

Approved: 4-1-98  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on March 26, 1998, in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department  
Robin Kempf, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Midge Donohue, Committee Secretary

Conferees appearing before the committee:  
Mr. Greg Ziemak, Executive Director, Kansas Lottery  
Mr. Darrell Pflughof, Director of Security, Kansas Lottery  
Mr. Dennis Highberger, Attorney, Kansas Department of Health and Environment

Others attending: See attached list

The chair deferred to Senator Schraad who introduced Alison Guthrie, Laura Daums, and Adam Spoolstra, students from his home district who served as pages for the committee today.

Attention was then directed to **HB 2726**, concerning cigarettes and tobacco products. Testimony presented during the hearing on the bill on March 17 was recalled. It was noted that the areas of concern resulting in the governor's veto of the bill last session had been addressed. Noted also was the House floor amendment pertaining to disposition of funds received in cigarette and tobacco product litigation. The meeting was then opened for discussion.

Senator Schraad expressed concern with the provision concerning disposition of funds from cigarette and tobacco product litigation. He explained there had been a group appointed to address distribution of funds at the federal level. Senator Schraad indicated he and two members of the House are part of that group which is headed by the attorney general.

Senator Schraad moved to strike the disposition of funds provision.

Senator Gooch indicated he was not familiar enough with **HB 2726** to vote on it at this time and requested that his abstention be recorded.

Senator Harrington seconded Senator Schraad's motion, and the motion carried, with Senator Gooch abstaining.

Senator Schraad moved to strike language relating to the discretion of the judge to require a juvenile charged with an ordinance cigarette or tobacco infraction to appear in court with a parent or guardian. Senator Becker seconded the motion and the motion carried, with Senator Gooch abstaining.

Senator Jones moved to amend the appropriate section to clarify that there is no right to a jury trial on appeal to the court on cigarette or tobacco product infractions, and for other clarifying technical amendments. Senator Harrington seconded the motion. The motion carried with Senator Gooch abstaining.

Senator Schraad moved to report the bill favorably, as amended, to the full Senate. Senator Becker seconded the motion. The motion carried, with Senator Gooch abstaining.

Attention was then directed to **Sub 2972**, concerning background checks of certain employees. It was recalled that the committee had taken action earlier to amend **SB 684** (which provided for background information on individuals employed by or doing business with the lottery to be made available to the chair of the Lottery Commission, as well as the executive director) into **Sub 2972**.

The chair recognized Mr. Greg Ziemak, Executive Director of the Lottery, who told the committee the lottery had no objection to **Sub 2972** as presented to the committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:10 a.m., on March 26, 1998

In response to a question from a committee member, concerning the extent of background investigations, Mr. Darrell Pflughof, Director of Security for the Kansas Lottery, was recognized. Mr Pflughof told the committee the typical background check on retailers who contract with the lottery includes criminal history, credit history, tax (sales, as well as income), and financial responsibility information, and the same standards apply to all vendors and retailers on whom background investigations are conducted.. He said there are 1,825 retailers under contract with the lottery and, if the retailer is delinquent in any taxes owed, that retailer is not allowed to contract with the state. When asked by the chair if potential lottery retailers ever paid their delinquent taxes in order to become retailers, Mr. Pflughof responded in the affirmative.

Senator Becker, recalling that the committee had taken action earlier to approve a balloon amendment to the bill, again expressed his concern over the fact the background information on major vendors is not made available to the legislature. He indicated he felt this would ensure that the proper safeguards are in place. It was pointed out by the chair that safeguards are in place via the appointments process by the governor.

The chair recognized Mr. Dennis Highberger, Attorney for the Kansas Department of Health and Environment (KDHE), who provided information the committee had requested at the time **Sub 2972** was heard last week (Attachment #1). Mr. Highberger estimated that 41,000 records checks will be required by law per year on applicants for adult care home employment, and he indicated that number would not be affected with the passage of **Sub 2972**. He reported that 67,000 records checks were conducted last year on applicants for child care facility employment. Mr. Highberger explained payment of the cost for records checks, saying that child care licensees are not directly charged for the checks but the cost is built into the license fee.

Senator Becker expressed concern over the quality of the checks and the capability of the KBI to handle the volume Mr. Highberger reported. Mr. Pflughof explained these were criminal history checks accomplished via an automated system by entering a query on a subject and running it against a data base; that they are not the thorough background investigations done by individual law enforcement officers.

During discussion that followed, it was noted that Larned and Osawatomie state hospitals are not health care homes and **Sub 2972** would not be relevant to those institutions.

Senator Vidricksen moved to report the bill favorably to the full Senate. Senator Biggs seconded the motion, and the motion carried.

Senator Becker moved for approval of the minutes of the March 24 meeting. Senator Vidricksen seconded the motion. The motion carried.

Senator Oleen announced that a briefing on two new bills, (**HB 2886**, relating to sport shooting ranges, and **HB 2999**, concerning lottery machines in Kansas), was scheduled for Wednesday, April 1, with hearings to be held the following Wednesday.

The meeting adjourned at 12:05. The next meeting is scheduled for March 30, 1998.





**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Gary R. Mitchell, Secretary

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March 23, 1998

The Honorable Lana Oleen, Chair  
Senate Committee on Federal and State Affairs  
State House  
Topeka, KS 66612

Re: Requested information concerning House Bill 2972 and KSA 39-970

Dear Senator Oleen:

Thank you for the opportunity to appear before your committee at its March 19 meeting. Following is the additional information you requested regarding HB 2972 and KSA 39-970.

**1. Number of background checks.** The KDHE Health Occupations Credentialing Program estimates that KSA 39-970 will require the conducting of 41,000 background checks per year on applicants for adult care home employment. This number would not be affected by passage of HB 2972, although less information would be required to be collected for each applicant.

KSA 65-516 prohibits persons who have committed certain acts from working, volunteering, or residing in a child care facility. Last year 67,000 background checks were conducted under this statute.

**2. Cost of background checks.** KSA 39-970 provides that KDHE may charge an adult care home up to \$10 for each name submitted for a background check. KDHE has instituted a fee of \$7.50 per background check, half of which is paid to the KBI and half of which is retained by KDHE.

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Date: 3-26-98  
Attachment: #1

Child care licensees are not directly charged for background checks under KSA 65-516, but license fees were raised after passage of KSA 65-516 to cover the agency's increased costs. The KBI does not charge KDHE for the background checks, but under a memorandum of agreement between the KBI and KDHE, KDHE provides the KBI with 2 FTE data entry personnel. Chris Ross-Baze of KDHE's Child Care Licensing Program estimates that each FTE data entry position can process 15,000 to 18,000 names per year.

**3. Differences between child care and adult care home statutes.** Under KSA 39-970 as it currently appears in the statute books, the following adult convictions result in a permanent prohibition on adult care home employment:

- ▶ any **felony** described in articles 34, 35, and 36 of article 21 of the Kansas Statutes Annotated (except KSA 21-3605, nonsupport of a child);
- ▶ any attempt to commit any such act; or
- ▶ KSA 21-4301 (promoting obscenity) or KSA 21-4301a (promoting obscenity to a minor).

In comparison, the list of adult convictions resulting in prohibition is much broader for child care facilities under KSA 65-516:

- ▶ any felony conviction for a crime against persons;
- ▶ any felony conviction under the Uniform Controlled Substances Act;
- ▶ **any act** described in articles 34, 35, and 36 of article 21 of the Kansas Statutes Annotated, or any attempt to commit any such act; or
- ▶ KSA 21-4301 (promoting obscenity) or KSA 21-4301a (promoting obscenity to a minor).

Under HB 2972, any of a list of 16 serious crimes (including misdemeanor convictions for mistreatment of dependent adult or for sexual battery) would result in permanent prohibition. Any other felony described in articles 34, 35, and 36 of article 21 of the Kansas Statutes Annotated (except KSA 21-3506), any attempt to commit any such act, or any attempt to commit one of the permanently prohibited crimes would result in prohibition for a period of 5 years after release from the sentence for such a crime.

The subsections of KSA 39-970 dealing with juvenile adjudications and diversion agreements are identical to corresponding subsections of KSA 65-516. The subsection of KSA 65-516 dealing with juvenile adjudications was interpreted in Attorney General Opinion 85-154 as including any act described in articles 34, 35, and 36 of article 21 of the Kansas Statutes Annotated. Applying this interpretation to KSA 39-970 results in juvenile adjudications being treated more harshly than adult convictions. Under KSA 39-970, a diversion agreement involving a misdemeanor sexual offense will result in prohibition, while a conviction for the same offense would not.

HB 2972 would amend KSA 39-970 so that it applies to the same juvenile adjudications as it does to adult convictions. Under HB 2972, no diversion agreement would result in prohibition.

The Honorable Lana Oleen

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I hope that this letter has helped to clarify some of the issues raised at the committee meeting. I will be available at the committee's March 23 meeting to answer any further questions you may have. Please do not hesitate to contact me at 296-3426 if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Highberger", with a long horizontal line extending to the right.

Dennis J. Highberger, Attorney  
Office of the Secretary