

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on February 15, 2007, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

John McCabe, Legal Counsel, national Conference of Commissioners on Uniform State Laws
Katy Olsen, Kansas Bankers Association
Jim Clark, Kansas Bar Association
Ed Collister
Kyle Smith, Deputy Director, KBI
Capt. Glenn Kurtz, Sedgwick County Sheriff's Office
Ed Klumpp, Kansas Association of Chiefs of Police

Others attending:

See attached list.

The hearing on **SB 183--Uniform commercial code, article 1, general provisions** was opened.

John McCabe appeared in support, indicating that modification and revisions of other articles in the Uniform Commercial Code (UCC) require the revision of Article 1 of the UCC (Attachment 1). Mr. McCabe reviewed the changes and urged enactment for consistency with the rest of the UCC.

Kathy Olsen spoke in favor, suggesting a friendly amendment with regard to the choice of law provisions found in New Section 15 (Attachment 2). Such a change would require a connection to either the location of the parties or with the transaction.

The Chairman requested Ms. Olsen work with Mr. McCabe on language for a balloon amendment to be ready when the bill is discussed for final action.

Written testimony in support of Ms. Olsen's amendment to **SB 183** was submitted by:

David A. Hanson, Attorney, Glenn, Cornish, Hanson & Karns (Attachment 3)
Matthew Goddard, Vice President, Heartland Community Bankers Association (Attachment 4)

There being no further conferees, the hearing on **SB 183** was closed.

The hearing on **SB 308--Uniform commercial code, article 7, revisions** was opened.

John McCabe testified in support, indicating the proposed changes to the Uniform Commercial Code, Article 7, will clarify and update existing rules of law to include electronic documents of title (Attachment 5). With the increased use and reliance upon electronic documents of title, enactment would ensure that the law remains consistent with the demands of developing technology.

There being no further conferees, the hearing on **SB 308** was closed.

The hearing on **SB 237--Collection of certain specimens, probable cause determination** was opened.

Jim Clark appeared as a proponent, stating that the collection of DNA samples constitutes a search of that person and proposes that a magistrate be involved with the taking of samples from a person arrested without a warrant (Attachment 6).

CONTINUATION SHEET

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Kyle Smith testified in opposition, indicating the collection of DNA is fundamentally no different than the collection of fingerprints (Attachment 7). It is basically an identification tool and the inclusion of a probable cause determination would strengthen the argument that the collection of a DNA sample is a search, not an administrative action.

Capt. Glenn Kurtz, opponent, provided data regarding the development of collection procedures, sample packaging, and personnel training (Attachment 8). Capt. Kurtz also addressed the issue of workflow as currently required by statute and the effect of delaying collection until a magistrate finds probable cause. He suggested amending the language so that DNA samples would be collected upon conviction which would minimize court challenges.

Ed Klumpp appeared in opposition, stating that the requirement of finding probable cause prior to the collection of DNA samples will create inconsistencies and difficulties in the collection of samples (Attachment 9). Collection of DNA samples produces a record that can positively identify a person, the same as fingerprints. Potential problems with **SB 237** as written include:

- arrests with a warrant occur after a probable cause finding but an “on view” or “probable cause” arrest would require waiting for the submission of the sample, and
- difficulties in collecting samples after a probable cause hearing if the defendant is out on bond.

There being no further conferees, the hearing on **SB 237** was closed.

Final action on **SB 88--Restoration of spouse's name after divorce is final** continued.

Senator Allen distributed a balloon amendment providing a re-wording of language on page 8, line 15 of the bill (Attachment 10). The Chairman verified that it is Senator Allens’ intent with this amendment that there would be no new preceding required, no filing fee, the spouse would use a form prepared by the Judicial Council and there would be no need to hire an attorney.

Senator Journey moved, Senator Allen seconded, to adopt the balloon amendment. Motion carried.

Senator Allen moved, Senator Goodwin seconded, to recommend **SB 88**, as amended, favorably for passage.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 16, 2007.