

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Jeff Jack at 3:30 P.M. on March 7, 2005 in Room 313-S of the Capitol.

All members were present.

Representative Michael O'Neal - Excused
Representative Michael Peterson - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Stan Hazlett, Office of Judicial Disciplinary Administrator
Jeff Bottenberg, Kansas Sheriff's Association

The hearing on **SB 36 - the Supreme Court may require applicants to practice law to be fingerprinted and submit to a national criminal history record check**, was opened.

Stan Hazlett, Office of Judicial Disciplinary Administrator, explained that the proposed bill would allow the Kansas Supreme Court to require those applying for admissions to practice law in Kansas to submit a fingerprint and to a national criminal history record check. 26 other states have similar legislation. The bar applicant would be responsible for the fee of the background check therefore having on fiscal impact on the state. (Attachment 1)

Mr. Hazlett requested that subsection(b) be deleted from the bill. It would allow the Kansas Supreme Court to grant those who have graduated from the President's Law School in Wichita to apply to take the bar.

The hearing on **SB 36** was closed.

The hearing on **SB 39 - service of process fees charged by sheriff; single payment for same case**, was opened.

Senator Jay Emler, the sponsor of the bill, provided written testimony in support. (Attachment 2)

Jeff Bottenberg, Kansas Sheriff's Association, expressed the Associations support for the bill.

The hearing on **SB 39** was closed.

The hearing on **SB 5 - trade secret defined as in uniform trade secrets act**, was opened.

Representative Kinzer served on the 2004 Interim Committee on Local Government which studied Kansas Open Records Act. During that study it was found that the definition of "trade secrets" was in various state statutes and many were different. Therefore, the purpose of the bill is to establish a uniform definition of "trade secrets".

The hearing on **SB 5** was closed.

The committee meeting adjourned at 4:00 p.m. The next meeting was scheduled for March 8, 2005 at 3:30 p.m. in room 313-S.

STATE OF KANSAS

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OFFICE OF
THE DISCIPLINARY ADMINISTRATOR

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 36:
An Act concerning the admission to practice law; requirements;
fingerprints and criminal history

Bill Text: The text of the bill is attached.

Bill Summary: The state board of law examiners, appointed by the Supreme Court, already conducts a general background check in connection with the Court's determination of an applicant's character and fitness to practice law. See Supreme Court Rule 704, 204 Kan. Ct. R. 594. However, until now that background check has been based primarily on information furnished by the applicant on an application to take the bar examination.

The Disciplinary Administrator of the Kansas Supreme Court, who initially reviews every application for the board of law examiners, requested permission to take fingerprints, pursuant to the authority already granted by the Kansas Supreme Court in Supreme Court Rule 704, (204 Kan. Ct. R. 594), in order to: 1) provide a positive means of identification of applicants, should that be necessary; and, 2) to conduct a criminal history background check on all applicants to verify the information provided by the applicants. The Supreme Court has authorized the Disciplinary Administrator's Office to proceed to secure the necessary legislation.

Specific legislation is necessary because Public Law 92-544, and 28 C.F.R. 20.33 permits the exchange of federal criminal history information with state and local governments for purposes of employment and licensing if authorized by state statute. Since Kansas does not presently have a state statute authorizing the request of the Federal Bureau of Investigation for criminal history information for licensing of prospective lawyers, specific legislation to that effect is required. This legislative proposal is submitted to satisfy that requirement.

Presently, pursuant to K.S.A. 22-4701, *et seq.*, we can request the Kansas Bureau of Investigation to provide a report of Kansas arrests and if the applicant has such a record then the KBI can get further information from the FBI about arrests and convictions elsewhere. However, if the applicant does not have a Kansas arrest record, then the KBI cannot get the further information from the FBI. A separate FBI report is necessary for those applicants who apply for admission to practice law from outside the state. Over the past six years applicants from outside the state total from 43% to 51% of all applicants. In February the Kansas Supreme Court adopted a reciprocity rule which will allow out-of-state attorneys to apply for admission to the Kansas Bar if the attorney is from a state that permits mutuality of admission without examination for members of the Kansas Bar. The adoption of this rule could result in several hundred additional out-of-state applicants.

The proposed legislation will have no material effect on any state agency operations. The cost of the background check will be borne by the applicants. The policy implications and background have been stated in the bill summary. This bill has no material impact on other state agencies. The Kansas Bureau of Investigation advises that these criminal history background requests can and will be handled in the ordinary course of business.

The bill I introduced in the Senate Judiciary Committee is set out in Section 1 of the bill which is attached. Senator Schmidt proposed, and the Senate Judiciary Committee adopted, Section 2 of the bill. Section 2(a) contains the language which presently exists in K.S.A. 7-103 which states that the Supreme Court may make whatever rules it deems necessary for the examinations of applicants for admission to take the bar. Subsection (b) is completely unrelated to my intent in introducing this bill. That section suggests to the Kansas Supreme Court that it may allow people who graduated from the President's Law School in Wichita to apply to take the bar in the State of Kansas. Subsection (b) is really not necessary because those individuals could apply to the bar whether that section is included or not.

SENATE BILL No. 36

By Committee on Judiciary

1-13

10 AN ACT concerning the admission to practice law; requirements; fin-
11 gerprints and criminal history; *amending K.S.A. 7-103 and repeal-*
12 *ing the existing section.*

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

15 Section 1. (a) The supreme court may require an applicant for ad-
16 mission to practice law in this state to be fingerprinted and submit to a
17 national criminal history record check. The fingerprints shall be used to
18 identify the applicant and to determine whether the applicant has a record
19 of criminal arrests and convictions in this state or other jurisdictions. The
20 supreme court and the state board of law examiners are authorized to
21 submit the fingerprints to the Kansas bureau of investigation and the
22 federal bureau of investigation for a state and national criminal history
23 record check. The state board of law examiners and the supreme court
24 may use the information obtained from fingerprinting and the applicant's
25 criminal history only for purposes of verifying the identification of any
26 applicant and in the official determination of character and fitness of the
27 applicant for admission to practice law in this state.

28 (b) Local and state law enforcement officers and agencies shall assist
29 the supreme court in taking and processing of fingerprints of applicants
30 seeking admission to practice law in this state and shall release all records
31 of an applicant's arrests and convictions to the supreme court and the
32 state board of law examiners.

33 *Sec. 2. K.S.A. 7-103 is hereby amended to read as follows: 7-*
34 *103. (a) The supreme court of this state may make such rules as it*
35 *may deem necessary for the examination of applicants for admission*
36 *to the bar of this state and for the discipline and disbarment of*
37 *attorneys.*

38 (b) *The supreme court of this state may allow persons who have been*
39 *granted and hold a juris doctorate degree or bachelor of laws degree from*
40 *the president's law school to apply seeking admission to the bar of this*
41 *state. Such applicants shall satisfy all other qualifications and examina-*
42 *tions as established by supreme court rule.*

43 *Sec. 3. K.S.A. 7-103 is hereby repealed.*

SB 36—Am.

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1 Sec. ~~2~~ 4. This act shall take effect and be in force from and after its
2 publication in the statute book.

**House Judiciary Committee
March 7, 2005
Senate Bill 39**

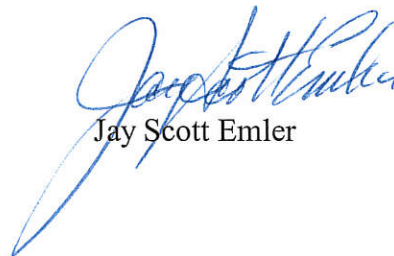
Testimony of Jay Scott Emler

Mr. Chairman and members of the House Judiciary Committee, thank you for the opportunity to appear in front of you today.

This bill came about as a result of an experience in my law practice when I had requested service of subpoenas on two individuals for a trial. Both individuals were to be served at the same address. I made out one check for \$10, which was the total fee for two subpoenas at \$5 each. The day before trial, I received the subpoenas and the check back because the Sheriff's office wanted two checks instead of one. I checked with other colleagues and in other communities and such fees are handled in different ways. The bill would authorize one check or more to be acceptable, at the option of the person writing the check.

This has been a brief review of my concerns. I will be happy to stand for questions.

Respectfully submitted,



Jay Scott Emler