

Approved

Date: *Feb. 27, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:40 a.m. on February 20, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

None

Others attending: see attached list

SB 99—offender registration act

The Chair reviewed **SB 99**, a bill which adds to the list of persons convicted of certain violent and sexually oriented offenses who are required to register with the sheriff of their county of residence, those convicted in another state who have moved to Kansas. Following distribution and discussion of a balloon amendment which staff prepared at an earlier request of the Chair to help clarify the technical amendments to the bill, Senator Adkins moved to amend SB 99 and pass the bill out favorably as amended, Senator O'Connor seconded. Carried.

SB 132—aggravated battery

The Chair reviewed **SB 132**, a bill which adds aggravated battery to the DUI statutes. Following brief discussion Senator Adkins moved to pass the SB 132 out favorably, Senator Haley seconded. Carried.

SB 136—wage garnishment; assignment of account

After discussion of **SB 136**, a bill which would allow third parties to utilize wage garnishment of assigned accounts, Senator Donovan moved to pass the bill out favorably, Senator O'Connor seconded. Motion failed

SB 137—enacting the Kansas estate tax apportionment act

The Chair reviewed **SB 137**, a bill which replaces all previous estate tax provisions with a method of apportioning and assessing estate taxes between all of the decedent's beneficiaries, whether the parties' testamentary interest is a probate or non-probate interest. Senator Goodwin moved to pass the bill out favorably, Senator Adkins seconded. Carried.

SB 175—re: certain remedies under the consumer protection act

Senator Schmidt reviewed his subcommittee's report on **SB 175**, a bill "which clarifies procedural requirements for sequestering assets of certain supplier defendants in consumer protections actions and creates a prejudgment lien on this property under the Kansas Consumer Protection Act." (attachment 1) Following discussion, Senator Schmidt moved to pass the bill out favorably as recommended by the subcommittee, Senator Adkins seconded. Carried.

SB 76—agreements between the state and Native American Indian tribes

The Chair reviewed two balloon amendments to **SB 76**, one offered by the governor's office and the other offered by Ron Hein, tribal representative. These amendments show where there is agreement between the parties and where there are differences. Following lengthy discussion Senator Adkins moved to amend SB 76 to expand the governor's authority to negotiate with any Native American tribe, Senator Gilstrap seconded. Motion failed. Senator Vratil moved to amend SB 76 to limit the necessity of the governor to report negotiations of compacts to only those involving taxing authority, law enforcement authority, or water rights.

Senator Adkins seconded. Carried Following discussion on the use of the words compact or agreement terminology Senator Adkins moved to amend SB 76 by striking the words "or agreement" as they appear throughout the bill. Motion died for lack of second. Senator Oleen moved to amend SB 76 by striking language in the bill which would make it necessary for the governor to report prospective negotiations to the joint committee, Senator Adkins seconded. Carried. Senator Oleen moved to pass SB 76 out favorably as amended, Senator O'Connor seconded. Carried.

SB 67-DUI; concerning penalties

The Chair distributed copies of a chart prepared by staff which gives a comparative description of current law and two amendment proposals to **SB 67** relating to DUI penalties. (attachment 2) This bill was passed as amended on February 13th but is now being revisited because of serious funding considerations attached to the amendment which removed the .02 requirement from the bill. Following an overview of the chart and lengthy discussion Senator Oleen moved to amend SB 67 using Proposal #2 on the chart, Senator Pugh seconded. Motion failed. Following further discussion, Senator Adkins moved to pass SB 67 out favorably without amendments, Senator Schmidt seconded. Senator Haley made a substitute motion to table SB 67. Motion died for lack of second. Senator Oleen made a substitute motion to amend the bill using Proposal #1 on the chart, Senator Donovan seconded. Carried. Senator Donovan moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

Meeting adjourned at 10:33 a.m. The next scheduled meeting is February 27, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-20-01

NAME	REPRESENTING
Jan Brasher	KSC
Paul Jants	KSC
Joe Herald	KSC
Kyle Smith	KBT
Kristy Hiebert	AG
Edwaine J. Ramsey	KCA KCAA
W. Lynn M. Maxwell	Judicial Council
Michelle K. Whit	Kearney Law Office
Dickilyn Hessel	Budget
Corrie Kangas	Sen. Brownlee
Ron Hein	Indian Nations in Kansas
COREY PETERSON	ASSOCIATED General Contractors of KS.
John Peterson	Ks Governmental Consulting
Ami Hyten	OTA
Paul Davis	Ks Bar Assn.
Kathy Olsen	Ks Bankers Assn.
Jeff Bottberg	State Farm
Julie Namrich	Federico Consulting
Bill Henry	Ks Land Title Assn.
Barb Grant	Ks Trial Lawyers Assoc.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-20-01

NAME	REPRESENTING
Tami Nelson	Leadership Emporia
Jelly Mays	Leadership Emporia
DAVID HARDING	LEADERSHIP EMPORIA
KEVIN GRAHAM	A.G

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February 15, 2001

Senator Schmidt's Judiciary Subcommittee February 9, 2001

1. SB 175 clarifies procedural requirements for sequestering assets of certain supplier defendants in consumer protection actions and creates a prejudgment lien on this property under the Kansas Consumer Protection Act.

Proponents: Steve Rarrick, Deputy Attorney General (Attachment 1), supported the bill.

Opponents: None.

Subcommittee Action: The Subcommittee recommends the Committee report the bill favorably. The Subcommittee notes the change in the bill at page 2, lines 10-11 of the word "asset" to "property" is a technical change only.

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2-20-01
att 1*

*STJ
2-20-01
ATT 1*

- DLS 2/14/01
OK - Kay
Mark
DLS



CARLA J. STOVALL
ATTORNEY GENERAL

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Office of the Attorney General
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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Judiciary Subcommittee
RE: SB 175
February 9, 2001

Chairperson Schmidt and Members of the Sub-Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of SB 175. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Kansas Consumer Protection Act (KCPA) allows a court, at the request of the Attorney General or the County or District Attorney, to order the sequestration of assets when a supplier threatens or is about to remove, conceal, or dispose of property to the damage of consumers to whom restoration would be made, or when the property was derived or is commingled with other property derived from transactions involving violations of the KCPA. As you can imagine, there are times when this is the only tool we have available to preserve assets to satisfy consumer losses. SB 175 would amend K.S.A. 50-632 to clarify the procedural requirements for sequestering assets and to explicitly create a pre-judgment lien on the property sequestered to be applied to any judgment ultimately obtained against the supplier.

The amendments to the sequestration provisions at pages 2 and 3 of the bill clarify the procedural requirements for sequestration to ensure they comport with the requirements of due process. Since the enactment of the KCPA and the sequestration provisions in 1973, the United States Supreme Court has concluded that statutes providing for *ex parte* sequestration of assets must provide for judicial determination based on facts set forth by affidavit, must provide notice to the defendant that his/her property has been sequestered, and must provide the defendant an opportunity to challenge the sequestration in court promptly after sequestration is ordered in order to satisfy due process requirements. While we have attempted to ensure that these rights are protected by the court when we seek sequestration of property, our statute needs updated to avoid constitutional challenges.

The bill also creates a pre-judgment lien on the property sequestered to be applied to any judgment ultimately obtained against the supplier (page 2, lines 29-30). This is an obstacle we have encountered in a couple KCPA cases, where other creditors have claimed liens in the property we

1-2

sequestered at the time we filed suit and shut the businesses down. We have spent substantial time litigating these issues, and ultimately have had to compromise claims because our statute doesn't explicitly create a lien on the property we sequester. In cases filed since that time, we have had to file duplicate motions, one for sequestration, and one for a pre-judgment lien, to ensure we obtained a lien on the property we were trying to preserve to satisfy consumer losses. This amendment would avoid that duplicative effort.

The bill also allows a court to award actual damages to a defendant if the court finds the State obtained an *ex parte* order of sequestration with knowledge, or with reason to know, that grounds for sequestration did not exist.

One other change proposed by this bill is to replace the word "asset" at page 2, line 10-11, with the word "property." We believe this change is not a substantive change, as the word property is later used in the same section in a similar context, and we believe the meaning of the two words are interchangeable. However, we would request that the legislative record reflect that this amendment does not change or reduce the types of assets or property that are subject to sequestration, as we believe such an interpretation could harm consumers. Specifically, we believe we should be able to sequester all property, real or personal, tangible or intangible, when we meet the standard required by the statute, and do not believe the change suggested will effect that ability.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably. I would be happy to answer questions of the Chair or any member of the Committee.

SUMMARY OF DUI ADMINISTRATIVE SANCTIONS

2/10/01
10-02-2
att 2

CATEGORY	CURRENT LAW	SB 67	PROPOSAL #1	PROPOSAL #2	LAW IN 1996-1999
Adult-First Occurrence	<ul style="list-style-type: none"> Suspend 30 days/restrict 330 days. Diversion available K.S.A. 8-1014 	No change	No change	No change	
Adult-Second or subsequent occurrence	<ul style="list-style-type: none"> Suspend one year No diversion available K.S.A. 8-1014; K.S.A. 22-2908 	No change	No change	No change	
Less than 21 years with alcohol concentration of .08 or above	<ul style="list-style-type: none"> Suspend one year or if diversion, suspend for term of diversion K.S.A. 8-1014 	<ul style="list-style-type: none"> Suspend one year No lower suspension when diversion 	<ul style="list-style-type: none"> Suspend one year 	<ul style="list-style-type: none"> 18 or more-30 suspend/330 restrict-First-Diversion 18 or more-one year-2nd + Others-1 yr 	<ul style="list-style-type: none"> First-Suspend 30 days/restrict 330 days Second or more-Suspend one year
Less than 21 years with alcohol concentration of .02 or greater but less than .08	<ul style="list-style-type: none"> Suspend one year No diversion available K.S.A. 8-1567a 	No change	<ul style="list-style-type: none"> Suspend 30 days/restrict 330 days-First Suspend one year-Second or more 	<ul style="list-style-type: none"> Suspend 30 days/restrict 330 days-First Suspend one year-Second or more 	<ul style="list-style-type: none"> First-Suspend at least 30 days Second or more-Suspend at least 90 days
Miscellaneous Test refusal-Suspend one year		Delete "up to" and "at least" language for suspensions			

5-10-01
10-02-2
att 2