

Approved

Date: 2/12/02

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:34 a.m. on February 11, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present:

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

Conferees appearing before the committee:

Tim Madden, Department of Corrections (DOC)  
Steve Rarrick, Office of Attorney General (AG)  
Ernest Pogge, AARP

Others attending: see attached list

The minutes of the February 8<sup>th</sup>, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

### **SB 434—unlawful sexual relations by contracted employees**

Conferee Madden testified in support of **SB 434**, a bill which expands the definition of unlawful sexual relations in current law to include contract employees. The conferee discussed the provisions in the bill in detail. (attachment 1) Following discussion Senator Donovan moved to pass the bill out favorably, Senator Schmidt seconded. Carried.

### **SB 382—consumer protection; re: profiteering from disaster**

Conferee Rarrick testified in support of **SB 382**, a bill which would make it an unconscionable act for any supplier to engage in profiteering as a result of a disaster. He stated the bill defines “profiteering from disaster” and discussed the guidelines it sets for the court to consider in its determination of profiteering. He further discussed a balloon amendment he offered which extends the definition of “disaster” and “time of disaster” to include a declaration of a local disaster emergency by certain local officials. (attachment 2) Following discussion Senator Schmidt moved to adopt the balloon amendment, Senator Goodwin seconded. Carried.

Conferee Pogge testified in support of **SB 382**. He discussed AARP’s work with several municipalities in obtaining approval of regulations governing fraudulent home repair practices which often occur after a natural disaster. He stated his organization supports efforts to cap increases on necessary supplies and service during times of disaster. (attachment 3)

Committee Member Senator Schmidt testified in support of **SB 382**. He discussed guidelines in the bill which help clarify current law regulating profiteering from disaster. (attachment 4)

### **SB 443—personal property of inmates; establishing when considered abandoned property**

Conferee Madden testified in support of **SB 443**, a bill which provides for the disposition of abandoned inmate property. He reviewed current legislation and discussed the changes in this bill which he stated are technical in nature. (attachment 5) Following discussion Senator Haley moved to pass the bill out favorably, Senator Schmidt seconded. Carried.

### **Final action**

#### **SB 399—CINC; re: appointment of counsel.**

Following a review of **SB 399** by the Chair and notification by staff regarding a printing error, Senator Schmidt moved to make a corrected reprint of the bill, Senator O’Connor seconded. Carried. Lengthy discussion followed. Senator Goodwin moved to pass the bill out favorably, Senator Schmidt seconded. Carried 6-3 with Senator Pugh requesting his nay vote be recorded.

#### **SB 400—Kansas probate code; re: residence of administrator**

Following a review of **SB 400** by the Chair, Senator Donovan moved to pass the bill out favorably, Senator O’Connor seconded. Carried.

#### **SB 412—aid to indigent defendants; application fee**

Following a review of **SB 412** by the Chair, Senator Goodwin moved to pass the bill out favorably, Senator Umbarger seconded. Carried.

The meeting adjourned at 10:36 a.m. The next scheduled meeting is February 12, 2002.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-11-02

NAME	REPRESENTING
Michael Whit	Kearney Law
Roberta Sue McKeena	SRS
Ernest C. Fogge	AAFP
Connie Burns	Whitney B. Damron, PA
Jean Barber	KS Assn Defense Counsel
David Wray	citizen
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Tim Madden	KDOC
Nancy Lindberg	AG
Steve Rarrick	AG
John C. Gottenberg	Westar Energy
Dale Rees	Kansas Govt Consulting
Kathy Porter	Judicial Branch
Helen Pedigo	Comptroller's office
Barb Covert	KTLA
Paul Davis	KBA
Lynnae South	JA
Matt Bergman	Pat Heibel Assoc.
Alvan Richard	KIDAA



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Bill Graves  
Governor

Charles E. Simmons  
Secretary

## Memorandum

DATE: February 7, 2002

TO: Senate Judiciary Committee

FROM: Charles E. Simmons  
Secretary of Corrections 

RE: SB 434

SB 434 amends K.S.A. 21-3520 to prohibit sexual relations between an employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and a person who is under the direct supervision and control of the contract employee. Additionally, SB 434 amends K.S.A. 21-3520 to clarify the prohibition against sexual relations between contract employees and incarcerated inmates.

K.S.A. 21-3520 currently prohibits employees of contractors providing services in correctional facilities from engaging in consensual sexual activities with inmates. SB 434 extends that prohibition to employees of contractors providing supervision services for offenders on parole, conditional release or postrelease supervision. SB 434 addresses and prohibits sexual relationships between contract staff operating day reporting centers or community-based residential facilities and offenders under their supervision.

SB 434 also clarifies the prohibition against consensual sexual relations between contract employees and inmates. K.S.A. 21-3520 currently defines the scope of contract employees prohibited from engaging in consensual sexual relations with inmates as employees of contractors providing services at a correctional facility. SB 434 clarifies that the scope of the prohibition against contract employees engaging in unlawful sexual

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relations includes employees of contractors providing a service for a correctional facility even if the service provided pursuant to the contract is not performed at the facility. This distinction is illustrated in situations in which another governmental entity contracts with the Department for use of an inmate work crew at a site that is not on facility grounds.

Personnel in all of the categories above exercise control over an offender. It is important that they not abuse their authority. Engaging in sexual activity with an offender is such an abuse and should be prohibited.

The Department urges favorable consideration of SB 434.

CES/TGM



CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

CONSUMER PROTECTION / ANTITRUST DIVISION

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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 Committee

RE: SB 382

February 11, 2002

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of Attorney General Carla J. Stovall to testify in support of Senate Bill 382. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

As you are aware, numerous gas stations in Kansas substantially increased the price of gasoline and diesel fuel shortly after the terrorist attacks on our country on September 11th. Public outrage over these price increases far exceeded any consumer issue we have addressed in the past seven years. Our office received more than 1,500 calls from Kansans in the week following September 11. The Attorney General quickly announced a settlement program for companies who increased their prices above \$2.49 per gallon, and within one month we had settled with 39 companies, representing 63 gasoline and diesel fuel stations across Kansas. We are currently in litigation with the one company that refused the settlement program.

One aspect of addressing this issue was deciding what price constituted unconscionable pricing under K.S.A. 50-627 (b)(2):

(b) The unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to, the following that:

...

(2) when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily available in similar transactions by similar consumers;

The Kansas Court of Appeals has held there is no fixed ratio limit for determining price unconscionability, but the issue is to be determined by the court based on the peculiar circumstances of each case. *Remco Enterprises, Inc. V. Houston*, 9 Kan.App.2d 296, 677 P.2d 567 (1984). The

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*Remco* court noted, however, that case law from other jurisdictions indicates that a price over 2 ½ times the fair retail value of the goods greatly increases the possibility that the contract will be declared to be unconscionable. While the \$2.49 threshold set by our office is below 2 ½ times the prevailing prices, our office believes Kansas courts would consider the particular circumstances of these price increases and find them unconscionable. We have, however, heard from Kansans and legislators who believed we should have set the threshold much lower and, as you can imagine, the retailer we are prosecuting believes it should be much higher.

Our office has also received numerous calls from consumers and representatives of insurance companies concerned about price gouging in the wake of the recent ice storm. Some merchants have taken advantage of those damaged by this recent storm. Rather than being satisfied with the increased sales and profits resulting from this disaster, these businesses have chosen to profiteer from the storm by substantially increasing prices on motel rooms, generator rentals, tree removal, and home repair. Without the 25% threshold contained in this bill, our ability to assist these consumers is extremely limited. Containing the cost of repairs and damages in the wake of a disaster is in the best interest of all Kansans, whether paid for by insurance or directly by the consumer.

Senate Bill 382 will provide a bright line rule in post-disaster price gouging situations. The bill acknowledges justified price increases caused by additional costs actually incurred by the supplier in section (b)(1)(C), and sets 25% above prices charged immediately prior to the disaster as *prima facie* evidence of price gouging. We believe the 25% threshold following a disaster is fair and reasonable, although we have found other state statutes that have set the threshold at 10%. While most Kansas businesses do not react to the misfortune of others by price-gouging or profiteering, this legislation will give our office the ability to deal with the few who choose to profiteer from disasters.

We would suggest amending the definitions of “disaster” and “time of disaster” contained at page 1, lines 41-42, and page 2, line 6 of the bill, to include a declaration of local disaster emergency by the chairman of a board of county commissioners or a mayor pursuant to K.S.A. 48-932. State law currently provides for these declarations, and local authorities may often be able to assess local damage and react quicker than the Governor or President.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 382. I would be happy to answer any questions of the chair or the members.

SENATE BILL No. 382

By Senator Schmidt

1-14

AN ACT concerning the consumer protection act; relating to profiteering from disaster.

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

Section 1. (a) It shall be an unconscionable act within the meaning of K.S.A. 50-627, and amendments thereto, for any supplier to profiteer from a disaster.

(b) As used in this section:

(1) "Profiteer from a disaster" means unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether the price increase described in this subsection is unjustified, the court shall consider all relevant circumstances including, but not limited to, the following: (A) Whether the price charged by the supplier during the time of disaster grossly exceeded the price charged by the supplier for similar property or services immediately prior to the disaster, and an increase of more than 25% shall be prima facie evidence of gross excess;

(B) whether the amount charged by the supplier during the time of disaster grossly exceeded the price at which the same or similar property or services were readily obtainable by other consumers in the trade area, and a price difference of more than 25% shall be prima facie evidence of gross excess; and

(C) whether the increase in the amount charged by the supplier during the time of disaster was attributable to additional costs incurred by the supplier in connection with the sale of the product or service, and proof the supplier incurred such additional costs shall be prima facie evidence that the price increase was justified when such additional costs were actually incurred by the supplier during the period in which the substantially increased price was being charged;

(2) "time of disaster" means the period of time when a declaration of a state of emergency by the president of the United States ~~or the governor~~ is in effect; or 30 days after the occurrence of the event that constitutes the disaster, whichever is longer;

, the governor, or any local official authorized to declare a state of local disaster pursuant to K.S.A. 48-932 or amendments thereto,

1 (3) "disaster" means natural or man-made events including, but not  
 2 limited to, tornado or other severe storm, earthquake, flood, fire, riot, act  
 3 of war, terrorism, civil disorder or other extraordinary adverse circum-  
 4 stance. The court shall find that an event constitutes a disaster if the event  
 5 results in the declaration of a state of emergency by the president of the  
 6 United States ~~or the governor~~. The court may find that an event consti-  
 7 tutes a disaster in the absence of a declared state of emergency; and

8 (4) "necessary property or service" means any necessary property or  
 9 service for which consumer demand does, or is likely to, increase as a  
 10 consequence of the disaster and includes, but is not limited to, consumer  
 11 food items or property, property or services for emergency cleanup,  
 12 emergency supplies, communication supplies and services, medical sup-  
 13 plies and services, home heating fuel, building materials and services,  
 14 freight, storage services, housing, lodging, transportation and motor fuels.

15 (c) The provisions of this section shall be part of and supplemental  
 16 to the consumer protection act.

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

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, the governor, or any local official  
 authorized by K.S.A. 48-932 or amendments  
 thereto.





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February 11, 2002

Good morning Senator Vratil and members of the Senate Judiciary Committee. My name is Dr. Ernest Pogge and I am the coordinator of the AARP Kansas Legislative Task Force. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. AARP is the nation's leading organization for people age 50 and older. It serves their needs and interests through information and education, advocacy and community services provided by a network of local chapters and experienced volunteers throughout the state and country. Thank you for this opportunity to express our views in *support* of Senate Bill 382.

Fraudulent home repair practices continue to be a national and state priority for AARP. AARP Kansas has worked with the District Attorney in Johnson County to promote "Storm Chaser" registration to prevent home repair fraud and the grossly escalated pricing of home repair materials that often occurs after a natural disaster. We have been successful working with the Johnson County Commissioners and eight municipalities in obtaining approval of regulations that require contractor licensing, education and registration.

Home repair, especially following a disaster, is necessary for preserving both the safety and value of a homeowner's property. While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually experience inadequate, unprofessional or fraudulent home repair work. The financial and psychological impacts of home repair fraud can be severe. Older persons may lose all or a significant part of their life savings and be left with shoddy or incomplete repairs and no legal resources or remedies.

Kansas is one of only six states, as of 1998, that have no applicable laws or regulations at the state level, governing home improvement contractors. Including Kansas, six states (Colorado, Kentucky, Missouri, South Dakota, and Vermont) have either no laws regarding fraudulent practices by a contractor or specifically allow only counties and cities to individually regulate contractors.

AARP believes that state legislation should be developed to impose criminal and civil penalties for home repair fraud including escalated pricing on services and materials. While state legislation is being considered, counties and municipalities should strive for uniformity in providing basic consumer protection provisions including: 1) licensure, insurance and bonding requirement of home improvement contractors 2) a written contract

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Esther "Tess" Canja, President William D. "Bill" Novelli, Executive Director

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of services including specific prohibited and required contract provisions, and 3) establishment of criminal penalties and civil remedies to allow consumers to sue contractor in order to recover out of pocket damages, punitive damages, court cost and attorney fees.

We believe that an increase of 25 % in goods and services may be high for many Kansas during times of disaster, however in order to provide greater protection during these times, AARP Kansas does support efforts to cap increases and prevent unconscionable acts of profiteering on necessary supplies and services during times of disaster. Therefore, AARP *supports* Senate Bill 382.

Thank you again for this opportunity. I stand ready to answer questions.

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**Senator Derek Schmidt**  
15th District

Committee Assignments

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During Session

**Testimony of Senator Derek Schmidt  
In Support of Senate Bill 382  
Before the Senate Judiciary Committee  
February 1, 2002**

Mr. Chairman and members of the committee, thank you for your consideration today of Senate Bill 382, which I introduced to clarify and strengthen provisions of the Kansas Consumer Protection Act that prohibit price gouging and other forms of profiteering during a disaster.

I encourage the committee to recall the dark days after September 11. There was fear and uncertainty in the country. Our people were at considerable unease. It was in that environment that several gasoline retailers – some well-meaning, others self-serving – chose to sharply raise the price of gasoline. Those price spikes fueled fear. There were long lines of motorists at gasoline stations. In some cases, fistcuffs erupted as people scrambled to purchase fuel that they believed would fall into short supply.

I recall this story to make this point: Our state and nation are most vulnerable in the immediate wake of any disaster. It is then, while our leaders struggle to restore or maintain order, that we most need to avoid private actions that tend to exacerbate fear – including some of the extremes of the marketplace. Profiteering is not only bad for consumers; it is bad for crisis management. That is why public policy should prohibit it.

Under current law, the authority of the attorney general and of any county or district attorney to bring an action for price gouging rests solely on the general authority in K.S.A. 50-627(b)(2), which requires a court to consider, when determining whether a supplier's action was unconscionable in violation of law, whether "when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers."

I say this bill would "clarify" and "strengthen" the law because both need to be done. In my view, the current law is sufficiently vague as to be unfair to both businesses and consumers.

It is unfair for businesses because they cannot know from the statute precisely what conduct is prohibited. For example, it was only after the Attorney General brought suit

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and offered a standard settlement to gasoline stations that raised prices after September 11 that the stations knew the bright line to trigger enforcement would be raising prices above \$2.49 per gallon.

The current law is unfair to consumers because it permits a significant amount of profiteering at the expense of consumers during times of disaster. We see that time and again after tornadoes, floods, and of course national disasters such as the attacks on September 11.

This legislation would clarify the law so businesses can understand what the law is, and it would strengthen the law so consumers are adequately protected.

The bill would do the following:

- It would prohibit “profiteering from a disaster,” which is defined as “unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers.”
- It would make price increases in excess of 25 percent a key factor courts would consider in determining whether a price increase is unjustified.
- It would apply only during a “time of disaster” declared by the governor or by the president and would last for the longer of the duration of the disaster declaration or for 30 days.
- It would apply only to the sale to consumers of property or services that are “necessary.” The court would retain discretion to determine what is necessary but would be guided by examples of necessary items (food, medicine, cleanup supplies, etc.) set forth in the statute.
- It would put in place a mechanism to place the liability for any unlawful price increase on the actor who caused it by holding retailers harmless for merely passing through to consumers actual increase costs imposed on them by their suppliers.

Mr. Chairman, this bill would give businesses, consumers, emergency managers and law enforcement personnel much more certain guidance during our most uncertain times. I believe it is necessary public policy, and I look forward to working with all of our colleagues to move it through the legislative process.

I appreciate the opportunity to appear today.



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Bill Graves  
Governor

Charles E. Simmons  
Secretary

## Memorandum

DATE: February 11, 2002

TO: Senate Judiciary Committee

FROM: Charles E. Simmons  
Secretary of Corrections *CHS*

RE: SB 443

SB 443 amends KSA 75-52,135, and is technical and clarifying in nature. KSA 75-52,135 provides for determination of abandoned inmate property, and further provides for notice to the State Treasurer's office and disposition of such property under the unclaimed property law administered by that office.

The department requested introduction of SB 443 after discovering that the unclaimed property statute citations in KSA 75-52,135 are inaccurate. The bill makes two corrections to statutory references in this statute—KSA 58-3912 is replaced by 58-3950 and KSA 58-3918 is replaced by 58-3904 et seq.

The bill also clarifies that an inmate's property shall be considered abandoned if not claimed by an authorized representative within 90 days of the inmate's death. Current law specifically addresses unclaimed property determinations following an inmate's escape or release, but not death.

The bill is consistent with existing KDOC practice and we anticipate no change in our current procedures for referrals to the State Treasurer's Office under the unclaimed property law.

We respectfully request that the committee report SB 443 favorably.

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