

Approved
Date: 3/5/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:39 a.m. on February 26, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

None

Others attending: see attached list

The minutes of the February 25th, 2002 meeting were approved on a motion by Senator Adkins, seconded by Senator Donovan. Carried.

Final Action

SB 475—protection from abuse; intimate partners or household members

Following the Chair's review of **SB 475** and discussion regarding a request to amend the bill to mandate that 'ex parte' entries be "cancelled" and not just "cleared,"(attachment 1) Senator Adkins moved to amend the bill as stated, Senator Oleen seconded. Carried. Following further discussion, Senator Goodwin moved to pass the bill out favorably as amended, Senator Adkins seconded. Carried with Senator Pugh requesting his nay vote be recorded.

SB 477—protection from abuse; re: funding for programs

Following a review of **SB 477** and discussion regarding amendments offered by the Office of Judicial Administration and the Office of Attorney General, Senator Adkins moved to amend the bill to conform allocation of docket fees to the way the court does it normally, Senator Schmidt seconded. Carried. Senator Adkins moved to amend the bill to increase the docket fee to \$105 with \$4 for the Protection from Abuse fund, Senator Goodwin seconded. Carried with Senator Pugh requesting his nay vote be recorded. Senator Adkins moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

SB 476—examination of victims of sexual assault

Senator Schmidt stated that **SB 476** was not heard in his subcommittee as there was an identical bill in the house judiciary which was expected to be passed. Following brief discussion, Senator Adkins moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

SB 489—immunity from liability for certain owners of anhydrous ammonia

Senator Schmidt reviewed **SB 489** and the balloon amendments which reflect a compromise between the trial lawyers and agri-business retailers.(attachment 2) Following discussion, Senator Schmidt moved to amend the bill as reflected in the balloon with corrections by Senator O'Connor and Senator Schmidt, Senator Umbarger seconded. Carried. There was lengthy discussion regarding the gradual increase in proposed legislation which grants immunity to certain groups or individuals and hesitancy was expressed on the part of some Committee members to continue in this vein. Senator Schmidt moved to pass the bill out favorably as amended, Senator Umbarger seconded. Carried with Senator Pugh requesting his nay vote be recorded.

SB 487—burglary; sentencing

Senator Adkins reviewed **SB 487** and moved to amend **SB 500** into the bill. Following discussion he withdrew his motion and moved to pass the bill out favorably, Senator Schmidt seconded. Carried.

SB 524—business entities; re: annual report; filing of certain documents; franchise tax

Following a review of **SB 524** and discussion regarding an amendment offered by the Secretary of State,(attachment 3) Senator Adkins moved to adopt the amendment and pass the bill out favorably as amended, Senator Schmidt seconded. Carried.

The meeting adjourned at 10:31 a.m. A tentative meeting is scheduled upon adjournment of the Senate today.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 26, 2002

NAME	REPRESENTING
Nancy Lindberg	AG
Julienne Machin	AG
Kelly Petrow	AG
SC Barnes	KCSOV
Kyle Smith	KBI
Harry Tiffany	KDOR - DMV
Sheila S. Walker	KDOR - DMV
Joe Luber	Ky Co-op Council
Melissa Kinyemann	Sec. of State
Marlee Carpenter	KCOJ
Matt Bartholt	Ks. Co-op Council
Mary White	KTLA
Ridley Parker	Judicial Branch
GREG Foley	KDA
Ernest Kulzlej	AAEP
Jeff Bothberg	Kansas Sheriff's Assn
Doug Wareham	Kansas Agribusiness Retailers Assn.
Paul Davis	KBA
MIKE Taylor	City of Wichita

RE: SB 475 – PFA Orders

As I understand the issue, the KBA is objecting to the inclusion of the 'ex parte', i.e., temporary and emergency orders, in the mandatory NCIC language because of a concern with such orders lingering in the computer and coming back to blacken someone's good name. Normally entries are "Cleared" upon the expiration of the court order(s), which means that they are no longer active and show that they have expired but are still available to law enforcement inquiries. (E.G., after a woman is murdered, the cops might check old P.F.A.'s to look for possible suspects) But entries can also be "Cancelled", which removes the order from the NCIC database so that not even law enforcement can run it on the computer. Perhaps language could be inserted into the bill mandating that 'ex parte' entries be "cancelled" and not just "cleared" and that would resolve the concern. E.G.:

"All entries of emergency and temporary orders into the national criminal information center database shall be cancelled upon the expiration of the time period set out in the court order, or, if no time period is set, no later than one year from entry date."

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SENATE BILL No. 489

By Committee on Judiciary

2-1

9 AN ACT concerning civil actions and civil penalties; relating to certain
10 fertilizers; owners of anhydrous ammonia, immunity from liability; civil
11 penalty for certain persons or custom blenders of fertilizer; amending
12 K.S.A. 2-1201b and repealing the existing section.
13

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

15 Section 1. As used in this act:

16 (a) (1) "Owner" means:

- 17 (A) Any person who lawfully owns anhydrous ammonia;
- 18 (B) any person who lawfully owns a container, equipment or storage
19 facility containing anhydrous ammonia;
- 20 (C) any person responsible for the installation or operation of such
21 containers, equipment or storage facilities;
- 22 (D) any person lawfully selling anhydrous ammonia;
- 23 (E) any person lawfully purchasing anhydrous ammonia for agricul-
24 tural purposes; or
- 25 (F) any person who operates or uses anhydrous ammonia containers,
26 equipment or storage facilities when lawfully applying anhydrous am-
27 monia for agricultural purposes.

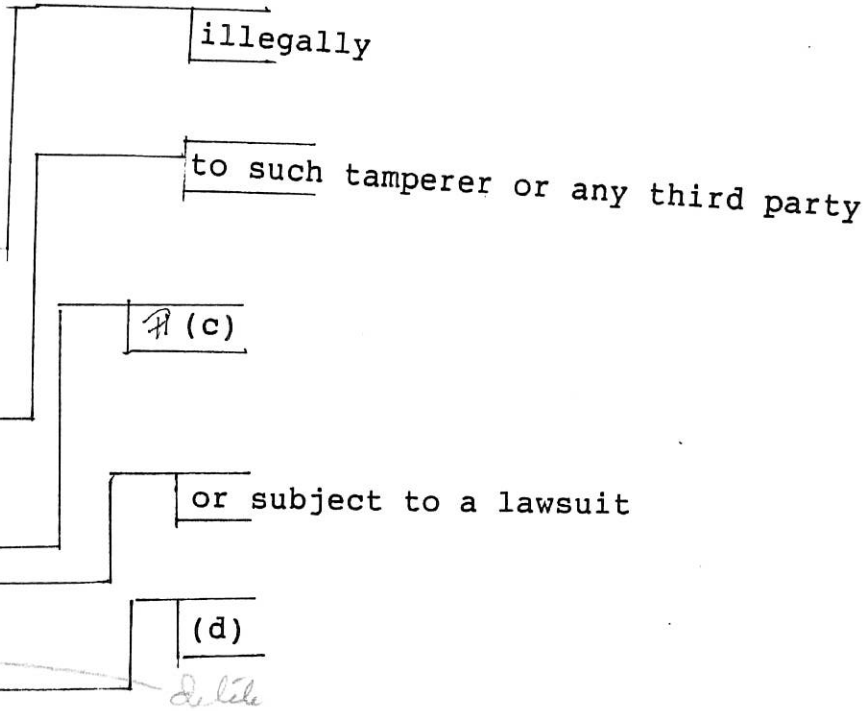
28 (2) "Tamperer" means a person who commits or assists in the com-
29 mission of tampering.

30 (3) "Tampering" means transferring or attempting to transfer anhy-
31 drous ammonia from its present container, equipment or storage facility
32 to another container, equipment or storage facility without prior author-
33 ization from the owners.

34 (b) A tamperer assumes the risk of any personal injury, death and
35 other economic and noneconomic loss arising from such tamperer's partic-
36 ipation in the act of tampering. A tamperer shall not commence a direct
37 or derivative action against any owner relating to the act of tampering.

38 Owners are immune from suit by a tamperer or any third party suit based
39 on the tamperer's actions. Owners shall not be held liable for any negli-
40 gent act or omission which may cause personal injury, death or other
41 economic or noneconomic loss to a tamperer or any third party relating
42 to the act of tampering.

43 (c) The immunity from liability and suit authorized by this section is



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1 expressly waived for owners whose acts or omissions constitute willful,
2 wanton, reckless or intentional conduct.

3 Sec. 2. K.S.A. 2-1201b is hereby amended to read as follows: 2-
4 1201b. (a) It shall be deemed a violation of ~~this act~~ K.S.A. 2-1201 and 2-
5 1201a, and amendments thereto, for any person to: (1) Sell or distribute
6 in this state any custom blended fertilizer ~~who~~ when such person does
7 not hold a valid license as required by this act; or ~~to~~ (2) fail to comply
8 with the requirements of K.S.A. 2-1201a hereof, and amendments thereto,
9 and, except as otherwise provided, the provisions of K.S.A. 2-1208, except
10 subsection (1) (a), and amendments thereto. Failure to comply with
11 the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments
12 thereto, shall not be deemed a violation of this section. The penalties as
13 provided therein in K.S.A. 2-1208, and amendments thereto shall apply
14 to persons as described in this section who fail to comply with the pro-
15 visions of K.S.A. 2-1208, and amendments thereto.

16 (b) Any person or custom blender who violates any provision of ar-
17 ticle 12 of chapter 2 of Kansas Statutes Annotated, and amendments
18 thereto or the rules and regulations adopted pursuant thereto, may incur
19 a civil penalty in an amount not more than \$5,000 per violation. In the
20 case of a continuing violation, every day such violation continues may be
21 deemed a separate violation. Such civil penalty may be assessed in addi-
22 tion to any other penalty provided by law. Any civil penalty assessed
23 pursuant to this subsection is subject to review in accordance with the act
24 for judicial review and civil enforcement of agency actions. The secretary
25 shall remit any civil penalty collected pursuant to this act to the state
26 treasurer in accordance with the provisions of K.S.A. 75-4215, and
27 amendments thereto. Upon receipt of each such remittance, the state trea-
28 surer shall deposit the entire amount in the state treasury to the credit of
29 the state general fund.

30 Sec. ~~3~~ K.S.A. 2-1201b is hereby repealed.

31 Sec. ~~4~~ This act shall take effect and be in force from and after its
32 publication in the statute book.

(e) If any third party plaintiff brings an action against an owner claiming that the owner's negligent acts or omissions caused or contributed to personal injury, death or other economic or noneconomic loss to the tamperer or to any third party relating to the act of tampering, and if the owner prevails, the court shall order the plaintiff to pay the reasonable attorney fees incurred by the owner in defending against the action.

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On and after July 1, 2003,

New Sec. 3. If the secretary of agriculture does not adopt a revised regulation related to storage of liquid fertilizer in mobile containers prior to February 1, 2003, then the requirements provided in KAR 4-4-900 et seq. shall be applicable to each mobile container or combination of mobile containers which has a combined capacity of 2,000 gallons or more which is used to store liquid fertilizer for more than 60 consecutive days.

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RON THORNBURGH
Secretary of State



First Floor, Memorial Hall
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TESTIMONY OF THE SECRETARY OF STATE
TO THE SENATE JUDICIARY COMMITTEE
ON SB 524

February 22, 2002

Chairman Vratil and Members of the Committee:

The Secretary of State appreciates the introduction and hearing on SB 524, which was requested by our office.

The Kansas Bar Association and the Secretary of State worked jointly this last year to update the Kansas corporate code. A bill containing an amended corporate code has been introduced by the KBA in the house judiciary committee. The purpose of SB 524 is to duplicate changes made in the corporate code in the laws relating to all other business entities. Our intent is to create uniformity and consistency among all business entities that file with the Secretary of State. The amendments contained in the bill are outlined below.

- 1. Filing Procedures.** The Secretary of State adopted an imaging system in 2000, which replaced our paper filing system. All documents are indexed and maintained on the imaging system and therefore retention of paper documents is no longer necessary. SB 524 directs the Secretary of State to image the original paper document filed by the customer and to return the paper document to the customer as a certified copy. This new procedure reduces our storage needs while providing the customer evidence of the document that was recorded in our office. Our office has checked with the Historical Society and they are satisfied that the Secretary of State's imaging system will adequately preserve our records.
- 2. Extensions.** The current statutory language allowing business trusts, limited liability companies and limited partnerships to file an extension (which delays the filing deadline for the annual report) is contained in the corporate code. SB 524 moves these provisions to their respective acts. The corporate code also contains a provision limiting public disclosure of the IRS tax extension filed with the Secretary of State; this provision is likewise moved to the correct statutory section for LLCs, LPs and business trusts.
- 3. Definition of "doing business" for Foreign Entities.** The definition of "doing business," which determines when a foreign entity must register with the Secretary of State, is amended to reflect the definition given in the KBA corporate code revision. The new definition is based on Delaware law and the Kansas Revised Uniform Partnership Act. All foreign entities that register with our office will use this uniform definition.

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4. **Business Trust Annual Reports.** The business trust annual report still requires detailed financial disclosure, which was eliminated from all other entity annual reports in 1997. SB 524 strikes this language from the business trust annual report in order to create uniform reporting requirements among all business entities.

5. **Franchise Tax Calculation.** Business entities pay a franchise tax at the time they file their annual report with our office. The franchise tax is calculated based on net worth; \$1 for each \$1,000 in net worth. Parent entities that own net worth in subsidiaries are therefore taxed twice. SB 524 would allow a parent entity to subtract any net worth reported by the subsidiary entity before computing its franchise tax, thereby eliminating the double taxation. A subsidiary entity is defined as ownership of over 50%, based on recommendations from the Department of Revenue.

This amendment will have a fiscal impact on state general funds; therefore the committee should carefully consider this provision of the bill. The Secretary of State believes the amendment promotes fairness and equity in taxing Kansas business entities; however, we would understand if the committee decides to eliminate this provision of the bill.

The Secretary of State requests an additional amendment to SB 524, which was missed by our office when drafting the bill. The amendment, which is contained in the KBA corporate rewrite, would strike the requirement that limited partnerships include the section, range and township when listing agricultural land on the annual report. The amended language is attached to my testimony.

I appreciate the opportunity to appear today on SB 524 and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

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1 (1) The number of acres and location, listed by section, range, town-
2 ship and county of each lot, tract or parcel of agricultural land in this state
3 owned or leased by the limited partnership; and

4 (2) whether any of the agricultural land held and reported under sub-
5 section (c)(1) was acquired after July 1, 1981.

6 (d) The annual report shall be signed by the general partner or part-
7 ners of the limited partnership, sworn to before an officer duly authorized
8 to administer oaths and forwarded to the secretary of state. At the time
9 of filing the report, the limited partnership shall pay to the secretary of
10 state an annual franchise tax in an amount equal to \$1 for each \$1,000 of
11 the partners' net capital accounts located in or used in this state at the
12 end of the preceding taxable year as required to be reported on the fed-
13 eral partnership return of income, ~~except that~~ *minus the amount of equity*
14 *owned in any subsidiary entity reported on the subsidiary entity's annual*
15 *report. For purposes of this subsection, "subsidiary" means an entity in*
16 *which a limited partnership holds more than 50% ownership.* No annual
17 tax shall be less than \$20 or more than \$2,500. The amount of any such
18 franchise tax paid by the limited partnership to the secretary as provided
19 by this subsection shall not be disclosed by the secretary.

20 (e) The provisions of K.S.A. 17-7509 and amendments thereto, re-
21 lating to penalties for failure of a corporation to file an annual report or
22 pay the required franchise tax, and the provisions of subsection (a) of
23 K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a do-
24 mestic corporation's articles of incorporation for failure to file an annual
25 report or pay the required franchise tax, shall be applicable to the certif-
26 icate of partnership of any limited partnership which fails to file its annual
27 report or pay the franchise tax within 90 days of the time prescribed in
28 this section for filing and paying the same. Whenever the certificate of
29 partnership of a limited partnership is forfeited for failure to file an annual
30 report or to pay the required franchise tax, the limited partnership may
31 be reinstated by filing a certificate of reinstatement, in the manner and
32 form to be prescribed by the secretary of state and paying to the secretary
33 of state all fees and taxes, including any penalties thereon, due to the
34 state. The fee for filing a certificate of reinstatement shall be the same as
35 that prescribed by K.S.A. 17-7506 and amendments thereto for filing a
36 certificate of extension, restoration, renewal or revival of a corporation's
37 articles of incorporation.

38 Sec. 6. K.S.A. 2001 Supp. 56-1a607 is hereby amended to read as
39 follows: 56-1a607. (a) Every foreign limited partnership shall make an
40 annual report in writing to the secretary of state, stating the prescribed
41 information concerning the limited partnership at the close of business
42 on the last day of its tax period next preceding the date of filing. If the
43 limited partnership's tax period is other than the calendar year, it shall

1 give notice of its different tax period to the secretary of state prior to
2 December 31 of the year it commences the different tax period. The
3 annual report shall be filed at the time prescribed by law for filing the
4 limited partnership's annual Kansas income tax return. If the limited part-
5 nership applies for an extension of time for filing its annual income tax
6 return under the internal revenue code or under K.S.A. 79-3221 and
7 amendments thereto, the limited partnership shall also apply, not more
8 than 90 days after the due date of its annual report, to the secretary of
9 state for an extension of the time for filing its report and an extension
10 shall be granted for a period of time corresponding to that granted under
11 the internal revenue code or K.S.A. 79-3221 and amendments thereto.
12 The application shall include a copy of the application to income tax
13 authorities.

14 (b) The annual report shall be made on a form prescribed by the
15 secretary of state. The report shall contain the name of the limited
16 partnership.

17 (c) Every foreign limited partnership subject to the provisions of this
18 section which is a limited corporate partnership, as defined in K.S.A. 17-
19 5903 and amendments thereto, and which holds agricultural land, as de-
20 fined in K.S.A. 17-5903 and amendments thereto, within this state shall
21 show the following additional information on the report:

22 (1) The number of acres and ~~location, listed by section, range, town-~~
23 ~~ship and~~ county of agricultural land in this state owned or leased by the
24 limited partnership; and

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25 (2) whether any of the agricultural land held and reported under sub-
26 section (c)(1) was acquired after July 1, 1981.

27 (d) The annual report shall be signed by the general partner or part-
28 ners of the limited partnership, sworn to before an officer duly authorized
29 to administer oaths and forwarded to the secretary of state. At the time
30 of filing the report, the foreign limited partnership shall pay to the sec-
31 retary of state an annual franchise tax in an amount equal to \$1 for each
32 \$1,000 of the partners' net capital accounts located in or used in this state
33 at the end of the preceding taxable year as required to be reported on
34 the federal partnership return of income, ~~except that~~ *minus the amount*
35 *of equity owned in any subsidiary entity reported on the subsidiary en-*
36 *tity's annual report. For purposes of this subsection, "subsidiary" means*
37 *an entity in which a foreign limited partnership holds more than 50%*
38 *ownership.* No annual tax shall be less than \$20 or more than \$2,500. The
39 amount of any such franchise tax paid by the limited partnership to the
40 secretary as provided by this subsection shall not be disclosed by the
41 secretary.

42 (e) The provisions of K.S.A. 17-7509 and amendments thereto, re-
43 lating to penalties for failure of a corporation to file an annual report or