

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on February 19, 2007, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

John P. Wheeler, Finney County Attorney
Tom Drees, Ellis County Attorney
Randy Hearrell, Kansas Judicial Council
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Mark Stafford, General Counsel, Kansas Board of Healing Arts
Melissa Wangeman, Legal Counsel, Secretary of State's Office
Joseph Molina, Assistant Attorney General

Others attending:

See attached list.

The Chairman opened the hearing on **SB 268–Use of deadly force.**

John Wheeler appeared in support, indicating this bill would address concerns regarding unintended consequences of legislation passed in 2006 (Attachment 1). This legislation commonly referred to as “Stand and Defend” has altered the well-settled law of self defense and has raised several points of concern. These concerns include the possible elimination of the common law objective “reasonable man” standard and the creation of “immunity from prosecution and civil action for the use of such force.” Enactment of **SB 268** will return the law of self defense back to the well-established law as it existed prior to last year’s legislation.

Tom Drees testified in support, relating the need for repeal of K.S.A. 21-3219 because of its adverse and unintended affect on police, prosecutors and the general public (Attachment 2). Mr. Drees feels current law may cause police officers and prosecutors to lose immunity under the Kansas Tort Claims Act, prosecutors could be subject to wrongful prosecution civil claims, as well as encourage the general public to vigilantism.

Written testimony in support of **SB 268** was submitted by:

Paul Morrison, Kansas Attorney General (Attachment 3)
Tom Stanton, Reno County Attorney (Attachment 4)

There being no further conferees, the hearing on **SB 268** was closed.

The hearing on **SB 269–Kansas code for care of children, service of process** was opened.

Randy Hearrell spoke in favor, indicating this bill would clarify that it was not the advisory committee’s intent that publication in another state or foreign country be required in every case when a parent might be located somewhere else (Attachment 5).

There being no other conferees, the hearing on **SB 269** was closed.

The Chairman opened the hearing **SB 324–Repealing certain K.S.A. sections, concerning certain crimes.**

Helen Pedigo spoke in support, indicating **SB 324** will repeal statutes with outdated class D and E felony penalties and one in conflict with the animal cruelty law passed on 2006 (Attachment 6). Ms. Pedigo stated that no convictions have been based on these statutes within the last three years. Ms. Pedigo also indicated that the Sentencing Commission would not oppose retention of the statutes if amended to reflect current severity levels within the sentencing guidelines.

Mark Stafford testified in favor, requesting retention and amendment of K.S.A. 65-28,107 which establishes

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on February 19, 2007, in Room 123-S of the Capitol.

an individual's right to decide in advance to withhold or withdraw life-sustaining medical procedures to treat terminal illnesses in written declarations (Attachment 7). Mr. Stafford provided a balloon amendment with the requested changes.

Melissa Wangeman testified in favor, requesting retention and amendment of K.S.A. 17-1311 which creates a penalty for misuse of a cemetery permanent maintenance fund (Attachment 8). Ms. Wangeman provided a balloon amendment with the requested changes.

Joseph Molina opposed elimination of K.S.A. 17-1311(a) which creates a penalty for misuse of a cemetery permanent maintenance fund (Attachment 9). Mr. Molina suggested language which would update the criminal penalty of K.S.A. 17-1311(a).

There being no further conferees, the hearing on **SB 324** was closed.

The Chairman called for final action on **SB 183--Uniform commercial code, article 1, general provisions**. Senator Vratil reviewed the bill and distributed a balloon amendment suggested by Kathy Olsen, Kansas Bankers Association, during the hearing on February 15 (Attachment 10).

Senator Bruce moved, Senator Lynn seconded, to adopt the proposed balloon amendment. Motion carried.

Senator Bruce moved, Senator Journey seconded, to recommend SB 183, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 308--Uniform commercial code, article 7, revisions**. The Chairman reviewed the bill. Senator Bruce moved, Senator Goodwin seconded, to recommend SB 308 favorably for passage. Motion carried.

The Chairman called for final action on **SB 133-Election crimes; advance voting ballot suppression**.

The Chairman reviewed the bill indicating the committee had identified several potential problems with the bill as written. A packet of balloon amendments was distributed (Attachment 11). Senator Journey had prepared language concerning the definition of "exercising undue influence" located on page 5 of the packet. Senator Journey reviewed the proposed amendment.

Senator Journey moved, Senator Lynn seconded, to adopt the proposed amendment as reflected in subsection (g) on page 5 of the proposed balloon amendments. Motion carried.

Senator Vratil indicated there had been concern on the bill's language which would make it a crime for the voter to destroy their own ballot and this could be resolved by striking the word "any" on line 14 and inserting the language "another person's" between the words altering and advance voting. Senator Journey moved, Senator Bruce seconded, to amend SB 133 as described by Senator Vratil. Motion carried.

The Chairman then referred to page 1 of the proposed amendment packet which would address the need for language concerning intent. Following discussion, Senator Bruce moved, Senator Goodwin seconded, to replace the colon following the word knowingly on page 1, line 13, and to adopt the balloon amendment as reflected on page 1 of the packet. Motion carried.

The Chairman indicated the proposed amendments on pages 2, 3, and 4 all deal with depositing advance voting ballots in the mail or some mailing service. The committee reviewed the proposed amendments.

Senator Journey moved, Senator Donovan seconded, to adopt the first two balloons on page 4 of the packet of proposed balloon amendments. Motion carried.

The Chairman indicated action on **SB 133** will continued at a later date.

The meeting adjourned at 10:32 A.M. The next scheduled meeting is February 20, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/19/07

NAME	REPRESENTING
Jim Cusack	KBA
Clarissa Shields	4-H
Star Jones	John Peterson
Charles Kerls	Legislative intern
Joe Wolue	AG's office
Mike Allen	AG's office
Bob Keller	JCSO
Tom Drees	Ellis Co. / KODAA
Ed BRANCART	KODAA
Tom STANTON	KODAA / RENO COUNTY DA
Jesse Boyon	Sec. of State
Melissa Wanyemann	"
Michael White	Senate President's office



Kansas County & District Attorneys Association

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To: Senator John Vratil, Chair, and the members of the Senate Judiciary Committee

From: John P. Wheeler, Jr., Finney County Attorney

Re: Senate Bill 268

Date: February 19, 2007

I thank the Chair for allowing me to supplement the record on Senate Bill 268 with this written testimony. I am appearing here today on behalf of the Kansas County and District Attorneys Association to testify in support of this bill.

Last year the Legislature passed 2005-2006 Senate Bill 366 which was ultimately enrolled into law. It is our position that Sections 1 through 4 of Senate Bill 366, which is now commonly referred to as "Stand and Defend" and is now codified as K.S.A, 2006 Supp. 21-3211, 21-3212, 21-3218 and 21-3219, has dramatically altered the well-settled law of Self Defense. Further, although believed to be unintended, Senate bill 366 has the effect of severely restricting, perhaps even prohibiting, prosecutors from effectively prosecuting crimes of violence in this state.

There are several points of concern regarding the "Stand and Defend" provisions. First, the Legislature may well have eliminated the common law objective "reasonable man" standard which had become the well-settled law of this state. It appears now that

K.S.A. 2006 Supp. 21-3211 (Defense of Self) and 21-3212 (Defense of Dwelling), which now both specifically authorize use of lethal force as “such person reasonably believes...necessary” has now adopted a purely subjective test for use of defensive force, that is that which is only in the mind of the person using the defensive force.

That concern is further supported by the far more problematic and troubling addition to the Kansas law of self defense: the creation of “immunity from prosecution and civil action for the use of such force”. The immunity provisions are now codified in K.S.A.. 2006 Supp. 21-3219. Historically, “self defense” as used in the criminal law was a theory of defense available to a defendant charged with a crime of violence. The burden of proof never did shift to the defendant but the defendant had the burden to come forward with the evidence of self defense, which the State had the burden to overcome by proof beyond a reasonable doubt. The degree of force allowed to a defendant was to be determined by a jury or trier of fact. To interject “immunity” from prosecution is a marked departure from established legal principles of self defense. Merriam Webster Dictionary defines “immune” as (a) “free or exempt” (example: Immune from further taxation.) and (b) “marked by protection” (example: some criminal leaders are immune from arrest.) K.S.A. 2006 Supp. 21-3219 specifically defines “criminal prosecution” to include “arrest, detention in custody and charging or prosecution of the defendant.” The same statute allows law enforcement officers the power to investigate “...but the agency shall not arrest the person for using force unless it determines there is probable cause for the arrest.”

However, although law enforcement does have, under certain conditions, the power to arrest on probable cause, it is ultimately a determination that must be tested by a

“neutral and detached magistrate.” Law enforcement, as well as prosecutors, are very confused. Law enforcement appears to retain arrest powers but the suspect is also immune from arrest. Are there civil ramifications for a wrongful arrest if a judge later determines there was insufficient probable cause? It just can’t be both ways.

A prosecutor may obtain a probable cause determination from a judge. However, a prosecutor cannot prosecute because the suspect claiming self defense is immune “...from prosecution and charging.” A prosecution is deemed commenced, unless otherwise provided by law (example: Grand Jury Indictment), by the “filing of a complaint with a magistrate.” That can no longer be the case if the suspect is immune.

And what if the prosecutor, based upon the facts of the investigation determines that the suspect was either not acting in self defense, or that the degree of force used was excessive under the facts, goes forward and files a complaint. When the judge asks, “Why is this defendant not immune?” and directs the case be dismissed, is the prosecutor subject to civil suit or perhaps discipline? The law has been well established that a prosecutor is immune from civil suit for any act he or she may do in within the scope of an official prosecution function. Now, we ask: “Whose immunity is superior?”, the prosecutor’s or the suspects?

Senate Bill 268, as proposed, will have the effect of returning the law of self defense back to the well-established law as it existed prior to the passage of 2005-2006 Senate Bill 366. The law of self defense in existence prior to last year’s changes included virtually every thing found in the present statutory scheme, except immunity. There never has been a retreat requirement, except as required in K.S.A. 21-3214 (Use of force by an aggressor), which remains under the current amendments. Prior law allowed for

the use of reasonable force, including lethal force when necessary as determined by a jury of one's peers based upon the specific facts presented. Further, although it appears that some may not believe, prosecutors do use sound discretion in making filing decisions and those decisions are further reviewed by a judge.

I appreciate the opportunity to appear before the committee and for your time and attention in listening to both my views and the views of my organization, the Kansas County and District Attorneys Association. Further, I am available to answer any questions you may have.

John P. Wheeler, Jr.
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Email: ca01@finneycounty.org

**TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
KANSAS LEGISLATURE IN SUPPORT OF SENATE BILL 268
FEBRUARY 19, 2007 @ 9:30 A.M
ROOM 123 SOUTH
*THOMAS J. DREES - ELLIS COUNTY ATTORNEY**

- I. K.S.A. 21-3219 (immunity from criminal prosecution and civil liability) needs to be repealed because of its adverse and unintended affect on police, prosecutors and the general public.
- A. Police officers may lose immunity under the Kansas Tort Claims Act. K.S.A. 75-~~6103~~(a) makes governmental entities liable for damages caused by negligent or wrongful acts or omissions of its employees, if a private person would be liable under the laws of this state. K.S.A. 75-6104 grants immunity to governmental employees (police officers and prosecutors) from damages resulting from (b) enforcement or failure to enforce a law, and (e) any claim based upon exercise or performance or the failure to exercise or perform a “discretionary function or duty” on the part of the employee, whether or not the discretion is abused and regardless of the level of discretion involved (emphasis added). K.S.A. 21-3219(b) takes away the officer’s discretion. A law enforcement officer is prohibited from arresting a person for use of force unless they determine the person to be in violation of the Kansas self-defense statutes now codified in K.S.A. 21-3211, 12, 13 and 14. This subjects officers to personal liability for wrongful arrest lawsuits if it is determined that the person did in fact exercise self defense in accordance with the statute. The statute may remove the officer’s “discretionary function”, thereby subjecting the officer to personal liability.
- B. Prosecutors could also be subject to wrongful prosecution civil claims and may lose their immunity under the Kansas Tort Claims Act. K.S.A. 21-3219(a), which states that the person using force “is immune from criminal prosecution... including arrest, detention in custody and charging or prosecution”. Charging and prosecution is a discretionary function under the Kansas Tort Claims Act. If a judge or jury found the person using force did act in accordance with the statute, the grant of immunity to the defendant would subject the prosecutor and his county to liability under the Kansas Tort Claims Act. K.S.A. 22-3219 may very well remove prosecutor’s immunity in its effort to grant the person using force immunity.
- C. The general public is placed in danger as well. A person harmed by an individual who mistakenly uses force in a situation would be less likely to avail themselves of the court system, fearing that they would be subject to counter suit because of the grant of immunity in “civil action for the use of such force” under K.S.A. 21-3219. The court system is designed to give the citizenry of this country a place to

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
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address their grievances with one another and with their government. Any statute that chills the public's desire to address their grievance in the court system is bad public law. A court of law is a better place for people to be "dueling" with one another, rather than on main street with six shooters. K.S.A. 21-3219 takes us back to vigilantism and "might makes right" without civil and criminal laws to protect the public.

II. Repeal of all changes incorporated by Senate Bill 366 is appropriate.

A. The major change in the legislation was to remove the word "aggressor" from K.S.A. 21-3211 and 3212 and substitute the word "another". Aggressor is an important legal term of art in the self-defense statutes. "Aggressor" requires there to be some evidence of an imminent threat or confrontational circumstance involving an overt act by the aggressor in order for self defense to be used. State v. Stewart, 243 Kan. 639, 763 P.2d 572 (1988); State v. Sims, 265 Kan. 166, 169, 960 P.2d 1271 (1998).

"Aggressor" allows for courts to utilize the "reasonable man" standard with respect to the amount of permissible force used. State v. Marks, 226 Kan. 704, 712-13, 602 P.2d 1344 (1979). Therefore, the defense of self defense requires both a subjective (reasonable man) standard, and an objective (reasonable belief by the defendant) standard that the use of force was necessary. State v. Holmes, 278 Kan. 603, 102 P.3d 406 (2004). By changing the word "aggressor" to "another", the statute may require the jury to look at the self defense or use of force only from the viewpoint of the person using the force. This may remove the "reasonable man" standard, which allows the jury to decide, under the totality of the circumstances, if force was warranted and if the amount of force used by the defendant was appropriate both objectively and subjectively.

B. "If it isn't broke, don't fix it." The Kansas Self-Defense Laws have been in place for a long time and have generated relatively little case law. There has been no public outcry concerning the Kansas Self-Defense Laws. There was no reason to change the wording of the statutes and subject all self-defense cases to new appellate battles interpreting what the new language means. Any time that the legislature changes the wording of statutes, they are subject to new interpretation by the appellate courts. The language changes in the Kansas self-defense statutes may produce unintended results in the appellate courts.

*Thomas J. Drees has served as a prosecuting attorney in Kansas for 17 years and is currently serving his 3rd term as the Ellis County Attorney.

22-2307. Domestic violence calls; written policies to be adopted by law enforcement agencies; contents. (a) All law enforcement agencies in this state shall adopt written policies regarding domestic violence calls as provided in subsection (b). These policies shall be made available to all officers of such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed;

(2) a statement defining domestic violence;

(3) a statement describing the dispatchers' responsibilities;

(4) a statement describing the responding officers' responsibilities and procedures to follow when responding to a domestic violence call and the suspect is at the scene;

(5) a statement regarding procedures when the suspect has left the scene of the crime;

(6) procedures for both misdemeanor and felony cases;

(7) procedures for law enforcement officers to follow when handling domestic violence calls involving court orders, including protection from abuse orders, restraining orders and a protective order issued by a court of any state or Indian tribe;

(8) a statement that the law enforcement agency shall provide the following information to victims, in writing:

22-2308. Same; liability. No law enforcement agency or employee of such agency acting within the scope of employment shall be liable for damages resulting from the adoption or enforcement of any policy adopted under this act, including, but not limited to, the policy and procedure for law enforcement officers to follow when handling a protective order issued by a court of any state or Indian tribe, unless a duty of care, independent of such policy, is owed to the specific individual injured.

22-2401. Arrest by law enforcement officer. A law enforcement officer may arrest a person under any of the following circumstances:

(a) The officer has a warrant commanding that the person be arrested.

(b) The officer has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.

(c) The officer has probable cause to believe that the person is committing or has committed:

(1) A felony; or

(2) a misdemeanor, and the law enforcement officer has probable cause to believe that:

(A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;

(B) the person may cause injury to self or others or damage to property unless immediately arrested; or

(C) the person has intentionally inflicted bodily harm to another person.

(d) Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.

21-3219. Use of force; immunity from prosecution or liability; investigation.

(a) A person who uses force which, subject to the provisions of K.S.A. 21-3214, and amendments thereto, is justified pursuant to K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.

SENATE BILL No. 268

By Committee on Judiciary

2-5

9 AN ACT relating to crimes and punishment; concerning use of force;
10 amending K.S.A. 2006 Supp. 21-3211 and 21-3212 and repealing the
11 existing sections; also repealing K.S.A. 2006 Supp. 21-3218 and 21-
12 3219.

13

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

15 Section 1. K.S.A. 2006 Supp. 21-3211 is hereby amended to read as
16 follows: 21-3211. ~~(a)~~ A person is justified in the use of force against ~~an-~~
17 ~~other an aggressor~~ when and to the extent it appears to such person and
18 such person reasonably believes that such ~~force conduct~~ is necessary to
19 defend such person or a third person against such other's imminent use
20 of unlawful force.

21 ~~(b) A person is justified in the use of deadly force under circum-~~
22 ~~stances described in subsection (a) if such person reasonably believes~~
23 ~~deadly force is necessary to prevent imminent death or great bodily harm~~
24 ~~to such person or a third person.~~

25 ~~(c) Nothing in this section shall require a person to retreat if such~~
26 ~~person is using force to protect such person or a third person.~~

27 Sec. 2. K.S.A. 2006 Supp. 21-3212 is hereby amended to read as
28 follows: 21-3212. ~~(a)~~ A person is justified in the use of force against ~~an-~~
29 ~~other~~ when and to the extent that it appears to such person and such
30 person reasonably believes that such ~~force conduct~~ is necessary to prevent
31 or terminate such other's unlawful entry into or attack upon such person's
32 dwelling or occupied vehicle.

33 ~~(b) A person is justified in the use of deadly force to prevent or ter-~~
34 ~~minate unlawful entry into or attack upon any dwelling or occupied ve-~~
35 ~~hicle if such person reasonably believes deadly force is necessary to pre-~~
36 ~~vent imminent death or great bodily harm to such person or another.~~

37 ~~(c) Nothing in this section shall require a person to retreat if such~~
38 ~~person is using force to protect such person's dwelling or occupied ve-~~
39 ~~hicle.~~

40 Sec. 3. K.S.A. 2006 Supp. 21-3211, 21-3212, 21-3218 and 21-3219
41 are hereby repealed.

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

2-4



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Senate Judiciary Committee
SB 268
Attorney General Paul Morrison
February 19, 2007

Mr. Chairman and members of the committee, thank you for allowing me to submit written testimony regarding this very important public policy concern.

The Office of Attorney General supports the concept behind Senate Bill 268, which seeks to correct an unintended consequence of a recently passed law permitting Kansans to use force to defend themselves in a physical conflict. Current law provides Kansans with immunity from prosecution in certain instances where use of force is necessary to defend oneself against another's imminent use of unlawful force. Kansas law enforcement and prosecutors have become aware of the potential for gang members involved in criminal activity to try to use this immunity to escape prosecution. SB 268 seeks to clarify the Legislature's intent as to who is eligible for such immunity.

Ultimately, it is important that the bill language be drafted deliberately and take into account all of the possible implications of a new law. It is our understanding that talks are ongoing to develop amending language to SB 268. Our office is committed to working with the interested parties to develop amending language to SB 268 that would satisfy all concerns and restore the intent of the Legislature.

Thank you for your time and consideration.

Senate Judiciary

2-19-07
Attachment 3

To: Kansas Senate Judiciary Committee

From: Thomas R. Stanton, Deputy Reno County District Attorney

Re: Senate Bill 268

Date: February 19, 2007

Thank you for your consideration of this written testimony in support of Senate Bill 268. This testimony is being submitted on behalf of the Kansas County and District Attorneys Association, as well as the Reno County District Attorney's Office.

Last year this esteemed body passed legislation which created absolute immunity from prosecution for any person who uses deadly force, subject to the provisions of K.S.A. 21-3211, 21-3212 and 21-3213. This legislation did not significantly change the law in Kansas regarding the right of a citizen to defend himself or herself from attack, but it did significantly change the law as to the ability of police officers to arrest, and prosecutors to charge, persons who use force greater than is necessary for the situation in which the use of force occurred.

In the past, it has always been the purview of a jury to determine whether force used in a specific situation was reasonable from an objective point of view. Self-defense was an affirmative defense which, if proven to be reasonable to a jury, resulted in an acquittal of any criminal wrongdoing. However, the determination of whether the use of force is reasonable has become subjective. The question, under the new provisions of the law, is not whether a

Senate Judiciary
2-19-07
Attachment 4

reasonable person would have used force in a given situation, but whether the person using the force believed it was required, even where there is no evidence to support a reasonable belief for the need for the use of force.

This situation has been made more dangerous by the insertion into the law of the immunity provision now codified in K.S.A. 21-3219. The issue of whether the use of force by a person was subjectively reasonable under the circumstances will now never be submitted to any jury, much less whether the evidence supported an objectively reasonable belief the use of force was required. This is so because the person using the force is immune from arrest and prosecution. Under a strict interpretation of the language of the new statute, a court must disallow any prosecution for a crime involving the use of force when the person using the force presents a subjective belief the use of such force was necessary under the circumstances. Officers may not arrest such a person; prosecutors may not file criminal charges against such a person. The person using force is simply immune from these actions.

Subsection (b) of K.S.A. 2006 Supp. 21-3219 allows law enforcement officers to use “standard procedures for investigating the use of force.” The statute goes on to state, however, “the agency shall not arrest the person for using force unless it determines there is probable cause for the arrest.” Under this statute, probable cause would never exist if the person using force had a subjectively reasonable belief the force was required under the circumstances. Officers investigating the case who discover there was no objectively reasonable justification for the use of force might believe the use of force was unlawful. However, this would require the use of an objective test to determine whether the actions were reasonable under the circumstances. Officers may not apply an objective test, and would not be able to show the immunity provision

did not apply. Thus, as long as a person can state he or she believed the use of force was required, that person is immune from prosecution.

This level of immunity granted the citizenry of Kansas under K.S.A. 21-3219 is greater than any protection afforded law enforcement officers in this state. If a police officer uses force, especially deadly force, the officer is relieved from duty, and an investigation is conducted. If the investigation concludes the use of force was objectively unreasonable, the officer is subject to criminal prosecution for the improper use of force. K.S.A. 21-3219 provides less trained, and less disciplined, citizens more protection than we afford our most highly trained professional law enforcement officers. The last message we want to send our citizens is that the standard of care with which the use of force, especially deadly force, may be employed is anything short of the highest standard available.

Before closing, I wish to remind this Committee that the statute at issue is not restrictive to the use of firearms. The law seems to have been passed in connection with the carry concealed legislation that also passed last session. The effort behind Senate Bill 268 is not an attack on the right to bear arms or the carry concealed legislation. The immunity created by K.S.A. 21-3219 applies to the use of force regardless of the type of weapon used. The weapon is not the issue. Immunity from the wrongful use of any weapon is the issue. We must return to a jury determination of whether the use of force was objectively reasonable under all the facts and circumstances of a given situation.

Respectfully submitted,

Thomas R. Stanton
Deputy Reno County District Attorney
206 West First Avenue, Fifth Floor

Hutchinson, Kansas 67501
(620) 694-2715

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: February 19, 2007
RE: Testimony in Support of SB 269

The Revised Child in Need of Care Code made several changes to the provisions concerning service of process. One such change affects service by publication. The final sentence of K.S.A. 38-2237(e) now provides that, "In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found." This language has created problems for court personnel, because the language can be read to imply that for every parent whose location cannot be ascertained, it is necessary to publish notice in whatever the best guess of location might be. In practice, publication of notice in the correct newspaper for locations out of state, and perhaps in another country, is a very expensive and time consuming proposition.

The advisory committee proposed this language in response to *Board of County Commissioners of Reno County v. Akins*, 271 Kan. 192, 21 P.3d 535 (2001), which held that publication notice of a tax sale in the county where property was located violated due process when it was known that the taxpayer did not reside in the county, and insufficient efforts were made to locate the taxpayers. The advisory committee's concern was that, in *Akins*, the taxpayers were known to have lived for some time in Oregon, which meant that publication in the State of Kansas was particularly unlikely to provide any actual notice of proceedings. Although *Akins* does not explicitly require it, the committee believed that if a parent was known to have lived for some time in another location but a current address could not be found, due process might require that publication notice be made in the location where the parent was known to reside. Courts insist on a very high standard of due process when the state terminates parental rights, and it is particularly unfortunate and disruptive for children when problems with service require the process to be redone. See *In re S.R.*, 34 Kan. App. 2d 202; 116 P.3d 43 (Kan Ct. App. 2005).

At the same time, it was not the advisory committee's intention that publication in another state or foreign country be required in every case when a parent might be located somewhere else. To clarify the scope of the publication requirement, the advisory committee would suggest adoption of the following amendment from page 2, lines 8-14 of SB 269.

~~In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found.~~
If a parent cannot be served by other means and due diligence has revealed with substantial certainty that the parent is residing in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.

Senate Judiciary

2-19-07

Attachment 5



KANSAS

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman
Attorney General Paul Morrison, Vice Chairman
Helen Pedigo, Executive Director

KATHLEEN SEBELIUS, GOVERNOR

SENATE JUDICIARY COMMITTEE Senator John Vratil, Chairman

TESTIMONY ON SENATE BILL 324 Helen Pedigo, Executive Director February 19, 2007

Mr. Chairman and Committee members, thank you for the opportunity to appear before you today. I appear on behalf of the Kansas Sentencing Commission, to support Senate Bill 324. The bill repeals the following statutes that fall into the following categories: those that include outdated class D and E felony penalties, one for which the elements of the crime were repealed and one that is in conflict with the animal cruelty law passed in 2006. The statutes are attached to my testimony.

- | | |
|--------------------|--|
| K. S. A. 17-1311a | Cemetery corporations; misuse of the permanent maintenance fund, a class D felony. |
| K. S. A. 21-3727 | Injury to domestic animals, a class A nonperson misdemeanor – conflicts with K. S. A. 21-4310, animal cruelty, a nonperson felony. |
| K. S. A. 47-604 | Protection of domestic animals; penalty for second or subsequent violation of quarantine, a class D felony. |
| K. S. A. 65-28,107 | Healing Arts; falsifying or fudging the declaration of another, a class E felony. |
| K. S. A. 66-276 | Railroads, relates back to K. S. A. 66-275, which was repealed in 1998. |
| K. S. A. 75-7b19 | Private investigative or security operations; knowingly falsifying fingerprints or photos, a class E felony. |

Most of the statutes, with the exception of injury to domestic animals and animal quarantine violation statutes, were last amended during the 1960's and 70's. No convictions have been based on these statutes within the last three years, according to the Sentencing Commission journal entry database.

I have contacted representatives of the Secretary of State, Livestock Commissioner, Healing Arts board and KBI to let them know this bill exists. You may hear from them as to why these statutes should be retained and amended to reflect current severity levels within the sentencing guidelines. We do not oppose such amendments if the statutes are deemed necessary. The Commission's purpose in proposing this bill was to clean up the criminal statutes and eliminate those that are unnecessary. I ask you to consider this bill and pass it out of committee favorably. Thank you for your time and I would be happy to answer questions.

JAYHAWK TOWER, 700 SW JACKSON STREET, SUITE 501, TOPEKA, KS 66603

Voice 785-296-0923 Fax 785-296-0927 <http://www.kansas.gov/ksc/>

Senate Judiciary

2-19-07

Attachment 6

Chapter 17.--CORPORATIONS
Article 13.--CEMETERY CORPORATIONS

17-1311a. Same; penalties for misuse. (a) Misuse of the permanent maintenance fund or any money belonging thereto is using, lending or permitting another to use, moneys in the fund in a manner not authorized by law, by a custodian or other person having charge or control of such fund or moneys by virtue of his position.

(b) Misuse of the permanent maintenance fund is a class D felony.

History: L. 1971, ch. 71, § 2; July 1.

Chapter 21.--CRIMES AND PUNISHMENTS
PART II.--PROHIBITED CONDUCT
Article 37.--CRIMES AGAINST PROPERTY

21-3727. Injury to a domestic animal. (a) Injury to a domestic animal is willfully and maliciously:

(1) Administering any poison to any domestic animal;

(2) exposing any poisonous substance with the intent that the same shall be taken or swallowed by any domestic animal; or

(3) killing, maiming or wounding any domestic animal of another without the consent of the owner.

(b) This section shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(c) Injury to a domestic animal is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-3727; L. 1992, ch. 239, § 122; L. 1993, ch. 291, § 81; July 1.

Chapter 47.--LIVESTOCK AND DOMESTIC ANIMALS
Article 6.--PROTECTION OF DOMESTIC ANIMALS

47-604. Penalty for violating quarantine. Any person who knowingly and intentionally violates, disregards or evades, or attempts to violate, disregard or evade any order establishing or regulating a quarantine issued pursuant to article 6 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto, upon a first conviction shall be guilty of a class A misdemeanor. On a second or subsequent conviction of a violation of this section, such person shall be guilty of a class D felony.

History: L. 1905, ch. 495, § 24; R.S. 1923, 47-604; L. 1989, ch. 156, § 11; L. 1992, ch. 100, § 1; July 1.

Chapter 65.--PUBLIC HEALTH
Article 28.--HEALING ARTS

65-28,107. Same; attending physician's refusal to comply with declaration of qualified patient; transfer of patient; unprofessional conduct; unlawful acts. (a) An attending physician who refuses to comply with the declaration of a qualified patient pursuant to this act shall effect the transfer of the qualified patient to another physician. Failure of an attending physician to comply with the declaration of a qualified patient and to effect the transfer of the qualified patient shall constitute unprofessional conduct as defined in K.S.A. 65-2837.

(b) Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another shall be guilty of a class A misdemeanor.

(c) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a class E felony.

History: L. 1979, ch. 199, § 7; July 1.

Chapter 66.--PUBLIC UTILITIES
Article 2.--DUTIES AND LIABILITIES OF RAILROAD COMPANIES

66-276. Same; penalty. Any officer or employee of such railroad company who shall violate any of the provisions or conditions of the preceding section shall upon conviction be deemed guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

History: L. 1909, ch. 190, § 2; March 10; R.S. 1923, 66-276.

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
Article 7b.--PRIVATE INVESTIGATIVE OR SECURITY OPERATIONS

75-7b19. Falsification of fingerprints or photographs; violation of act; penalties. Any person who knowingly falsifies the fingerprints or photographs required to be submitted under this act shall be guilty of a class E felony; and any person who violates any of the other provisions of this act shall be guilty of a class A misdemeanor.

History: L. 1972, ch. 315, § 19; July 1.

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS
GOVERNOR

February 15, 2007

The Hon. John L. Vratil
Chair, Senate Committee on Judiciary
Kansas State Capitol, Room 281E

Re: Senate Bill No. 324

Dear Senator Vratil:

Ms. Helen Pedigo kindly suggested that I contact you regarding Senate Bill 324. That bill would repeal K.S.A. 65-28,107 to eliminate an outdated criminal classification. On behalf of the Board of Healing Arts, I respectfully request that Senate Bill 324 amend rather than repeal the statute.

K.S.A. 65-28,107 is part of the Kansas natural death act. That act establishes the right of individuals to decide in advance whether to withhold or withdraw life-sustaining medical procedures to treat terminal illnesses, and to state those decisions in written declarations. These declarations are commonly known as living wills. The statute prohibits a physician from refusing to effectuate a declaration, and prohibits any individual from concealing or destroying the declaration. The statute provides grounds for disciplinary action against licensed physicians, and imposes criminal penalties for other individuals who violate the prohibition.

Repealing the statute would result in a material change in public policy, and would also render meaningless the reference to the statute at K.S.A. 2006 Supp. 65-2837(b)(10). Repeal would also allow a person to conceal or destroy another person's living will with impunity. A balloon is attached to demonstrate how the statute might be amended rather than repealed. The committee may determine that a criminal classification is more appropriate.

Please let me know if you have questions or concerns.

Respectfully,

Mark W. Stafford,
General Counsel

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Senate Judiciary

2-19-07
Attachment 7

SENATE BILL No. 324

AN ACT *amending K.S.A. 65-28,107 and* repealing K.S.A. 17-1311a, 21-3727, 47-604, 65-28,107, 66-276 and 75-7b19; concerning certain crimes and punishments.

* * *

Section 1. *K.S.A. 65-28,107 is hereby amended to read as follows: K.S.A. 65-28,107. (a) An attending physician who refuses to comply with the declaration of a qualified patient pursuant to this act shall effect the transfer of the qualified patient to another physician. Failure of an attending physician to comply with the declaration of a qualified patient and to effect the transfer of the qualified patient shall constitute unprofessional conduct as defined in K.S.A. 65-2837.*

*(b) Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another shall be guilty of a class A **person** misdemeanor.*

*(c) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a ~~class E~~ **severity level 3, person felony**.*

Sec. 2. K.S.A. 17-1311a, 21-3727, 47-604, 65-28,107, 66-276 and 75-7b19 are hereby repealed.

Sec. 3. This act shall take effect

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE TO THE SENATE JUDICIARY COMMITTEE ON SB 324

FEBRUARY 19, 2007

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to offer an amendment to SB 324, a bill requested by the Sentencing Commission. I also appreciate Helen Pedigo giving me notice that this bill contains a provision relating to the duties of the Secretary of State.

It is my understanding that SB 324 is intended to delete obsolete references to D and E felonies because such classified felonies no longer exist.

The Secretary of State is concerned about the repeal of K.S.A. 17-1311a contained in the bill. This statute creates a D felony for misuse of a cemetery permanent maintenance fund. The permanent maintenance fund is required of cemeteries in order to preserve and maintain the cemetery into perpetuity. The Secretary of State is charged by law with conducting audits of cemetery PMFs to ensure they are properly trusted. The Attorney General enforces the laws relating to cemeteries. Both our offices concur that we do not want to lose this criminal penalty.

We offer the attached amendment, which restores the criminal penalty to K.S.A. 17-1311a at a level 6 nonperson felony. With the amendment, we have no opposition to the bill. We would however, defer to the Attorney General as to the proper severity level.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

Senate Judiciary

2-19-07
Attachment 8

AMENDMENT TO SB 324

K.S.A. 17-1311a. (a) Misuse of the permanent maintenance fund or any money belonging thereto is using, lending or permitting another to use, moneys in the fund in a manner not authorized by law, by a custodian or other person having charge or control of such fund or moneys by virtue of his position.

(b) Misuse of the permanent maintenance fund is a ~~class-D felony~~ severity level 6, nonperson felony.

Testimony of
Joseph N. Molina, Assistant Attorney General
Consumer Protection Division
Office of Attorney General Paul Morrison
Before the Senate Judiciary Committee
RE: Kansas Cemetery Corporations Act, SB 324
February 19, 2007

Chairperson Vratil and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Paul Morrison today and provide our comments on Senate Bill 324 concerning amendments to the Kansas Cemetery Corporations Act. My name is Joseph N. Molina and I am an Assistant Attorney General for Consumer Protection/Antitrust Division.

According to my understanding of SB 324, it is intended to remove obsolete references to Class D and E felonies.

The Attorney General is concerned primarily about the repeal of K.S.A. 17-1311a, which is contained in the bill. 17-1311a creates a penalty for the misuse of a cemeteries permanent maintenance fund. The permanent maintenance fund is required of cemeteries in order to preserve and maintain the cemetery into perpetuity. The Attorney General, specifically, the Consumer Protection Division is tasked with enforcement of these laws. To suddenly repeal our ability to bring criminal action against any entity that misuses a cemeteries permanent maintenance fund would severely limit our power to enforce the Cemetery Act. As such we must oppose SB 324.

In its place the Attorney General and the Secretary of State's Office wish to offer the following amendment for consideration that would update the criminal penalty in K.S.A. 17-1311a. That proposed amendment reads, "17-1311a (b) Misuse of the permanent maintenance fund is a severity level 7 nonperson felony."

The simple act of updating the felony portion of K.S.A. 17-1311a to include the new sentencing guidelines will allow the Attorney General's Office the power and authority to bring criminal action for the misuse of cemeteries permanent maintenance funds. With this proposed amendment, we have no opposition to the bill.

I appreciate the opportunity to appear today and would be happy to answer questions.

SENTENCING RANGE - NONDRUG OFFENSES

9-2

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

- 36 months recommended for felonies classified in Severity Levels 1-5
- 24 months recommended for felonies classified in Severity Levels 6-7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

- 36 months for felonies classified in Severity Levels 1-4
- 24 months for felonies classified in Severity Level 5-6
- 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

- 24 months for felonies classified in Severity Levels 1-6
- 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

SENATE BILL No. 183

By Committee on Judiciary

1-25

*Proposed
Amend from
Kathy Elson*

z183g1.pdf
NOTE: Highlighted material is to

Senate Judiciary

2-19-07

Attachment 10

9 AN ACT concerning the uniform commercial code; general provisions;
10 amending K.S.A. 16-1501, 50-682, 58-241, 60-1007, 60-2409, 61-3703,
11 84-2-202, 84-2a-501, 84-2a-518, 84-2a-519, 84-2a-527, 84-2a-528, 84-
12 4-104, 84-4a-105, 84-4a-106, 84-4a-204, 84-5-103 and 84-8-102 and
13 K.S.A. 2006 Supp. 16-1603, 16-1616, 84-2-103, 84-2a-103 and 84-9-
14 102 and repealing the existing sections; also repealing K.S.A. 84-1-101,
15 84-1-102, 84-1-103, 84-1-104, 84-1-106, 84-1-107, 84-1-108, 84-1-109,
16 84-1-202, 84-1-203, 84-1-204, 84-1-205, 84-1-206, 84-1-207, 84-1-208,
17 84-1-209, 84-2-208 and 84-2a-207 and K.S.A. 2006 Supp. 84-1-105,
18 84-1-201 and 84-3-103.

19
20 *Be it enacted by the Legislature of the State of Kansas:*
21 New Section. 1. (UCC 1-101.) Short titles. (a) This act may be cited
22 as the uniform commercial code.
23 (b) This article may be cited as uniform commercial code — general
24 provisions.
25 New Sec. 2. (UCC 1-102.) Scope of article. This article applies to a
26 transaction to the extent that it is governed by another article of the
27 uniform commercial code.
28 New Sec. 3. (UCC 1-103.) Construction of uniform commercial code
29 to promote its purposes and policies; applicability of supplemental prin-
30 ciple of law. (a) The uniform commercial code must be liberally construed
31 and applied to promote its underlying purposes and policies, which are:
32 (1) To simplify, clarify, and modernize the law governing commercial
33 transactions;
34 (2) to permit the continued expansion of commercial practices
35 through custom, usage and agreement of the parties; and
36 (3) to make uniform the law among the various jurisdictions.
37 (b) Unless displaced by the particular provisions of the uniform com-
38 mercial code, the principles of law and equity, including the law merchant
39 and the law relative to capacity to contract, principal and agent, estoppel,
40 fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and
41 other validating or invalidating cause supplement its provisions.
42 New Sec. 4. (UCC 1-104.) Construction against implied repeal. The
43 uniform commercial code being a general act intended as a unified cov-

1 New Sec. 13. (UCC 1-205.) Reasonable time; seasonableness. (a)
2 Whether a time for taking an action required by the uniform commercial
3 code is reasonable depends on the nature, purpose, and circumstances of
4 the action.

5 (b) An action is taken seasonably if it is taken at or within the time
6 agreed or, if no time is agreed, at or within a reasonable time.

7 New Sec. 14. (UCC 1-206.) Presumptions. Whenever the uniform
8 commercial code creates a "presumption" with respect to a fact, or pro-
9 vides that a fact is "presumed," the trier of fact must find the existence
10 of the fact unless and until evidence is introduced that supports a finding
11 of its nonexistence.

12 New Sec. 15. (UCC 1-301.) Territorial applicability; parties' power
13 to choose applicable law. (a) In this section:

14 (1) "Domestic transaction" means a transaction other than an inter-
15 national transaction.

16 (2) "International transaction" means a transaction that bears a rea-
17 sonable relation to a country other than the United States.

18 (b) This section applies to a transaction to the extent that it is gov-
19 erned by another article of the uniform commercial code.

20 (c) Except as otherwise provided in this section:

21 (1) An agreement by parties to a domestic transaction that any or all
22 of their rights and obligations are to be determined by the law of this
23 state or of another state is effective, whether or not the transaction bears
24 a relation to the state designated; and

25 (2) an agreement by parties to an international transaction that any
26 or all of their rights and obligations are to be determined by the law of
27 this state or of another state or country is effective, whether or not the
28 transaction bears a relation to the state or country designated.

29 (d) In the absence of an agreement effective under subsection (c),
30 and except as provided in subsections (e) and (g), the rights and obliga-
31 tions of the parties are determined by the law that would be selected by
32 application of this state's conflict of laws principles.

33 (e) If one of the parties to a transaction is a consumer, the following
34 rules apply:

35 (1) An agreement referred to in subsection (c) is not effective unless
36 the transaction bears a reasonable relation to the state or country
37 designated.

38 (2) Application of the law of the state or country determined pursuant
39 to subsection (c) or (d) may not deprive the consumer of the protection
40 of any rule of law governing a matter within the scope of this section,
41 which both is protective of consumers and may not be varied by
42 agreement:

43 (A) Of the state or country in which the consumer principally resides.

10-3

1 unless subparagraph (B) applies; or
 2 (B) if the transaction is a sale of goods, of the state or country in
 3 which the consumer both makes the contract and takes delivery of those
 4 goods, if such state or country is not the state or country in which the
 5 consumer principally resides.

6 (f) An agreement otherwise effective under subsection (c) is not ef-
 7 fective to the extent that application of the law of the state or country
 8 designated would be contrary to a fundamental policy of the state or
 9 country whose law would govern in the absence of agreement under sub-
 10 section (d).

11 (g) To the extent that the uniform commercial code governs a trans-
 12 action, if one of the following provisions of the uniform commercial code
 13 specifies the applicable law, that provision governs and a contrary agree-
 14 ment is effective only to the extent permitted by the law so specified:

- 15 (1) K.S.A. 84-2-402, and amendments thereto;
- 16 (2) K.S.A. 84-2a-105 and 84-2a-106, and amendments thereto;
- 17 (3) K.S.A. 84-4-102, and amendments thereto;
- 18 (4) K.S.A. 84-4a-507, and amendments thereto;
- 19 (5) K.S.A. 84-5-116, and amendments thereto;

- (7) 20 (6) K.S.A. 84-8-110, and amendments thereto;
- 21 (7) K.S.A. 2006 Supp. 84-9-301 through 84-9-307, and amendments
 22 thereto.

(8) 23 New Sec. 16. (UCC 1-302.) Variation by agreement. (a) Except as
 24 otherwise provided in subsection (b) or elsewhere in the uniform com-
 25 mercial code, the effect of provisions of the uniform commercial code
 26 may be varied by agreement.

27 (b) The obligations of good faith, diligence, reasonableness, and care
 28 prescribed by the uniform commercial code may not be disclaimed by
 29 agreement. The parties, by agreement, may determine the standards by
 30 which the performance of those obligations is to be measured if those
 31 standards are not manifestly unreasonable. Whenever the uniform com-
 32 mercial code requires an action to be taken within a reasonable time, a
 33 time that is not manifestly unreasonable may be fixed by agreement.

34 (c) The presence in certain provisions of the uniform commercial
 35 code of the phrase "unless otherwise agreed", or words of similar import,
 36 does not imply that the effect of other provisions may not be varied by
 37 agreement under this section.

38 New Sec. 17. (UCC 1-303.) Course of performance, course of deal-
 39 ing, and usage of trade. (a) A "course of performance" is a sequence of
 40 conduct between the parties to a particular transaction that exists if:

- 41 (1) The agreement of the parties with respect to the transaction in-
 42 volves repeated occasions for performance by a party; and
- 43 (2) the other party, with knowledge of the nature of the performance

(a) Except as otherwise provided in this section, when a transaction bears reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the uniform commercial code applies to transactions bearing an appropriate relation to this state.

(c) If

- (6) K.S.A. 84-6-103, and amendments thereto;

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

9 AN ACT concerning elections; relating to election crimes; relating to
10 advance voting suppression.

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

12 Section 1. Advance voting suppression is knowingly: (a) Destroying
13 or altering any advance voting ballot applied for, or completed, by a reg-
14 istered voter, regardless of whether or not such registered voter has
15 knowledge of destruction or alteration;

16 (b) obstructing the delivery of an advance voting ballot to a voter or
17 a completed advance voting ballot to the county election officer;

18 (c) failing to deliver any such advance voting ballot to the appropriate
19 county election officer within two business days as directed by the voter;

20 (d) delivering an advance voting ballot to or causing the delivery of
21 an advance voting ballot to any place other than the county election office;

22 (e) exercising undue influence upon an advance voter in applying for,
23 transmitting or marking an advance voting ballot; or

24 (f) opening an advance voting ballot envelope sealed by the voter or
25 examining or disclosing the contents of such voter's advance voting ballot
26 except as required to fulfill official duties as otherwise prescribed by law.

27 Advance voting suppression is a severity level 9, nonperson felony.

28 Sec. 2. This act shall take effect and be in force from and after its
29 publication in the statute book.
30

with intent to impede, obstruct or influence the
election process

21

Senate Judiciary
2-19-07
Attachment 11

11-2

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

9 AN ACT concerning elections; relating to election crimes; relating to
10 advance voting suppression.

11

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

13 Section 1. Advance voting suppression is knowingly: (a) Destroying
14 or altering any advance voting ballot applied for, or completed, by a reg-
15 istered voter, regardless of whether or not such registered voter has
16 knowledge of destruction or alteration;

17 (b) obstructing the delivery of an advance voting ballot to a voter or
18 a completed advance voting ballot to the county election officer;

19 (c) failing to deliver any such advance voting ballot to the appropriate
20 county election officer within two business days as directed by the voter;

21 (d) delivering an advance voting ballot to ~~or~~ causing the delivery of
22 an advance voting ballot to ~~any place other than the county election office;~~

23 (e) exercising undue influence upon an advance voter in applying for,
24 transmitting or marking an advance voting ballot; or

25 (f) opening an advance voting ballot envelope sealed by the voter or
26 examining or disclosing the contents of such voter's advance voting ballot
27 except as required to fulfill official duties as otherwise prescribed by law.

28 Advance voting suppression is a severity level 9, nonperson felony.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.

,

or depositing an advance voting ballot in the United States mail
for delivery to

11-3

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

9 AN ACT concerning elections; relating to election crimes; relating to
10 advance voting suppression.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Advance voting suppression is knowingly: (a) Destroying
14 or altering any advance voting ballot applied for, or completed, by a reg-
15 istered voter, regardless of whether or not such registered voter has
16 knowledge of destruction or alteration;

17 (b) obstructing the delivery of an advance voting ballot to a voter or
18 a completed advance voting ballot to the county election officer;

19 (c) failing to deliver any such advance voting ballot to the appropriate
20 county election officer within two business days as directed by the voter;

21 (d) delivering an advance voting ballot to ~~or~~ causing the delivery of
22 an advance voting ballot to any place other than the county election office;

23 (e) exercising undue influence upon an advance voter in applying for,
24 transmitting or marking an advance voting ballot; or

25 (f) opening an advance voting ballot envelope sealed by the voter or
26 examining or disclosing the contents of such voter's advance voting ballot
27 except as required to fulfill official duties as otherwise prescribed by law.

28 Advance voting suppression is a severity level 9, nonperson felony.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.

,

or depositing an advance voting ballot in any mailing service
for delivery to

4-11

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

9 AN ACT concerning elections; relating to election crimes; relating to
10 advance voting suppression.

11

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

13 Section 1. Advance voting suppression is knowingly: (a) Destroying
14 or altering any advance voting ballot applied for, or completed, by a reg-
15 istered voter, regardless of whether or not such registered voter has
16 knowledge of destruction or alteration;

17 (b) obstructing the delivery of an advance voting ballot to a voter or
18 a completed advance voting ballot to the county election officer;

19 (c) failing to deliver any such advance voting ballot to the appropriate
20 county election officer within two business days as directed by the voter;

21 (d) delivering an advance voting ballot to ~~or~~ causing the delivery of
22 an advance voting ballot to any place other than the county election office;

23 (e) exercising undue influence upon an advance voter in applying for,
24 transmitting or marking an advance voting ballot; or

25 (f) opening an advance voting ballot envelope sealed by the voter or
26 examining or disclosing the contents of such voter's advance voting ballot
27 except as required to fulfill official duties as otherwise prescribed by law.

28 Advance voting suppression is a severity level 9, nonperson felony.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.

2

or depositing an advance voting ballot in any mailing service
for delivery to

(g) Delivering an advance voting ballot to a mailing service for
delivery to the county election officer shall not be a violation of
this section.

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

9 AN ACT concerning elections; relating to election crimes; relating to
10 advance voting suppression.

11

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

13 Section 1. Advance voting suppression is knowingly: (a) Destroying
14 or altering any advance voting ballot applied for, or completed, by a reg-
15 istered voter, regardless of whether or not such registered voter has
16 knowledge of destruction or alteration;

17 (b) obstructing the delivery of an advance voting ballot to a voter or
18 a completed advance voting ballot to the county election officer;

19 (c) failing to deliver any such advance voting ballot to the appropriate
20 county election officer within two business days as directed by the voter;

21 (d) delivering an advance voting ballot to or causing the delivery of
22 an advance voting ballot to any place other than the county election office;

23 (e) exercising undue influence upon an advance voter in applying for,
24 transmitting or marking an advance voting ballot; or

25 (f) opening an advance voting ballot envelope sealed by the voter or
26 examining or disclosing the contents of such voter's advance voting ballot
27 except as required to fulfill official duties as otherwise prescribed by law.

28 Advance voting suppression is a severity level 9, nonperson felony.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.

(g) As used in this section, undue influence means coercion, compulsion or restraint as to diminish the voter's free agency, and by overcoming the power of resistance, obliges or causes such voter to adopt the will of another.