

Approved February 9, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on February 5, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Doug Mays, Kansas Securities Commission

Senate Bill 548 - Securities commissioner's authority to censure and fine.

Doug Mays, Kansas Securities Commission, testified the adoption of this bill that would grant the power to censure and/or fine up to \$5,000 per violation with no maximum limit. This will eliminate the need to amend the statute in the near future due to inflationary reasons. A copy of his handout is attached (See Attachment I).

Senate Bill 549 - Reciprocal enforcement of subpoenas from securities administrators of other state.

Doug Mays explained the adoption of this bill would empower the office to serve subpoenas on behalf of other jurisdictions without specific language requiring reciprocity. A copy of his handout is attached (See Attachment II).

Following the hearings on Senate Bill 548 and Senate Bill 549, Senator Burke moved to report Senate Bill 548 favorably for passage. Senator Hoferer seconded the motion. The motion carried. Senator Hoferer moved to report Senate Bill 549 favorably for passage. Senator Burke seconded the motion. The motion carried.

House Bill 2451 - Blood samples drawn to test for alcohol not privileged.

The chairman explained this bill was reported favorably by the committee yesterday. A cleanup type of amendment is needed to correct the errors. Senator Talkington moved to reconsider the actions of the committee on the bill. Senator Hoferer seconded the motion. The motion carried. Senator Yost moved to amend the bill by deleting the wording "his" or "her". Senator Parrish seconded the motion. The motion carried. Senator Hoferer moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

Senate Bill 467 - Standards for determining what constitutes obscenity.

Senator Hoferer moved to amend the bill by changing the effective date to publication in the Kansas Register. Senator Burke

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514S, Statehouse, at 10:00 a.m./p.m. on February 5, 1988

Senate Bill 467 continued

seconded the motion. The motion carried. Senator Burke moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

House Bill 2287 - Displaying materials or performances harmful to minors.

Senator Gaines explained his proposed amendments to the bill. A copy of his proposal is attached (See Attachment III). Following his explanation, Senator Gaines moved to amend the bill by changing the age from 18 to 16. Senator Winter seconded the motion. The motion carried. Senator Gaines moved to amend the bill by adding "unmarried" in line 91 before "person". Senator Yost seconded the motion. The motion carried. The committee discussed changing the violation to a class C misdemeanor. It was the consensus of the committee not to change the language. Following committee discussion, Senator Gaines moved to amend the bill by striking "which is harmful to minors" and inserting the new language as indicated in the proposal. Senator Winter seconded the motion. The motion carried. Senator Hoferer moved to amend the bill in Subsection (c) and inserting "a reasonable person would find that". Senator Parrish seconded the motion. The motion carried. Senator Winter moved to amend the bill by adding a severability clause. Senator Yost seconded the motion. The motion carried.

The chairman announced further action on House Bill 2287 will be taken up on Monday.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

A copy of a statement of the Kansas Association of Broadcasters concerning House Bill 2287 is attached (See Attachment V).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-5-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Linda Jephers	Topeka	AC-NFA
Doug Mays	"	Sec. Commissioner
Roger Watts	Topeka	See Lou
Michael Corrigan	Lawrence	Atty Gen
Manuel P. Ortiz	LAWRENCE	OVERLAND PARK
S. Struff	Topeka	AP
KENT VINCENT	"	
Harriet Lange	Topeka	Ks Assn of Broadcasters
M. Horva	"	Cap-Jaw 4/1
PATRICIA HENSHALL	TOPEKA	OJA
J.P. Small	TOPEKA	PALMER'S CO
Rich Hayes	"	"
Henry J. Huss	—	Sen Mitch
Rep Marvin E. Smith	Topeka	
Rep Ray Mollenkamp	Russell Springs, Ks	
Ben Superior	Topeka	KFL
Jerry Staylor	"	Leg
Jerry Ran	"	Reg.

2-5-88

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

Landon State Office Building
900 Southwest Jackson St., Suite 552
Topeka, Ks 66612-1220
(913) 296-3307

Mike Hayden,
Governor

M. Douglas Mays
Securities Commissioner

Issue: The Power to Fine and Censure

I. Issue Definition.

The broadening of the enforcement remedies available to the Kansas Securities Commissioner through the creation of statutory authority to fine and/or censure violators of the Kansas Securities Act.

II. Background.

Each year the office of the Securities Commissioner handles a wide variety of cases ranging from minor infractions due to administrative failures by the industry, to outright attempts to circumvent the Securities Act. This spectrum of violations is, unfortunately, not matched by a similar range of disciplinary remedies. Often, under present statutes, the Securities Commissioner is faced with the choice of either complete revocation or suspension of an agent or company, or simply doing nothing. In a majority of cases, neither of these remedies fits the infraction. This disparity frustrates sensible regulation from both an industry and a regulatory standpoint.

The solution is to adopt legislation providing for a wider spectrum of remedies between the two existing extremes, thus allowing for more equitable treatment of disciplinary cases. This can be accomplished by granting the Securities Commissioner the power to censure licensed agents, broker/dealers, and investment advisers, and to impose fines for any violation of the Kansas Securities Act, or any rule or order under the Act.

In 1985, these sanctions were officially endorsed and made a part of the Uniform Securities Act recommended by the North American Securities Administrators Association (NASAA). Since that time, thirteen states and Puerto Rico have adopted this provision and several other states are in the process. Recently, the Securities Industry Association (SIA), representing over 90% of the securities industry, called for adoption by the states of this legislation.

Attach. I

III. Recommendation.

The Securities Commissioner recommends the adoption of legislation granting the power to censure and/or fine up to \$5,000 per violation with no maximum limit. The justification is twofold -- allowing the greatest enforcement flexibility and eliminating the need to amend the statute in the near future due to inflationary reasons.

This legislation is favored by both securities regulators and by the industry being regulated. The SIA, if requested, will send a representative to testify in favor of adoption.

The bill would be in the form of an amendment to K.S.A. 17-1266a of the Kansas Securities Act. A rough draft is attached.

IV. Fiscal Impact.

Fiscal impact is difficult to gauge. For FY 88, an estimated \$10-25,000 in fines could be levied. In future years, it is conceivable that total fines could reach in excess of \$100,000. These revenues would be added to the General Fund.

V. Legislative Implications.

There can be a natural reluctance by any legislative body to grant additional administrative authority to a government agency. This, however, is not so much the broadening of powers, but, instead, the creation of disciplinary options between the two existing extremes. Neither is it a precedent, due to the similar existing powers granted to the Insurance Commissioner some years ago (the Insurance Commissioner recently levied a \$50,000 fine against an insurance corporation).

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Mike Hayden,
Governor

M. Douglas Mays
Securities Commissioner

Issue: Subpoena Powers

Priority: Six

I. Issue Definition.

The granting of statutory authority for the Kansas Securities Commissioner to serve subpoenas on behalf of other securities agencies and states.

II. Background.

Absent specific legislation, subpoena authority of this state or any other state extends only to its territorial boundaries. Securities violations frequently involve out-of-state contacts and perpetrators and, therefore, the need for the compelling of out-of-state testimony of witnesses and production of documents. Seeking enforcement of a local subpoena in another state usually involves the filing of a separate enforcement proceeding which involves extra legal red tape and results in significant delays.

The passage of this legislation would simply allow the Securities Commissioner to enforce subpoenas from other securities agencies. This uniform provision has been endorsed by the North American Securities Administrators Association (NASAA), which encourages adoption by all states. In the last two years, seven states have passed the model legislation and several other states are currently undertaking passage.

Reciprocal subpoena powers will greatly enhance the ability of the Kansas Securities Commissioner to prosecute violators of the Securities Act, who through fraudulent activities bilk Kansas residents out of millions of dollars.

Attch. II

III. Options.

The only option available is whether or not to specify reciprocity in the legislation. Thus far, no other state has specifically required it.

IV. Recommendation.

The Securities Commissioner recommends the adoption of model legislation empowering this office to serve subpoenas on behalf of other jurisdictions without specific language requiring reciprocity. Many times it is to our advantage to cooperate with other securities agencies' investigations within our borders regardless of whether or not they can serve subpoenas on behalf of Kansas.

V. Fiscal Impact.

No impact.

VI. Legislative Implication.

The bill would be in the form of an amendment to K.S.A. 17-1265 of the Kansas Securities Act. A copy of the proposed amendment is attached.

HOUSE BILL No. 2287

By Representative Smith

2-11

Attach. III

0017 AN ACT concerning crimes and punishments; relating to mate-
0018 rial or performances harmful to minors; prohibiting certain
0019 acts and providing penalties therefor.
0020

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. (a) No person having custody, control or supervi-
0023 sion of any commercial establishment shall knowingly:

0024 (1) Display any material ~~which is harmful to minors~~ in such a
0025 way that minors, as a part of the invited general public, will be
0026 exposed to view ~~such material or device;~~

nudity, sexual conduct, sexual excitement
or sadomasochistic abuse

0027 (2) sell, furnish, present, distribute or disseminate to a minor,
0028 or otherwise allowing a minor to view, with or without consid-
0029 eration, any material which is harmful to minors; or

0030 (3) present to a minor, or participate in presenting to a minor,
0031 with or without consideration, any performance which is harmful
0032 to a minor.

0033 (b) Violation of subsection (a) is a class ~~B~~ misdemeanor.

0034 (c) Notwithstanding the provisions of K.S.A. 21-3202 and
0035 amendments thereto to the contrary, it shall be an affirmative
0036 defense to any prosecution under this section that:

0037 (1) The allegedly harmful material or device was purchased,
0038 leased or otherwise acquired by a public, private or parochial
0039 school, college or university, and that such material or device
0040 was either sold, leased, distributed or disseminated by a teacher,
0041 instructor, professor or other faculty member or administrator of
0042 such school as part of or incidental to an approved course or
0043 program of instruction at such school.

0044 (2) The defendant is an officer, director, trustee or employee
0045 of a public library and the allegedly harmful material or device

0046 was acquired by a public library and was disseminated in ac-
0047 cordance with regular library policies approved by its governing
0048 body.

0049 (3) An exhibition in a state of nudity is for a bona fide
0050 scientific or medical purpose, or for an educational or cultural
0051 purpose for a bona fide school, museum or library.

0052 (4) With respect to a prosecution for an act described by
0053 subsection (a)(1), the allegedly harmful material was kept behind
0054 blinder racks.

0055 (5) With respect to a prosecution for an act described by
0056 subsection (a)(2) or (3), the defendant had reasonable cause to
0057 believe that the minor involved was ~~18~~-years old or over, and 16
0058 such minor exhibited to the defendant a draft card, driver's
0059 license, birth certificate or other official or apparently official
0060 document purporting to establish that such minor was ~~18~~-years 16
0061 old or more.

0062 (d) As used in this section:

0063 (1) "Blinder rack" means a device in which material is dis-
0064 played in such a manner that the lower 2/3 of the material is not
0065 exposed to view.

0066 (2) "Harmful to minors" means that quality of any descrip-
0067 tion, exhibition, presentation or representation, in whatever
0068 form, of nudity, sexual conduct, sexual excitement or sadoma-
0069 sochistic abuse when the material or performance, taken as a
0070 whole, has the following characteristics:

0071 (A) The average adult person applying contemporary com-
0072 munity standards would find that the material or performance
0073 has a predominant tendency to appeal to a prurient interest in
0074 sex to minors;

0075 (B) the average adult person applying contemporary com-
0076 munity standards would find that the material or performance
0077 depicts or describes nudity, sexual conduct, sexual excitement or
0078 sadomasochistic abuse in a manner that is patently offensive to
0079 prevailing standards in the adult community with respect to what
0080 is suitable for minors; and

0081 (C) ~~the material or performance lacks serious literary, scien-~~
0082 tific, educational, artistic or political value for minors.

a reasonable person would find that

0083 (3) "Knowingly" means having general knowledge of, reason
0084 to know or a belief or ground for belief which warrants further
0085 inspection or inquiry as to the character and content of any
0086 material or performance ~~which is reasonably susceptible to ex-~~
0087 ~~amination by the defendant.~~

and, with respect to a prosecution for an
act described by subsection (a)(1), that
the material is exposed to view

0088 (4) "Material" means any book, magazine, newspaper,
0089 pamphlet, poster, print, picture, figure, image, description, mo-
0090 tion picture film, record, recording tape or video tape.

0091 (5) "Minor" means any person under ~~18~~ years of age.

unmarried
16

0092 (6) "Nudity" means the showing of the human male or fe-
0093 male genitals, pubic area or buttocks with less than a full opaque
0094 covering; the showing of the female breast with less than a full
0095 opaque covering of any portion thereof below the top of the
0096 nipple; or the depiction of covered male genitals in a discernible
0097 state of sexual excitement.

0098 (7) "Performance" means any motion picture, film, video
0099 tape, played record, phonograph, tape recording, preview,
0100 trailer, play, show, skit, dance or other exhibition performed or
0101 presented to or before an audience of one or more, with or
0102 without consideration.

0103 (8) "Sadomasochistic abuse" means flagellation or torture by
0104 or upon a person clad in undergarments, in a mask or bizarre
0105 costume or in the condition of being fettered, bound or otherwise
0106 physically restrained on the part of one so clothed.

0107 (9) "Sexual conduct" means acts of masturbation, homosex-
0108 uality, sexual intercourse or physical contact with a person's
0109 clothed or unclothed genitals or pubic area or buttocks or with a
0110 human female's breast.

0111 (10) "Sexual excitement" means the condition of human
0112 male or female genitals when in a state of sexual stimulation or
0113 arousal.

0114 (e) This section shall be part of and supplemental to the
0115 Kansas criminal code.

0116 Sec. 2. This act shall take effect and be in force from and
0117 after its publication in the statute book.

KANSAS ASSOCIATION OF BROADCASTERS

February 5, 1988
SENATE JUDICIARY COMMITTEE
Statement for the Record
RE: HB 2287

The Kansas Association of Broadcasters respectfully requests that the following be added to the record concerning HB 2287:

HB 2287, on its surface, does not appear to apply to broadcast stations as 'commercial establishments'; and the specific concerns expressed by proponents of the bill seemingly are not broadcast-related.

The Federal Communications Commission has the authority to regulate the broadcast of indecent material aimed at children and is aggressively addressing this area. The FCC does not ban per se, indecent programming because it is constitutionally protected in some cases; but the Commission does 'channel' it to protect children, by establishing a 'safe harbor' for programming, i.e. the time periods when children are not likely to be in the audience.

In the event that HB 2287, in the broadest of interpretations, could be construed to cover broadcast stations, the bill does not allow for a 'safe harbor' for program content making it constitutionally suspect.

Kansas Association of Broadcasters
Harriet J. Lange
Executive Director

Attch. V