

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 3, 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:

Ed Cross, Kansas Independent Oil & Gas Association

Doug Wareham, Kansas Bankers Association

Kyle Smith, Kansas Bureau of Investigation

Bill Miskel, Special Assistant to Commissioner, Juvenile Justice Authority

Others attending:

See attached list.

Chairman Vratil opened the hearing on **HB 2104**.

HB 2104 UCC securities interest in oil and gas production

Proponents:

Ed Cross, Executive Vice President, Kansas Independent Oil & Gas Association, testified in support of the bill. Mr. Cross stated that he understood that the bill was written to correct an oversight which occurred when Article 9 of the Uniform Commercial Code was amended in 2000, but which left out K.S.A. 84-9-319. Chairman Vratil suggested that the 2000 amendments were not an oversight, that the provisions for adding K.S.A. 84-9-319 back into the bill were not in the Uniform Law Commissioners' recommended amendments to the UCC. Chairman Vratil stated that the whole basis for perfecting security interests under UCC is notice filing. Chairman Vratil requested that Mr. Cross consult with his attorney and provide written answers as to why the oil and gas producers should be treated differently than any other person or entity who claims a security interest and also, how extenders of credit are to know that there is a claim of a security interest. Mr. Cross stated he would address these questions and get back to the Committee. (Attachment 1)

Written testimony was provided by Lee Allison, Kansas Energy Council. (Attachment 2)

Neutral:

Doug Wareham, Kansas Bankers Association, testified that the Association wanted to offer a balloon amendment to the bill. Currently, K.S. A. 84-9-501 (a) provides that if a lender's security interest is in "as-extracted collateral", the lender must perfect its security interest in that collateral by filing a financing statement with the Office of the Register of Deeds in the county where the property (from which the oil or gas is extracted) is located. Mr. Wareham stated that the Association is neutral on the bill but would like the amendment considered. (Attachment 3)

Chairman Vratil stated, under K.S.A. 84-9-501(a) any lender must file a UCC financing statement or claim for security interest to perfect their security interest. Under this bill, a producer does not have to file anything to perfect his security interest. He posed the question to Mr. Wareham whether there should be a difference between how those two classes of security interests are treated. Mr. Wareham stated that he felt bankers live with this issue every day, but in general, the banks take a dim view anytime special treatment is granted. They are not fans of hidden liens that they were not aware of or cannot identify through the Register of Deeds office. However, there are many bankers that have a strong interest in financing oil and gas providers, and Mr. Wareham stated he believed he could line up bankers on both sides of this issue.

Senator Donovan used an analogy of his car business and how a blanket lien with GMAC and the bank is put in place to cover new and used cars and inventory. Chairman Vratil stated that the concept of a blanket lien

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may be one to explore for oil and gas. He questioned, in approaching this problem, whether a landowner might be required to file a blanket lien at the time of first production on that landowner's property. Mr. Wareham stated that he'd be willing to work with Mr. Cross to see if that would satisfy their needs and might improve our position on the bill. Mr. Cross indicated that he would research the idea with his attorney and see if they could come up with something together.

Chairman Vratil closed the hearing on **HB 2104** and opened the hearing on **HB 2314**.

HB 2314 Timing of offender registration

Proponents:

Kyle Smith, Kansas Bureau of Investigation (KBI), testified in support of the bill. Mr. Smith stated that the Kansas Offender Registration Act requires an individual convicted of certain crimes, generally sexual offenses, murder or kidnaping, to register for a period of 10 years on first offenses, second offenses, or if it was a crime against a child, the individual must register for a lifetime. The Act was originally passed in 1993 and modified in 1994. The KBI has since discovered some drafting errors. There is some confusion about when the registration period starts: from the conviction, parole or discharge. The KBI's intention is that the registration period start from the date of the individual's last release. The bill defines the period as not including time while the individual was in jail, or while the person is intentionally and knowingly violating the act. The second section of the bill deals with a similar problem with juveniles. The juveniles are covered by this act register until they are 18 or for five years from their adjudication. The bill defines the period as from the release date and the period does not include time while juveniles are incarcerated, or while knowingly violating the act.

Chairman Vratil closed the bill on **HB 2314** and opened the hearing on **HB 2347**.

HB 2327 Authority for Juvenile Justice authority to test offenders for infectious diseases

Proponent:

Bill Miskel, Special Assistant to the Commissioner of the Juvenile Justice Authority (JJA), testified in support of the bill. Mr. Miskel stated that the JJA had requested the bill. Juvenile corrections employees are not frequently exposed to the body fluids of a juvenile offender. However, when such exposure does occur, the authority to request a court to order to test a juvenile offender and the results of that test to be disclosed to the exposed employee provides the employee with information that is important in helping to make informed health care decisions. (Attachment 4)

Senator Bruce questioned whether there was already a statute pertaining to law enforcement officers in dealing with exposure to bodily fluids. Mr. Miskel acknowledged there was another statute that pertains to law enforcement officers, but this bill would include juvenile correctional employees in the same category as adult correctional employees. Mr. Smith offered that there are three definitions in the statutes he is aware of for law enforcement officers. Because juvenile correctional employees are not part of the training act and they are trained differently, they are excluded from that definition. Mr. Bowie, legal counsel for JJA and guest in the meeting, stated that correctional employees are excluded specifically from the definitions. Chairman Vratil asked that copies of the statutes they are talking about be provided to the Committee, as the Committee needs to verification that juvenile corrections officers are clearly not covered under the statutes that now apply to law enforcement officers. Mr. Miskel pointed out that this bill would also cover all juvenile correctional employees and not just juvenile correctional officers.

Chairman Vratil closed the hearing on **HB 2327**.

Chairman Vratil asked the Committee to address **SB 179**.

SB 179 Enhancing penalties for offenses against children

Chairman Vratil stated, in reviewing the status of the bill, that the bill increases the severity level for various

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crimes against children and has a significant bed space impact. Kevin Graham, Assistant Attorney General (AG) and guest at the meeting, offered several amendments to reduce the impact on bed space. Mr. Graham stated that the AG's office would like to see the bill passed as it is written, as their office feels that the increase in severity level is both justified and necessary. However, regarding the Chairman's concern regarding the bed space impact, the first balloon amendment Mr. Graham offered would decrease bed space while preserving the intent of the bill. (Attachment 5) The amendment would strike section one of the bill and strike the increase in severity level for indecent solicitation of a child. However, it would leave the increased penalty level for aggravated indecent solicitation of a child. Chairman Vratil questioned how this change might affect the bed space impact. Mr. Graham stated that there would be very little change in the bed space impact, but some. Chairman Vratil asked Ms. Patricia Biggs, Executive Director of the Kansas Sentencing Commission and guest in the meeting, to address the bed space impact if section one was left in, and Ms. Biggs stated she would work on providing that.

Mr. Graham offered a second option balloon, indicating that, after reviewing federal law and how it has been interpreted, he eliminated "or appears to be" on page 2, line 3, and the "affirmative defense" language found on, page 2, lines 39-43, and page 3, lines 1-3. (Attachment 6) Mr. Graham handed out a third balloon, which required some clarifications by the Committee. (Attachment 7).

Chairman Vratil stated that the Committee could not take final action on the bill until there was additional bed space impact information could be provided. Senator Donovan suggested it might be reasonable to make an amendment on the bill, and Chairman Vratil concurred. There was a motion to adopt the second balloon option provided by Mr. Graham (Attachment 6). Chairman Vratil summarized that the motion amended the bill on page 2, line 3, by deleting the words, "or appears to be" and on page 2, beginning with line 39, deleting everything on the remainder of that page and deleting everything on page 3 through line 19. Senator Donovan moved, seconded by Senator Bruce, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 7, 2005.