

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:38 A.M. on February 21, 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:

Others attending:

See attached list.

Approval of Minutes

Senator Donovan moved, Senator Bruce seconded, to approve the committee minutes of January 31, 2007. Motion carried.

The Chairman called for final action on **SB 270--Ephedrine and pseudoephedrine; purchase; sale; pharmacy log; prohibiting direct access by customers; immunity; statewide uniformity**. Chairman Vratil reviewed the bill and the proposed amendments suggested by Kyle Smith, Kansas Bureau of Investigation.

Following discussion Senator Lynn moved, Senator Donovan seconded, to adopt the amendments proposed by Kyle Smith with the deletion of Section 4 and subsection 3, on page 3, concerning two dosage blister packs. Motion carried.

Senator Donovan moved, Senator Umbarger seconded, to recommend SB 270, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 324--Repealing certain K.S.A. sections, concerning certain crimes**. Chairman Vratil reviewed the bill and amendments proposed by Mark Stafford, Kansas Board of Healing Arts and Melissa Wangeman, Secretary of State's Office.

Senator Journey moved, Senator Lynn seconded, to amend SB 324 in accordance with the recommendation from Mark Stafford. Motion carried.

Senator Journey moved, Senator Goodwin seconded, to amend SB 324 in accordance with the recommendation from Melissa Wangeman with the exception to make the offense a level 7. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to recommend SB 324, as amended, favorably for passage. Motion carried.

The Chairman resumed final action on **SB 133--Election crimes; advance voting ballot suppression**. A balloon was distributed reflecting the changes made by the committee on February 19 (Attachment 1). Chairman Vratil indicated he had read over the amendments made February 19, and is of the opinion that the amendment made to Section 1(b) is contradictory. Senator Vratil moved to restore Section 1(d) on page 1, lines 21 and 22, to their original language. Senator Schmidt seconded the motion. Motion carried.

The Chairman indicated proposed amendments by Melissa Wangeman, Secretary of State's Office (Attachment 2). Chairman Vratil reviewed the proposed amendments including a minor change by the Chairman to subsection (h). Senator Journey moved, Senator Lynn seconded, to adopt the proposed amendments with a friendly change to insert the word "calendar" between the words "five" and "days" of subsection (h). Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:38 A.M. on February 21, 2007, in Room 123-S of the Capitol.

Senator Schmidt moved, Senator Goodwin seconded, to modify subsection (h) by inserting the language “with first class postage attached,” before “at least five calendar days”. Motion carried.

Senator Bruce questioned the language on page 1, lines 15 and 16. Senator Vratil moved, Senator Goodwin seconded, to strike on page 1, line 15, the language “regardless of whether or not such registered voter has knowledge of destruction or alteration;” and insert the language “unless such registered voter consents in writing to such destruction or alteration”. Motion carried. Senator Haley voted “no” and requested his vote recorded.

Senator Goodwin moved, Senator Haley seconded, to recommend **SB 133**, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 268–Use of deadly force**. Senator Schmidt distributed a proposed Substitute for **SB 268** and described the proposed bill (Attachment 3). Senator Schmidt indicated that the legislation passed last year did not contain input from prosecutors and **SB 268** is the prosecutors solution to such legislation. Substitute for SB 268 is an alternate approach which does not repeal last year’s legislation but goes to the heart of the prosecutor’s concerns, especially the immunity sections of the current law. Current law potentially creates a bottom line effect nullifying every conviction between the effective date of the current law and whenever the courts so rule in cases in which these defense provisions were an issue.

Senator Allen questioned the intent of last year’s bill. Chairman Vratil, as a member of the conference committee that dealt with the bill, indicated that it was the intent to give some form of protection to people who were defending themselves lawfully. Immunity was probably the wrong way to approach it, because the bill granted immunity not only from prosecution but from arrest which creates a real quandary for law enforcement. Senator Schmidt’s proposal reflected an affirmative defense that one would assert in court. He said it would be a better way to approach the problem. This bill would codify what was common law before last year’s legislation.

Following further discussion the committee indicated a preference to not work the bill any further this session.

The meeting adjourned at 10:32 A.M. The next scheduled meeting is February 28, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/21/07

NAME	REPRESENTING
Ed Kump	Ks Assoc of Chiefs of Police
Bob Keller	JCSO
Jeff Bohly	KSA
John Peltz	KSC
Brenda Thurman	KSC
Jesse Borjon	Sec. of state
Melissa Wanyemana	Sec of state
Brad Bryant	Sec. of state
Cindy Gregersen	ESU student
Julie Hein	Hein Law Firm
Debra Billingsley	KBOP
La Mue	LGR
San Morin	KCS Medical Society

SENATE BILL No. 133

By Committee on Elections and Local Government

1-22

z133c7

Senate Judiciary
2-21-07
Attachment 1

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;

, with intent to impede, obstruct or influence the election process

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;

another person's

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

or depositing an advance voting ballot, at least two business days prior
to the election day, in the United States mail for delivery to

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.

(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.

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

Changes of
2-19-07

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;~~

or before the close of polls on election day, whichever first occurs

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

delivering

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.

(h) Delivering an advance voting ballot to the U.S. mail
at least five days prior to election day for delivery to the
county election officer shall not be a violation of this section.

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

(i) As used in this section, the term "deliver" means hand-deliver,
mail, or otherwise transmit an advance voting ballot.

PROPOSED Substitute for SENATE BILL NO. 268

By

AN ACT concerning use of force; immunity from prosecution or liability; amending K.S.A. 2006 Supp. 21-3219 and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 21-3219 is hereby amended to read as follows: 21-3219. (a) ~~A person who uses force which,~~ Subject to the provisions of K.S.A. 21-3214, and amendments thereto, a person who uses force which is justified pursuant to K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto, or K.S.A. 2006 Supp. 21-3218, and amendments thereto, shall have the affirmative defense provided by such statutes in any criminal prosecution and 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.

Sec. 2. K.S.A. 2006 Supp. 21-3219 is hereby repealed.

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