

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairman Terry Bruce at 9:36 A.M. on January 26, 2006, in Room 123-S of the Capitol.

All members were present.

John Vratil arrived, 9:38 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Melissa Wangeman, Legal Counsel, Deputy Assistant Secretary of State
Kathleen Olsen, Kansas Bankers Association
Major Mark Goodloe, Kansas Highway Patrol
Karen Whitman, Shawnee County Assistant District Attorney
Richard Howard, Manager, Office of Quality Improvement, KDHE
Dennis and Linda Beaver
James G. Keller, Deputy General Counsel, Department of Revenue

Others attending:

See attached list.

Bill Introductions

Senator Schmidt introduced three bills. The first concerning children in need relating to reports of alleged abuse or neglect. The second addressed changes to K.S.A. 8-1608 regarding leaving the scene of an accident and the third addressed changes to K.S.A. 8-1602 regarding failure to report an accident. Senator Haley moved, Senator Donovan seconded, to introduce all three bills. Motion carried.

Chairman Vratil arrived and assumed Chair of the meeting.

Final Action on **HB 2352--Revised Kansas code for care of children**

Senator Vratil called for final action on **HB 2352**. The Chairman distributed a balloon amendment reflecting agreed changes following the public hearing between Conferee Judge Graber and members of the Judicial Council Advisory Committee (Attachment 1). He also indicated a letter from Conferee Rick Levy concerning a question by Senator O'Connor regarding instances in the bill where parties were treated differently than interested parties (Attachment 2). Mr. Levy's reply indicated that in the instances he reviewed the vast majority of the times when both were mentioned together, both were treated equally. However, he suggested three minor amendments to clarify language he encountered during his review. All of the amendments suggested by the Judicial Council Advisory Committee, Judge Graber and Rick Levy have been included in a balloon amendment distributed to the committee. The Chairman also indicated that the revisors had inadvertently left out (Adoption and Safe Families Act) language on adoptions and foster children and he suggested that it be added to the bill even though SRS (Social and Rehabilitation Services) indicated that while it is not essential it does clarify matters.

Following discussion, Senator Bruce moved, Senator Goodwin seconded, to adopt the balloon amendments presented today including the ASFA language. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to adopt the balloon amendments proposed by the Judicial Council at the time of the hearing. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to favorably recommend the bill as amended. Motion carried.

The hearing on **SB 352--Uniform commercial code; filing of financing statements** was opened. Melissa Wangeman spoke as a proponent (Attachment 3). She indicated that the purpose of SB 352 is to correct a technical drafting error in Revised Article Nine of the Uniform Commercial Code which causes

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unintentional consequences by causing a shortened period of time by which to file statements in order to comply with the new law. Enactment of **SB 352** will clarify rule 9-705 as it applies to those financing statements failing to meet the new requirements of Revised Article Nine.

Kathy Olsen, a proponent, provided a balloon amendment containing alternative language based on Nebraska's legislation (Attachment 4). She feels the suggested language more clearly identifies to the practitioner which filings are potentially affected and provides a clear cut safe harbor for those filings.

There being no further conferees, the Chairman closed the hearing on **SB 352**.

The hearing on **SB 341--DUI excessive blood or breath-alcohol concentration, penalties** was opened.

Major Mark Goodloe appeared as a proponent indicating support for the intent of **SB 341** but was concerned that the proposed penalties may be less for offenders who refuse to take an evidentiary test showing an actual Blood Alcohol Content (BAC) (Attachment 5). Offenders who refuse to submit to testing, which would make prosecution more difficult. Another concern was the possibility of an increase in the number of individuals attempting to litigate, resulting in greater likelihood to contest a BAC and increased court time for law enforcement officers.

Karen Whitman spoke as a proponent and stated while the intent of SB 341 is commendable she had concerns with the bill (Attachment 6). First, she suggested the addition of Aggravated Involuntary Manslaughter while DUI. This would provide for the enhancement of a person's criminal history if they had been convicted of a number of DUI's prior to the offense involving the death. The second suggestion would remove the courts' discretion in requiring drug and alcohol treatment as part of a person's parole and have all DUI convictions require such treatment. Third, regarding enhancement of penalty when a child under the age of 14 is in the vehicle be assessed for each child in the vehicle.

Richard Howard spoke in support of the bill (Attachment 7). Kansas Department of Health and Environment (KDHE) provides support for Kansas Law Enforcement Agencies through the Division of Health and Environmental Laboratories. They are responsible for recommending breath alcohol instruments, instrument and calibration standards, and performance checks for the instruments. KDHE also provides training for law enforcement officers to ensure testing is performed accurately. He indicated that as the severity of penalty increases, so will the desire to avoid conviction for the offense, resulting in an increase in court cases which will have a direct impact upon the demand for court testimony by KDHE. He is seeking additional funding for expenses incurred as a result of this legislation.

Dennis Beaver testified in favor of the bill in hopes to reduce deaths caused by drunk drivers (Attachment 8).

James Keller testified as neutral indicating that the Department of Revenue has concerns with the present language of the bill (Attachment 9). These include:

- Amending K.S.A. 8-1014 to require alternative actions for test results over .16 should include corresponding notice changes in K.S.A. 8-1001 (f)
- The bill provides an incentive to refuse testing for individuals having prior occurrences
- No clear indication on the impact for drivers under the age of 21
- The bill will require changes to several forms used by the Division of Motor Vehicles
- Conviction abstracts will need to include alcohol levels and will test results greater than .16 require a separate finding by the Court
- Increased cost to administer the Kansas Implied Consent Law

Written testimony in support of **SB 341** was submitted by:

Randy Rogers, President, Kansas Sheriff's Association (Attachment 10)

Terry Roberts, Executive Director, Kansas State Nurses Association (Attachment 11)

Lillian Spencer, Executive Director, Mothers Against Drunk Driving (Attachment 12)

The Chairman closed the public hearing on **SB 341**.

The meeting adjourned at 10:33 a.m. The next scheduled meeting is January 30, 2006.