

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Thursday, March 11, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Barbara Allen (E)
Senator David Haley -Arrived 9:40
Senator Edward Pugh - Arrived 9:38
Senator Greta Goodwin (E)
Senator Les Donovan (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association
Jim Kowach, Kansas Department of Transportation
Dina Fisk, Kansas Society of Land Surveyors
Woody Moses, Kansas Aggregate Producers' Association (written testimony)
Dave Holtwick, Home Builders Association (written testimony)
Barb Conant, Kansas Trial Lawyers (written testimony)
Thad Fowler, Kansas Society of Land Surveyors (written testimony)
Chris Wilson, Executive Director, Kansas Building Industry Association, Inc. (written testimony)
Professor Richard Levy, Kansas Judicial Council, Juvenile Offender/CINC Advisor Committee
Candy Shively, Social Rehabilitation Services
Denise Everhart, Commissioner, Juvenile Justice Authority (written testimony)

Others attending: See attached list.

Chairman Vratil announced that he was referring **HB 2603** to Senator Schmidt's sub-committee for a hearing and then a report back to the full Committee for consideration.

HB 2612 - Technical amendments to the Uniform Commercial Code

Chairman Vratil opened the hearing on **HB 2612**. Kathy Taylor Olsen, Kansas Bankers Association, testified in favor of **HB 2612**, which makes a technical correction to the Uniform Commercial Code Revised Article 9. She said the error is found in KSA 84-9-509(a)(1), where the word "or" was omitted in the final printing on page 1, line 19. Ms. Olsen stated that it was clear from the original draft in 2002 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that it was intended for lenders to have another option – that being a separately authenticated record. She added this amendment would allow a debtor to separately authorize the filing of the financing statement in an independent document. (Attachment 1)

There being so other conferees to testify, the Chairman closed the hearing on **HB 2612**.

Final Action on:

HB 2612 - Technical amendments to the Uniform Commercial Code

The Chair called for discussion and final action on **HB 2612** with consideration being given to place it on the Consent Calendar.

Senator O'Connor moved to recommend favorably for passage **HB 2612**, and placement on the Consent Calendar, seconded by Senator Oleen, and the motion carried.

HB 2617 - Allowing land surveyor to enter upon property for a land survey, not considered a trespass, if damages, survey or liable

Chairman Vratil opened the hearing on **HB 2617**. Jim Kowach, Kansas Department of Transportation,

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testified in support of **HB 2617**. The bill would allow entry onto property after a reasonable attempt to contact the property owner was made. He stated that the bill would have a favorable impact on the survey community in Kansas. ([Attachment 2](#))

Dina Fisk, Kansas Society of Land Surveyors, spoke in favor of **HB 2617**. She stated that all surveys must have a reference point or Point of Beginning which is often marked with a 'monument'. Evidence of monuments is required in a survey and noted to indicate which reference points were found, including those found beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent. Their application related to the survey need to be indicated. It is necessary for a licensed land surveyor or the authorized agent or employee to enter upon land adjacent to the land being surveyed to find the reference point. She concluded that this bill would provide parity with Kansas Statute provisions for government employed surveyors who are granted immunity to trespass and similar protection provided to private sector surveyors in other states. ([Attachment 3](#))

Woody Moses, Kansas Aggregate Producers' Association, testified in support of **HB 2617**. He explained that the U.S. Army Corps of Engineers require his industry to survey the Kansas River on a biennial basis. Passage of this bill it will assist his industry in conducting the biennial survey. ([Attachment 4](#))

Committee questions and discussion followed the oral testimony.

Written testimony in support of **HB 2617** was submitted by the following:

Dave Holtwick, Home Builders Association of Greater Kansas City ([Attachment 5](#))
Barb Conant, Kansas Trial Lawyers Association ([Attachment 6](#))
Thad Fowler, Kansas Society of Land Surveyors ([Attachment 7](#))
Chris Wilson, Kansas Building Industry ([Attachment 8](#))

The Chair closed the hearing on **HB 2617**.

HB 2742 - Child in need of care records, confidentiality

Chairman Vratil opened the hearing on **HB 2742**. Professor Richard Levy, representing Kansas Judicial Council (KJC) and Juvenile Offender/CINC Advisory Committee, testified in support of **HB 2742**. He explained that the confidentiality provisions of the Child in Need of Care Code were studied by the KJC and Juvenile Offender/CINE Advisory Committee and were guided by three basic goals: (1) Need to Know, (2) Clear Guidance, and (3) Practicality. The Committee's proposals to further these goals reflected three types of changes: (1) Organizational changes, (2) Clarification, and (3) Changes in the scope of access. The committee reworked the confidentiality provisions, and Professor Levy provided copies of the proposed changes in his written testimony. The committee basically reorganized the laws and clarified them. ([Attachment 9](#))

Candy Shively, SRS, testified in support of **HB 2742**. The bill was a significant improvement in a difficult-to-navigate area. She explained that the House amended this bill in Section 4(e) on page 9 to require *in camera* inspection prior to ordering release of otherwise confidential information. SRS believed it was the intent of the House that Section 5(f) on page 11 contain similar language; therefore, a technical change to include this language was recommended. ([Attachment 10](#))

Denise Everhart, Juvenile Justice Authority, submitted written testimony as a neutral conferee on **HB 2742**. ([Attachment 11](#))

Committee questions and discussion followed regarding legislative access to all the records. It was a contentious issue during the interim committee discussions.

There being no other conferees to appear to testify, Chairman Vratil closed the hearing on **HB 2742**.

Final Action on:

HB 2347 - Kansas uniform securities act

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Chairman Vratil called for discussion and final action on **HB 2347**. He explained the bill, and stated that the Committee had worked it on March 5 and 8. He said the Committee adopted the amendment proposed by the Kansas Cooperative Council, along with technical amendments. He explained that the Committee had yet to choose between the provisions recommended by the Securities Commissioner's office, which generally speaking would give the Security Commissioner more authority to enforce the law, and those that are recommended by the Kansas Bar Association which would return the bill to its uniform state as recommended by the Uniform Law Commissioners. He stated that there were compelling arguments for both proposals.

Senator Pugh made a motion to amend **HB 2347** by striking provisions of Section 43(b)(3), pages 57 and 58, commencing on line 43 through line 4 on page 58. Senator Oleen seconded the motion.

Committee discussion followed with clarification on the concept of administrative law. The Chairman explained that the amendment would eliminate the authority of the Securities Commissioner to make administrative decisions and relegate the decisions to the District Court. Senator Goodwin asked Rick Fleming from the Securities Commissioner's office if by stripping out some of the enforcement capabilities of the Commissioner's office would affect the ability to protect investors. Mr. Fleming responded in the affirmative, and added that the Securities Commission currently has the ability to order people to pay restitution plus interest. Discussion continued regarding the right of appeal, and limitations when reviewed by the court.

Chairman Vratil called for a vote on Senator Pugh's motion to amend. The motion failed.

Discussion continued on **HB 2347**. Senator Allen inquired if this bill that an interim study committee dealt with last summer that included variable annuities. The Chair responded affirmatively that it was the bill that sparked the controversy over variable annuities. He explained that variable annuities were included in the definition of a security in the bill which is what the interim committee recommended.

Rick Fleming stated the amendment outlined on page 3 of his March 3, 2004 testimony was agreed to by the Securities Commission and Kansas Bar Association.. The Chairman said the amendment related to Section 39(3) on page 52, line 20, deleting the wording "under paragraph (1)" and adding wording after "(3) *the offer under paragraph (1) discloses whether*" the offeror has the present.....

Senator Goodwin made a motion to adopt the agreed to amendment as explained by the Chairman, seconded by Senator O'Connor, and the motion carried.

Senator Schmidt moved to pass **HB 2347** out favorably as amended, seconded by Senator Umbarger, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is Friday, March 12, 2004.