

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 15, 2005, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen- excused  
David Haley- excused  
Dwayne Umbarger- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Representative Peggy Mast  
Donna Calabrese, Director of Vital Statistics, Kansas Department of Health and Environment  
Mike Williams, Detective, Emporia Police Department  
Sheriff Randy Rogers, President, Kansas Sheriff's Association  
Gene Balloun, Shook, Hardy & Bacon  
Mark Baldwin, General Counsel & CFO, Data Systems International  
Marlee Carpenter, The Kansas Chamber  
Ron Hein, R.J. Reynolds  
Callie Denton, Kansas Trial Lawyers Association  
Kathy Damron, Phillip Morris

Others attending:

See attached list.

Chairman Vratil opened the meeting and the hearing on **Sub HB 2087**.

**Sub HB 2087 Relating to identity theft, identity fraud and vital record fraud**

Proponents:

Representative Peggy Mast stated that the bill deals with identify theft and fraud by defining and imposing a sentence for the crime. (Attachment 1)

Donna Calabrese stated that the current statute only addresses the willful making or alteration of certificates and attaches a penalty of a class B misdemeanor, which is not a sufficient measure to deter vital record fraud.

**HB 2087** and **HB 2179** were combined together into **Sub HB 2087**. Ms. Calabrese offered a balloon amendment that adds the language necessary to amend K.S.A. 65-2434 with the reference to K.S.A. 21-2830 for vital record fraud prosecution. (Attachment 2) Ms. Calabrese stated that an additional amendment needs to be made to correct a typographical error on page 2, line 18, to change "K.S.A 9-1599" to "K.S.A. 8-1599".

Detective Mike Williams, Emporia Police Department, stated that at the present time, there is no penalty for use of another person's identity if there is no economic benefit. Detective Williams encouraged that the amendment proposed by Ms. Calabrese be passed. (Attachment 3)

Sheriff Randy Rogers, Kansas Sheriff's Association, stated that on behalf of the Association, they are in support of the bill and amendment. The bill would provide a tool that would benefit law enforcement in efforts to protect innocent victims and to hold those that prey on them accountable. (Attachment 4)

Kyle Smith testified on behalf of the Kansas Peace Officers Association, stating the Association urged passage of the bill. The Association's primary concern is the growing problem of identity theft. (Attachment 5)

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Written testimony was provided by Craig Kaberline, Kansas Area Agency on Aging. (Attachment 6)

Chairman Vratil closed the hearing on **Sub HB 2087** and opened the hearing on **HB 2152**.

**HB 2152 Master settlement agreement for tobacco; appeal bond limitations apply to affiliates of signatory**

Proponents:

Eugene Balloun, with Shook, Hardy & Bacon, LLP, stated that the comments he wanted to make were regarding Data Systems International, Inc. (DSI), in Overland Park, Kansas. Data Systems International is a business established in Overland Park for more than 20 years, that employs approximately 200 people, and is involved in the computer hardware and software business. DSI had entered into an employment contract with its president, which was an extremely lucrative contract. Disputes arose concerning the operation of the company, and the president was placed on leave. He then filed a suit against DSI. This lawsuit was litigated and, to the surprise of both sides, the district judge entered summary judgement against the company for approximately \$6 million dollars. At that point, DSI had a net worth of about \$5-\$6 million dollars.

Mr. Balloun explained that if an adverse judgement is entered against a defendant, that defendant may or may not post a bond on appeal. If a bond is not posted, that means the judgement creditor is free to start collecting the judgement. DSI sought relief from the court under K.S.A. 60-2103 (d), the supersedeas bond provision. The business was mortgaged to the bank, and they were unable to post a bond. After a series of hearings, a compromise agreement was worked out with the judgement creditor, and the court approved the settlement agreement. Under the terms of the agreement, DSI paid the judgement creditor \$125,000 immediately, and \$20,000 a month during the pendency of the appeal in lieu of an appeal bond. Mr. Balloun noted that a copy of the Court of Appeals decision and a copy of the District Court Order have been provided to the Committee. (Attachments 7 & 8).

By the time the appeal was heard, the client had paid almost \$500,000 in non-refundable payments because it could not post a supersedeas bond. The case was then processed on appeal and the court of appeals reversed the district court's entry of the summary judgment of \$6 million, and the case is now back before the district court set for trial.

Mr. Balloun stated that this case fully illustrates the kinds of situations that can arise with businesses in Kansas when they are faced with judgments in Kansas, and the companies or the individuals would not be able to post bonds. He suggested to the Committee that some relief is needed in that respect.

Mark Baldwin, General Counsel & CFO, Data Systems International, stated that regarding the bonding requirements to obtain a supersedeas bond, most insurance companies look at the net worth and book value of the company and allow no more than 20 percent. In this day and age, judgments can be far in excess of \$100, million dollars. For companies the size of DSI, with a book value of \$5-6 million dollars, it is a challenge of just trying to find a bond to advocate a company's position. It is a fairness issue that needs to be considered as the legislature goes about setting public policy. (Attachment 9)

Marlee Carpenter, The Kansas Chamber, stated that the Chamber respectfully requests that the Committee consider an amendment extending the appeal bond waiver to all businesses in Kansas. Additionally, Ms. Carpenter stated that her written testimony included some suggested language changes and a copy of **HB 2222**, which was introduced during the 2001 Legislative Session, which proposed some limits that defendants may be required to post, based on the judgment, while appealing an adverse judgement. (Attachment 10).

Chairman Vratil stated that he had spoken with Ms. Carpenter and another representative of the Kansas Chamber just the day before, and, as a result, the Chamber has agreed not to propose any amendments to this bill, but to look for another vehicle to add their proposed amendment to. Chairman Vratil's understanding is that this proposed amendment will not be offered to **HB 2152**.

Ron Hein, representing R.J. Reynolds Tobacco Company, stated that the bill originally followed up on 2003 legislation where there was an appeal bond cap, which placed monetary limits on the amount of bond required to be posted to proceed with an appeal in cases involving tobacco manufacturers who were signatories to the

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Master Settlement Agreement (MSA). The legislation was designed to help protect the hundreds of millions of dollars paid each year to the 46 states who entered into the MSA. **HB 2152** clarifies the statute to provide such appeal bond protection applicable to appeal of litigation which involves signatories to the MSA. Mr. Hein stated that when there were objections by the Kansas Trial Lawyers Association, and that they were able to work out language that was agreeable to both organizations. Mr. Hein requested the Committee favorably recommend that the bill be passed. (Attachment 11).

Callie Denton, Kansas Trial Lawyers Association (KTLA), stated that KTLA was originally opposed to the bill because they believed it provided an expansion to the appeal bond caps that were intended for the tobacco companies only. They were very agreeable to working on narrowing the provisions to just be a clarification and not an expansion of the appeal bond cap provision. Ms. Denton stated that the bill is very consistent with the legislative intent in 2003, so they now support it. Regarding the Chamber's policy suggestions regarding **HB 2222**, this was a bill that KTLA opposed and would not want to see the provisions added to the bill. (Attachment 12)

Jim Clark, the Kansas Bar Association (KBA), stated that the Association has no position on the proposed legislation. To his knowledge, the only types of cases which would require high appeal bonds are class actions. Congress has preempted class actions in most state cases, so there is probably some good reasons to make changes to the appeal bond statutes, but Mr. Clark recommended changes should be made after an interim study or perhaps after review by the Kansas Judicial Council.

Written testimony was submitted by Kathy Damron, on behalf of Altria Services Corporation, Philip Morris, USA. (Attachment 13)

Chairman Vratil closed the hearing on **HB 2152** and asked the Committee to consider final action on the bill.

### **Final Action:**

**HB 2152 Master settlement agreement for tobacco; appeal bond limitations apply to affiliates of signatory**

A motion was made to recommend the bill favorably out of Committee. Senator Goodwin moved, seconded by Senator Donovan, and the motion carried. Senator Schmidt requested that his "no" vote be recorded in the minutes.

Chairman Vratil announced to the Committee that he is going to request that the Judicial Council review in more detail **HB 2104**, which deals with a UCC security interest in oil and gas production. Chairman Vratil stated that he had learned that there are more provisions in the UCC which allow for security interests in oil and gas production. He was informed that the problem that is faced by the owners is that the producers refuse to grant security interests, and, therefore, they are seeking an automatic security interest in the oil and gas production.

Chairman Vratil asked the Committee to consider final action on **HB 2168**.

### **Final Action:**

**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**

A motion was made to recommend favorably that the bill be passed. Senator Donovan moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **HB 2327**.

### **Final Action:**

**HB 2327 Authority for Juvenile Justice Authority to test offenders for infectious diseases**

A motion was made to recommend favorably that the bill be passed. Senator Bruce moved, seconded by

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Senator Goodwin, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 16, 2005.