

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 23, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairman Vratil opened the meeting and asked the Committee to consider **SB 112** for final action.

**Final Action:**

**SB 112 Materialman's liens; priority of claims; property under construction**

Chairman Vratil passed out a proposed balloon amendment from the Kansas Bankers Association and Heartland Community Bankers Association. (Attachment 1) The Chair announced that all interested parties were in agreement on the amendment except for the Associated General Contractors who were not in agreement with the amendments. The Chairman stated he believed all the concerns expressed by Committee members at the hearing of the bill were addressed in the amendment. A motion was made to approve the proposed amendment. Senator Umbarger moved, seconded by Senator Bruce, and the motion carried. A motion to recommend the bill favorably as amended was made. Senator Bruce moved, seconded by Senator Umbarger, and the motion carried.

Chairman Vratil asked Senator Bruce to give the Sub-Committee Report on five bills. Senator Bruce stated that the Sub-Committee recommended that **SB 145**, **SB 146**, and **SB 148** be passed out of Committee without amendment. (Attachment 2)

Senator Bruce provided a balloon amendment on **SB 180** which would allow law enforcement to use the preliminary breath tests, and the results would be admissible in the criminal trial of a minor. (Attachment 3) The amendment reflects that there is no waiting period for a preliminary breath test to be given. Currently, law enforcement has to detain a person 15 minutes before administering the test, in order to get a deep lung air alcohol level reading, and not a breath alcohol level reading. Because it is a minor, any alcohol is a crime, whether it is in their lungs or on their breath, and this change is reflected in the amendment. The amendment also would allow the results of the test or the refusal of a person to take the test to be admissible in court in any criminal action.

Senator Bruce provided a balloon amendment on **SB 117**. (Attachment 4) The amendment would require the sheriff to notify a licensed child care facility or any school property of an offender residing within 1,000 feet of such facility. The amendment would allow the sheriff to collect a fee up to \$50, to be paid by the offender, in order for the sheriff to comply with the notification. Additionally, in section (1) the "offender" definition was changed to mean any person who has been convicted of any of the listed acts, no matter the date of occurrence of the crime or the date of conviction. The current law limits offenders registering that were convicted since 1994. Senator Bruce indicated that KBI had records back to 1980 on offenders, and it would not be a problem with that change.

Chairman Vratil asked the Committee to consider final action on **SCR 1606**.

**SCR 1606 Constitutional amendment to have the supreme court justices appointments subject to consent by the Senate**

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 23, 2005, in Room 123-S of the Capitol.

Senator Schmidt requested that an amendment to the bill be made. (Attachment 5) The proposed amendment would put in place a mechanism that may potentially minimize the selection process to the extent possible. The resolution as written offers that if the Senate declines to consent to a nominee, the nominating commission must reconvene and send up three more names. The proposed amendment would offer that in the event that the Senate turns down an appointee, the governor has the opportunity to send the Senate a second name from the original three appointees. If the governor chooses not to do that, then the commission would reconvene. A motion was made to accept the amendment. Senator Schmidt moved, seconded by Senator Donovan, and the motion carried. A motion was made to recommend the Senate Concurrent Resolution favorably as amended. Senator Schmidt moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider final action on SB 145.

**Final Action:**

**SB 145 Public court records filed on and after July 1, 2005 shall have any references to individual's social security number removed or rendered unreadable**

A motion was made to recommend the bill favorably. Senator Journey moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider final action on SB 146.

**Final Action:**

**SB 146 Increasing the compensation paid to chairpersons of medical malpractice screening panels**

A motion was made to recommend the bill favorably. Senator Schmidt moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider final action on SB 148.

**Final Action:**

**SB 148 Striking 5-year limitation on increase in repeat DUI penalties**

There was a motion made by Senator Journey to strike on page two, lines eight and nine in their entirety, and replace the comma with a period at the end of line seven. There was no second to the motion. A motion was made to recommend the bill favorably. Senator Goodwin moved, seconded by Senator Schmidt, and the motion carried.

Chairman Vratil asked the Committee to consider final action on SB 180.

**Final Action:**

**SB 180 Preliminary screening tests for alcohol consumption by minors; admissible into evidence**

Chairman Vratil noted that there were some minor technical changes that needed to be made to the amendment. A motion was made to accept the proposed amendment from the Sub-Committee and make the technical changes necessary. Senator Bruce moved, seconded by Senator Donovan, and the motion carried. There was a motion to recommend the bill favorably as amended. Senator Goodwin moved, seconded by Senator O'Connor, and the motion carried.

Chairman Vratil asked the Committee to consider final action on SB 117.

**Final Action:**

**SB 117 If an offender resides within 1,000 feet of any licensed child care facility or any school, sheriff shall notify such facility or school**

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 23, 2005, in Room 123-S of the Capitol.

A motion was made to accept the balloon amendment recommended by the Sub-Committee. Senator Goodwin moved, seconded by Senator O'Connor, and the motion carried. A second amendment was proposed to change on page 1, lines 17-19, to make the phrase "Offender" means "any person who has been convicted of any of the following acts since 1980". Senator O'Connor moved, seconded by Senator Haley, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator O'Connor moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 144**.

**SB 144 Dram shop law; liquor licensee liability for minors and incapacitated persons; social host liability for minors**

Chairman Vratil handed out a balloon amendment on the bill that removed all the dram shop language, making the bill specifically limited to civil recovery for social hosting, limited to minors consuming alcohol. (Attachment 6) There was a motion to accept the balloon amendment. Senator O'Connor moved, seconded by Senator Donovan, and the motion carried. A motion was made to recommend the bill favorably as amended. Senator O'Connor moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 1, 2005.



Submitted by  
CHAIRMAN Vratil

SENATE BILL No. 112

By Committee on Judiciary

1-26

9 AN ACT concerning materialman's liens; relating to determining priority  
10 of claims against property under construction; amending K.S.A. 60-  
11 1101, 60-1106 and 60-1110 and K.S.A. 2004 Supp. 60-1103b and re-  
12 pealing the existing sections.

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

15 Section 1. K.S.A. 60-1101 is hereby amended to read as follows: 60-  
16 1101. Any person furnishing labor, equipment, material, or supplies used  
17 or consumed for the improvement of real property, under a contract with  
18 the owner, ~~an owner contractor~~ or with the trustee, agent or spouse of  
19 the owner, shall have a lien upon the property for the labor, equipment,  
20 material or supplies ~~visibly~~ furnished at the site of the property subject  
21 to the lien, and for the cost of transporting the same; ~~however, a notice~~  
22 ~~of intent to perform, if required pursuant to K.S.A. 60-1103b, and amend-~~  
23 ~~ments thereto, must have been filed as provided by that section.~~ The lien  
24 shall be preferred to all other liens or encumbrances which are subse-  
25 quent to the commencement of the ~~visible~~ furnishing of such labor,  
26 equipment, material or supplies *by such claimant* at the site of the prop-  
27 erty subject to the lien. When two or more such contracts are entered  
28 into applicable to the same improvement, the liens of all claimants shall  
29 be similarly preferred to the date of the earliest unsatisfied lien of any of  
30 them, ~~as long as such earlier unsatisfied lien remains unsatisfied. If an~~  
31 ~~earlier unsatisfied lien is paid in full, the preference date for all claimants~~  
32 ~~shall be the date of the next earliest unsatisfied lien. The placement of a~~  
33 ~~sign or survey stakes at the site shall not constitute the "visible furnishing"~~  
34 ~~of labor, equipment, material or supplies.~~

35 Sec. 2. K.S.A. 2004 Supp. 60-1103b is hereby amended to read as  
36 follows: 60-1103b. (a) As used in this section, "new residential property"  
37 means a new structure which is constructed for use as a residence and  
38 which is not used or intended for use as a residence for more than two  
39 families or for commercial purposes. "New residential property" does not  
40 include any improvement of a preexisting structure or construction of any  
41 addition, garage or outbuilding appurtenant to a preexisting structure.

42 (b) A lien for the furnishing of labor, equipment, materials or supplies  
43 for the construction of new residential property may be claimed pursuant

or otherwise discharged  
commencement

1 to K.S.A. 60-1101 or 60-1103, and amendments thereto, after the passage  
 2 of title to such new residential property to a good faith purchaser for  
 3 value only if the claimant has filed a notice of intent to perform prior to  
 4 the recording of the deed effecting passage of title to such new residential  
 5 property. Such notice shall be filed in the office of the clerk of the district  
 6 court of the county where the property is located.

7 (c) The notice of intent to perform and release thereof provided for  
 8 in this section, to be effective, shall contain substantially the following  
 9 statement, whichever is applicable:

10 NOTICE OF INTENT TO PERFORM

11 "I \_\_\_\_\_  
 12 (name of supplier, subcontractor or contractor)  
 13 \_\_\_\_\_  
 14 (address of supplier, subcontractor or contractor)  
 15 do hereby give public notice that I am a supplier, subcontractor or contractor or other  
 16 person providing materials or labor on property owned by \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 (name of property owner)

19 and having the legal description as follows: \_\_\_\_\_"

20 RELEASE OF NOTICE OF INTENT TO PERFORM

21 NO. \_\_\_\_\_ AND WAIVER OF LIEN

22 "I \_\_\_\_\_  
 23 (name of supplier, subcontractor or contractor)  
 24 of \_\_\_\_\_  
 25 (address of supplier, subcontractor or contractor)  
 26 do hereby acknowledge that I filed notice of intent to perform no. \_\_\_\_\_ covering  
 27 property owned by \_\_\_\_\_  
 28 \_\_\_\_\_  
 29 (name of property owner)

30 and having the legal description as follows: \_\_\_\_\_

31 In consideration of the sum of \$\_\_\_\_\_, the receipt of which is hereby ac-  
 32 knowledged, I hereby direct the clerk of the district court of \_\_\_\_\_, Kansas  
 33 to release the subject notice of intent to perform and do hereby waive and relinquish any  
 34 statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the  
 35 above-described real estate under the statutes of the state of Kansas."

36 (d) When any claimant who has filed a notice of intent to perform  
 37 has been paid in full, such claimant shall be required to file in the office  
 38 in which the notice of intent to perform was filed, and to pay any requisite  
 39 filing fee, a release of such notice and waiver of lien which shall be exe-  
 40 cuted by the claimant, shall identify the property as set forth in the notice  
 41 of intent to perform, and state that it is the intention of the claimant to  
 42 waive or relinquish any statutory right to a lien for the furnishing of labor  
 43 or material to the property. Upon such filing, the notice of intent to

or otherwise discharged

Submitted by  
Senator Bruce

To: Senator Vratil, Chairman  
Senate Judiciary Committee

From: Senator Bruce, Judiciary Subcommittee Chairman, Senator O'Conner and Senator Betts,  
members

Date: February 22, 2005

Re: Subcommittee recommendations on SB 145, SB 146, SB 148, SB 180 and SB 117

The subcommittee considered the following bills:

**SB 145** - Public court records filed on and after July 1, 2005 shall have any references to individual's social security number removed or rendered unreadable.

Proponent: Senator Barbara P. Allen

BE PASSED

**SB 146** - Increasing the compensation paid to chairpersons of medical malpractice screening panels.

Proponent: Judge Lorentz (written testimony)

BE PASSED

**SB 148** - Striking 5-year limitation on increase in repeat DUI penalties.

Proponent: Dan Hermes

BE PASSED

**SB 180** - Preliminary screening tests for alcohol consumption by minors; admissible into evidence.

Proponent: Chief of Police Dan Givens

BE PASSED AS AMENDED (See balloon)

**SB 117** - If an offender resides within 1,000 feet of any licensed child care facility or any school, sheriff shall notify such facility or school.

Proponent: Christina Hankinson

BE PASSED AS AMENDED (See balloon)

Senate Judiciary

2-23-05

Attachment 2

**SENATE BILL No. 180**

By Committee on Judiciary

2-2

9 AN ACT concerning preliminary screening tests for alcohol use; amend-  
10 ing K.S.A. 8-1012, 32-1138 and 65-1,107 and K.S.A. 2004 Supp. 41-  
11 727 and repealing the existing sections.

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

14 Section 1. K.S.A. 8-1012 is hereby amended to read as follows: 8-  
15 1012. A law enforcement officer may request a person who is operating  
16 or attempting to operate a vehicle within this state to submit to a prelim-  
17 inary screening test of the person's breath to determine the alcohol con-  
18 centration of the person's breath if the officer has reasonable grounds to  
19 believe that the person: (a) Has alcohol in the person's body; (b) has  
20 committed a traffic infraction; or (c) has been involved in a vehicle acci-  
21 dent or collision. At the time the test is requested, the person shall be  
22 given oral notice that: (1) There is no right to consult with an attorney  
23 regarding whether to submit to testing; (2) refusal to submit to testing is  
24 a traffic infraction; and (3) further testing may be required after the pre-  
25 liminary screening test. Failure to provide the notice shall not be an issue  
26 or defense in any action. The law enforcement officer then shall request  
27 the person to submit to the test. Refusal to take and complete the test as  
28 requested is a traffic infraction. If the person submits to the test, the  
29 results shall be used for the purpose of assisting law enforcement officers  
30 in determining whether an arrest should be made and whether to request  
31 the tests authorized by K.S.A. 8-1001 and amendments thereto. A law  
32 enforcement officer may arrest a person based in whole or in part upon  
33 the results of a preliminary screening test. Such results shall not be ad-  
34 missible in any civil or criminal action *concerning the operation of or*  
35 *attempted operation of a vehicle* except to aid the court or hearing officer  
36 in determining a challenge to the validity of the arrest or the validity of  
37 the request to submit to a test pursuant to K.S.A. 8-1001 and amendments  
38 thereto. Following the preliminary screening test, additional tests may be  
39 requested pursuant to K.S.A. 8-1001 and amendments thereto.

40 Sec. 2. K.S.A. 32-1138 is hereby amended to read as follows: 32-  
41 1138. A law enforcement officer may request a person who is operating  
42 or attempting to operate a vessel within this state to submit to a prelim-  
43 inary screening test of the person's breath to determine the alcohol con-

PROPOSED AMENDMENT  
JUDICIARY SUBCOMMITTEE  
February 22, 2005

Submitted by  
SENATOR BRUCE

Senate Judiciary  
2-23-05  
Attachment 3



3-2

1 following:

2 (A) Perform 40 hours of public service; or

3 (B) attend and satisfactorily complete a suitable educational or train-  
4 ing program dealing with the effects of alcohol or other chemical sub-  
5 stances when ingested by humans; and

6 (2) upon a first conviction of a violation of this section, the court shall  
7 order the division of vehicles to suspend the driving privilege of such  
8 offender for 30 days. Upon receipt of the court order, the division shall  
9 notify the violator and suspend the driving privileges of the violator for  
10 30 days whether or not that person has a driver's license.

11 (3) Upon a second conviction of a violation of this section, the court  
12 shall order the division of vehicles to suspend the driving privilege of such  
13 offender for 90 days. Upon receipt of the court order, the division shall  
14 notify the violator and suspend the driving privileges of the violator for  
15 90 days whether or not that person has a driver's license.

16 (4) Upon a third or subsequent conviction of a violation of this sec-  
17 tion, the court shall order the division of vehicles to suspend the driving  
18 privilege of such offender for one year. Upon receipt of the court order,  
19 the division shall notify the violator and suspend the driving privileges of  
20 the violator for one year whether or not that person has a driver's license.

21 (e) This section shall not apply to the possession and consumption of  
22 cereal malt beverage by a person under the legal age for consumption of  
23 cereal malt beverage when such possession and consumption is permitted  
24 and supervised, and such beverage is furnished, by the person's parent  
25 or legal guardian.

26 (f) Any city ordinance or county resolution prohibiting the acts pro-  
27 hibited by this section shall provide a minimum penalty which is not less  
28 than the minimum penalty prescribed by this section.

29 (g) *A law enforcement officer may request a person under 21 years  
30 of age submit to a preliminary screening test of the person's breath to  
31 determine if alcohol has been consumed by such person if the officer has  
32 reasonable grounds to believe that the person has alcohol in the person's  
33 body. If the person submits to the test, the results shall be used for the  
34 purpose of assisting law enforcement officers in determining whether an  
35 arrest should be made for violation of this section. A law enforcement  
36 officer may arrest a person based in whole or in part upon the results of  
37 a preliminary screening test. Such results shall be admissible in court in  
38 any criminal action, but are not per se proof that the person has violated  
39 this section. The person may present to the court evidence to establish the  
40 positive preliminary screening test was not the result of a violation of this  
41 section.*

42 (h) This section shall be part of and supplemental to the Kansas liquor  
43 control act.

No waiting period shall apply to the use of a preliminary breath test under this subsection. or a refusal to submit to a preliminary breath test

SENATE BILL No. 117

By Senator Brownlee

1-26

PROPOSED AMENDMENT  
JUDICIARY SUBCOMMITTEE  
February 22, 2005

Senate Judiciary  
2-23-05  
Attachment 4

Submitted by  
SENATOR BRUCE

9 AN ACT concerning criminal procedure; relating to offender registra-  
10 tion; amending K.S.A. 2004 Supp. 22-4902, 22-4909 and 22-4912 and  
11 repealing the existing sections.  
12

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

14 Section. 1. K.S.A. 2004 Supp. 22-4902 is hereby amended to read as  
15 follows: 22-4902. As used in this act, unless the context otherwise  
16 requires:

17 (a) "Offender" means *any person who has been convicted of any of*  
18 *the following acts, no matter the date of occurrence of the crime or the*  
19 *date of conviction:* (1) A sex offender as defined in subsection (b);

20 (2) a violent offender as defined in subsection (d);

21 (3) a sexually violent predator as defined in subsection (f);

22 (4) any person who, on and after the effective date of this act, is  
23 convicted of any of the following crimes when the victim is less than 18  
24 years of age:

25 (A) Kidnapping as defined in K.S.A. 21-3420 and amendments  
26 thereto, except by a parent;

27 (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amend-  
28 ments thereto; or

29 (C) criminal restraint as defined in K.S.A. 21-3424 and amendments  
30 thereto, except by a parent;

31 (5) any person convicted of any of the following criminal sexual con-  
32 duct if one of the parties involved is less than 18 years of age:

33 (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

34 (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-  
35 3505, and amendments thereto;

36 (C) promoting prostitution as defined by K.S.A. 21-3513, and amend-  
37 ments thereto;

38 (D) patronizing a prostitute as defined by K.S.A. 21-3515, and  
39 amendments thereto;

40 (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and  
41 amendments thereto; or

42 (F) unlawful sexual relations as defined by K.S.A. 21-3520, and  
43 amendments thereto;

4-2

1 (h) "Aggravated offenses" means engaging in sexual acts involving  
2 penetration with victims of any age through the use of force or the threat  
3 of serious violence, or engaging in sexual acts involving penetration with  
4 victims less than 14 years of age, and includes the following offenses:

5 (1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of  
6 K.S.A. 21-3502, and amendments thereto;

7 (2) aggravated criminal sodomy as defined in subsection (a)(1) and  
8 subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

9 (3) any attempt, conspiracy or criminal solicitation, as defined in  
10 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an of-  
11 fense defined in this subsection.

12 (i) "Institution of higher education" means any post-secondary school  
13 under the supervision of the Kansas board of regents.

14 Sec. 2. K.S.A. 2004 Supp. 22-4909 is hereby amended to read as  
15 follows: 22-4909. (a) The statements or any other information required  
16 by ~~this~~ the Kansas offender registration act shall be open to inspection by  
17 the public at the sheriff's office, at the headquarters of the Kansas bureau  
18 of investigation and on any internet website sponsored or created by a  
19 sheriff's department or the Kansas bureau of investigation that contains  
20 such statements or information, and specifically are subject to the pro-  
21 visions of the Kansas open records act, K.S.A. 45-215 *et seq.*, and amend-  
22 ments thereto, except that the name, address, telephone number, or any  
23 other information which specifically and individually identifies the victim  
24 of any offender required to register as provided in this act shall not be  
25 disclosed other than to law enforcement agencies.

26 (b) (1) *If an offender resides within 1,000 feet of any licensed child  
27 care facility or any school property upon which is located a structure used  
28 by a unified school district or an accredited nonpublic school for student  
29 instruction or attendance or extracurricular activities of pupils enrolled  
30 in kindergarten or any of the grades one through 12, the sheriff of the  
31 county in which the facility or school is located shall communicate in  
32 writing to the administrator of such facility or school the following infor-  
33 mation concerning such offender: Name; date of birth; offense or offenses  
34 committed, date of conviction or convictions obtained; city or county of  
35 conviction or convictions obtained; sex and age of victim; current address;  
36 identifying characteristics such as race, skin tone, sex, age, hair and eye  
37 color, scars, tattoos and blood type; occupation, name of employer and  
38 place of employment; drivers license and vehicle information; and a  
39 photograph.*

40 (2) *The sheriff shall collect a fee not to exceed \$50 from the offender  
41 to cover the costs of implementing this subsection. The fee shall be set by  
42 the board of county commissioners by resolution. Such fee shall be de-  
43 posited in the county general fund.*

may

who meets the requirements of paragraph (1)

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until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30 day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, ~~the~~ supreme court nominating commission shall submit to the governor three additional names possessing the qualifications of office and such nominations shall be considered in the same procedure as provided in this article. The same nomination, appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be nominated ~~again~~ for the same vacancy. If the senate fails to vote on an appointment within the 30 day time limitation, the senate shall be deemed to have given consent to such appointment.

Submitted  
by  
SENATOR Derek  
Schmidt

Proposed Amnt.  
to  
SCR 1606

Senate Judiciary  
2-23-05  
Attachment 5

or appointed

(e) (d) Each justice of the supreme court appointed pursuant to provisions of subsection (a) or (b) of this section and consented to pursuant to the provisions of subsection (c) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his such justice's term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to ~~succeed himself~~ be retained in office. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his such justice's term of office. If such declaration is filed, his such justice's name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall \_\_\_\_\_  
(Here insert name of justice.)  
\_\_\_\_\_  
(Here insert the title of the court.)  
be retained in office?"

If a majority of those voting on the question vote against retaining him such justice in office, the position or office which he such

the governor may appoint another of the three persons whose names were submitted to the governor pursuant to subsection (a) and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. If the governor fails to make such subsequent appointment within 15 days after the senate vote on the previous appointee or if all three persons whose names were submitted to the governor pursuant to subsection (a) have been considered by, but did not receive the consent of, the senate, then

13

SENATE BILL No. 144

By Committee on Judiciary

I-31

Proposed amendment  
February 17, 2005

Senate Judiciary  
2-23-05  
Attachment 6

9 AN ACT concerning civil procedure; relating to civil liability for certain  
10 actions involving alcoholic beverages ~~[amending K.S.A. 41-715 and re-~~  
11 ~~pealing the existing section].~~

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

13 New Section 1. (a) ~~[(1) An aggrieved party shall have a cause of action~~  
14 ~~against a licensee for selling or serving alcohol to an incapacitated person~~  
15 ~~in violation of K.S.A. 41-715, and amendments thereto, or furnishing al-~~  
16 ~~cohol or cereal malt beverage to a minor in violation of K.S.A. 21-3610,~~  
17 ~~and amendments thereto, if a jury or court finds the following: (A) That~~  
18 ~~alcoholic liquor or cereal malt beverage was consumed by the minor or~~  
19 ~~incapacitated person and sold by the licensee on the licensed premises~~  
20 ~~of such licensee; (B) the consumption of such alcoholic liquor or cereal~~  
21 ~~malt beverage was a proximate cause of the damages sustained by the~~  
22 ~~aggrieved party; and (C) the damages were a foreseeable consequence of~~  
23 ~~such negligent service of alcoholic liquor or cereal malt beverage by the~~  
24 ~~licensee.~~

25 ~~[(2) An aggrieved party shall have a cause of action against a person~~  
26 ~~who violates K.S.A. 2004 Supp. 21-3610c, and amendments thereto, if a~~ is convicted of violating  
27 ~~jury or court finds the following: (A) That alcoholic liquor or cereal malt~~  
28 ~~beverage was possessed or consumed by the minor and such possession~~  
29 ~~or consumption occurred in such person's residence or on any land, build-~~  
30 ~~ing structure or room owned, occupied or procured by such person; (B)~~  
31 ~~the consumption of such alcoholic liquor or cereal malt beverage was a~~  
32 ~~proximate cause of the damages sustained by the aggrieved party; and (C)~~  
33 ~~the damages were a foreseeable consequence of violating K.S.A. 2004~~ the person's conviction of  
34 ~~Supp. 21-3610c, and amendments thereto.~~

35 (b) In any action thereon, evidence of acts or conduct by the ~~licensee~~  
36 ~~or~~ person in violation of these statutes may be admissible. Any claim  
37 ~~under this section shall survive death for purposes of K.S.A. 60-1801, and~~  
38 ~~amendments thereto, and may be maintained in a wrongful death action~~  
39 ~~under K.S.A. 60-1901, and amendments thereto.~~

40 (c) Any claim under subsection (a) shall be subject to and determined  
41 ~~under K.S.A. 60-258a, and amendments thereto.~~

42 (d) ~~[Blood alcohol content obtained at a different time than the point~~  
43 ~~]~~

6-2

1 ~~when the alcoholic liquor or cereal malt beverage was served and evi-~~  
2 ~~dence that the incapacitated person was furnished such alcoholic liquor~~  
3 ~~or cereal malt beverage without additional evidence that the licensee~~  
4 ~~acted knowingly or intentionally shall not constitute prima facie evidence~~  
5 ~~of liability under this section.~~

6 (e) In any claim under subsection (a) for breach of the duties imposed  
7 by K.S.A. 21-3610 or 21-3610c, and amendments thereto, evidence of the  
8 defenses codified in subsection (d) of K.S.A. 21-3610, and amendments  
9 thereto, as applicable, shall be admissible for the purpose of determining  
10 comparative negligence under K.S.A. 60-258a, and amendments thereto.

11 (f) As used in this section:

12 (1) "Aggrieved party" means a person who sustains damages as a con-  
13 sequence of the acts or conduct of a minor ~~or incapacitated person, as~~  
14 ~~applicable~~ but does not include: (A) Such minor ~~or incapacitated person~~ or  
15 (B) ~~any person who aided or abetted in the furnishing or sale of the~~  
16 ~~alcoholic liquor or cereal malt beverages to the minor or incapacitated~~  
17 ~~person, or (C) any person who aided or abetted in the procurement of a~~  
18 ~~residence or any land, building structure or room used in violation of~~ or  
19 K.S.A. 2004 Supp. 21-3610c, and amendments thereto.

the person's conviction of violating

20 (2) ~~"Licensee" means a licensee under the Kansas liquor control act~~  
21 ~~the club and drinking establishment act or the provisions of article 27 of~~  
22 ~~chapter 41 of the Kansas Statutes Annotated, and amendments thereto.~~

23 (3) "Incapacitated person" means a person who is physically or men-  
24 tally incapacitated by the consumption of alcoholic liquor or cereal malt  
25 beverage.

26 (4) Any other terms shall have the meanings as provided by ~~K.S.A.~~  
27 ~~21-3610 and 41-715 and~~ K.S.A. 2004 Supp. 21-3610c, and amendments  
28 thereto, as applicable.

29 Sec. 2. ~~K.S.A. 41-715 is hereby amended to read as follows: 41-715~~

30 (a) No person shall knowingly sell, give away, dispose of, exchange or  
31 deliver, or permit the sale, gift or procuring of any alcoholic liquor to or  
32 for any person who is an incapacitated person, or any person who is phys-  
33 ically or mentally incapacitated by the consumption of such liquor.

34 (b) Violation of this section is a misdemeanor punishable by a fine of  
35 not less than \$100 and not exceeding \$250 or imprisonment not exceeding  
36 30 days, or both.

37 Sec. 3. K.S.A. 41-715 is hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the statute book.