

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Vratil at 9:30 a.m. on January 15, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee: Bob Alderson, Kansas Bar Association
Richard Hayse, Kansas Bar Association
Melissa Wangeman, Secretary of State's Office

Others attending: see attached list

The Chairman called for bill introductions. Randy Hearrell, Kansas Judicial Council, requested introduction of three bills. The first bill expands the Office of Administrative Hearings and phase in over a period of five years the requirement that agencies under the Kansas Administrative Procedure Act utilize the Office of Administrative Hearings for all Kansas Administrative Act Proceedings. The second bill amends the Kansas Judicial Council statutes (K.S.A. 20-2201 *et seq.*), and the third bill amends K.S.A. 58-9-411 relating to the percentage of royalty payments allocated to principal and income under the Uniform Principal and Income Act. (Attachment 1) Senator Donovan moved to introduce the bill, seconded by Senator Goodwin, and the motion carried.

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects, requested introduction of a bill relating to alcohol and drug safety action education programs in regard to DUI's; and amending K.S.A. 8-1567 including repealing the existing section. (Attachment 2) Senator Schmidt moved to introduce this bill, seconded by Senator Umbarger, and the motion carried.

Conferees Bob Alderson and Richard Hayse, representing the Kansas Bar Association, gave a review of proposed legislation concerning the Kansas corporation code which was developed out of a study conducted by an ad hoc KBA committee of which Mr. Alderson chaired, and Mr. Hayse and Ms. Wangeman served as members of the committee. Due to time restraints, Ms. Wangeman was unable to present her part of the presentation on the provisions of the statute that comes under the Secretary of State's Office, but will be rescheduled for a later date. (Attachment 3)

General questions and discussion followed regarding possible security measures built into the voting process through the internet, who might oppose some of the requested changes, concerns for privacy of voting, and relationship of prior year dividends to current year dividends from an accounting standpoint. Chairman Vratil stated that there was an excellent article published recently in the Kansas Bar Journal relating to these amendments, and he would provide a copy of the article to the Committee members.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is January 16, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 15, 2003

NAME	REPRESENTING
FRED PHELPS, JR.	KS. Dept. of Corrections
DAN NORMES	KCASAP
Paul Jones	KSC
Farida Rowaryan	SOS
Melissa Wengeman	SOS
BOB ANDERSON	KBA
Lech Haysle	KBA (KS Bar Ass'n)
Connie Burns	Whitney Dameron PA
Barb Chant	KTLA
Ken Bore	Hein Law Firm
Songy Allen	Office of State Bank Commissioner
Berlin Mann	Hein Law Firm
Christy Edwards	SRS - HCP/AAPS
KETRA LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Kathy Olsen	Kansas Bankers Assn
Michael L. White	KCDAA
Aeri Hyten	JUDICIAL BRANCH



KANSAS JUDICIAL COUNCIL

JUSTICE DONALD L. ALLEGRUCCI, CHAIR, TOPEKA
JUDGE DAVID S. KNUDSON, SALINA
JUDGE C. FRED LORENTZ, FREDONIA
SEN. JOHN VRATIL, LEAWOOD
REP. MICHAEL R. O'NEAL, HUTCHINSON
J. NICK BADGEROW, OVERLAND PARK
GERALD L. GOODELL, TOPEKA
JOSEPH W. JETER, HAYS
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center
301 S.W. Tenth Street, Suite 262
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

Judicial.Council@ksjc.state.ks.us
www.kscourts.org/council

RANDY M. HEARRELL
EXECUTIVE DIRECTOR
CHRISTY R. MOLZEN
RESEARCH ATTORNEY
JANELLE L. WILLIAMS
ADMINISTRATIVE ASSISTANT
KARLA D. KEYS
ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: January 15, 2003
RE: Judicial Council Bill Requests

The Judicial Council respectfully requests three bills be introduced by the Senate Judiciary Committee this year. The bills are:

- A bill expanding the Office of Administrative Hearings and phasing-in over a period of five years (beginning July 1, 2004) the requirement that agencies under the Kansas Administrative Procedure Act utilize the Office of Administrative Hearings for all Kansas Administrative Act Proceedings. The bill is similar to HB 2488 which passed the House last year.
- A bill amending the Kansas Judicial Council statutes (K.S.A. 20-2201 *et seq.*). The proposal modernizes the Council statutes, some of which have not been amended since 1927 when the Council was created. It makes several technical changes and adds the chair of the newly created House Corrections and Juvenile Justice Committee to the membership of the Judicial Council.
- A bill amending K.S.A. 58-9-411 relating to the percentage of royalty payments allocated to principal and income under the Uniform Principal and Income Act.

Senate Judiciary

1-15-03
Attachment 1-1

_____ Bill No. _____

By Committee on _____

AN ACT relating to alcohol and drug safety action education programs; imposing certain requirements upon providers of programs, imposing certain requirements on the secretary of the department of social and rehabilitation services, amending K.S.A. 8-1567 and repealing the existing section.

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

Section 1. K.S.A. 8-1567 is hereby amended to read as follows: K.S.A. 8-1567. Driving under influence of alcohol or drugs; blood alcohol concentration; penalties. (a) No person shall operate or attempt to operate any vehicle within this state while:

- (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
- (2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
- (3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
- (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
- (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an *approved* alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs. *Alcohol and drug safety action education programs shall be not less than 10 hours in length and shall be approved by the secretary of social and rehabilitation services.*

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after

Senate Judiciary

Jan. 15, 2003
Attachment 2-1

such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections and shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse as determined by the secretary. Upon completion of the term of imprisonment and the required treatment program for alcohol and drug abuse, the person shall be released to a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an approved aftercare plan as determined by the Kansas parole board as a condition of release. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(l) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(m) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(n) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to

order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(p) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(q) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(r) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(s) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

Sect. 2. K.S.A. 8- 1567 is hereby repealed.

Sect. 3. This act shall take effect and be in force from and after its publication in the statute book.

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
MICHELLE L. MILLER

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON

LL.M., TAXATION
LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON BEFORE THE
SENATE COMMITTEE ON JUDICIARY ON
BEHALF OF THE KANSAS BAR ASSOCIATION
January 15, 2003

Chairman Vratil and Members of the Committee:

I am Bob Alderson, a lawyer in private practice in Topeka, and I am appearing today on behalf of the Kansas Bar Association ("KBA"), to explain the changes in the Kansas General Corporation Code ("Kansas Code") being proposed by the KBA. Sharing these duties will be Richard F. Hayse, also a lawyer in private practice in Topeka with the firm of Morris, Laing, Evans, Brock & Kennedy, and Melissa Wangemann, attorney for the Kansas Secretary of State. Mr. Hayse will explain some of the changes being proposed in the Kansas Code itself, while Ms. Wangemann will explain that portion of the bill relating to annual fees and reports filed with the Kansas Secretary of State.

The KBA's proposal being considered today grew out of a study conducted by an ad hoc KBA committee ("Study Committee") which was appointed to make a comprehensive review of the Kansas Code and related statutes. I "volunteered" to chair the Study Committee, and in addition to Mr. Hayse and Ms. Wangemann, the other lawyers selected to serve on the Study Committee were:

Barton P. Cohen
Blackwell Sanders Peper Martin, LLP
Overland Park

William N. Fleming
Barber, Emerson, Springer, Zinn & Murray, L.C.
Lawrence

Prof. Edwin W. (Webb) Hecker
University of Kansas School of Law
Lawrence

Senate Judiciary

Jan. 15-03
Attachment 3-1

Charles N. Henson
Wright, Henson, Somers, Sebelius, Clark & Baker, LLP
Topeka

Dixie F. Madden
Adams & Jones, Chtd.
Wichita

William E. Quick
Polsinelli, Shalton & Welte
Kansas City, Missouri

Clayton C. Skaggs
Barber, Emerson, Springer, Zinn & Murray, L.C.
Lawrence

Mark W. Stafford
General Counsel, Kansas Board of Healing Arts
Topeka

William R. Wood
Foulston & Siefkin
Wichita

If it is not readily apparent from reviewing the above list of names, I can assure you that the persons serving with me on the Study Committee made this a "blue ribbon" committee.

The impetus for convening the Study Committee was provided by recommendations for specific changes in the Kansas Code made to the KBA by the Kansas Secretary of State, as well as an observation by that office that a number of years had elapsed since the Kansas Legislature had considered comprehensive amendments to the Kansas Code, in recognition of changes made in the Delaware corporation statutes ("Delaware Code"). As you probably are aware, Kansas has patterned its corporation laws after the comparable provisions of the Delaware Code since 1939, and periodically the Legislature has amended the Kansas Code to incorporate Delaware amendments, including a total re-enactment of the Code in 1972.

Notwithstanding, at its initial meeting in May of 2001, the Study Committee considered some possible alternatives to a General Corporation Code premised on conformity with the Delaware Code, such as the Model Business Corporation Act which has been enacted in whole or in part in a number of states. However, after careful deliberation, the Study Committee unanimously determined that it was in the best interests of those who use and are subject to the Kansas Code to continue patterning it after the Delaware Code. That decision was prompted, in part, by the state's extensive

history of substantial conformity with the Delaware Code, as noted above. Practitioners have developed a familiarity with the language, style and format of the Kansas Code, as well as an understanding of its substantive provisions. Equally as important, though, the Study Committee wanted to preserve the relevance of Delaware case law construing provisions of the Delaware Code. The Kansas Supreme Court has declared these Delaware decisions to be "persuasive" in construing corresponding provisions of the Kansas Code. The use of Delaware judicial decisions in construing Kansas Code provisions can be particularly important where a section of the Kansas Code has little or no Kansas case law construing its provisions.

Once that decision was made, the Study Committee began the work of comparing the current Kansas and Delaware Codes, to determine the Delaware provisions not included in the Kansas Code. Here, I want to accord particular recognition to Clayton Skaggs, who provided each committee member with an electronic, side by side comparison of the two state codes, identifying the substantive differences between them. This was essential to the Study Committee's task of recommending to the KBA Legislative Committee changes which should be made in the Kansas Code.

It is noteworthy that the Study Committee carefully considered each of the changes it proposed to the KBA Legislative Committee. In fact, in some instances there was extensive deliberation regarding the propriety of including a particular Delaware Code provision in the Kansas Code. While most of the changes that have occurred in the Delaware Code subsequent to the last comprehensive amendment of the Kansas Code to seek conformity between the two codes, are included in the bill introduced yesterday by the Committee, not all of the Delaware provisions were recommended for inclusion in the Kansas Code. In addition, there are a few instances where the Study Committee recommended changing the Kansas Code in a way that is not comparable to the corresponding Delaware law.

Once the Study Committee completed its comparative review, its recommendations were submitted to the KBA Legislative Committee in the fall of 2001. With one exception, the KBA Legislative Committee adopted the recommendations of the Study Committee. (Richard Hayse will identify that one exception in his presentation.) The KBA Board of Governors subsequently adopted that Committee's recommendation.

Because of the comprehensive nature of the proposal, preparing the proposal in bill form required considerable time and effort. Although the draft was completed in time for introduction by the House Committee on Judiciary (House Bill No. 3022), there was not sufficient time in the 2002

legislative session for this bill to be heard. Accordingly, the bill has been re-drafted and was introduced by this Committee on Tuesday.

I would note that, subsequent to last session, the Study Committee reconvened to consider changes made to the Delaware Code in 2002. However, because there was not sufficient information available as to the purpose and effect of the changes made last year in the Delaware Code, and the Study Committee did not feel comfortable recommending the inclusion of these changes without an opportunity to study them more thoroughly, the bill introduced by this Committee does not include provisions comparable to the few amendments made in the Delaware Code in 2002.

The draft incorporating the KBA's recommended changes in the Kansas Code is extremely voluminous and time does not permit a section by section analysis of the changes. Nor is such analysis warranted, as many of the changes being recommended are technical, wording changes, and many of them simply effect consistent usage of terms throughout the Kansas Code. Other amendments are somewhat minor in nature and the effect of such changes should be readily apparent.

With that in mind, the effort today will be to identify several of the more substantive, noteworthy changes included in the bill. I will discuss a few of those more notable amendments, and Mr. Hayse will follow with a discussion of several others. Following these presentations, Mr. Hayse and I will endeavor to answer any questions which members of the Committee may have regarding the Kansas Code amendments.

As noted previously, following consideration of the changes being recommended in the Kansas Code itself, Melissa Wangemann will present the recommendations being made in statutes administered by the Secretary of State's office that are ancillary to the Code.

Thank you for your attention to this presentation. On behalf of the KBA, I would urge the Committee to recommend the bill favorable for passage.