representative Plummer seconded the motion. The motion carried.

HB 2785 - Civil liability for serving minors alcoholic beverages.

Chairman O'Neal stated that the balloon draft, (see attachment 5), takes a different approach to the original dram shop proposal. It would be limited to licensee only, social hosts are out. It picks up the Arizona language in Section 1, an aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21 -3610, 21-3610a and 51-715. The first two statutes are unlawful sale to a minor and the last statute is the unlawful sale to someone who is apparently intoxicated. Liability would be created if the jury finds all of these: purchaser consumed the alcoholic beverages sold by the licensee on the premises of the licensee (this takes out the package liquor store issue), if the consumption of the alcohol or cereal malt beverage was a proximate cause of the harm sustained by the aggrieved party and if harm was a foreseeable consequence of the negligent service of alcohol or cereal malt beverage by the licensee. These are the three elements that must be proved in order to prove liability. It's not simply the sale itself that triggers the liability. This bill would make it clear that the defenses that are currently available to licensees under the criminal statute would carry over under civil actions. The server training proposal is included in this bill.

Representative Bradley questioned if one has liquor in their home and the parents are out for dinner and the teenagers get into the liquor, would the parents be held liable. The Chairman stated that this is not included in the bill. This proposal is limited to licensees only.

Representative Goodwin questioned if social host were included in the bill. The Chairman replied that the proposed bill does not include social host. Representative Goodwin also questioned if someone goes bar hopping and has a accident, which bar would be held liable. Chairman O'Neal stated if the plaintiff felt that the three criteria were met on the part of the licensees, any of the bars could be held liable. The problem would be showing that it was the first drink at the establishment that was the causal connection between the accident and later drinking. With this example there is an intervening negligence act of others that takes out the prior bar. However, it doesn't take out the fact that an action might still be brought against the other bars.

Representative Wells commented that this summer the Committee heard that a dram shop law would cause insurance rates to rise. The Chairman stated that this proposal takes care of the home owners concerns because they are not licensees. For the licensee, K.S.A. 41-715 requires a knowing sale to someone who is incapacitate. Whether this triggers an exclusion for the act is up to the insurance company to argue.

Tuck Duncan stated that the reference on page 2, Section 3, under the Liquor Control Act does not include wholesalers, micro brewers and farm winery's, and creates confusion. Under the Club Drinking Establishment Act there are also temporary permit holders that have a cash bar. Only four temporary permits are available each year. These are not included either. These come under the "licensee". The solution would be to have this bill apply to only those "for profit" establishments/organizations and exempt those that have a 501(c) license or political groups.

Representative Mays stated that his concern was that by narrowly defining this to only include licensee it implies that unless you're a licensees you can't be held liable. Chairman O'Neal stated that this person can't be held liable now.

Representative Shriver made a motion to adopt the balloon for **Substitute HB 2785**. Representative Mayans seconded the motion. Representative Garner stated that he had no objection to the server trainer program, and we probably should have been doing this for some time now, but anyone who drinks alcohol should be held responsible of their acts.

Representative Garner made a substitute motion to strike all sections except for the server training provisions. Representative Smith seconded the motion. Chairman O'Neal stated that he opposed the substitute motion. He agreed that those who drink should be held responsible for their acts but at some point one becomes too intoxicated to know when to stop drinking. It is only at this point that the intoxicated person no longer has good judgement, that the responsibility shifts to the server. This proposed bill was a modest entry into the area of dram shop liability. Kansas is one of seven states that do not have some type of dram shop liability. Representative Pauls commented that she was in agreement with the Chairman. The motion failed.

Representative Mays made a motion to strike reference to K.S.A. 41-715 and incapacitated persons wherever it appears. Representative Bradley seconded the motion. Chairman O'Neal stated that the reason this was included was because the violation of K.S.A. 41-715, whether it involves an adult or juvenile is more serious and subjects the public to more harm. If one can show that they knowingly served someone who is incapacitated, under circumstances where it is foreseeable that harm will result from the individual that is being served, it's indefensible that a cause of action would not be recognized by an injured person. Representative Garner supported the motion. He stated that if a person is in the business of serving drinks they are dealing with many customers at one time. It seems that it would be hard to determine if a person is incapacitated or not. The motion carried.

Representative Plummer made a motion to exclude restaurant which derive not less than 50% of their sales from food receipts for a period of 12 months. Representative Smith seconded the motion. Tuck Duncan stated that Class B clubs are required to have 50% food receipts and certain counties require only 30% food receipts. The Director only has data to reflect Club B's that have 50% food receipts. It would be hard to determine who is in and who is out. Representative Mays commented that this proposed bill is narrowed down to minors, but it is much easier to determine if someone is a minor than if someone is incapacitated. He stated that he was unclear on the definition of a restaurant and doesn't support the motion. Representative Plummer stated that testimony this summer suggested that the problems are not the restaurant but the drinking establishments. The motion failed.

Representative Garner made a motion to exclude temporary licensee of non-profit 50(c)'s and political organizations. Representative Adkins seconded the motion. The motion carried.

Chairman O'Neal made a motion to substitute the word "minor" for "purchaser" in Section 1(a)(1). Representative Pauls seconded the motion. The motion carried.

Representative Pauls made a motion to report **Substitute HB 2785** favorably for passage. Representative Goodwin seconded the motion. The motion carried.

The Committee meeting adjourned at 3:15. The next meeting is scheduled for March 7, 1994.

HOUSE BILL NO. ____

By Committee on Judiciary

AN ACT concerning criminal procedure; relating to the defense of lack of mental state; amending K.S.A. 12-736 and 38-1655 and K.S.A. 1993 Supp. 22-2913, 22-3219, 22-3428 and 22-3428a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. It is a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the mental state required as an element of the offense charged. Mental disease or defect is not otherwise a defense.

New Sec. 2. In any case in which the defense has offered substantial evidence of a mental disease or defect excluding the mental state required as an element of the offense charged, and the jury returns a verdict of "not guilty," the jury shall also answer a special question in the following form: "Do you find the defendant not guilty solely because the defendant was, at the time of the alleged crime, suffering from a mental disease or defect which rendered the defendant incapable of possessing the required criminal intent?"

Sec. 3. K.S.A. 12-736 is hereby amended to read as follows: 12-736. (a) It is hereby declared to be the policy of the state of Kansas that persons with a disability shall not be excluded from the benefits of single family residential surroundings by any municipal zoning ordinance, resolution or regulation.

(b) For the purpose of this act:

(1) "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the residents of the home, which

dwelling is licensed by a regulatory agency of this state;

(2) "municipality" means any township, city or county located in Kansas;

(3) "disability" means, with respect to a person:

(A) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(B) a record of having such an impairment; or

(C) being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the controlled substance act (21 U.S.C. 802);

(4) "licensed provider" means a person or agency who provides mental health services and is licensed by:

(A) The department of social and rehabilitation services pursuant to K.S.A. 75-3307b or 65-425 et seq., and amendments thereto; or

(B) the behavioral sciences regulatory board pursuant to K.S.A. 75-5346 et seq. or 74-5301 et seq., and amendments thereto; or

(C) the state board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.

(c) (1) No mentally ill person shall be eligible for placement in a group home unless such person has been evaluated by a licensed provider and such provider determines that the mentally ill person is not dangerous to others and is suitable for group-home placement. A group home shall not be a licensed provider for the purposes of evaluating or approving for placement a mentally ill person in a group home.

(2) No person shall be eligible for placement in a group home if such person is (A) Assigned to a community corrections program or a diversion program; (B) on parole from a correctional institution or on probation for a felony offense; or (C) in a state mental institution following a finding of ~~not--guilty--by reason--of--insanity--pursuant--to-K.S.A.-22-3428,-and-amendments thereto~~ mental disease or defect excluding criminal

responsibility, pursuant to sections 1 and 2.

(d) No person shall be placed in a group home under this act unless such dwelling is licensed as a group home by the department of social and rehabilitation services or the department of health and environment.

(e) No municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation which prohibits the location of a group home in such zone or area or which subjects group homes to regulations not applicable to other single family dwellings in the same zone or area is invalid. Notwithstanding the provisions of this act, group homes shall be subject to all other regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, its building regulatory codes, subdivision regulations or other nondiscriminatory regulations.

(f) No person or entity shall contract or enter into a contract, restrictive covenant, equitable servitude or such similar restriction, which would restrict group homes or their location in a manner inconsistent with the provisions of subsection (e) ~~of this act~~.

Sec. 4. K.S.A. 1993 Supp. 22-2913 is hereby amended to read as follows: 22-2913. (a) As used in this section:

(1) "Conviction" means a judgment of guilt entered upon a finding of guilty or upon a plea of guilty or no contest ~~and--a verdict of not guilty because of insanity~~.

(2) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(b) At the time of an appearance before the court under K.S.A. 22-2901 and amendments thereto, the court shall inform every person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved or a sexual act may have been involved of the availability of testing for HIV infection and counseling and shall cause each alleged victim of the crime, if any, to be notified that testing for HIV infection and counseling is available.

(c) Upon conviction of a person for any crime which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the convicted person to submit to a test for HIV infection; or (2) shall order the convicted person to submit to a test for HIV infection if a victim of the crime, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the convicted person to submit to another test for HIV infection six months after the first test was administered.

(d) The results of any test for HIV infection ordered under this section shall be disclosed to the court which ordered the test, to the convicted person and to each person designated under subsection (c) by a victim or by the parent or legal guardian of

a victim. If a test for HIV infection ordered under this section results in a laboratory confirmation of HIV infection, the results shall be reported to the secretary of health and environment and to the secretary of corrections for inclusion in the convicted person's medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus, testing for HIV infection in accordance with K.S.A. 65-6001 et seq. and amendments thereto and referral for appropriate health care and services.

(e) The costs of any counseling and testing provided under subsection (d) by the secretary of health and environment shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the convicted person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and for the costs of any test ordered or otherwise performed under this section.

(f) When a court orders a convicted person to submit to a test for HIV infection under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the test for HIV infection nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.

(g) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the results or information. Any violation of this section

is a Class C misdemeanor.

Sec. 5. K.S.A. 1993 Supp. 22-3219 is hereby amended to read as follows: 22-3219. (1) Evidence of mental disease or defect excluding criminal responsibility is not admissible upon a trial unless the defendant serves upon the prosecuting attorney and files with the court a written notice of such defendant's intention to assert the defense ~~of--insanity--or--other--defense involving--the--presence--of~~ that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged. Such notice must be served and filed before trial and not more than 30 days after entry of the plea of not guilty to the information or indictment. For good cause shown the court may permit notice at a later date.

(2) A defendant who files a notice of intention to assert the defense ~~of-insanity-or-other-defense-involving-the-presence of~~ that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged thereby submits and consents to abide by such further orders as the court may make requiring the mental examination of the defendant and designating the place of examination and the physician or licensed psychologist by whom such examination shall be made. No order of the court respecting a mental examination shall preclude the defendant from procuring at such defendant's own expense an examination by a physician or licensed psychologist of such defendant's own choosing. A defendant requesting a mental examination pursuant to K.S.A. 22-4508 and amendments thereto may request a physician or licensed psychologist of such defendant's own choosing. The judge shall inquire as to the estimated cost for such examination and shall appoint the requested physician or licensed psychologist if such physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants. A report of each mental examination of the defendant shall be filed in the court and copies thereof shall be supplied to the

defendant and the prosecuting attorney.

~~(3)--The-court-shall-not-accept--a--plea--bargain--where--the defendant--enters--a--plea--of--not--guilty-by-reason-of-insanity unless-there-is-prima-facie-evidence-confirming-the-existence--of the-insanity.-Such-prima-facie-evidence-shall-consist-of,-but-not be--limited--to,--an--examination--conducted--by--a--physician-or licensed-psychologist-which-concludes-the-defendant--was--legally insane-at-the-time-of-the-commission-of-the-crime.~~

Sec. 6. K.S.A. 1993 Supp. 22-3428 is hereby amended to read as follows: 22-3428. (1) (a) When a defendant is acquitted on the ground that the defendant was ~~insane~~ suffering from a mental disease or defect at the time of the commission of the alleged crime, the verdict shall be not guilty ~~because-of--insanity--and~~. If the jury answers in the affirmative to the special question asked in section 2, the defendant shall be committed to the state security hospital for safekeeping and treatment. ~~A-finding-of-not guilty-by-reason-of-insanity-shall-constitute-a-finding-that--the acquitted--defendant--committed--an--act-constituting-the-offense charged-or-an-act-constituting-a-lesser--included--crime,--except that-the-defendant-did-not-possess-the-requisite-criminal-intent.~~ A finding of not guilty ~~because--of--insanity~~ and the jury answering in the affirmative to the special question in section 2 shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant and the defendant's attorney. The court shall inform the defendant that such defendant is entitled

to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4).

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the

patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment and to the district or county attorney of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least five days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause

harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to ~~insure~~ ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional

release the court shall: (a) Order that the patient be placed under the temporary supervision of state parole and probation services, district court probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 15 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file an application to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2913 and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which

the person was committed.

(6) In any case in which the defense ~~of insanity~~ that the defendant lacked the mental state pursuant to section 1 is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

~~(1)~~ (A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

~~(2)~~ (B) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

Sec. 7. K.S.A. 1993 Supp. 22-3428a is hereby amended to read as follows: 22-3428a. (1) Any person found not guilty ~~because of insanity~~ , pursuant to sections 1 and 2, who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428 and amendments thereto shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer

of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 20 days from the date when notice from the court was received. Within 10 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508 and amendments thereto may request a physician or licensed psychologist of the person's own choosing and the court

shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least five days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428 and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

Sec. 8. K.S.A. 38-1655 is hereby amended to read as follows: 38-1655. If the court finds that the evidence fails to prove an offense charged or an included offense as defined in subsection (2) of K.S.A. 21-3107~~(2)~~ and amendments thereto, the court shall enter an order dismissing the charge.

If the court finds that the respondent committed the offense charged or an included offense as defined in subsection (2) of

K.S.A. 21-3107~~(2)~~ and amendments thereto, the court shall adjudicate the respondent to be a juvenile offender and may enter orders of disposition authorized by this code.

If the court finds that the respondent committed the acts constituting the offense charged or an included offense as defined in subsection (2) of K.S.A. 21-3107~~(2)~~ and amendments thereto but is not responsible because of ~~insanity~~ mental disease or defect, the respondent shall not be adjudicated as a juvenile offender and shall be committed to the custody of the secretary and placed in a state hospital. The respondent's continued commitment shall be subject to annual review in the manner provided by K.S.A. 22-3428a and amendments thereto for review of commitment of a defendant ~~found-not-guilty-by-reason-of-insanity~~ suffering from mental disease or defect, and the respondent may be discharged or conditionally released pursuant to that section. The respondent also may be discharged or conditionally released in the same manner and subject to the same procedures as provided by K.S.A. 22-3428 and amendments thereto for discharge of or granting conditional release to a defendant found ~~not-guilty-by-reason-of-insanity~~ suffering from mental disease or defect. If the respondent violates any conditions of an order of conditional release, the respondent shall be subject to contempt proceedings and return to custody as provided by K.S.A. 22-3428b and amendments thereto.

Sec. 9. K.S.A. 12-736 and 38-1655 and K.S.A. 1993 Supp. 22-2913, 22-3219, 22-3428 and 22-3428a are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

PROPOSAL TO ELIMINATE THE VERDICT OF "NOT GUILTY BY REASON OF INSANITY"
March 3, 1994

SUMMARY OF COMMENTS OF RAYMOND L. SPRING:

I have reviewed a draft of the proposed legislation and believe that it will achieve the intended result. I would offer the following suggestions for amendments or additions, however:

1. I would suggest that section 6(1)(a) be rewritten to read as follows:

When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to section 2, the defendant shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty and the jury answering in the affirmative the special question asked pursuant to section 2 shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

2. I would suggest that in section 6(6) the word "required" be inserted in the second line thereof between the words "the" and "mental".

3. It would appear that a new section may be necessary as follows:

In any case in which the defendant is found not guilty of a charged crime, and the special question under section 2 is answered in the affirmative and the defendant is also found guilty of a lesser included or otherwise charged offense, the court shall proceed in the manner authorized by K.S.A. 22-3429 et seq.

House Judiciary
Attachment 2
3-3-94

HOUSE BILL NO. ____

By

AN ACT concerning civil procedure; relating to the liability and assumption of risk for domestic animal participants and domestic animal activity sponsors in civil liability for injuries or deaths of participants resulting from the inherent risks of domestic animal activities; requiring the posting of warning notices regarding sponsor liability.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Engages in a domestic animal activity" means riding, training, boarding, loading, hauling, breeding, racing, providing or assisting in medical treatment of, driving, or being a passenger upon a domestic animal or in or on a vehicle pulled or pushed by a domestic animal, whether mounted or unmounted or any person assisting a participant or show management. The term "engages in an activity involving domestic animals" does not include being a spectator at an activity involving domestic animals, except in cases where the spectator places the spectator's self in an unauthorized area and in immediate proximity to the activity involving domestic animals.

(b) "Domestic animal" means a cow, swine, sheep, goat, domesticated deer, llama, poultry, rabbit, horse, pony, mule, jenny, donkey or hinny.

(c) "Domestic animal activity" means, but is not limited to:

(1) Shows, fairs, competitions, performances or parades that involve any or all breeds of domestic animals and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, English and western performance riding,

trail riding, endurance trail riding and western games, and hunting;

(2) domestic animal training or teaching activities or both;

(3) boarding domestic animals;

(4) riding, inspecting or evaluating domestic animals belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the domestic animals or is permitting a prospective purchaser of the domestic animals to ride, inspect or evaluate the domestic animals;

(5) rides, trips, hunts or other domestic animal activities of any type however informal or impromptu that are sponsored by a domestic animal activity sponsor; and

(6) hoofcare and placing or replacing shoes on a domestic animal.

(d) "Domestic animal activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes or provides the facilities for, a domestic animal activity, including but not limited to: Pony clubs, 4-H clubs, hunt clubs, riding clubs, trail rides, racetrack, school and college-sponsored classes, programs and activities, therapeutic riding programs, breeding farms, training farms and operators, instructors, and promoters of domestic animal facilities, including, but not limited to, stables, clubhouses, pony ride strings, fairs and arenas at which the activity is held.

(e) "Domestic animal professional" means an individual, partnership or corporation and such individual or entities' employees engaged in a domestic animal activity for compensation:

(1) In instructing a participant or renting to a participant a domestic animal for the purpose of riding, driving or being a passenger upon the domestic animal, or a passenger in or on a vehicle pulled or pushed by a domestic animal; or

(2) in renting equipment or tack to a participant.

(f) "Inherent risks of domestic animal activities" means those dangers or conditions which are an integral part of domestic animal activities, including, but not limited to:

(1) The propensity of a domestic animal to run, buck, bite, shy, stumble, rear, fall, step on or behave in ways that may result in injury, harm or death to persons on or around them;

(2) the unpredictability of a domestic animal's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals;

(3) certain hazards such as surface and subsurface conditions;

(4) collisions with other domestic animals or objects; and

(5) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within such participant's ability.

(g) "Participant" means any person who engages in a domestic animal activity.

Sec. 2. Except as provided in section 3, any participant is assuming the inherent risks of domestic animal activities when such participant engages in a domestic animal activity. The domestic animal activity sponsor or domestic animal professional, pursuant to K.S.A. 60-208, and amendments thereto, shall plead an affirmative defense of assumption of risk by the participant.

Sec. 3. (a) Nothing in section 2 shall prevent or limit the liability of a domestic animal activity sponsor, a domestic animal professional or any other person if the domestic animal activity sponsor, domestic animal professional or person:

(1) (A) Provided the equipment or tack, which was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

(B) provided the domestic animal and failed to make a reasonable effort to determine the ability of the participant to manage the particular domestic animal based on the participant's

representations of such participant's ability;

(2) owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to the domestic animal activity sponsor, domestic animal professional or person and not made known to the participant;

(3) commits an act or omission that falls below the standard of care of a reasonable domestic animal activity sponsor, domestic animal professional or other person engaged in domestic animal activities in the same locality; or

(4) injures the participant by willful, wanton or intentional conduct.

(b) Nothing in section 2 shall prevent or limit the liability of a domestic animal activity sponsor or a domestic animal professional under liability provisions set forth in the products liability laws or under liability provisions of article 4 of chapter 29 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 4. (a) Every domestic animal professional shall post and maintain signs which contain the warning notice specified in subsection (b). Such signs shall be placed in a clearly visible location on or near stables, corrals, boarding areas, or arenas where the professional conducts domestic animal activities if such stables, corrals, boarding areas or arenas are owned, managed or controlled by the equine professional. The warning notice specified in subsection (b) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a domestic animal professional for the providing of professional services, instruction or the rental of equipment or tack or a domestic animal to a participant, whether or not the contract involves domestic animal activities on or off the location or site of the domestic animal professional's business, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following warning notice:

WARNING

Under Kansas law, there is no liability for an injury to or the death of a participant in domestic animal activities resulting from the inherent risks of domestic animal activities, pursuant to the Kansas law. You are assuming the risk of participating in this domestic animal activity.

Inherent risks of domestic animal activities includes, but shall not be limited to:

(1) The propensity of a domestic animal to behave in ways i.e., running, bucking, biting, kicking, shying, stumbling, rearing, falling or stepping on, that may result in an injury, harm or death to persons on or around them;

(2) the unpredictability of a domestic animal's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals;

(3) certain hazards such as surface and subsurface conditions;

(4) collisions with other domestic animals or objects; and

(5) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the domestic animal or not acting within such participant's ability.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

CARLOS MAYANS
REPRESENTATIVE, 100TH DISTRICT
SEDGWICK COUNTY
1842 N. VALLEYVIEW
WICHITA, KS 67212
316-722-0286

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: LABOR & INDUSTRY
PUBLIC HEALTH & WELFARE
JOINT COMMITTEE ON ARTS & CULTURAL RESOURCES

March 3, 1994

Mr. Chairman & Members of the Committee:

Attached, you will find examples from across the state of problems associated with the Equine Liability issue.

The favorable passage of this bill will provide relief to this industry and thousands of 4-H'ers across the state. In addition to the millions of dollars in economic development.

House Judiciary
Attachment 4
3-3-94

1) KC - $500,000 law suit against owners of a stallion who was boarded at a professional stable facility. A passerby stuck hand in stall window and stallion bit finger.

2) Private instructors cannot afford $12,000 average insurance premium unless affiliated with large package, i.e., Topeka Roundup Club. Average income of instructor is about $12,000. Insurance if purchased privately is $10-12,000.

3) No nationally ranked instructor in State of Kansas dealing with European Sports, i.e., dressage, hunter, jumping, driving. Mary Ann Thomas in Manhattan must spend time in Houston to be coached for national competition. She must transport a horse valued at more than $100,000 and spend Kansas dollars in Texas. Mark Gratney, Leavenworth, a trainer for AQHA cannot get insurance to cover horse operation. Cannot have seminars or public events.

4) Council Grove wants to add two horse drawn hotel hacks to compliment existing historical tourist draw and their hotels and Bed and Breakfasts. Insurance cannot be purchased due to liability issues. Hence, project put on hold awaiting outcome of this relief.

5) SE Kansas corporation out of business on Santa Fe Trail with Wagon Train rides. Threatened lawsuit and cost of liability insurance.

6) Lack of training facilities and opportunities for people to receive training in cutting, reigning, or any other horse sport.

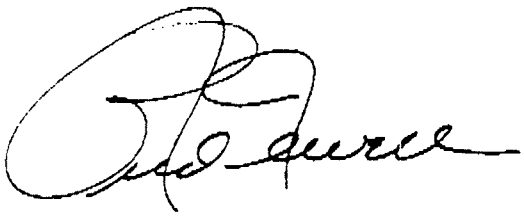
7) All horse facilities are existing only because we are willing to accept risks. 99% cannot afford or cannot buy insurance.

8) Colorado prior to their limited liability had experienced a decline in tourist attractions, i.e., chuck wagon dinners, hayrack rides, horseback riding, from 37 to 1 single operation. Inability to afford insurance or not being able to purchase coverage created this problem. After passage of their limited liability bill, the number of facilities who have returned is 18 and growing.

The obvious lack of any opportunity to rent horses for riding, entertain with hayrack rides, and the devastating lack of training facilities within this great state hampers our rural economy. Today it has been estimated that the horse industry is worth $300,000,000.00, when in actuality, with liability issues laid aside this industry could expand almost overnight to $1,000,000,000.00 plus and continue to grow for years. Liability has prevented the industry growth. Now is the time to grow rural America and offer our urban constituents an opportunity to be involved with horses.

Today 4-H is one of the greatest opportunities our children have of experiencing "family traditions". Not only our rural children, but our city youngsters as well. Sponsors of 4-H livestock events are now being threatened by lawsuits and this is stifling the 4-H growth. We must not let this great family institution die. We need relief.

Thanks Carlos!



Kansas Horse Council

February 22, 1994

The Honorable Carlos Mayans
Kansas House of Representatives
State Capitol
Topeka, KS 66612

Dear Representative Mayans:

I appreciate your help in the matter of the equine/livestock limited liability bill. The reason for my pushing this project and getting you involved, along with Representative Plummer, is that for the third year in a row the Judiciary has decided to stop this bill. We revised the bill to change it from barring a claim to assumption of risk in dealing with animals and their inherent behavior.

My real concern is that in 1995 the warm-up race for the 1996 World Championship Endurance Race which will be held at Ft. Riley is going to happen. The 1995 race will pull people from all over the United States and possibly as high as 3,000 spectators to the Ft. Riley/Junction City area to observe this 100 mile endurance race. All of these people, it would seem to me, are at risk and I don't know at this time how our lack of a limited liability bill will affect participant attendance. In 1996 the World Championship Endurance Race, drawing people from 18 countries will be held on this course. We anticipate 4,000 spectators at this event and we are again sitting with no relief in liability. All we are asking is that if people place themselves in close proximity or participate in a sport which involves animals, they must assume risk.

Here at home, probably the greatest institution for extended families and our youth is 4-H. There are more horses at the state fairs than all other species of livestock combined and today the 4-H sponsors and 4-H events are being threatened with liability issues. For this reason alone, we have written the bill to cover livestock which includes all farm animals and horses. In 1994 an 8-state semi-final barrel racing regional meet will be held here in Topeka. An event of this importance could draw over 300 horses. With our current liability status we expect somewhere between 100 and 150 horses. This event could be worth about $1,000,000 in tourist dollars to the state.

I am enclosing a copy of a letter I received from Ms. McClintock from Council Grove. It is pretty self-explanatory, but if you take this one issue and multiply it by the number of people in the state that could put on a Western event to attract tourist dollars, you can appreciate the economic impact.

4-4

1895 East 56 Road at Big Springs Lecompton, Kansas 66050 Telephone: (913) 887-6422 Facsimile: (913) 887-6046

nsas Horse Council

Recently I spent 3 days listening to the woes of rural Kansas. We believe the horse industry is second only to livestock, i.e., cattle, in dollars, and is larger than all other combined livestock in the state. I estimate this to be in excess of $750,000,000 annually and no one knows it, and people are afraid to invest in it because they cannot, or choose not to deal with the liability issue.

We sincerely need your help.

Sincerely,

Bud Newell
President

BN:nkb

Enclosure

cc: Representative Blaise Plummer

1895 East 56 Road at Big Springs Lecompton, Kansas 66050 Telephone: (913) 887-6422 Facsimile: (913) 887-6046

206 North Rockhill
Council Grove, KS 66846
February 15, 1994

Mr. Bud Newell
Kansas Horse Council
1895 East 56 Road
Lecompton, KS 66050

Dear Bud,

This letter is in response to your request of me last month to pull together information regarding the economic impact of horse-related activities in the Council Grove area, and a projected economic impact if liability concerns and insurance premiums were substantially reduced.

I immediately requested the information and have done follow-up, but responses have been slow due to busy schedules. We estimate that $160,000.00 is the current economic impact for the Council Grove Area, and believe this to be a conservative figure. It includes estimates of downtown shopping, restaurants, and gas stations.

The types of horse activities bringing this revenue to our area are: horse sales, training, riding lessons, horsemanship clinics, cutting horse contests, ranch tours, rodeos, carriage and stagecoach rides. This figure does not include the report from our County Extension Agent, whose report is enclosed.

All my sources seem to agree that the economic impact would double, if concerns about liability and insurance rates could be alleviated. I thank you for your efforts to acquire an Equine Activity Liability Act for our State. If I can be of further assistance to this cause, let me know. We will get a letter writing project going when you let us know it is time for one.

Sincerely yours,

Shirley McClintock

Shirley McClintock

Substitute for HOUSE BILL NO. 2785

By Committee on Judiciary

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) An aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21-3610, 21-3610a or 41-715, and amendments thereto, if a jury or court finds the following: (1) That the purchaser consumed the alcoholic beverages sold by the licensee on the premises of the licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the harm sustained by the aggrieved party; and (3) the harm was a foreseeable consequence of the negligent service of alcoholic liquor or cereal malt beverage by the licensee. In any action thereon, evidence of acts or conduct by the licensee in violation of these statutes may be admissible. Any claim under this section shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(b) Any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto.

(c) In any claim under subsection (a) for breach of the duties imposed by K.S.A. 21-3610 or 21-3601a, and amendments thereto, evidence of the defenses codified in subsection (d) of K.S.A. 21-3610 and subsection (d) of K.S.A. 21-3610a, and amendments thereto, as applicable, may be admissible for the purpose of determining comparative negligence under K.S.A. 60-258a, and amendments thereto.

(d) Except as expressly provided in subsections (a) and (c), there shall be no claim under K.S.A. 60-258a, and amendments thereto, for breach of the duties imposed by K.S.A. 21-3610,

21-3610a or 41-715, and amendments thereto, and alleged negligence or fault for furnishing or selling alcoholic liquor or cereal malt beverages shall not be admissible in an action under K.S.A. 60-258a, and amendments thereto.

(e) As used in this section:

(1) "Aggrieved party" means a person who sustains harm as a consequence of the acts or conduct of a minor or incapacitated person, but does not include: (A) such minor or incapacitated person, absent clear and convincing evidence that the furnishing or sale of the alcoholic liquor or cereal malt beverage was knowing or intentional; or (B) any person who aided or abetted in the furnishing or sale of the alcoholic liquor or cereal malt beverage to the minor or incapacitated person.

(2) "Harm" has the meaning provided by subsection (d) of K.S.A. 60-3302, and amendments thereto.

(3) "Licensee" means a licensee under the Kansas liquor control act, the club and drinking establishment act or the provisions of article 27 of chapter 41 of the Kansas Statutes Annotated.

(4) Any other terms shall have the meanings as provided by K.S.A. 21-3610, 21-3610a and 41-715, and amendments thereto, as applicable.

Sec. 2. As used in sections 2 through 10:

(a) "Director" means the director of the division.

(b) "Division" means the division of alcoholic beverage control of the department of revenue.

(c) "Licensed premises" means:

(1) Premises licensed under the Kansas liquor control act, the club and drinking establishment act or the provisions of article 27 of chapter 41 of the Kansas Statutes Annotated; or

(2) premises where a caterer licensed under the club and drinking establishment act offers for sale, sells or serves alcoholic liquor.

(d) "Licensee" means a licensee under the Kansas liquor control act, the club and drinking establishment act or the

provisions of article 27 of chapter 41 of the Kansas Statutes Annotated.

(e) Other terms have the meanings provided by K.S.A. 41-102 and amendments thereto.

Sec. 3. Except as otherwise provided by law, on or after July 1, 1995:

(a) Any person who is employed by a licensee and who participates in any manner in the sale of alcoholic liquor or cereal malt beverage for consumption and not resale or in the mixing or serving of alcoholic liquor or cereal malt beverage for consumption on licensed premises shall be required to have a valid, unexpired server permit issued by the director.

(b) No licensee shall permit any person employed by the licensee to sell alcoholic liquor or cereal malt beverage for consumption and not resale or to mix or serve any alcoholic liquor or cereal malt beverage on the licensee's licensed premises unless such person has a valid, unexpired server permit issued under this act.

(c) A permittee shall make the server permit available at any time while on duty for immediate inspection by any agent employed by the division or by any other law enforcement officer.

Sec. 4. (a) A server permit shall be a purely personal privilege, valid only upon licensed premises, for the period of time stated in the permit. A server permit may be suspended or revoked for any reason specified in section 7.

(b) No server permit shall be used by any person other than the person to whom it is issued. A licensee shall verify the identification of the permittee and determine that the permittee has in the permittee's possession a valid, unexpired server permit before allowing the permittee to sell alcoholic liquor or cereal malt beverage for consumption and not resale or to mix or serve alcoholic liquor or cereal malt beverage for consumption on the licensee's licensed premises.

Sec. 5. Unless suspended or revoked, a server permit issued on or after July 1, 1995, shall expire on the anniversary date of

the permittee's birthday three years after the date of issuance of the permit or, if a temporary permit authorized by rules and regulations promulgated hereunder, on the expiration date stated in such temporary permit.

Sec. 6. (a) An applicant for a server permit must: (1) Be 18 or more years of age; (2) not have had a permit denied or revoked or have a permit currently under suspension; and (3) have successfully completed the education program and examination required by section 9.

(b) Server permits shall be issued, in accordance with rules and regulations of the secretary, by instructors of the education program required by section 9. Application for a permit shall be made on a form approved by the director. The applicant shall truthfully answer all questions, provide any further information required by rules and regulations adopted by the director and pay such fees as may be required.

(c) An applicant for a server permit must: (1) Authorize a criminal records check to be conducted by the Kansas bureau of investigation; (2) tender the appropriate fee; and (3) authorize, on a form prescribed by the director, the release of the report of the criminal records check to the instructor, subject to applicable laws and rules and regulations regarding disclosure of such records.

Sec. 7. (a) The director may suspend or revoke a server permit if the director has reasonable grounds to believe that:

(1) The permittee has made any false statement to the instructor in the permit application;

(2) the permittee is not eligible under law for employment by a licensee;

(3) the permittee has not successfully completed the education program and examination required by section 9; or

(4) the permittee has performed or permitted any act which would constitute a violation of the Kansas liquor control act, the club and drinking establishment act or the provisions of article 27 of chapter 41 of the Kansas Statutes Annotated, or any

rule and regulation adopted thereunder.

(b) In addition to or in lieu of suspending or revoking a server permit pursuant to subsection (a)(4), the director may suspend or revoke the license of the licensee upon whose licensed premises the violation occurred.

(c) All proceedings for suspension or revocation of a permit or license pursuant to subsection (a) or (b) shall be in accordance with the provisions of the Kansas administrative procedure act.

(d) (1) The director may impose a civil fine not to exceed $1000 in addition to or in lieu of suspension or revocation of a permit or license pursuant to this section.

(2) No fine shall be imposed pursuant to this subsection except upon the written order of the director to the permittee or licensee. The order shall state the violation, the fine to be imposed and the right of the permittee or licensee to appeal the order. The order shall be subject to appeal and review in the manner provided by K.S.A. 41-321, 41-322 and 41-323, and amendments thereto.

(3) Any fine imposed pursuant to this subsection shall be paid to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state general fund.

Sec. 8. (a) If a server permit issued under this act is lost, mutilated or destroyed, the permittee shall apply immediately for a duplicate permit on a form supplied by the director and shall forward to the director the application and a fee of $25.

(b) If a permittee changes name by marriage or otherwise, the permittee shall apply immediately for a new server permit on a form supplied by the director and shall forward to the director the application, the permit, evidence of the change of name and a fee of $25.

(c) The director may issue a duplicate permit or cause a duplicate to be issued by an instructor, in accordance with rules and regulations of the secretary.

Sec. 9. (a) The director shall require each licensee and each holder of a server permit and each person applying to become a licensee or permit holder to complete an approved alcohol server education program and examination in order to qualify or requalify for a license or permit unless an extension is granted for hardship reasons. After satisfactory completion of the initial education program and examination, each licensee or permittee, in order to qualify for renewal of the license or permit, shall be required to complete an alcohol server education program and examination every three years thereafter unless an extension is granted for hardship reasons. The secretary by rule and regulation may exempt from the requirements of this subsection licensees who do not participate in the management of the business.

(b) The standards and curriculum of the alcohol server education program shall include, but not be limited to, the following:

(1) Alcohol as a drug and its effects on the body and behavior, especially driving ability. Instruction shall include information regarding: (A) Physiological and behavioral effects of alcohol use; (B) absorption rate factors; (C) laws affecting servers and sellers of alcohol; (D) potential alcohol-related problems in professional or social settings; and (E) strategies for dealing with problem situations.

(2) Effects of alcohol in combination with commonly used, legal prescription or nonprescription drugs and illegal drugs.

(3) Recognition of the problem drinker and community treatment programs and agencies.

(4) State alcoholic beverage laws such as prohibition of sale to minors and sale to intoxicated persons, sale for on-premises or off-premises consumption, hours of operation and penalties for violation of the laws.

(5) Drunk driving laws and alcoholic liquor or cereal malt beverage liability statutes.

(6) Intervention with a problem customer, including ways to

cut off service, methods of dealing with a belligerent customer, alternative means of transportation to get a customer safely home, and how to assess and evaluate situations and behavior with discussion of both effective and ineffective intervention techniques.

(7) Advertising and marketing for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(c) The secretary shall establish, by rules and regulations, a fee not to exceed $10 a year for each permittee subject to the education requirement of this section, to be used for administrative costs in certification of instructors.

(d) The director shall provide for the education program required by this section through independent contractors, private persons or private or public schools certified by the director.

Sec. 10 The secretary of revenue shall adopt rules and regulations in accordance with K.S.A. 41-210 and amendments thereto for the administration of the education program required by this act, for the issuance of server permits and for the certification of instructors. The rules and regulations shall establish the length of training programs, the qualifications for instructor certification, maintenance of instructor certification, permittee and instructor certification examinations, program administration quality control and such other matters as required to implement and administer the provisions of this act.

Sec. 11. Sections 2 through 10 shall be part of and supplemental to the Kansas liquor control act.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.