

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 18, 2008 in Room 313-S of the Capitol.

All members were present except:

Annie Kuether- excused
Ben Hodge - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

SB 418 - Kansas sentencing commission; duty to annually produce official juvenile correctional facility population projections

Representative Pauls made the motion to report SB 418 favorably for passage. Representative Watkins seconded the motion. The motion carried.

SB 423 - notice of filing of foreign judgement

Representative Owens made the motion to report SB 423 favorably for passage. Representative Davis seconded the motion. The motion carried.

SB 424 - oil & gas leases, distribution of monies deposited with the court

Representative Owens made the motion to report SB 424 favorably for passage. Representative Whitham seconded the motion. The motion carried.

SB 448 - applicability of Kansas general corporation code to certain cooperative

Representative Whitham made the motion to report SB 448 favorably for passage. Representative Davis seconded the motion. The motion carried.

SB 449 - UCC secured transactions, striking forms

Representative Whitham made the motion to report SB 449 favorably for passage. Representative Owens seconded the motion. The motion carried.

SB 450 - cemetery corporations, investment of permanent maintenance funds

Representative Davis made the motion to report SB 450 favorably for passage, and placed on the consent calendar. Representative Whitham seconded the motion. The motion carried.

SB 479 - postrelease supervision for certain offenders convicted & SB 476 - arrest for violating conditions of probation or conditions of release

Representative Colloton made the motion to report SB 476 favorably for passage. Representative Pauls seconded the motion.

A balloon was provided to the committee on SB 479 (Attachment #1) to clean up language regarding the period of post-incarceration supervision for the longest sentence. Representative Pauls made the motion to adopt the balloon and place the provisions of the balloon into SB 476 and make it effective upon publication in the Kansas Registry. The motion was seconded. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 18, 2008 in Room 313-S of the Capitol.

Representative Pauls made the motion to report **SB 476** favorably for passage, as amended. Representative Whitham seconded the motion. The motion carried.

SB 477 - offender registration, electronic solicitation

Representative Colloton made the motion to report **SB 477** favorably for passage. Representative Owens seconded the motion.

Representative Colloton made a substitute motion to allow for revisor's technical amendments in the title of the bill. Representative Owens seconded the motion. The motion carried.

Representative Colloton made the motion to report **SB 477** favorably for passage, as amended. Representative Wolf seconded the motion. The motion carried.

SB 481 - controlled substance, schedule, salvia & gypsum weed

Representative Colloton made the motion to report **SB 481** favorably for passage. Representative Wolf seconded the motion.

Representative Owens expressed concern that gypsum is a common weed. He made the substitute motion to delete the reference to gypsum, page 5, lines 28-33. Representative Garcia seconded the motion. The motion failed.

Representative Pauls made the motion to add gypsum to the list of noxious weed statute. Representative Ward seconded the motion. The motion carried 8-6.

Representative Pauls made the motion to report **SB 481** favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

SB 379 - indemnification clauses

A balloon was provided by Chairman O'Neal. This was his attempt to address some of the concerns raised by various parties. (Attachment #2) Jason Thompson, Revisor of Statute, explained the proposed balloon.

SB 32 - Health care; medical assistance repayment; discretionary trusts

Representative Ward made the motion to strike the provisions in **SB 32** and replace with the provisions of **HB 2621**. Representative Owens seconded the motion. The motion carried.

Representative Ward made the motion to report **House Substitute for SB 32** favorably for passage. Representative Owens seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next committee meeting was scheduled for March 19, 2008.

SENATE BILL No. 479

By Committee on Judiciary

1-28

Proposed Amendment
March 18, 2008

House Judiciary
Date 3-18-08
Attachment # 1

10 AN ACT relating to crimes and punishment; providing for postrelease
11 supervision for certain offenders; amending K.S.A. 21-4608 and re-
12 pealing the existing section.

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

14 Section 1. K.S.A. 21-4608 is hereby amended to read as follows: 21-
15 4608. (a) When separate sentences of imprisonment for different crimes
16 are imposed on a defendant on the same date, including sentences for
17 crimes for which suspended sentences, probation or assignment to a com-
18 munity correctional services program have been revoked, such sentences
19 shall run concurrently or consecutively as the court directs. Whenever
20 the record is silent as to the manner in which two or more sentences
21 imposed at the same time shall be served, they shall be served concur-
22 rently, except as provided in subsections (c), (d) and (e).

23 (b) Any person who is convicted and sentenced for a crime commit-
24 ted while on probation, assignment to a community correctional services
25 program, parole or conditional release for a misdemeanor shall serve the
26 sentence concurrently with or consecutively to the term or terms under
27 which the person was on probation, assigned to a community correctional
28 services program or on parole or conditional release, as the court directs.

29 (c) Any person who is convicted and sentenced for a crime committed
30 while on probation, assigned to a community correctional services pro-
31 gram, on parole, on conditional release or on postrelease supervision for
32 a felony shall serve the sentence consecutively to the term or terms under
33 which the person was on probation, assigned to a community correctional
34 services program or on parole or conditional release.

35 (d) Any person who is convicted and sentenced for a crime commit-
36 ted while on release for a felony pursuant to article 28 of chapter 22 of
37 the Kansas Statutes Annotated shall serve the sentence consecutively to
38 the term or terms under which the person was released.

39 (e) (1) Any person who is convicted and sentenced for a crime com-
40 mitted while such person is incarcerated and serving a sentence for a
41 felony in any place of incarceration shall serve the sentence consecutively
42 to the term or terms under which the person was incarcerated.
43

Prepared by Revisor of Statutes Office
ball479jw.pdf

1-2

1 (2) If a person is sentenced to prison for a crime committed on or
 2 after July 1, 1993, while the person was imprisoned for an offense com-
 3 mitted prior to July 1, 1993, and the person is not eligible for the retro-
 4 active application of the sentencing guidelines act, the new sentence shall
 5 not be aggregated with the old sentence but shall begin when the person
 6 is paroled or reaches the conditional release date on the old sentence,
 7 whichever is earlier. If the offender was past the offender's conditional
 8 release date at the time the new offense was committed, the new sentence
 9 shall not be aggregated with the old sentence but shall begin when the
 10 person is ordered released by the Kansas parole board or reaches the
 11 maximum sentence date on the old sentence, whichever is earlier. The
 12 new sentence shall then be served as otherwise provided by law. The
 13 period of ~~postrelease~~ supervision shall be based on the ~~new sentence,~~
 14 ~~except that those offenders whose old sentence is a term of imprisonment~~
 15 ~~for life, imposed pursuant to K.S.A. 21-4628, and amendments thereto,~~
 16 ~~prior to its repeal, or an indeterminate sentence with a maximum term of~~
 17 ~~life imprisonment, for which there is no conditional release or maximum~~
 18 ~~sentence expiration date, shall remain on postrelease supervision for life~~
 19 ~~or the~~ longest term of post incarceration supervision imposed for
 20 all crimes upon which sentence was imposed or until discharged from
 21 supervision by the Kansas parole board. The term of post incarceration
 22 supervision imposed by this paragraph shall apply retroactively to
 23 crimes committed prior to the effective date of this act.

post incarceration

(3) As used in this subsection, "post incarceration supervision" includes parole and postrelease supervision.

24 (f) The provisions of this subsection relating to parole eligibility shall
 25 be applicable to persons convicted of crimes committed prior to January
 26 1, 1979, but shall be applicable to persons convicted of crimes committed
 27 on or after that date only to the extent that the terms of this subsection
 28 are not in conflict with the provisions of K.S.A. 22-3717 and amendments
 29 thereto. In calculating the time to be served on concurrent and consec-
 30 utive sentences, the following rules shall apply:

31 (1) When indeterminate terms run concurrently, the shorter mini-
 32 mum terms merge in and are satisfied by serving the longest minimum
 33 term and the shorter maximum terms merge in and are satisfied by con-
 34 ditional release or discharge on the longest maximum term if the terms
 35 are imposed on the same date.

36 (2) When concurrent terms are imposed on different dates, compu-
 37 tation will be made to determine which term or terms require the longest
 38 period of imprisonment to reach parole eligibility, conditional release and
 39 maximum dates, and that sentence will be considered the controlling
 40 sentence. The parole eligibility date may be computed and projected on
 41 one sentence and the conditional release date and maximum may be com-
 42 puted and projected from another to determine the controlling sentence.

43 (3) When indeterminate terms imposed on the same date are to be

SENATE BILL No. 379

By Committee on Ways and Means

3-12

Balloon Amendment - 03/18/08 - Rep. O'Neal
RS - SB379O'Neal.pdf (JThompson)

House Judiciary
Date 3-18-08
Attachment # 2

12 AN ACT concerning ~~construction~~ contracts; relating to indemnification
13 provisions and additional insured parties; amending K.S.A. ~~2006 Supp.~~
14 16-121 and repealing the existing section.
15

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

17 Section 1. K.S.A. ~~2006 Supp.~~ 16-121 is hereby amended to read as
18 follows: 16-121. (a) When used in this section:

19 (1) "Construction contract" means an agreement for the design, con-
20 struction, alteration, renovation, repair or maintenance of a building,
21 structure, highway, road, bridge, water line, sewer line, oil line, gas line,
22 appurtenance or other improvement to real property, including any mov-
23 ing, demolition or excavation, except that no deed, lease, easement, li-
24 cense or other instrument granting an interest in or the right to possess
25 property shall be deemed to be a construction contract even if the in-
26 strument includes the right to design, construct, alter, renovate, repair or
27 maintain improvements on such real property. ←

"Construction contract" shall not include any design, construction, alteration, renovation, repair or maintenance of: (A) Dirt or gravel roads used to access oil and gas wells and associated facilities; or (B) oil flow lines or gas gathering lines used in association with the transportation of production from oil and gas wells from the wellhead to oil storage facilities or gas transmission lines.

28 (2) "Damages" means personal injury damages, property damages or
29 economic loss.

(4) "Motor carrier transportation contract" means . . .

30 (3) "Indemnification provision" means a covenant, promise, agree-
31 ment, *clause* or understanding in connection with, *contained in, or col-*
32 *lateral to* a construction contract that requires the promisor to hold harm-
33 less, indemnify or defend the promisee or others against liability for *loss*
34 *or damages.* ←

(5) "Mutual indemnity obligation" means . . .

(7) "Unilateral indemnity obligation" means . . .

(6) 35 → (4) "~~Indemnitee~~" shall include an agent, employee or independent
36 contractor who is directly responsible to the ~~indemnitee~~. ←

Promisee

37 (b) An indemnification provision in a construction contract or other
38 agreement, including, but not limited to, a right of entry, entered into in
39 connection with a construction contract, which requires the ~~indemnitor~~
40 to indemnify the ~~indemnitee~~ for the ~~indemnitee's~~ negligence or inten-
41 tional acts or omissions is against public policy and is void and
42 unenforceable.

promisor

motor carrier transportation contract,

promisee

promisee's

43 (c) A provision in a construction contract which requires a party to

motor carrier transportation contract or

2-2

1 provide liability coverage to another party, as an additional insured, for
 2 such other party's own negligence or intentional acts or omissions is
 3 against public policy and is void and unenforceable, ~~except that the provisions of this subsection shall not apply to a construction contract~~
 4 ~~between the owner of the property and the general contractor.~~

6 (d) This act shall not be construed to affect or impair the contractual
 7 obligation of a contractor or owner to provide railroad protective insur-
 8 ance or general liability insurance.

9 ~~(d)~~ (e) This section applies only to indemnification provisions entered
 10 into after the act takes effect.

11 Sec. 2. K.S.A. 2006 Supp. 16-121 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force on and after January
 13 1, ~~2008~~ 2009, and its publication in the statute book.

January 1, 2009

and additional
insured provisions

: (1) The

- ;
- (2) an agreement under which an owner, a responsible party or a governmental entity agrees to indemnify a contractor directly or through another contractor with respect to strict liability under environmental laws;
 - (3) an indemnification agreement that is an integral part of an offer to compromise or a settlement of a disputed claim, if: (A) The settlement is based on consideration; (B) the dispute relates to an alleged event that is related to a construction contract and that occurred before the settlement is made; and (C) the indemnification relates only to claims that have arisen or may arise from the past event;
 - (4) the validity of any insurance contract, construction bond or other agreement lawfully issued by an insurer or bonding company;
 - (5) a separately negotiated provision or provisions whereby the parties mutually agree to a reasonable allocation of risk, if each such provision is: (A) Based on generally accepted industry loss experience; and (B) supported by adequate consideration; and
 - (6) an agreement that provides for indemnity if the parties agree in writing that the indemnity obligation will be supported by liability insurance coverage to be furnished by the promisor subject to the following limitations:
 - (A) With respect to a mutual indemnity obligation, the indemnity obligation is limited to the extent of the coverage and dollar limits of insurance or qualified self-insurance each party as promisor has agreed to obtain for the benefit of the other party as promisee.
 - (B) With respect to a unilateral indemnity obligation, the indemnity obligation must be at the promisee's expense.

(4) "Motor carrier transportation contract" means, with respect to a motor carrier as defined in K.S.A. 66-1,108, and amendments thereto, a contract, agreement or understanding covering:

(A) The transportation of property by a motor carrier;

(B) the entrance on property by the motor carrier for the purpose of loading, unloading or transporting property; or

(C) a service incidental to activity described in clause (A) or (B) including, but not limited to, storage of property.

"Motor carrier transportation contract" shall not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment.

(5) "Mutual indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which the parties agree to indemnify each other and each other's contractors and their employees against loss, liability, or damages arising in connection with bodily injury, death, and damage to property of the respective employees, contractors or their employees, and invitees of each party arising out of or resulting from the performance of the agreement.

(7) "Unilateral indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which one of the parties as promisor agrees to indemnify the other party as promisee with respect to claims for personal injury or death to the promisor's employees or agents or to the employees or agents of the promisor's contractors but in which the promisee does not make a reciprocal indemnity to the promisor.