

MINUTES OF THE SENATE JUDICIARY COMMITTEE

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

All members were present except:

David Haley- excused

Committee staff present:

Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Ron Hein, R.J. Reynolds
David Remes, Covington & Burling
Derek Crawford, Phillip Morris
Keith Burdick, CFO & Partner, Xcaliber International
Lew Ebert, The Kansas Chamber
Don Patterson, Fisher, Patterson, Sayler & Smith
Jerry Slaughter, KaMMCO
Jim Clark, Kansas Bar Association
Steve Dickerson, Kansas Trial Lawyers Association

Others attending:

See attached list.

Chairman Vratil opened the meeting and called for bill introductions. Shannon Jones, Statewide Independent Living Council of Kansas, requested the introduction of a bill that would amend existing statutes to prohibit discrimination in child custody cases against parents that have disabilities. Senator Betts moved, Senator Bruce seconded, and the motion carried.

Chairman Vratil opened the hearing on **SB 51**.

SB 51 Tobacco settlement agreement; release of funds from escrow

Proponents:

Ron Hein noted he submitted written testimony for the Committee's review and would give his time to speak to Mr. David Remes. (Attachment 1)

David Remes, testifying on behalf of R.J. Reynolds Tobacco Company, stated that the bill was designed to close an unintended loophole in the Tobacco Escrow Statute that Kansas enacted in 1999, as part of the tobacco Master Settlement Agreement (MSA). Mr. Remes provided charts demonstrating the payment gap between what Kansas was projected to receive and what Kansas actually received. (Attachment 2-4) Mr. Remes answered questions from the Committee and explained how the loophole actually worked for non-participating manufacturers.

Derek Crawford, Phillip Morris, stated that this type of bill has been enacted in 39 of 52 Master Settlement Agreement jurisdictions as a result of hard work and support of the National Association of Attorneys General (NAAG). NAAG adopted a resolution urging the enactment of the Allocable Share Amendment to the State Escrow Statutes. Mr. Crawford stated the bill was important in preserving the stability of MSA dollars for Kansas and would have a substantial fiscal impact. (Attachment 5)

Opponent:

Keith Burdick, Xcaliber International, cited a report released by NAAG in 2002, which noted a price increase of \$17 per carton by the big companies. As a result, the big companies made it possible for small companies like his to start a business because the small companies do not have a lot of overhead or need high profit margins. Mr. Burdick stated there was a bill introduced in the House (**HB 2946**) last year that would have assessed the same costs as established in the MSA on all cigarettes sold in the state. This bill would have created a truly fair and level playing field but would have had the same consequence as **SB 51** will have, in

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that it will drive the price of low cost cigarettes up and likely drive sales out of the state. Mr. Burdick stated this legislation is about competition. ([Attachment 6](#))

Chairman Vratil closed the hearing on **SB 51** and opened the hearing on **SB 53**.

SB 53 Expert and opinion testimony

Proponents:

Lew Ebert testified that the Kansas Chamber and members are in support of the bill. Mr. Ebert stated that in a December, 2004, CEO and Business Owner's Poll, 60 percent of the respondents believed that the current litigation system is a deterrent to business growth and 83 percent believed that frivolous lawsuits increase the cost of doing business in the state. Additionally, a November, 2004, Poll of Registered Voters found nearly 65 percent believed the current legal system should be reformed and 61 percent believed that lawsuit reform would contribute to economic growth. ([Attachment 7](#))

Don Patterson stated there are two logical processes- *deductive* and *inductive*- that experts testifying in court use today. Using a *deductive logical process*, the expert identifies a principle which is applied to the facts the expert is purporting, in order to arrive at the conclusion. Under the *Frye* rule, a principle has to be accepted by whatever scientific community that the expert is a member of, and usually applies to one of the sciences: physical, biological or medical. In *Daubert*, the validity of the principle being applied is subject to four factors: has it been tested or is it capable of being tested; has it been peer reviewed and published; what is the rate of error; and has it been accepted in the scientific community. In the *inductive logical process*, there is a testing of a hypothesis where a series of events "A" cause condition "B". The opinion an expert gives reaches a point where it becomes "more likely valid" than "not likely valid". Mr. Patterson stated the problem in Kansas courts is that even though an expert might say a principle is being applied, the expert is not required to identify what it is. Mr. Patterson summarized that the whole purpose of the bill is to stem the tide of unreliable expert testimony, and have a judge do screening first. ([Attachment 8](#))

Jerry Slaughter stated that KaMMCO supports the bill, but requested the Committee add language to the bill so if adopted, it would have no adverse impact on the validity or effect of the requirements imposed by K.S.A. 60-3412 in medical malpractice liability actions. ([Attachment 9](#)) Chairman Vratil clarified with Mr. Slaughter that in the bill on page 2, line 2, after "subsection (b) of K.S.A. 60-456" a comma should be added, the word "and" should be stricken, and the words "and K.S.A. 60-3412 as applicable" should be added.

Written testimony was submitted by Leslie Kaufman, Kansas Cooperative Council and Mary Jane Stankiewicz, Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association. ([Attachments 10 & 11](#))

Opponents:

Jim Clark stated that the Kansas Bar Association is opposed to the bill. Kansas rules of evidence, although located within the code of civil procedure, are applicable to criminal, domestic and juvenile cases as well. Any extensive revision of the law of evidence should be subjected to further study before any legislative action is taken. ([Attachment 12](#))

Steve Dickerson stated that the Kansas Trial Lawyers Association opposes the bill. The present Kansas rule insures that scientific evidence meets an acceptable level of reliability without placing an impossible burden on state trial judges and state judicial resources. Before any action is taken to adopt the bill, Mr. Dickerson encouraged the Committee to refer the bill to the Kansas Judicial Council, or a like-entity, for study and recommendation. ([Attachment 13](#))

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