

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on February 4, 2003 in Room 123-S of the Capitol.

All members were present.

Committee staff present:     Mike Heim, Kansas Legislative Research Department  
                                      Lisa Montgomery, Office of the Revisor of Statutes  
                                      Dee Woodson, Committee Secretary

Conferees appearing before the committee:

          Terri Roberts, Tobacco Free Kansas Coalition  
          Ron Pope, Kansas Trial Lawyers  
          Ed Larson, Kansas Judicial Council  
          Melissa Wangemann, Secretary of State's Office  
          Hal Hudson, National Federation of Independent Business

Others attending:     see attached list

Chairman Vratil called for bill introductions. Senator Gilstrap asked that a bill be introduced which is requested by an Assistant District Attorney in Wyandotte County, pertaining to forensic laboratory services rendered by Kansas City, Kansas Community College. Senator Gilstrap made a motion that this bill be introduced, seconded by Senator Allen, and the motion carried.

**SB 48 - appeal bonds in litigation involving signatories or successors of the tobacco litigation agreement**

The Chair reopened the hearing on **SB 48**. Conferee Roberts testified in opposition to the proposed legislation. She stated that **SB 48** appears to give special considerations/protections to certain tobacco companies in court cases in which there is an unfavorable court decision and the case is then appealed by the tobacco company. Ms. Roberts said that the bill imposes a \$25,000,000 statutory cap on an appeal bond in such cases, and only those tobacco companies that are part of the MSA would benefit from this proposed statute change; no other commercial, public or privately held corporations. She added that limiting the appeal bond amount for one type of industry would set a precedent that other industries might seek. (Attachment 1)

Conferee Pope testified in opposition of **SB 48** as it sets a dangerous precedent for other industries to seek similar protections while eliminating the rights of individuals. He stated that it was not true that the MSA payments could be in jeopardy. He said that these types of verdict amounts are extremely rare in Kansas, and was not aware of any situation in Kansas where posting an appeal bond was a problem for any judgments that have been entered. He explained that a limit of \$25 million is insufficient in cases where individuals have suffered major injuries or death by powerful corporations. Mr. Pope added that the tobacco companies are well-diversified with the financial capability of paying and posting the bond, and are not at risk of bankruptcy. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 4, 2003 in Room 123-S of the Capitol.

After brief discussion, the Chair closed the hearing on **SB 48**.

**SB 37 - receipts from an interest in minerals and other natural resources pursuant to the uniform principal and income act**

Chairman Vratil opened the hearing on **SB 37**. Conferee Larson testified in support of **SB 37** for the Kansas Judicial Council. He explained that the change which is suggested by **SB 37** is to adopt the current depletion allowance under the federal income tax code (15% of gross receipts in case of a royalty, shut in well payment, take or pay payment, bonus or more than nominal delay rental and 15% of the net amount received from a working interest) as the amount to be credited to principal and balance (85%) to be allocated to income. He said the suggested change simply strikes the "90" from lines 25 and 28 of the existing act and inserts in its place "15". Mr. Larson stated that the change is consistent with the approach taken by surrounding states with a substantial oil and gas industry when they adopted the 1997 version of the Uniform Principle and Income Act. (Attachment 3)

After brief Committee questions and discussion, the Chair closed the hearing on **SB 37**.

**SB 38 - annual report, filing of certain documents, franchise tax and business activities of certain business entities**

Chairman Vratil opened the hearing on **SB 38**. Conferee Wangemann explained the changes requested by the Secretary of State's office. In her written testimony (Attachment 4) she outlined the recommended amendments to the bill involving filing procedures, extensions, business trust annual reports, definition of "doing business" for foreign entities, agricultural information on annual reports, third-party agent for Certificates of Good Standing, and franchise tax calculation. She noted there would be a fiscal impact on state general funds regarding the franchise tax amendment involving parent entities that own net worth in subsidiaries and are being taxed twice. Ms. Wangemann stated that the Secretary of State believes the amendment promotes fairness and equity in taxing Kansas business entities.

Question was asked about how much revenue would be lost in allowing the subsidiaries not to pay the tax. Ms. Wangemann replied that the Secretary of State's Office and the Department of Revenue do not track companies by the parent/subsidiary relationship, so they are unable to estimate the effect currently. Copies of the fiscal note for **SB 38** were distributed to Committee members. (Attachment 5) Committee discussion continued regarding the loss of revenue involving the franchise tax issue. The Chair asked if the Secretary of State's Office could furnish some additional information and possible estimates on this issue.

Written testimony was submitted in opposition to **SB 38** by Hal Hudson, State Director for the National Federation of Independent Business (NFIB). He asked that the bill be amended on page 2, lines 5 through 8, and elsewhere in the bill where reference is made to payment of \$1 per \$1,000 or net worth, with a minimum of \$40 and a maximum of \$5,000. With Mr. Hudson's written testimony was attached a copy of Kenneth Daniels' testimony before the House Taxation Committee on January 29, 2003 in regard to **HB 2025**. (Attachment 6)

After brief discussion, the Chairman closed the hearing on **SB 38**.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 4, 2003 in Room 123-S of the Capitol.

**Final Action on:**

**SB 21 - nomination and selection of justices and judge**

**SB 28 - professional corporation law of Kansas**

**SB 29 - corporation code amendments**

Chairman Vratil briefly reviewed **SB 21**, and explained that it was cleanup legislation. Senator Oleen moved to pass SB 21 out favorably, seconded by Senator O'Connor, and the motion carried.

The Chair reviewed **SB 28** and the technical amendments submitted by the Secretary of State's Office. Senator Goodwin made a motion to accept the amendments to the bill, seconded by Senator Donovan, and the motion carried.

Senator Oleen moved that the Committee report SB 28 out favorably as amended, seconded by Senator Goodwin, and motion carried.

Chairman Vratil reviewed **SB 29**, and reminded the Committee that the Secretary of State's Office recommended that the franchise tax provision regarding parent/subsidiaries corporations, which also appears in **SB 38**, should either be left in both bills or taken out of both bills for conformity.

Final action on **SB 29** was postponed after Committee discussion and request for additional information from the Secretary of State's Office.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 5, 2003.