

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on March 17, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Donovan (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Chris Wilson, Kansas Building Industry Association
Barbara Conant, Kansas Trial Lawyers
Mike Taylor, City of Wichita
Jay Hinkel, Asst. City Attorney, Wichita
Sandy Jacquot, League of Kansas Municipalities
Representative Bonnie Huy
Blaise Plummer, City of Emporia
Judge Eric Yost, 18th Judicial District, Sedgwick County
Marsha Spangler, Clerk of the District Court, 18th Judicial District, Sedgwick County
Jeanne Turner, Chief Clerk, 5th Judicial District, Emporia
Kathy Porter, Office of Judicial Administration
Michael Pepoon, Director Government Relations, Sedgwick County
John Todd, Wichita citizen
William T. Davitt, Wichita Citizen
Jeff Bottenberg, Kansas Sheriff's Association (written only)

Others attending: see attached list

HB 2294 - Construction defects; contractors right to cure prior to filing a civil action; criminal penalties

Chairman Vratil opened the hearing on **HB 2294**. Chris Wilson, Director of Government Affairs for Kansas Building Industry Association (KBIA), testified in support of **HB 2294**. She explained that the bill came about in part as a result of concerns regarding construction defect claims and how best to resolve them. She said that the National Association of Home Builders (NAHB) was addressing the issue of construction defect litigation and the resulting effect on general liability insurance. **HB 2294** is based on NAHB model legislation. Ms. Wilson stated KBIA modified the national model bill for Kansas, requested introduction of **HB 2294**, and worked extensively with the Kansas Trial Lawyers Association (KTLA) on the bill. She said KBIA requested numerous agreed-upon amendments, resulting in **Substitute for HB 2294**. (Attachment 1)

Barbara Conant, Director of Public Affairs for the Kansas Trial Lawyers Association, spoke in support of **Sub HB 2294**. She stated that KTLA opposed **HB 2294** as introduced, but by working with the KBIA they substantially amended **HB 2294** to meet KBIA members' goals with the legislation and, at the same time, protect the interest of consumers. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 17, 2003 in Room 123-S of the Capitol.

The Chairman closed the hearing on **HB 2294**.

Final Action on:

SB 243 - Uniform controlled substances act schedule IV substances

Chairman Vratil reviewed **SB 243**, and said that Senator Schmidt had an amendment he would like to offer. Senator Schmidt explained that he had requested a prison bed impact for his proposed amendment from the Kansas Sentencing Commission. (Attachment 3) He stated his amendment clarified the law in light of a case from the Court of Appeals, *State v. Frazier*, which held that a person was guilty of violating the drug paraphernalia statute, which is a level 4 drug crime, rather than possession of ingredients used to make methamphetamine. Senator Schmidt explained the bed impact report as it related to his proposed amendment.

Senator Schmidt moved to amend **HB 2317** into **SB 243**, seconded by Senator Umbarger, and the motion carried.

Senator Schmidt made a motion to recommend **SB 243** favorably as amended, seconded by Senator Umbarger, and the motion carried.

SB 197 - Alcoholic beverages; furnishing to and consumption by persons under age 21

Chairman Vratil called the Committee's attention to **SB 197** to be worked for final action. Senator O'Connor distributed a proposed balloon amendment, and explained the changes she was requesting. She stated that the amendment reinserts stricken language and basically goes back to current law that allowing a parent to give 3.2 cereal malt beverage to the parent's own child in the parent's own home and under supervision. The balloon also added a new section 3 regarding unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage. (Attachment 4)

Senator O'Connor moved to adopt the amendment to **SB 197**, seconded by Senator Oleen. The Chair clarified the changes called for in the proposed amendment. Committee discussion followed. Chairman Vratil called for a vote on the motion to amend. The motion failed.

The Chair referred the Committee back to the bill for further consideration, and discussion. Senator O'Connor made a motion to amend the bill by reinstating the language that was deleted on page 1, line 18; page 1, lines 35 through 37, and page 2, lines 35 through 39. The motion was seconded by Senator Schmidt, and the motion to amend carried.

Senator O'Connor moved to pass **SB 197** out favorably as amended, seconded by Senator Goodwin, and the motion carried.

HB 2133 - Municipal courts collecting fines and court costs

Chairman Vratil opened the hearing on **HB 2133**. Mike Taylor, Government Relations Director, City of Wichita, testified in support of **HB 2133**. Mr. Taylor stated that the City of Wichita was requesting this legislation to help Wichita Municipal Court, and all Municipal Courts in Kansas, more effectively deal with the growing problem of delinquent fines. He explained that the bill requests that Municipal Courts be allowed the same authority for collecting unpaid fines as District Courts by 1) converting those debts

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 17, 2003 in Room 123-S of the Capitol.

into civil judgments and 2) requiring delinquent defendants to pay the cost of the collection fee as well as the fine. Mr Taylor added that more effective tools such as garnishment then could be used to collect those debts. ([Attachment 5](#))

Jay C. Hinkel, Assistant City Attorney for the City of Wichita, testified in support of **HB 2133**, and offered a technical amendment. He stated the amended bill, submitted with his written testimony, incorporates the text which passed the House, and places it in the appropriate sections of the existing municipal code. He said the proposed changes would not be mandatory; a municipality would be required to take affirmative action to accept this authority and adopt the related procedures. He added that if the municipality were to accept this opportunity, it would also be accepting the burden of handling the work load associated with that choice, and would not place that work upon the district courts, county sheriffs, or any other office or agency. ([Attachment 6](#))

The Chairman paraphrased what this amendment would do, and Senator Oleen stated there was quite a bit of history on this issue and asked if the staff would furnish the history covering this matter.

Sandy Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities, spoke in favor of **HB 2133**, and stated that they supported the substitute language presented by the City of Wichita's amendment. ([Attachment 7](#))

Representative Bonnie Huy testified in support of **HB 2133**, and offered a balloon amendment. This amendment strikes subsection (c) lines 3 through 8 on page 2 of the bill. Representative Huy stated that she was against a Municipal Court being given more powers to collect a bad debt than the collection powers given to a citizen, private business, or a district court. ([Attachment 8](#))

Blaise Plummer, Emporia City Attorney, appeared in support of **HB 2133**, and stated that Municipal Court fines serve as punishment and a deterrent for ordinance violations. He added that if fines go uncollected, the ends of justice will not be met. It is unfair to the majority of citizens, who pay their fines, court costs and restitution, to let defendants slide because the defendants are not able to pay amounts owed. Mr. Plummer testified that this bill provides a tool to convert fines, court costs and restitution to a civil judgment, and to utilize the existing limited actions procedures in district court to execute on the judgment. ([Attachment 9](#))

Judge Eric Yost, 18th Judicial District, testified on behalf of the judges in Sedgwick County, and said the judges were not taking a position regarding collection of unpaid fines and costs. Judge Yost stated the judges were concerned that if the bill was not amended, it would result in a doubling of the civil lawsuit caseload in Sedgwick County. If **HB 2133** was amended so that the City of Wichita assumed the costs of the city's own collection work, the judges would not object to the bill. ([Attachment 10](#))

Marsha Spangler, Clerk of the District Court, testified in opposition to **HB 2133** because of the impact the bill would have of the workload on the Clerk of the District Court's Office. ([Attachment 11](#))

Jeanne Turner, Chief Clerk, 5th Judicial District, Emporia, testified in opposition to **HB 2133** on behalf of the Kansas Association of District Court Clerks and Administrators. Ms. Turner said that the bill would

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 17, 2003 in Room 123-S of the Capitol.

allow any debt, over 180 days old, owed to municipal courts to become a judgment and be filed for collection in the district courts. Ms. Turner added that since cities are exempt from paying filing fees, no revenue would be generated for the State. She suggested municipal courts be allowed to contract with a collection agency just like the district courts are able to do if necessary. ([Attachment 12](#))

Kathy Porter, Office of Judicial Administration, testified in opposition to **HB 2133**, and expressed her concerns the workload it would put on the clerks and judges throughout the state. She referred the Committee to page 2, paragraph 2, of her written testimony addressing the debt collection contracts into which the Attorney General is authorized to enter. Ms. Porter also pointed out paragraph 3, page 2, of her testimony the language addresses payment of money in civil cases. No parallel language could be found for debts owed to the district courts. This is a policy issue for the Legislature to decide. ([Attachment 13](#))

Michael Pepoon, Director Government Relations, Sedgwick County, spoke in opposition to **HB 2133**, and on behalf of the Board of County Commissioners of Sedgwick County and Sedgwick County Sheriff, Gary Steed. Mr. Pepoon stated that the Commissioners and the Sheriff were concerned with the effect the increase of authority would have on the workload of the Sedgwick County Sheriff's Department and the County budget. ([Attachment 14](#))

John Todd, Wichita, appeared before the Committee to oppose **HB 2133**. Mr. Todd was against extending greater debt collection authority to the City of Wichita's Municipal Court, and allowing them to add on collection fees before solving other issues involving the court. He recommended that the Committee defeat **HB 2133** as it is written, and replace it with the language in **HB 2334** that was considered in the 2001 legislative session. The later bill would provide for the direct election of Municipal Court judges by the people. ([Attachment 15](#))

William Davitt, Wichita, testified in opposition of **HB 2133**, and spoke about the corruption in the Wichita Municipal Court and its branch called Environmental Court. ([Attachment 16](#))

Written testimony was submitted by Jeff Bottenberg on behalf of the Kansas Sheriff's Association in opposition of **HB 2133**. ([Attachment 17](#))

Chairman Vratil closed the hearing on **HB 2133**.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is March 18, 2003.