

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 22, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused

David Haley- excused

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 final action on Sub HB 2457.

Final Action:

Sub HB 2457 Civil procedure; service of process, by return receipt delivery

Chairman Vratil stated that the bill was a relative simple bill. However, Senator Schmidt had an amendment that he passed out last Friday to Committee members. (Attachment 1). The amendment was the result of testimony given during the hearing on the tobacco appeals bond limitation bill. The Kansas Chamber had recommended to the Committee that the appeal bond limitations be broadened to apply not only to tobacco companies, but to companies across the board.

The amendment sets appeals bond caps; for a judgement from \$1 million to \$100 million dollars, the appeals bond cap would be \$1 million dollars; for judgements in excess of \$100 million, the appeals bond cap would be \$25 million dollars. Senator Schmidt stated there would also be authority for a court to adjust the bond higher if there was a showing that there was actual dissipation of assets, or there is a likelihood that assets were going to dissipate.

A motion was made to accept the amendment. Senator Schmidt moved, seconded by Senator Donovan and there was discussion among the Committee members.

Senator Goodwin stated that she would like this amendment to go through the Committee hearing process. Senator Schmidt stated there were substantial hearings last year on the appeal bond issue as it applied to the tobacco companies. At that point, he had raised the concern that the legislators were writing public policy that gave special privileges to one type of company, based on what they manufacture, and not helping other companies. Then, last week, testimony was given in depth. Senator Goodwin stated she would still like to have an interim committee study this issue and then have a full committee hearing so that the Committee could hear from others that this amendment might affect.

Senator Betts agreed with Senator Goodwin's comments, that he believed that the Committee should hear from others affected by this issue.

Senator Donovan stated that the testimony that came from the actual case that was presented during the recent hearing showed, in his opinion, a great need for action in this area, and he was in favor of passing the amendment.

Chairman Vratil called for the vote to amend the bill, and the motion carried. Chairman Vratil directed the Committee's attention to page 4, subsection (B) (i), the fifth line down, starting with the word, "judgement" followed by a comma, and stated the words, "and in such event" needed to be inserted after the word

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“judgement” and before the comma. Chairman Vratil stated it should read as it does in the paragraph that follows in paragraph (ii). Chairman Vratil stated that, unless there is an objection, he would instruct the revisors to insert that phrase. There was no objection.

A motion was made to recommend the bill favorably as amended. Senator Schmidt moved, seconded by Senator Donovan, and the motion carried. Senator Betts asked to have his “no” vote recorded in the minutes.

Chairman Vratil asked the Committee to consider final action on **Sub HB 2051**.

Final Action:
Sub HB 2051 Timing of offender release notification

Chairman Vratil stated the bill was brought by the Department of Corrections (DOC) and requires the KBI, identified as a central repository of information, to identify persons committed to a correctional facility and report to the DOC the issuance of any arrest warrant or imposition of sentence for these persons committed to the correctional facilities. At the heart of the problem, according to Kyle Smith, Special Agent with the KBI, is how to get counties and cities to enter information into the database. The DOC has access to the central repository database now.

Senator Journey stated he felt the DOC should be checking to make sure they have all the current information on those persons committed to their correctional facilities.

Senator O’Connor felt that, as an obligation to society, both the KBI and the DOC should be checking to make sure that the persons incarcerated are screened for additional arrest warrants or imposition of sentences before they are released.

Senator Bruce stated that he believed that the local levels were not entering information because a sheriff does not want to pay the fees to extradite an offender. That is an issue that somehow still needs to be resolved and is not addressed by this bill.

A motion was made to table the bill. Senator Journey moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **HB 2380**.

Final Action:
HB 2380 Duties of the attorney general and assistants

Chairman Vratil stated that the bill eliminates the existing responsibility of the Attorney General to prepare an annual index of Attorney General Opinions, as the index is now available on several web sites. Additionally, the bill clarifies that the Attorney General may delegate certain duties to Assistant Attorney Generals.

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

Chairman Vratil asked the Committee to consider final action on **HB 2385**.

Final Action:
HB 2385 Admission of photographs of wrongfully taken property

Chairman Vratil stated that the bill concerns the admission of photographs into evidence. It was suggested that an appropriate way to deal with the issue was to repeal the statute, which sets forth in some detail the foundational elements necessary to admit photographs into evidence. **HB 2385** would delete the detailed language about foundations for admission into evidence, and would indicate that the photographs could be admitted so long as the foundational requirements of the Code of Evidence are satisfied. There was also a

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suggestion to amend the bill to put a period after the word, "evidence". Chairman Vratil asked the Committee for input whether they were interested in repealing the statute or amending the bill as suggested.

Senator Journey stated he had given this bill considerable thought. His concern was for victims of crimes. Senator Journey was concerned that if they did not leave the statute on the books, or if they didn't amend it, then situations could arise where the property had been given back and photographic evidence was not found to meet requirements, for some reason, and good cases would get thrown out. Senator Journey suggested the bill be amended and passed out of Committee.

Chairman Vratil clarified that the amendment was to change line 20 by inserting a period (.) after the word, "evidence" and then insert a sentence that says, " Such photographs may be admitted into evidence if they meet the foundational requirements under Chapter 60 of the Kansas Statutes Annotated." Chairman Vratil also suggested that latitude be given to the revisor to express the intent of the amendment in the appropriate words in the bill. A motion was made to do this. Senator Donovan moved, seconded by Senator Goodwin, and the motion carried.

A motion was made to recommend the bill favorably as amended. Senator Journey moved, Seconded by Senator O'Connor, and the motion carried.

Chairman Vratil thanked the Committee for all their service during the legislative session. Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 30, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/22/05

NAME	REPRESENTING
Renae Welton	w/ Senator Goodwin
Aliyah Harris	KAAAC
Tadeasha Davis	KAAAC
J Butler	KSC
B Hammon	KSC
P Briggs	KSC

Senate Judiciary
3-22-05
Attachment 1

Substitute for HOUSE BILL No. 2457

By Committee on Judiciary

2-23

9 AN ACT concerning civil procedure; relating to service of process;
10 amending K.S.A. 2004 Supp. 60-304 and repealing the existing ~~Section~~
11

60-3004 and K.S.A.
and 60-2103
sections

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

13 Section 1. K.S.A. 2004 Supp. 60-304 is hereby amended to read as
14 follows: 60-304. As used in this section, "serving" means making service
15 by any of the methods described in K.S.A. 60-303, and amendments
16 thereto, unless a specific method of making service is prescribed in this
17 section. Except for service by publication under K.S.A. 60-307, and
18 amendments thereto, service of process under this article shall be made
19 as follows:

20 (a) *Individual.* Upon an individual other than a minor or a disabled
21 person, by serving the individual or by serving an agent authorized by
22 appointment or by law to receive service of process, but if the agent is
23 one designated by statute to receive service, such further notice as the
24 statute requires shall be given. Service by ~~certified mail return receipt~~
25 *delivery* shall be addressed to an individual at the individual's dwelling
26 house or usual place of abode and to an authorized agent at the agent's
27 usual or designated address. If service by ~~certified mail return receipt~~
28 *delivery* to the individual's dwelling house or usual place of abode is
29 refused or unclaimed, the sheriff, party or party's attorney seeking service
30 may complete service by certified mail, restricted delivery, by serving the
31 individual at a business address after filing a return on service stating the
32 ~~certified mailing return receipt delivery~~ to the individual at such individ-
33 ual's dwelling house or usual place of abode has been refused or un-
34 claimed and a business address is known for such individual.

35 (b) *Minor.* Upon a minor, by serving the minor and also either the
36 minor's guardian or conservator if the minor has one within the state or
37 the minor's father or mother or other person having the minor's care or
38 control or with whom such minor resides, or if service cannot be made
39 upon any of them, then as provided by order of the judge. Service by
40 ~~certified mail return receipt delivery~~ shall be addressed to an individual
41 at the individual's dwelling house or usual place of abode and to a cor-
42 porate guardian or conservator at such guardian or conservator's usual
43 place of business.

2
1

1 (h) *Service upon an employee.* If the plaintiff or the plaintiff's agent
 2 or attorney files an affidavit that to the best of the affiant's knowledge
 3 and belief the defendant is a nonresident who is employed in this state,
 4 or that the place of residence of the defendant is unknown, the affiant
 5 may direct that the service of summons or other process be made by the
 6 sheriff or other duly authorized person by directing an officer, partner,
 7 managing or general agent, or the person having charge of the office or
 8 place of employment at which the defendant is employed, to make the
 9 defendant available for the purpose of permitting the sheriff or other duly
 10 authorized person to serve the summons or other process.

11 Sec. 2. ~~K.S.A. 2004 Supp. 60-304~~ is hereby repealed.

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

Insert K.S.A. 2004 Supp. 60-2103 and K.S.A. 60-3004 as Sec. 2 and
 3 and renumber remaining sections.

60-3004 and K.S.A.

and 60-2103 are

Senator D. Schmidt
March 16, 2005

Sec. 2. K.S.A. 2004 Supp. 60-2103 is hereby amended to read as follows: 60-2103. (a) When and how taken. When an appeal is permitted by law from a district court to an appellate court, the time within which an appeal may be taken shall be 30 days from the entry of the judgment, as provided by K.S.A. 60-258, and amendments thereto, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subsection commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: Granting or denying a motion for judgment under subsection (b) of K.S.A. 60-250, and amendments thereto; or granting or denying a motion under subsection (b) of K.S.A. 60-252, and amendments thereto, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under K.S.A. 60-259, and amendments thereto, to alter or amend the judgment; or denying a motion for new trial under K.S.A. 60-259, and amendments thereto.

A party may appeal from a judgment by filing with the clerk

of the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this chapter, or when no remedy is specified, for such action as the appellate court having jurisdiction over the appeal deems appropriate, which may include dismissal of the appeal. If the record on appeal has not been filed with the appellate court, the parties, with the approval of the district court, may dismiss the appeal by stipulation filed in the district court, or that court may dismiss the appeal upon motion and notice by the appellant.

(b) Notice of appeal. The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or part thereof appealed from, and shall name the appellate court to which the appeal is taken. The appealing party shall cause notice of the appeal to be served upon all other parties to the judgment as provided in K.S.A. 60-205, and amendments thereto, but such party's failure so to do does not affect the validity of the appeal.

(c) Security for costs. Security for the costs on appeal shall be given in such sum and manner as shall be prescribed by a general rule of the supreme court unless the appellate court shall make a different order applicable to a particular case.

(d) Supersedeas bond. (1) Whenever an appellant entitled thereto desires a stay on appeal, such appellant may present to the district court for its approval a supersedeas bond which

shall have such surety or sureties as the court requires. Subject to paragraph (2), the bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed, or if the judgment is affirmed, and to satisfy in full such modification of the judgment such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed after notice and hearing at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. When an order is made discharging, vacating, or modifying a provisional remedy, or modifying or dissolving an injunction, a party aggrieved thereby shall be entitled, upon application to the judge, to have the operation of such order suspended for a period of not to exceed 10 days on condition

that, within such period of 10 days such party shall file a notice of appeal and obtain the approval of such supersedeas bond as is required under this section.

(2) (A) Except as provided in paragraph (B), if an appellant appeals from any form of judgment based on any legal theory and seeks a stay of enforcement during the period of appeal:

(i) If the judgment exceeds \$1,000,000 in value but is less than \$100,000,000 in value, the supersedeas bond shall not exceed \$1,000,000; or

(ii) if the judgment equals or exceeds \$100,000,000 in value, the supersedeas bond shall not exceed \$25,000,000.

(B) The limitations on the amount of a supersedeas bond established by paragraph (A) shall not apply if:

(i) The appellee proves by a preponderance of the evidence that the appellant bringing the appeal is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the court may enter such orders as are necessary to stop the dissipation and diversion of assets, including a requirement that the appellant post a bond in the full amount of the judgment; or

(ii) the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment and in such event, the court may increase the amount of such bond required not to exceed the full amount of the judgment.

(C) Nothing in this section shall be construed to prohibit a court from setting a supersedeas bond in a lower amount as may be otherwise required by law or for good cause shown.

(D) A bond shall not be found insufficient under any other provision of law due to limits imposed under this subsection.

(e) Failure to file or insufficiency of bond. If a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the appellate court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the appellate court.

(f) Judgment against surety. By entering into a supersedeas bond given pursuant to subsections (c) and (d), the surety submits such surety's self to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting such surety's liability on the bond may be served. Such surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the judge prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if such surety's address is known.

(g) Docketing record on appeal. The record on appeal shall be filed and docketed with the appellate court at such time as the supreme court may prescribe by rule.

(h) Cross-appeal. When notice of appeal has been served in a

case and the appellee desires to have a review of rulings and decisions of which such appellee complains, the appellee shall, within 20 days after the notice of appeal has been served upon such appellee and filed with the clerk of the trial court, give notice of such appellee's cross-appeal.

(i) Intermediate rulings. When an appeal or cross-appeal has been timely perfected, the fact that some ruling of which the appealing or cross-appealing party complains was made more than 30 days before filing of the notice of appeal shall not prevent a review of the ruling.

Sec. 3. K.S.A. 60-3004 is hereby amended to read as follows: 60-3004. (a) If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, including the ground that an appeal will be taken, is pending or the time for taking appeals is not yet expired, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required

in this state subject to the provisions of subsection (d) of K.S.A. 60-2103, and amendments thereto.