

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence

Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

Chairman Vratil opened the meeting and hearing on **HB 2168**.

**HB 2168 Uniform commercial code; defining a new class of payment instrument, drawn on the customer's account without an authorized signature, called a demand draft.**

Proponent:

Kathy Olsen, Kansas Bankers Association, testified in support of the bill. The bill amends the Uniform Commercial Code, Articles 3 and 4, as they relate to "demand drafts". The purpose is to define a new class of payment that is now being drawn on a bank customer's account without a signature, and it places the risk of loss for processing on the depository-collecting bank. Ms. Olsen testified that demand drafts contain customer account numbers and routing information in order for transactions to occur through normal banking channels. Customers will continue to have a period of time to review their statements and have recourse, to recover monetary funds, if an error has been made or an unauthorized transaction occurs. (Attachment 1)

Chairman Vratil closed the hearing on **HB 2168** and opened the hearing on **HB 2268**.

**HB 2268 Uniform interstate enforcement of domestic violence protection orders act**

Proponent:

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence (KCASDV), testified in support of the bill. Ms. Barnett stated that **HB2268** is the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act developed by the National Council of Commissioners of Uniform State Laws. The bill addresses interstate enforcement of protection orders and the current piece-meal treatment of the issue. Ms. Barnett stated that there has been much confusion and inconsistency across Kansas and, consequently, less safety for victims of domestic violence and stalking.

Ms. Barnett pointed out that the Kansas process for registering foreign and domestic protection orders is already outlined in K.S.A. 60-3112, and currently it is the responsibility of the sheriff to enter these orders into the national registry. Ms. Barnett asked that **HB 2268** be amended to make reference to K.S.A. 60-3112 so that there is no confusion as to what state law applies and she provided a balloon amendment with suggested language. (Attachment 2) Ms. Barnett encouraged the Committee to consider also changing the name of the Act by removing the words "Domestic Violence" from the title, as protection orders do not just address domestic violence but can also address such things as sexual or physical abuse of a child and anti-stalking protection orders. Ms. Barnett stated she believed **HB2268** included a drafting error in the implementation date. In New Section 10, the effective date of the Act should be July 1, 2005, and it is drafted as July 1, 2006, and each reference to 2006 should be changed.

The Committee asked questions of Ms. Barnett regarding current procedures for entering protection orders, and why protection orders were not entered by the Kansas Bureau of Investigation, since they are the portal

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

through which NCIC information flows. Joyce Grover, Attorney for KCASDV and guest in the meeting, responded that K.S.A. 60-3112, authorizes the sheriff to contact the NCIC to make sure that protection orders are valid. If sheriffs have probable cause and think a protection order is valid, they can enforce it. The procedures do not change from what is being done now on domestic protection from abuse orders. Ms. Grover handed out to Committee members a copy of the statute. (Attachment 3)

Chairman Vratil questioned Ms. Barnett regarding whether or not it would become more difficult for people to figure out how to register the protection orders if the bill refers to another Kansas statute. Ms. Barnett stated that law enforcement personnel are familiar with K.S.A. 60-3112, and that the intent is to further clarify procedures.

Senator O'Connor asked why both "court" and "tribunal" are necessary in the bill. Ms. Barnett stated that in Kansas, the reference used is "court", but in other states there may be other administrative systems in place, so the word "tribunal" is used to recognize other state systems if they are not a "court".

Chairman Vratil stated that the House amended the bill to take the clerk of the court out of the procedure. The proposed amendment eliminates reference to the sheriff and makes reference to K.S.A.60-3112, which puts the clerk of the court back into the procedure on all emergency protection from abuse orders. Ms. Grover stated that she and Ms. Barnett did not read K.S.A. 60-3112 as doing that, and that it is not the current practice around the state. Chairman Vratil stated that a practice is irrelevant when a statute mandates a certain procedure.

### Opponent:

Kathy Porter, Office of Judicial Administration (OJA), testified that she felt her point had been addressed. As introduced, New Section 5 of the bill would have impacted the Judicial Branch by requiring the clerks of the district court to accept certified copies of out of state protective orders from persons who wish to have them registered, to enter the orders on a registry, to certify two copies of the registered order, and to give copies of the certified orders to the individual registering the order and the local sheriff. The clerk would also have needed to remove from the registry foreign protective orders that are inaccurate or no longer in effect. Ms. Porter stated that the Judicial Administration believes that the best route is to direct the protective person to the sheriff. (Attachment 4)

Chairman Vratil clarified with Ms. Porter that the OJA likes the House version of the bill. Ms. Porter concurred but stated that if there were a way to incorporate the language that Ms. Barnett would like regarding registration, that would be fine.

Chairman Vratil closed the hearing on **HB 2268**.

Chairman Vratil stated that although no specific bills were listed for final action on the agenda, he would like the Committee to consider final action on **SB 179** perhaps as early as tomorrow's meeting. Senator Donovan stated that the bill was in his Sub-Committee and that they recommended it to the full Committee, but that there might be a bed space impact. Senator Donovan suggested that when the Committee considers it, there may be an amendment offered to adjust some of that. Additionally, the bill deals with the crime of child pornography and the number of counts an individual may be charged with. Senator Bruce suggested that the impact statement numbers may be a little inflated because currently aggravated indecent solicitation is charged as a severity level six, which means there is no presumptive prison time and it is not a border-box situation. Kevin Graham, Assistant Attorney General and guest at the meeting, stated that by having a severity level 6, an offender can't get prison unless it is the third time conviction of the crime. By reducing the severity level to 5, it makes it a first time for border-box. Senator Goodwin clarified that her recollection on the Sub-Committee was that the issue was so complex that the Sub-Committee recommended it be taken up by the full committee, and no other recommendation was made. Senator Journey asked that Committee members have a copy of the bed space impact for consideration when the bill is addressed for final action. Chairman Vratil stated that would be reproduced and provided.

Chairman Vratil asked to reconsider an issue on **HB 2268**, Section 2. The Chairman questioned why the date of July 1, 2006 or the requested amended date of July 1, 2005, was even needed. Chairman Vratil suggested

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

that taking the date out and saying that “this Act applies to protection orders and to the continuing actions for enforcement of foreign orders” would be comprehensive. Ms. Grover stated that the KCASDV would consider that. Senator Goodwin clarified with Kathy Porter whether there was going to be an amendment from OJA, and Ms. Porter stated she would work with the KCASDV and see if they could come up with language that all could support.

Senator Schmidt requested a clarification on **SB 179**. He stated that some of the language would make it a crime to have depictions that are of or appear to be of a child under the age of 18. The “appears to be” language was new, and he was seeking further clarification of what the language was actually trying to do. Mr. Graham responded that the language was drafted so that the prosecutors can convict if they can convince a jury that the depiction is of a “child”. Chairman Vratil stated that “appears to be” really broadens the scope.

Senator Journey stated that, from the information he has seen in the prosecution of these cases, pornography is being computer generated entirely without a person, and it is not a violation of the law if a minor is not used to make the visual image. Expert testimony is being offered to juries in an effort to determine the age of the purported image, based upon its physical characteristics. Videos are being produced without any human actors whatsoever, except perhaps for voice-over.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 3, 2005.