

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 14, 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
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairman Vratil called the meeting to order and announced the first bill to consider for final action would be **SB 27**. Chairman Vratil asked Senator Bruce to deliver the Sub-Committee recommendation on this bill.

SB 27—Unlawfully selling drug products containing Ephedrine or Pseudoephedrine, pharmacy controls; rebuttable presumption of intent if possession of more than nine grams

Senator Bruce stated the Sub-Committee met on four occasions and passed out a balloon amendment. (Attachment 1) The Sub-Committee looked at laws in other states and other proposed legislation. Every state around Kansas, with the exception of one, has introduced legislation in the past year patterned off of Oklahoma's law. Other states within the midwest, including Iowa and Illinois, have also introduced legislation with the same restrictions as Oklahoma.

Senator Bruce stated that, when looking at methamphetamine and what medicines could be used as precursors, it was determined that any ephedrine or pseudoephedrine product may be used to make meth, including gel caps and liquids. However, it is the starch-based small red pills that are predominately used because the other forms do not make a quality methamphetamine product.

Senator Bruce stated that the Sub-Committee looked at the issue of bail. Their recommendation, reflected in the balloon amendment, sets bail at \$50,000, unless the judge finds that the defendant is unlikely to re-offend, or if the court imposes pretrial supervision or the defendant agrees to participate in an accredited drug treatment program.

Senator Bruce stated that, on the issue of preemption, the Sub-Committee recommendation is to make the bill uniform so that municipalities, cities and counties may not impose more requirements.

Criminal provisions were also addressed. The Sub-Committee removed the section in the original bill that made possession of nine grams or more illegal, and substituted for it the selling of three or more packages of the ephedrine or pseudoephedrine products. Regarding gel caps and liquid, the Sub-Committee decided not to schedule or impose selling restrictions on these forms of product. Instead, the recommendation is to require the Board of Pharmacy and Kansas Bureau of Investigation to review the types of evidence found at meth lab crime scenes and make an annual report to the legislature as to whether or not further action is required on those forms of the product.

The Sub-Committee looked at restriction options at the point of sale, such as lock boxes, behind the counter storing of the product, and such things as surveillance cameras. The Sub-Committee reviewed the scheduling requirements. Under current state law, a precursor to a more serious drug is required to be a Schedule V, so the Sub-Committee determined to leave the product as a Schedule V drug. Senator Bruce stated that the lock-box issue was not included because a lock box would have the same impact as a Schedule V in that small retail stores would not be able sell it due to the lack of resources, manpower and space to handle it properly. The liquid and gel caps may be sold anywhere and without restriction.

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The Committee asked several questions of Senator Bruce. Chairman Vratil thanked the Sub-Committee members for their work. Senator Schmidt moved to amend the bill, as recommended by the Sub-Committee, seconded by Senator Journey, and the motion carried.

Final Action:

SB 27--Unlawfully selling drug products containing Ephedrine or Pseudoephedrine, pharmacy controls; rebuttable presumption of intent if possession of more than nine grams

A motion was made to recommend the bill favorably, as amended. Senator Schmidt moved, seconded by Senator Journey, and the motion carried.

Chairman Vratil asked the Committee to consider both **SB 14** and **SB 32**.

SB 14--Definition of mentally retarded for the purposes of imposing the death penalty;pre-trial hearing and special verdict question to the jury

SB 32--Persons with a cognitive disability not eligible for death penalty

Chairman Vratil stated that both of the bills deal with the death penalty and mental retardation, but are different approaches. The Chairman said **SB 32** is the same bill the Committee recommended last year. It is a bill that was drafted largely with the assistance of the Judicial Council and contains a definition of cognitive disability and would preclude imposing the death penalty on a person with a cognitive disability. **SB 14** recommended by the Interim Judiciary Committee, defines mental retardation. The only significant difference between the two bills are the definitions used.

Senator O'Connor stated that she read Deputy District Attorney Kevin O'Connor's testimony, in which he stated he had done a number of death penalty trials dealing with these kinds of issues, and that current law protects the mentally retarded and does not need to be changed. Senator Bruce indicated that he read Mr. O'Connor's testimony also and came to the same conclusion. After hearing all the testimony, Senator Bruce stated he was of the opinion that this type of case is very rare, and even if there was such a defendant, that the statutes already on the books would take care of the mentally retarded, and it would be unconstitutional to try an individual if they met one or more of the fourteen criteria. Senator Donovan also concurred and suggested that action at this time may be unnecessary. A motion was made to table both **SB 14** and **SB 32**. Senator Journey moved, seconded by Senator O'Connor, and the motion carried.

Chairman Vratil asked the Committee to consider **SB 39**.

Final Action:

SB 39 –Service of process fees charge by sheriff; single payment for same case

A motion was made to recommend the bill favorably and because the bill is noncontroversial in nature, that the bill be placed on the Consent Calendar. Senator Donovan moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil asked the Committee to consider **SB 51**.

Final Action:

SB 51–Tobacco settlement agreement; release of funds from escrow

Senator Allen asked if an answer had been provided to Chairman Vratil's question of what refund Xcaliber International had received in Kansas. Chairman Vratil stated that the Attorney General's office did provide a letter indicating the initial escrow deposit for 2001-2003, the amount due per the Master Settlement Agreement(MSA) cap, and the escrow refund that was made. In 2002, Xcaliber received a refund of 84 percent of what they had placed in trust, and in 2003, they received a refund of 85 percent. (Attachment 2)

Senator Bruce stated that he has listened to everyone and researched this issue, and his initial concern is not so much with the bill, as with the Master Settlement Agreement. Senator Bruce stated that regardless of

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whether the bill is passed, he thought that the MSA issue would return again. Senator Bruce suggested that the only real fix might be to scrap the MSA and go to a real tax system where every manufacturer is taxed at the same rate.

Senator O'Connor stated she has also struggled with the issue. It is the smaller companies, who started doing business after the MSA, that are being accused of not paying their "fair" share, yet the smaller companies, if they were doing business in more states, they would be paying more. The more states a company is doing business in, the more they are going to have to pay to be in business. Right now, there are a number of states that have effectively shut out the small businesses because of laws like this bill being passed. Senator O'Connor suggested that if the bill were passed, there would probably be another law suit over it, and it was her understanding that there was another law suit and injunction pending in the State of New York. Senator O'Connor suggested passage may not be wise public policy, as there seems to be some anti-trust questions that are still being dealt with.

Senator Umbarger brought to the attention of the Committee a letter dated February 13, 2005 from David Remes, Covington and Burlington. (Attachment 3) Senator Umbarger stated, after reading the letter, he is in support of the bill, even though it is a tough bill. Senator Bruce stated for the record that he was not a smoker. A motion was made to recommend the bill favorably. Senator Umbarger moved, seconded by Senator Allen, and the motion carried.

Chairman Vratil was asked to delay action on **SB 53** for several days. Because the issue is a complex one, the Chairman stated that the Committee may want to refer it to the Judicial Council for study. Chairman Vratil stated that he would honor the request to delay action on the bill at this time but did plan to work the bill soon.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 15, 2005.