

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, March 8, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley (A)  
Senator Dwayne Umbarger (E)  
Senator Kay O'Connor - Arrived 9:48 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 Paul Davis  
Judge Christel E. Marquardt  
Senator David Adkins  
Janet Schalansky, Secretary of SRS  
Professor James Concannon, Washburn University  
Gene Balloun, Attorney  
Lou Ebert, President & CEO, Kansas Chamber  
Brad Smoot, Kansas Civil Law Forum

Others attending: See attached list.

**HB 2618 - Terms of office of court of appeals judges six years, from current four years**

Chairman Vratil opened the hearing on **HB 2618**. Representative Paul Davis testified in favor of his proposed bill. He stated he felt the terms of office for all appellate judges in Kansas ought to be congruent. He explained a minor amendment made to the bill in the House Judiciary Committee would not take affect immediately for those judges on the Court that are standing for retention in the upcoming election. (Attachment 1)

Judge Christel Marquardt spoke in support of **HB 2618**, and stated that the bill was supported by the Kansas Court of Appeals, the Kansas District Court judges, and the Kansas Supreme Court. Judge Marquardt included with her written testimony data from the U.S. Department of Justice which showed that the terms of office for judges on other state's Courts of Appeals range from 6 years to lifetime appointments. (Attachment 2)

Brief Committee discussion and questions followed.

Chairman Vratil distributed copies of **SB 19** which passed the Senate 39-1, last session, and explained that the 2003 bill proposed to increase the retirement age for Appellate Court judges from 70 to 75. He said the bill was stalled in the House last session. He asked for the Committee to consider amending **SB 19** into **HB 2618** when the it worked **HB 2618**. The Chairman asked the members to study **SB 19** for future consideration. (Attachment 3)

Having no other conferees to appear on **HB 2618**, Chairman Vratil closed the hearing.

**SB 489 - State Child Death Review Board; prescribing duties regarding injury to or death of a child under certain circumstances**

Chairman Vratil opened the hearing on **SB 489**. Senator David Adkins testified in support of the proposed legislation. He explained that the bill would amend statutes of the State Child Death Review Board (SCDRB) by requiring referral of cases of a child death or near fatality to the SCDRB within 30 days of the injury or death when the death is the result of child abuse or neglect. The bill clarifies that cases would be referred when the death occurred on or after January 1, 2001, the child is a ward of the State, or has at any time been determined to be a child in need of care. Senator Adkins' concern was with

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the “disclosure of records law” which is not useful when a death or near death situation occurs. He said that Missouri has taken the federal mandate and used it, at the discretion of its Chief of the Child Protective Agency, to release those records.

Senator Adkins stated that he wanted the Brian Edgar case to be included in this legislation. He said the idea was to conduct a Legislative Post Audit type approach with SCDRB auditing the records, determining what happened, making specific findings of fact, and making specific recommendations on what should be changed. Senator Adkins explained that Attorney General Kline’s office was working hard to craft compromise language to address this issue, and it should be released shortly with the support of Representative Landwehr, and himself. He advised the Chairman that the best chance for resolving this issue was to wait until the compromise language was identified. Then, Senator Adkins would forward that work product to the Committee for further consideration. (no written testimony submitted)

Following Committee questions and discussion, the Chair recognized Secretary Janet Schalansky, Social and Rehabilitation Services (SRS), to testify as a neutral conferee on **SB 489**. Secretary Schalansky testified that SRS supports openness and oversight by SCDRB, and also the access to and full review of records by SCDRB. She stated that SRS recommended limiting the scope of the bill to children who had been wards of the state within three years prior to the child’s death or near fatality. Secretary Schalansky submitted a balloon amendment covering SRS’s recommendation. ([Attachment 4](#))

Following brief discussion and questions, the Chairman closed the hearing on **SB 489**.

### **HB 2764 - Class actions, appeal from certification of class**

Chairman Vratil opened the hearing on **HB 2764**. Professor James Concannon, Washburn University, testified in support of the proposed legislation which gives the Court of Appeals discretion to permit an immediate appeal, prior to final judgment, of a trial court order certifying, or refusing to certify, an action to proceed as a class action. He stated he firmly believed that, absent compelling reasons, the Kansas rules of civil procedure should mirror the Federal Rules of Civil Procedure. ([Attachment 5](#))

Professor Concannon explained that **HB 2764** incorporates the 1987 technical amendments that did not involve substantive changes. It does not incorporate the December, 2003, amendments. He concluded that this bill would bring Kansas law into greater conformity with Federal Rule 23.

Committee questions and discussion followed.

Gene Balloun, Attorney, testified in favor of **HB 2764**. He explained the bill adopts the provisions of Federal Rules of Civil Procedure 23(f), but does not take away any appellate rights. He said it adds an additional provision for interlocutory appeal. He added that **HB 2764** provides an additional avenue of appeal leading to early resolution of class certification issues which will benefit litigants, judges, attorneys, and the public. ([Attachment 6](#))

Lew Ebert, Kansas Chamber, spoke in support of **HB 2764** because conforming Kansas’ civil procedure Rule 23(f) to the federal rule allows a more efficient use of the Chamber’s member’s legal resources. Mr. Ebert concluded that implementation of this rule in no way restricts any party’s access to due process or their day in court. ([Attachment 7](#))

Brad Smoot, Kansas Civil Law Forum, submitted written testimony in support of **HB 2764**. ([Attachment 8](#))

There being no other conferees to appear before the Committee, the Chair closed the hearing on **HB 2764**.

### **Final Action on:**

### **HB 2764 - Class actions, appeal from certification of class**

Chairman Vratil announced that since this bill passed the House on a vote of 125 to 0, it appeared to be non-controversial. The Chair called for discussion and final action.

**Senator Donovan moved to pass HB 2764 out favorably, seconded by Senator Betts, and the motion**

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carried.

Minutes for the January 29 and February 2, 2004 meetings were presented for approval. Senator Donovan moved to approve the minutes as written, seconded by Senator Schmidt, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 a.m. The next scheduled meeting is Tuesday, March 9, 2004.