

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on February 3, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Gilstrap (E)

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

Conferees appearing before the committee:

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects
Donna Doolin, Acting Director of Addiction & Prevention Services, Department of
Social and Rehabilitation Services
Kathy Porter, Office of Judicial Administration
Kyle Smith, Kansas Bureau of Investigation
Ron Hein, Prairie Band Potawatomi Nation and R.J. Reynolds Tobacco Co.
Manny Barbaran, Mannies Bonding Company (written testimony only)
Kathy Damron, Altria Group, Inc. (parent company of Philip Morris)

Others attending: see attached list

Chairman Vratil called for bill introductions. Senator Schmidt requested introduction of two bills. The first bill was for a resolution urging U.S. Department of Health to award grant funding to Kansas Experience Works Program. Senator Schmidt moved to introduce this proposed bill, seconded by Senator Umbarger, and the motion carried. The second bill Senator Schmidt requested to be introduced was for a bill authorizing fire departments to ask for reimbursement of cost from arsonists. Senator Schmidt moved to introduce this proposed bill, seconded by Senator Goodwin, and the motion carried.

Donna Schneweis, representing Amnesty International and Kansas Coalition Against the Death Penalty, requested a bill be introduced concerning crimes, criminal procedure and punishment; relating to a moratorium on the imposition of death sentences; creating a death penalty study commission and prescribing certain duties thereon. (Attachment 1) After brief discussion, Senator Goodwin made a motion to have the proposed bill introduced, seconded by Senator Umbarger, and the motion carried.

SB 27 - relating to alcohol and drug safety action education program requirements

The Chair opened the hearing on **SB 27**. Conferee Hermes testified in support of **SB 27**, and explained that the Kansas Coordinators of Alcohol Safety Action Projects (KCASAP) was primarily responsible for the evaluation, education, treatment or referral of DUI and other alcohol/drug related offenders. He said that subsequent to the revisions in the DUI laws several years ago, the education requirement for those that are convicted of driving under the influence has been limited to first time offenders. Mr. Hermes stated that they now have only one chance at providing effective education for DUI offenders and requiring a minimum of ten hours of course work and allowing the Secretary of SRS to approve programs in the state will provide a framework to increase the effectiveness of the courses in our state. (Attachment 2)

Conferee Doolin testified as a proponent of **SB 27**, and explained what this bill would require of people who are convicted of DUI offenses in regard to participation in a ten hour alcohol and drug safety action education program. She stated that as the designated single state authority on alcohol, tobacco, and other drugs of abuse issues, that SRS is the appropriate entity to ensure oversight and approval of his type of education program. She pointed out that SRS already has the licensing authority for over 200 alcohol and drug treatment programs across the state. Ms. Doolin said that uniformity in education programs was very important, and SRS supports the increased level of alcohol and drug education programs for DUI offenders. (Attachment 3)

Committee discussion included concerns expressed about the fiscal note on **SB 27** which calls for SRS adding two FTE positions at a cost of \$73,581 which would come out of the State General Fund. It was

CONTINUATION SHEET

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suggested that possibly the offenders be required to pay for the extra cost of the educational training. The Chair explained that the fiscal note on this bill pertained to the costs that SRS would incur to prepare the review procedures, conduct the certification reviews, and process related documentation. He suggested that SRS look into the possibility of a fee structure for this type program so that this bill would have a neutral fiscal note. ([Attachment 4](#))

Conferee Porter testified as a neutral party on **SB 27**, and shared some of the concerns the judges had expressed in emails. The judges questioned the extension of the training to ten hours which would have to be done in more than one day which could create more hardship for a defendant if they had to take off work. Ms. Porter said the judges would like some guarantee that if this proposed bill was passed into law that there will be at least one approved program serving each judicial district, and that the fees charged will not be overly burdensome to offenders, who have already been assessed fines and evaluation fee. She added that the judges would also like to see some assurance that SRS would look at those programs that are currently providing evaluation services, and try to allow for some transition between the evaluation and treatment programs. ([Attachment 5](#))

Following general discussion and questions, the Chair closed the hearing on **SB 27**.

SB 35 - criminal use or possession of body armor

The Chairman opened the hearing on **SB 35**. Conferee Smith testified in support of **SB 35**. He said that this bill would address two problems: (1) the use of body armor while committing crimes, and (2) prohibit persons who have been convicted of a person felony from owning such armor. He stated that these are reasonable and prudent limitations that would enhance public and officer safety. He requested a friendly amendment in section 2 at the end of the first sentence which would add "or felony violations of the controlled substances act". He explained that the amendment was necessary because drug manufacturing and trafficking crimes are some of the most dangerous ones worked by officers. He added that the use of body armor by the offender is premeditated. ([Attachment 6](#))

Senator Pugh stated that he would like to recommend that criminal intent be put in the bill, and would like to see it redrafted to correct it. Senator Schmidt explained how this proposed bill was requested by the Sheriff of Wilson County for the past two years, and it was modeled after the South Carolina model. Senator Goodwin called attention to the fiscal note on **SB 35**. The Chair pointed out that the Kansas Sentencing Commission estimates that the passage of this bill could possibly increase prison admissions by two to twelve per year, and gave the estimated additional costs involved. ([Attachment 7](#))

Question was also raised about this bill making it a severity level 5 person felony, and whether any thought should be given to making it a level 7 severity offense. Senator Schmidt also stated that he had a concern regarding the drafting of the section on the licensing of body armor by the county sheriff and who would have the authority to waive the licensing in regard to having 105 county sheriffs within the state.

Conferee Hein testified in support of **SB 35**, and noted there is no mention in this bill of federal law enforcement officers or Tribal law enforcement officers. He submitted a balloon amendment, with his written testimony, that would include Tribal law enforcement officers. ([Attachment 8](#))

Written testimony was submitted by Manny Barbaran in support of **SB 35**, and in which he requested that professional surety service personnel be exempted due to safety concerns. ([Attachment 9](#))

There being no opponents to appear before the Committee, the Chair closed the hearing on **SB 35**.

SB 48 - appeal bonds in litigation involving signatories or successor of the tobacco litigation agreement

Chairman Vratil opened the hearing on **SB 48**. Conferee Damron testified in support of **SB 48** on behalf of Altria Group, Inc., the parent company of Philip Morris. She said this proposed bill was an important step in protecting the historic Master Settlement Agreement (MSA) between the states and tobacco companies. She included with her testimony a chart showing the states where appeal bond limits exist. Ms. Damron stated that the proposed bill merely ensures that a full appeal of a potentially ruinous

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MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 3, 2003 in Room 123-S of the Capitol.

judgment may occur before the financial soundness of the tobacco companies, and hence MSA payments, are threatened. (Attachment 10)

Chairman Vratil reviewed with the Committee how the system works when a judgment is rendered in a district court, then plaintiff has the right to attempt to collect that judgment even though the case may be appealed unless the defendant posts an appeal bond. The Chair explained this is a bond intended to insure that if the appeal turns out to favor the plaintiff, the money will be there to pay the judgment and the defendant won't have an opportunity to dissipate assets while the appeal is pending. He added that under current Kansas law there is no limit on the amount of an appeal bond, although the statute says the appeal bond will be in the amount of 100% of the judgment.

Conferee Hein testified in support of **SB 48**, and explained what happened in the Florida case of a large judgment. He said that this proposed bill would cap the appeal bond in cases involving tobacco companies that are signatories to the Master Settlement Agreement. He stated that this bill would follow the lead of 12 other states, each of whom has recognized that this could be a real problem. He added that **SB 48** hurts nobody, and protects the plaintiff while the case is on appeal because it provides that if the tobacco companies are shown to be dissipating their assets the judge can require a higher bond. (Attachment 11)

Chairman Vratil announced that the hearing on **SB 48** would be continued at the next meeting.

The minutes of the January 28 and 29 were approved on a motion by Senator Donovan, seconded by Senator Schmidt, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 4, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

Pg. 1

DATE: Feb. 2, 2003

NAME	REPRESENTING
Deborah Schmitt	Amnesty International
Don Barnes	KCSAP
Apathy Demuron	Attria Group, Inc.
Doug Smith	Ks Professional Societies
Anna Malin	SRS
Tanya Dorf	SRS
Terri Roberts	Tobacco Free Kansas Coalition
Trista Cuzydlo	KS Bar Assn.
Jeff Bottenberg	KS Sho. Hrs Assn
Kathy Ruter	Judicial Branch
M. G. Hellebrand	Kansas Smokeless Kids Initiative
Diane Albert	KDOR - Vehicles
Kyle Kessler	DOB
Chad	KHP
RAY RAMIREZ	KHP
Scott Schneider	KADC
Michael White	KCPAA
Ron Hein	Hein Law Firm, Chartered
Henry Hengler	KTLA

AN ACT concerning crimes, criminal procedure and punishment; relating to moratorium of imposition of death sentences; creating a death penalty study commission and prescribing certain duties thereon.

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

Section 1. (a) No sentence imposition of a death shall be imposed or executed sentence pursuant to the laws of this state shall take place for two years from the effective date of this act. This prohibition shall apply to all cases pending on the effective date of this act and to all cases filed during the term of the prohibition.

(b) (1) A death penalty study commission is hereby created. Such commission shall study the laws relating to and the administration of that provide for the death penalty and for the administration of the death penalty in this state. Such commission shall study and make findings and recommendations with regard to regarding the following:

(A) Whether defendants who are charged with capital murder actually meet the statutory criteria for capital murder;

(B) what is the total cost to state and local governmental entities for capital murder cases;

(C) whether capital murder cases are handled similarly in all areas of the state, or does disparity exist;

(D) whether changes are needed in the laws or in the processing of capital murder cases to ensure that no innocent person is ever sentenced to death in this state; and

(E) whether race of the victim or of the defendant plays a role in charging and the disposition of capital murder cases.

(2) Membership of the commission shall consist of seven members and shall be as follows:

(A) Two members appointed by the Chief Justice of the Supreme Court;

(B) one member appointed by the Governor;

(C) one member appointed by the President of the Senate;

(D) one member appointed by the Minority Leader of the Senate;

(E) one member appointed by the Speaker of the House of Representatives;
and

(F) one member appointed by the Minority Leader of the House of Representatives.

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Attachment 1-1

(3) The commission shall elect a chairperson and vice-chairperson from among the members of the commission. The commission shall meet upon the call of the chairperson. A majority of members shall constitute a quorum.

(4) Members of the commission attending meetings of the commission shall be paid compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto.

(c) Such commission shall make a report that includes the findings of such study and any recommendations of such commission to the Kansas legislature on or prior to December 31, 2003.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

PUBLIC SOLUTIONS

DAN HERMES
2512 SW OSBORN ROAD
TOPEKA, KS 66614

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ASSOCIATION MANAGEMENT AND
LOBBYING SERVICES*

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E-MAIL: HERMES4@MINDSPRING.COM

LEGISLATIVE TESTIMONY

TO: Chairman John Vratil and Members of the Senate Judiciary Committee

DATE: February 3, 2003

SUBJECT: SB 27

Mr. Chairman and Members of the Committee, my name is Dan Hermes and I represent the Kansas Coordinators of Alcohol Safety Action Projects (KCASAP).

The Association was incorporated in 1981 and consists of member agencies that are primarily responsible for the evaluation, education, treatment or referral of DUI and other alcohol/drug related offenders. The organization promotes effective laws dealing with the drinking driver and underage drinking problems. The association encourages strict enforcement, swift and fair sentencing, and quality education and treatment for the offender.

Over the last year, the Association has been researching Alcohol and Drug Education Schools in Kansas and practices in other states. This research has led the KCASAP Association to recommend SB 27 as an advance in public policy for the State of Kansas. Subsequent to the revisions of the DUI laws several years ago, the education requirement for those that are convicted of driving under the influence has been limited to first time offenders. We now only have one shot at providing effective education for DUI offenders and requiring a minimum of ten hours of coursework and allowing the Secretary of SRS to approve programs in the state will provide a framework to increase the effectiveness of the courses in our state.

From the research the Association has done, ten hours of education is the minimum that is required in other states and most states require that the programs are approved for content and curriculum. If SB 27 moves forward and becomes law, members of KCASAP look forward to working with the Department of SRS to develop effective standards for approval of programs.

I thank the committee for its time and attention and would stand for any questions.

Senate Judiciary
Feb 3 2003
Attachment 2-1

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary Committee
February 3, 2003

Education Requirements for DUI Offenders

Division of Health Care Policy
Donna Doolin, Acting Director, Addiction and
Prevention Services

For additional information contact:
Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.3271
fax: 785.296.4685
www.srskansas.org

Senate Judiciary
Feb. 3, 2003
Attachment 3-1

**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

Senate Judiciary Committee
February 3, 2003

Senate Bill 27 - Education Requirements for DUI Offenders

Chairman Vratil and members of the Judiciary Committee, thank you for the opportunity to appear before you today. My name is Donna Doolin, and I am the Acting Director of Addiction and Prevention Services, a division of the Department of Social and Rehabilitation Services. I am here to testify on Senate Bill 27.

This bill would require people who are convicted of Driving Under the Influence (DUI) offenses to successfully complete an approved ten hour alcohol and drug safety action education program. Currently, there is a wide variety in the content and duration of alcohol and drug safety action education programs throughout the state of Kansas. Other states, such as Oklahoma and California, have adopted similar DUI education programs with the initial phases being ten hours of education for DUI offenders.

Senate Bill 27 further provides that the required alcohol and drug safety action education programs be approved by SRS. As the designated Single State Authority on alcohol, tobacco, and other drugs of abuse issues, SRS is the appropriate entity to ensure oversight and approval of these education programs. SRS already has the licensing authority for over 200 alcohol and drug treatment programs across the state. The education program would include SRS-approved videos and other classroom materials and presentations, as well as ensuring the competency of persons delivering the education program to DUI offenders.

One of the major focuses in any form of treatment an individual receives is education about their illness; this applies to illnesses ranging from cancer and heart disease to diabetes and alcohol or drug problems. Uniformity in education programs is especially important in order to ensure those attending alcohol and drug safety action education programs will be receiving similar kinds of information regarding the risks associated with psychoactive substance use, as well as available prevention, treatment and recovery resources.

SRS supports the increased level of alcohol and drug education programs for DUI offenders proposed in Senate Bill 27. Providing a higher level of education to DUI offenders about alcohol and drug safety will not only help offenders understand the consequences of their actions, but it will also help protect the citizens of Kansas.

This concludes my testimony. I am happy to stand for any questions from the Committee.

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 29, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for **SB 27** by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 27 is respectfully submitted to your committee.

SB 27 would require the Department of Social and Rehabilitation Services (SRS) to approve alcohol and drug safety action programs for people convicted of driving under the influence. Under current law, people convicted of driving under the influence for the first time must complete a drug or alcohol safety action program as part of their sentence. SB 27 would require the course to be at least ten hours long and be approved by SRS.

Estimated State Fiscal Effect				
	FY 2003 SGF	FY 2003 All Funds	FY 2004 SGF	FY 2004 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$73,581	\$73,581
FTE Pos.	--	--	--	2.0

SRS reports that there are approximately 200 alcohol and drug safety action programs in Kansas that would have to be approved under SB 27. SRS estimates that preparing the review procedures, conducting the certification reviews, and processing related documentation would require 2.0 additional FTE positions, a Program Consultant II and a Senior Administrative Assistant. The agency estimates that the cost of the additional staff would be \$65,291 and

The Honorable John Vratil, Chairperson

January 29, 2003

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associated operating expenditures would be \$8,290. All costs would be borne by the State General Fund. Any fiscal effect resulting from enactment of SB 27 is not included in *The FY 2004 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "Duane A. Goossen". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish at the end.

Duane A. Goossen
Director of the Budget

cc: Jerry Sloan/Amy Hyten, Judiciary
Jackie Aubert, SRS



State of Kansas

Office of Judicial Administration

Kansas Judicial Center

301 SW 10th

Topeka, Kansas 66612-1507

(785) 296-2256

February 3, 2003

**Testimony Regarding SB 27
Senate Judiciary Committee**

Kathy Porter

Office of Judicial Administration

I have received several e-mails from district judges questioning the need for the amendment included in SB 27. Some judges have noted that, while larger jurisdictions may have several providers competing for the programs, small jurisdictions may have only one service provider. In their opinion, extending the hours of the education programs and allowing the Department of Social and Rehabilitation Services regulatory authority to certify these programs, could create some unforeseen issues.

As an example, in the 30th Judicial District (Barber, Harper, Kingman, Pratt, and Sumner Counties), the current programs are eight hours long, and one provider holds sessions on a Saturday, so that an offender may attend without missing work. One or two providers break up the programs into several evening sessions. The concern is that a ten-hour program would not be realistic in one day. The two-hour increase could create more hardship for a defendant, with little appreciable benefit.

At a minimum, judges would like some guarantee that, if this legislation is enacted into law, there will be at least one approved program serving each judicial district, and that the fees charged will not be overly burdensome to offenders, who have already been assessed fines and the \$150 ADSAP evaluation fee. Judges would also like some assurance that, in the approval process, the Secretary of Social and Rehabilitation Services would look at those programs that are currently providing evaluation services, and would try to allow for some transition between the evaluation and treatment programs.

Thank you for your consideration of these issues.

KP:mr

Senate Judiciary

Feb 3, 2003

Attachment 5-1



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Testimony in Support of SB 35
Before the Senate Judiciary Committee
Kyle G. Smith
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
February 3, 2003

Chairman Vratil and Members of the Committee,

I appear in support of SB 35, which would address a growing and dangerous problem – criminals using body armor. I think most of us remember the vivid images of the Los Angeles bank robbery where the body armor clad suspects, with high-powered rifles were basically impervious to the handguns of the police. Fortunately we have not had such an incident in Kansas, but unfortunately, the problem is not isolated to just big cities on the coast. While not common, we have had cases in Kansas involving body armor and we have found vests while conducting narcotics search warrants.

SB 35 would address two problems; first the use of body armor while committing crimes and, in section 2, prohibit persons who have been convicted of a person felony from owning such armor. These appear to be reasonable and prudent limitations that would enhance public and officer safety. While such a law will not deter some criminals, it will others. And by prohibiting the possession by convicted felons, law enforcement will have a tool to intercede before the crimes occur.

We would like to suggest a friendly amendment. While section 2 prohibits possession, etc., of body armor by persons who have been convicted of crimes against a person, drug manufacturing and trafficking offenses are not classified as 'person' crimes. Since drug manufacturing and trafficking crimes are some of the most dangerous ones worked by officers we would suggest adding "*or felony violations of the controlled substances act*" at the end of the first sentence in section 2.

Thank you for your consideration and I would be happy to answer questions.

Senate Judiciary
Feb 3, 2003
Attachment 6-1

KANSAS

DIVISION OF THE BUDGET
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

January 31, 2003

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for **SB 35** by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 35 is respectfully submitted to your committee.

SB 35 would create two types of crime related to the use and possession of body armor. Under the bill, the use of body armor while committing a person felony would be classified as a severity level 5, person felony. This provision would not apply to law enforcement officers or security officers. The bill would also prohibit the possession, purchase, ownership, or use of body armor by a person who has been convicted of a person felony. This crime is classified in the bill as security level 8, person felony. The bill would authorize county sheriffs to grant exceptions to this provision if the sheriff determines that a person is likely to use body armor in a safe and lawful manner and has reasonable need for the protection provided by body armor. SB 35 would also authorize law enforcement agencies to issue body armor to persons in custody or to witnesses under the condition that the agencies would document the reasons for issuing the body armor and retain a copy of the document as an official record.

The Office of Attorney General states that passage of SB 35 could result in additional paperwork for county sheriffs and increase prosecution costs of criminal cases for the Office. However, the increases in those costs would be negligible. The Kansas Bureau of Investigation states that passage of SB 35 would have no fiscal effect on its budget.

The Kansas Sentencing Commission estimates that passage of SB 35 could possibly increase prison admissions by two to twelve per year from FY 2004 through FY 2013. Based on this estimate, the Kansas Department of Corrections predicts that the inmate population would be

Senate Judiciary

STATE CAPITOL BUILDING, ROOM 152-E, TOPEKA, KS 66612. *Feb 3, 2003*
Voice 785-296-2436 Fax 785-296-0231 <http://da.state>. Attachment 7-1

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Ronald R. Hein

Attorney-at-Law

Email: rhein@hwchtd.com

**Testimony re: SB 35
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Prairie Band Potawatomi Nation
February 3, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

The Prairie Band Potawatomi Nation is neutral or supportive with regards to SB 35, because we are not sure whether this legislation would impact our Tribal law enforcement officers. The exemption for law enforcement officers only includes state, county, or municipal law enforcement officers. However, federal law enforcement officers do not seem to be included, nor do Tribal law enforcement officers.

An argument could be made that the "security officer" exemption would cover Tribal law enforcement officers, although we are not sure if that is the intent of the language. If federal officers are included, our Tribal law enforcement officers who have Bureau of Indian Affairs authority could be included in there as well, but I see no exemption for federal officers in the bill as drafted.

I have attached a balloon amendment that would include Tribal law enforcement officers.

I would also call to the committee's attention that the Senate has passed legislation two years in a row, and this committee has just recently passed legislation (SB 9) a third time, that would add Tribal law enforcement officers to the list of defined law enforcement officers. The House has still not acted on that legislation.

If SB 9 passes, the amendment proposed would not be necessary.

I would urge the committee to adopt the balloon amendment and the bill if so amended..

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Senate Judiciary
Feb 3, 2003
Attachment 8-1

SENATE BILL No. 35

By Committee on Judiciary

1-21

8-2

9 AN ACT concerning crimes, criminal procedure and punishment; cre-
10 ating certain crimes involving use and possession of body armor and
11 prescribing penalties therefor.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) Criminal use of body armor is committing any offense
15 classified as a person felony while wearing body armor.

16 (b) The provisions of this section shall not apply to: (1) A uniformed
17 or properly identified state, county or city law enforcement officer, while
18 such officer is engaged in the performance of such officer's duty; or

19 (2) a security officer, while such officer is engaged in the performance
20 of such officer's duty.

21 (c) As used in this section: (1) "Body armor" means clothing or a
22 device designed or intended to protect a person's body or a portion of a
23 person's body from death or injury caused by a firearm; and

24 (2) "security officer" means a person lawfully employed to protect
25 another person or to protect the property of another person.

26 (d) Criminal use of body armor is a severity level 5, person felony.

27 (e) The provisions of this section shall be part of and supplemental
28 to the Kansas criminal code.

29 Sec. 2. (a) Criminal possession of body armor is possession, purchase,
30 ownership or use of body armor by a person who has been convicted of
31 an offense classified as a person felony.

32 (b) (1) The provisions of this section shall not apply to any person
33 who has been granted permission to possess, purchase, own or use body
34 armor as provided in this section.

35 (2) (A) A person who has been convicted of an offense classified as
36 a person felony whose employment, livelihood or safety is dependent on
37 such person's ability to possess, purchase, own or use body armor may
38 petition the county sheriff of the county in which such person resides for
39 written permission to possess, purchase, own or use body armor.

40 (B) The sheriff may grant a person who properly petitions the sheriff
41 under this subsection written permission to possess, purchase, own or use
42 body armor as provided in this section if the sheriff determines that the
43 petitioner is likely to use body armor in a safe and lawful manner and has

; or

(3) a tribal law enforcement officer, while such officer is engaged in the performance of such officer's duty.

MANNIES BONDING COMPANY

302 EAST SANTA FE • OLATHE • KANSAS • 66061

**TESTIMONY OF MANNY BARBARAN
SENATE JUDICIARY COMMITTEE
SENATE BILL NO. 35
February 3, 2003**

Dear Chairman Vratil and Honorable Members of the Senate Judiciary Committee:

Thank you for the opportunity to submit remarks on Senate Bill No. 35. I am a property bondsman and have been in the business for 34 years, operating in primarily in Wyandotte and Johnson counties. I appear before you on behalf of the Kansas Professional Sureties. Sureties, or bail bondsman, provide a valuable service to the judicial branch of government and to individuals involved in legal matters before the courts.

I want to express support Senate Bill No. 35 and would like to offer the attached amendment for your consideration.

Professional surety services include issuing and depositing the required forms for bond or appearance with the court and recovery of defendants for violations of court orders or bonds conditions. Professional sureties can get into a situation during the recovery of a defendant where their own safety comes into question. In these cases, the surety needs to wear the proper protective covering (or body armor) to ensure their own security and that of others. Therefore, we believe that an additional exemption for a professional surety is appropriate and necessary.

Thank you for your time this morning.

Senate Judiciary
Feb 3, 2003
Attachment *9-1*

SENATE BILL No. 35

By Committee on Judiciary

1-21

9 AN ACT concerning crimes, criminal procedure and punishment; cre-
10 ating certain crimes involving use and possession of body armor and
11 prescribing penalties therefor.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) Criminal use of body armor is committing any offense
15 classified as a person felony while wearing body armor.

16 (b) The provisions of this section shall not apply to: (1) A uniformed
17 or properly identified state, county or city law enforcement officer, while
18 such officer is engaged in the performance of such officer's duty; or

19 (2) a security officer, while such officer is engaged in the performance
20 of such officer's duty.

21 (c) As used in this section: (1) "Body armor" means clothing or a
22 device designed or intended to protect a person's body or a portion of a
23 person's body from death or injury caused by a firearm; and

24 (2) "security officer" means a person lawfully employed to protect
25 another person or to protect the property of another person.

26 (d) Criminal use of body armor is a severity level 5, person felony.

27 (e) The provisions of this section shall be part of and supplemental
28 to the Kansas criminal code.

29 Sec. 2. (a) Criminal possession of body armor is possession, purchase,
30 ownership or use of body armor by a person who has been convicted of
31 an offense classified as a person felony.

32 (b) (1) The provisions of this section shall not apply to any person
33 who has been granted permission to possess, purchase, own or use body
34 armor as provided in this section.

35 (2) (A) A person who has been convicted of an offense classified as
36 a person felony whose employment, livelihood or safety is dependent on
37 such person's ability to possess, purchase, own or use body armor may
38 petition the county sheriff of the county in which such person resides for
39 written permission to possess, purchase, own or use body armor.

40 (B) The sheriff may grant a person who properly petitions the sheriff
41 under this subsection written permission to possess, purchase, own or use
42 body armor as provided in this section if the sheriff determines that the
43 petitioner is likely to use body armor in a safe and lawful manner and has

(b)(3) a professional surety, while such professional surety is engaged in the performance of such professional surety's duty.

(c)(3) "professional surety" means person or entity authorized or appointed by the court to perform professional surety services for court ordered bail and appearance bonds.

(Barbaran Amendment)

9-2

Kathy Damron

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**Testimony Supporting SB 48
Presented on behalf of
Altria Group, Inc.
Before the
Senate Judiciary Committee
February 3, 2003**

Chairman Vratil and Members of the Committee:

My name is Kathy Damron, appearing before you this morning on behalf of Atria Group, Inc., the parent company of Philip Morris.

We are supporting Senate Bill 48 as an important step in protecting the historic Master Settlement Agreement between the states and tobacco companies. Under Kansas law a litigant can be required to post an appeal bond of at least 100% of the judgment. The proposal articulated in SB 48 would keep the present law and rules applicable but would limit the appeal bond for MSA signatories to \$25 million for any judgment in civil litigation.

The purpose of the bill is to protect the state's interest (and the interest of all other states) in receipt of its annual revenue from the MSA by ensuring that the MSA companies have the capacity to appeal potentially bankrupting civil judgments.

How much revenue does this represent to Kansas? According to the Kansas Division of Budget, these dollars are extremely significant:

FY 2000 Settlement Revenue	\$68 million
FY 2001 Settlement Revenue	\$52 million
FY 2002 Settlement Revenue	\$60 million
FY 2003 est. Settlement Revenue	\$57 million
FY 2004 est. Settlement Revenue	\$56 million

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These settlement dollars are having a tremendous impact on the daily lives of thousands of Kansans. They are being used to fund a variety of programs that otherwise would be reliant upon the state general fund to finance, competing with scarce resources for education, public safety, health care and other SGF programs. These MSA funded programs are important to Kansas. They are important to your constituents.

In considering this legislation, Kansas joins many other states where the proposed appeal bond limits have been enacted or are receiving strong consideration this year. Louisiana, Nevada, West Virginia and Oklahoma passed bills very similar to SB 48 last year. In other states where caps exist, the limits apply more broadly to virtually all defendants. Attached to my testimony is a chart of these states where limits exist.

SB 48, like the proposals enacted in the other states, offers no substantive protections to tobacco manufacturers; instead, the proposed bill merely ensures that a full appeal of a potentially ruinous judgment may occur before the financial soundness of the tobacco companies, and hence MSA payments, are threatened.

We respectfully ask that you give your support to SB 48.

ENACTED APPEAL BOND LEGISLATION**Tobacco Specific**

State	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Louisiana	6/25/2001	Master Settlement Agreement signatories only	\$50,000,000	Applies to all money judgments
Nevada	5/29/2001	All Master Settlement Agreement signatories	\$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	4/10/2001	All Master Settlement Agreement signatories	\$25,000,000	Applies to all forms of judgments in civil litigation
West Virginia	5/2/2001	All Master Settlement Agreement signatories	\$100,000,000 for all portions of a judgment other punitive damages; \$100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits

Non-Tobacco Specific

State	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Florida	5/9/2000	All litigants in class actions	\$100,000,000	Applies to punitive damages only
Georgia	3/30/2000	All litigants	\$25,000,000	Applies to punitive damages only
Indiana	3/14/2002	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	3/29/2000	All litigants	\$100,000,000	Applies to punitive damages portion of a judgment
Michigan	5/8/2002	All litigants	\$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi*	4/26/2001	All litigants	\$100,000,000	Applies to all litigation subject to court rule
North Carolina	4/5/2000	All litigants	\$25,000,000	Applies to all non-compensatory damages
Ohio	3/28/2002	All litigants	\$50,000,000	Applies to all forms of judgments in civil litigation
South Carolina	5/26/2000	All litigants	No bond required	Stays execution on civil judgments during appeal process
Virginia	3/10/2000	All litigants	\$25,000,000	Applies to punitive damages portion of a judgment

Notes

* Created by court rule rather than legislation.



Advance Alternatives

We advance alternatives by developing state policy that is family and child friendly.

CHILDREN'S INITIATIVES FUND GOVERNOR'S RECOMMENDATIONS

Program or Project	Gov. Rec. FY 2004
Health & Environment -- Health	
Healthy Start/Home Visitor	\$250,000
Infants & Toddlers Program	500,000
Smoking Prevention Grants	500,000
Total -- KDHE	1,250,000
Juvenile Justice Authority	
Juvenile Prevention Program Grants	5,414,487
Juvenile Graduated Sanctions Grants	3,585,513
Total -- JJA	9,000,000
Social & Rehabilitation Services	
Children's Mental Health Initiative	1,800,000
Family Centered System of Care	5,000,000
Therapeutic Preschool	1,000,000
Child Care Services	1,400,000
Community Services for Child Welfare	3,106,230
HealthWave	2,000,000
Medical Assistance	3,000,000
Smart Start Kansas	4,300,000
Family Preservation	2,243,770
Immunization Outreach	500,000
CMHC Children's Program Grants	2,000,000
School Violence Prevention	228,000
Children's Cabinet Accountability Fund	550,000
Total -- SRS	27,128,000
Department of Education	
Parent Education	2,500,000
Four-Year-Old At-Risk Programs	4,500,000
School Violence Prevention	500,000
Reading and Vision Research	300,000
General State Aid	1,225,000
Total -- Education	8,525,000
University of Kansas Medical Center	
TeleKid Health Care Link	250,000
Total -- KUMC	250,000
Total	\$46,153,000

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**Testimony re: SB 48
Senate Judiciary Committee
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
February 3, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

Senate Bill 48 would cap the appeal bond in cases involving tobacco companies that are signatories to the Master Settlement Agreement, which agreement delivers millions of dollars to Kansas every year.

The Master Settlement Agreement is vitally important to our state. It delivers millions of dollars in revenues, and will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions. Without minimizing those, it is the settlement monies that provide the reason the legislature should pass Senate Bill 48.

The ability of the tobacco companies to meet their obligations under the Master Settlement Agreement ultimately depends upon their financial health. If the companies become insolvent or are forced into bankruptcy, the tobacco companies could well be unable to meet their financial obligations to Kansas and every other state. It may seem far-fetched to worry about the financial health of tobacco companies, but the litigation onslaught they are facing presents a real risk.

Within the last several years, R.J. Reynolds and the other tobacco companies have faced gargantuan judgments. One class action in Florida resulted in a Verdict of \$145 billion. Two individual suits in California resulted in verdicts of \$28 billion and \$3 billion. These latter two verdicts were reduced by the trial judge, but the class action verdict in Florida was not.

In virtually every state, any defendant can appeal a judgment, but in most states if a defendant does not post a bond equal to the size of the judgment, the plaintiff can seize the defendant's assets even while a defendant is appealing. This means, for example, that a plaintiff could seize the bank accounts of a defendant, or its manufacturing facilities, or any property located anywhere that the plaintiff can find. This cou

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defendant out of business or into bankruptcy, even though they may have strong arguments on appeal.

With respect to tobacco companies, experience is showing that they are likely litigation targets and that some juries have awarded mammoth verdicts. In Kansas such a verdict would result, under our state's current law, in a requirement that the company post a bond equal to the amount of the judgment, plus interest and costs. The company may simply be unable to do that.

Already, 12 other states have confronted this issue, and passed limitations on appeal bonds. In eight of those states (Florida, North Carolina, Kentucky, Georgia, Virginia, Indiana, Ohio, and Michigan), the limits that were passed applied to any defendant, not just tobacco companies. In four other states (Nevada, West Virginia, Louisiana, and Oklahoma) the limits that were passed closely resemble Senate Bill 48, and apply only to tobacco companies.

Why choose one approach over the other? Frankly, if the legislature saw fit to pass a bond limitation bill that applied to all types of defendants, we would support that. Legislation introduced in 2001 in the House to accomplish that was supported by the Kansas Chamber of Commerce and Industry. Eight states thought that was the way to go. But a real issue for all of those states was the protection of their MSA monies, and four states decided to limit the bond only in cases involving MSA signatories. That is the approach taken here.

SB 48 solves the problem Kansas would face if the tobacco companies were hit with a large judgment in this state. It would require them to post a sensible bond, but not one that by itself could force them into bankruptcy. It would not change the substantive law in any way to help them. All it would do is let them pursue their appeal to the end. Under current law, if the defendant ultimately would lose and perhaps be driven out of business. Nothing in this bill changes that.

SB 48 addresses a specific problem in a narrow fashion. It follows the lead of 12 other states, each of whom has recognized that this could be a real problem. SB 48 hurts nobody, and protects the plaintiff while the case is on appeal, because it provides that if the tobacco companies are shown to be dissipating their assets the judge can require a higher bond.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.