

MINUTES OF THE SENATE JUDICIARY COMMITTEE

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

All members were present except:

Donald Betts- 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:

Randy Hearrell, Kansas Judicial Council

Eric Kraft, Young Lawyers Section President of the Kansas Bar Association

Debbie Riggs

Brette S. Hart

Others attending:

See attached list.

Chairman Vratil opened the meeting and stated that Committee members have a proposed Senate Resolution which is addressed to the United States Supreme Court and generally urges the Supreme Court to accept the petition for *Writ of Certiorari* in the *Marsh* case and to overrule the Kansas Supreme Court decision in that case. The Chairman stated it would be taken up at the next meeting with the intention of passing it out of Committee. (Attachment 1)

Chairman Vratil announced that a camera crew was on hand from 60 Minutes and would be filming a portion of the meeting. The Chairman opened the hearing on **SB 258**.

SB 258—Statutory and legal forms to be created and provided by the judicial council

Proponent:

Randy Hearrell, Executive Director of the Kansas Judicial Council, testified that the Council has undertaken a project to remove legal forms from the statute books and make them available on the internet and in a publication entitled Kansas Legal Forms. The bill removes the forms from the Kansas Statutes Annotated and directs the Judicial Council to prepare the forms to become available on the internet. (Attachment 2)

Chairman Vratil closed the hearing on **SB 258** and opened the hearing on **SB 129**.

SB 129—Consumer protection; modification or limitation of warranties; workmanlike performance

Proponent:

Mr. Eric Kraft, representing the Young Lawyers Section of the Kansas Bar Association, testified in support of the bill. Mr. Kraft stated that this bill slightly modifies the Kansas Consumer Protection Act, enacted in 1973, to equate the implied warranties of service contracts to those implied in contracts for goods. (Attachment 3)

Chairman Vratil closed the hearing on **SB 129** and opened the hearing on **SB 224**.

SB 224—Judicial discretion for 120 day call back in certain situations

Proponent:

Senator Journey testified that the bill enhances the options available to District Court Judges across the State in dealing with issues of placement and disposition at the resolution of felony criminal cases in Kansas. The bill has two operative sections; the first section affects the sentencing portion of criminal cases, and the second section affects cases where the revocation of probation or assignment to community corrections has occurred. The bill gives the District Court Judge the final option of reinstating a probation after the defendant

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on in Room 123-S of the Capitol.

has served up to 120 days in custody prior to the filing of the motion by either of the parties. This gives judges another tool to use in modifying the behavior of defendants. Senator Journey stated that the revisor is preparing a balloon amendment to the bill to address an issue brought up by the Department of Corrections regarding judges giving a defendant a county jail sentence before putting the individual on probation, and the option would only be available for presumptive prison cases and not for border box cases. (Attachment 4)

Neutral:

Mr. Tim Madden, representing the Secretary of the Department of Corrections, testified regarding the provisions of the bill. The bill, as currently written, does include “border box” offenders. Mr. Madden identified five factors that the Department of Corrections recommends the Committee consider regarding a 120 day modification for “border box” offenders and supervision violators. (Attachment 5)

Mr. Madden stated the Department wanted to refrain from making any other comments until it has had the opportunity to study impact estimates on admissions and bed capacity, and is able to do some analysis of the effect on workloads due to increased admissions and releases. Senator Goodwin stated that the Department of Corrections did a survey in the past year of how much jail space was available in the state. Senator Goodwin asked for this information to be supplied to the Committee and Mr. Madden stated he could provide this.

Chairman Vratil closed the hearing on **SB 224** but added that the Committee would look forward to receiving the fiscal impact note and bed space report from the Department of Corrections.

SB 144--Dram shop law; liquor licensee liability for minors and incapacitated persons; social host liability for minors

Proponents:

Debbie Riggs testified that on November 20, 2001, her 17 year old son, Paul, went to a party where alcohol was being served to underage kids. He left the party at 10 p.m. that evening and on the way home hit a tree and died three weeks later, never regaining consciousness. (Attachment 6)

Ms. Riggs stated that she did not want to open a series of frivolous lawsuits or a debate on dram shop. It was her hope that the bill would be designed as a civil action to aid victims when persons were convicted of the criminal law. Ms. Riggs stated that lines 26-32 of the bill are exactly what the bill should contain. She is looking for a civil law to specifically address a way to seek recovery from parents that have been convicted of the crime that was passed by Governor Sebelius. Ms. Riggs concluded by stating that K.S.A. 4102 should not stand alone and asked for passage of the bill which would show the nation that Kansas is continuing to battle the problem of underage drinking on behalf of our youth, who are also our future.

Brette Hart, a third year law student at Washburn, provided some background on the current lack of dram shop legislation in Kansas, and cited several cases that set the precedent that subsequent courts have followed. (Attachment 7-9)

Chairman Vratil asked for a balloon amendment be drafted to eliminate the dram shop portion of the bills and specifically leave in the social hosting.

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

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on in Room 123-S of the Capitol.