

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, March 3, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley - Arrived 9:45 a.m.
Senator Edward Pugh - Arrived 10:10 a.m.
Senator Greta Goodwin - Arrived 9:40 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Representative Mike O'Neal
Rose Rozmiarek, Chief of Investigations, State Fire Marshal's Office
Judge Steve Becker, Reno County District Court
Rick Fleming, General Counsel for Securities Commission
Don Schnacke, Kansas Independent Oil and Gas Association
Leslie Kaufman, Director of Government Relations, Kansas Cooperative Council
Kathy Taylor-Olsen, Kansas Bankers' Association Roger Walter, Kansas Bar Association

Others attending: See attached list.

HB 2525 - Increasing severity levels on criminal use of explosives

Chairman Vratil opened the hearing on **HB 2525**. Representative Mike O'Neal, sponsor of the proposed bill, appeared before the Committee to support the bill. He distributed written request and testimony from Chief Judge, Steven R. Becker, Reno County, asking consideration be given to elevating the severity level for the criminal use of explosives. Representative O'Neal expressed his personal support of the proposed legislation. He explained the bill would increase the penalty from the current Level 8 to a Level 6. He stated that the Legislature is mindful of the bed space impact situation, but this bill would give the court discretion in dangerous type cases. ([Attachment 1](#))

The Chairman noted that a copy of the Fiscal Note on **HB 2525** had been completed by the Kansas Sentencing Commission, and showed the bed impact was not significant. ([Attachment 2](#))

Brief discussion and questions followed Representative's O'Neal's testimony.

Rose Rozmiarek, Chief of Investigations, Deputy State Fire Marshall, testified in favor of **HB 2525**. She explained that the State Fire Marshall's office not only investigates fires, but also investigates explosions and explosive issues. The State Fire Marshall's office licenses all users, blasters, and storage facilities in the State of Kansas as well as Class 'B' fireworks. Ms. Rozmiarek stated that increasing the severity level for criminal use of explosives would send a message that individuals will be punished properly for their unlawful acts.

Ms. Rozmiarek proposed a language amendment to **HB 2525** to include other explosive devises that are being constructed and are dangerous and destructive such as common Class 'C', 1.4 fireworks. ([Attachment 3](#))

The Chairman clarified that the proposed amendment does not intend to include Class 'C' fireworks as prohibited, but if they are not used for the purpose for which they are intended then they would be prohibited.

Chairman Vratil closed the hearing on **HB 2525**.

HB 2347 - Kansas uniform securities act

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Rick Fleming, General Counsel for the Securities Commission, testified in support of **HB 2347**. Mr. Fleming introduced Chris Biggs, Securities Commissioner for the State of Kansas, who was in attendance and would also be available for questions. Mr. Fleming provided background and historical information on regulating securities in Kansas. He explained that as changes occurred at the federal level, states have tried to keep up by amending securities statutes and regulations, but in the process the states drifted further and further away from uniformity among the 50 states. He said it has become difficult to understand state securities laws unless one is familiar with federal law.

Mr. Fleming explained that the National Conference of Commissioners on Uniform State Laws (NCCUSL) overhauled the model state securities law with its adoption of the Uniform Securities Act (2002). The overhaul was an attempt to address problems in Kansas and other states. He said the new model act varies in many respects from current Kansas law, and he attempted to analyze the difference in a large 5-column spreadsheet distributed to Committee members. ([Attachment 4](#))

Mr. Fleming stated that the Office of the Securities Commissioner did not necessarily agree with every provision of the new Uniform Securities Act, but recognized the value of uniform laws. He added that the Kansas Securities Commissioner's office did not believe it was necessary to create uniformity with respect to the punishment for violating the rules. He said that except for the removal of variable annuities from the definition of a security in Section 2(28), the Office of the Securities Commissioner is comfortable with the bill as it passed the House. Mr. Fleming stated their opposition of any attempt by the Kansas Bar Association to strip away their enforcement authority or ability to protect Kansas investors. He urged the Senate Judiciary Committee to reject any amendment that would remove the Commissioner's authority to order restitution or disgorgement in an administrative proceeding, or to remove the authority to conduct examinations of securities issuers. He outlined two further proposed amendments that are detailed in his written testimony.

Committee questions and discussion followed.

Don Schnacke, Kansas Independent Oil & Gas Association, testified in support of **HB 2347**, and expressed concern that K.S.A. 17-126a was being removed from **HB 2347**. He said that preserving the oil and gas securities exemption was important since the vast majority of Kansas oil and gas operators are small business entities. He stated that the Securities Commission had assured the Association that the oil and gas industry will have a seat at the table when regulatory language is developed replacing K.S.A. 17-1262a definitions. ([Attachment 5](#))

Leslie Kaufman, Kansas Cooperative Council, testified as neutral on **HB 2347**, but there was one provision which would change current law regarding cooperative instruments and negatively impact co-op members. He said they were unable to raise concern or come up with the precise language needed to address issues with Section 6 (8) (page 11, lines 11-16) as the House Judiciary Committee worked the bill. He submitted a proposed amendment that would alleviate the Cooperative Council's concerns with the current language. ([Attachment 6](#))

Kathleen Olsen, Kansas Bankers Association, submitted written testimony as neutral on **HB 2347**. ([Attachment 7](#))

Roger Walter, Kansas Bar Association (KBA), testified in opposition to **HB 2347**. He submitted five proposed amendments for the KBA as outlined in his written testimony. He also identified five sections of HB 2347 that should conform with the language of the Security Commissioner's USA-2002 counterpart sections. He said that KBA feels the changes proposed by the Security Commissioner's staff should not be made. These are labeled as Attachments 1, 2, 3 and 5 within Mr. Walter's written testimony. Mr. Walter submitted one instance when the KBA felt a compelling reason exists to depart from the uniform language of USA-2002. It is labeled Attachment 4, "Section 39. Rescission Offers." ([Attachment 8](#))

Following Committee discussion and questions, the Chairman asked Representative O'Neal, who was in attendance, if he had any comments he wanted to make to the Committee. Representative O'Neal stated

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that the House Judiciary Committee wanted to be careful because the bill was not exactly uniform language, and he insisted that amendments the House Committee considered would have to pass the Uniform Law Commission. He said that John McCabe and Michelle Clayton were in attendance at the House meeting, and they could live with most of the changes. He added the one exception to that was the one year Statute of Limitations, and that was a big deal. He expressed concern that Kansas is out of compliance there, but it was what the House Committee decided to do.

Chairman Vratil stated that he had talked to John McCable and Michelle Clayton the day before. He agreed that the two year Statute of Limitations amended into the bill was a big deal with the Uniform Securities Commission (USC). He explained it was a "big deal" because in drafting **HB 2347** there were a number of interested parties who participated. There was a lot of negotiation and a lot of give and take, and one of the things certain interested parties gave up was the one year Statute of Limitations. They received consideration in other areas in exchange for that.

Committee discussion continued.

The Chairman asked Mr. Biggs, Securities Commissioner, if he had any comments for the Committee. Mr. Biggs stated that since he had been the Commissioner, the Commission had had only one contested administrative hearing. He would like to keep the administrative hearings within the Commission's authority because of the large amount of expertise within the Commission. If a party does not agree with a ruling, then the party can always go to the District Judge.

The Chairman announced that time had elapsed for the meeting. He adjourned the meeting at 10:30 a.m.

The next scheduled meeting is March 4, 2004.