

Approved March 25, 1988
Date

MINUTES OF THE SENATE SUB COMMITTEE ON JUDICIARY #3

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 23, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Langworthy and Steineger

Committee staff present:

Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

- Representative Clinton Acheson
- Doug Martin, Shawnee County Counselor
- Chip Wheelen, Kansas Psychiatric Society
- Danton B. Rice, Secretary of State Legal Counsel
- Lou Allen, Consumer Protection Division of Office of Attorney General
- Ron Smith, Kansas Bar Association
- Bill Paprota, Leawood Attorney

House Bill 2931 - Allowing coroners access to certain information concerning patients in treatment facilities.

Representative Clinton Acheson, prime sponsor of the bill, explained he received a request for this bill from the Shawnee County Coroner's Office and the Shawnee County Counselor for the purpose of assisting the coroner in making a definitive decision on the cause of death.

Doug Martin, Shawnee County Counselor, testified this bill would allow the Shawnee County Coroner access to information that he needs to perform his statutory duties as the coroner. It is the responsibility of district coroners to hold inquests upon the dead bodies of such persons whose death appear to have been caused by unlawful means. A copy of his testimony is attached (See Attachment I). He related a problem the Shawnee County Coroner had in investigating a death that turned out to be a suicide. He had to call out the M-Squad to get the information. This is why the coroner asked for the bill.

Chip Wheelen, Kansas Psychiatric Society, testified we do have some very serious concerns about this bill. The patient records might become subject to state or local open records laws or somehow become accessible to the public. In K.S.A. 199-1030 it prescribes investigatory duties by a coroner when a death has occurred. Mr. Wheelen said he talked to the legal counsel, and he said perhaps this is the statute we should be looking at to give authority.

Mr. Wheelen will meet with Mr. Martin to come to a compromise and return with their amendment.

Mr. Martin suggested the information not be made public except upon a court order.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

#3

CONTINUATION SHEET

MINUTES OF THE SENATE SUBCOMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 23, 1988

Senate Bill 696 - Charitable organizations and solicitations act.

Danton B. Rice, Secretary of State Legal Counsel, testified this bill will rewrite the current charitable solicitations act to correct several administrative and constitutional defects. A copy of his testimony is attached (See Attachment II). Committee discussion was held with Mr. Rice.

Lou Allen, Consumer Protection Division of Office of Attorney General, testified this bill modifies and increases the powers and authorities of the Attorney General to allow for more effective investigation and prosecution for violations of the act. Some of the most recent fundraising drives have utilized the technique of sending goods not ordered by the potential contributor with an invoice for those goods. Copies of her statement with proposed amendments and a fiscal note are attached (See Attachments III). She passed around solicitation letters their office had received for the committee read. Considerable committee discussion was held with her. She explained their proposed amendments. She said she felt the committee should strike the misdemeanor and insert their proposed amendment in their handout.

Senate Bill 698 - Uniform premarital agreement act.

Ron Smith, Kansas Bar Association, stated the bar did not request the introduction of this bill, however, we always support uniform laws. Mr. Smith then introduced Bill Paprota, Attorney from Leawood, Kansas.

Mr. Paprota testified his office probably write more premarital contracts in a year than what most lawyers write in a year. It is fairly consistent with what Kansas law is now. The law favors this type of contract. With the increase in divorce rates you see second marriages more frequently. We are hesitant to discuss in the agreement the division of property and address question of maintenance at the same time. You have to kind of pick and choose. This act sets forth a policy of the legislature that you can do both and sets out some standards and protects the parties. He said he was concerned about several areas that could be expanded on if the legislature wants to ensure against overreaching and duress. He referred to section 2 of the bill that would require a third party to be present and be sure there is no overreaching. The chairman commented, if we do something like that, we would deviate from the uniformity. Mr. Paprota replied, other states have modified the act to include knowledge. Parties contract as to what is required under their state law. He suggested do away with ways you have to conform and require the state in which it was written. It is a lot like a will. It is a way to bring about some more formality to the agreement as you would for a will. He suggested in Section 2 adding requirement be signed by both sides and duly acknowledged. The requirement be signed at least seven days prior to the marriage ceremony. We try to do that in our office. He also suggested to require inclusion of the financial statement within the document at the time of its execution. He is concerned that it be nailed down tight.

The hearings on Senate Bill 696, Senate Bill 698 and House Bill 2931 were concluded.

CONTINUATION SHEET

MINUTES OF THE SENATE SUBCOMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 23, 19 88

Following discussion of Senate Bill 696, it was the consensus of the subcommittee to recommend to the full committee to adopt the proposed amendments of the Attorney General and include all prosecutors.

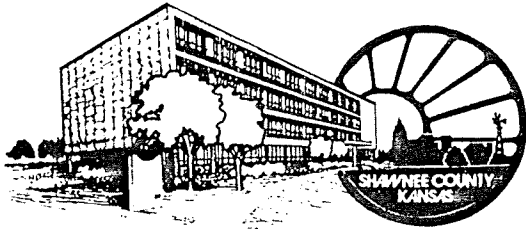
Concerning House Bill 2931, the consensus of the committee was to recommend to the full committee to adopt the amendment proposed by the Shawnee County Counselor and the Kansas Psychiatric Society by adding language in Section 1(a) subsection 12.

Concerning Senate Bill 698, it was the consensus of the committee to recommend to the full committee that the premarital agreement act stay as it is.

The meeting adjourned.

A copy of the guest list is attached (See Attachment IV).

Copy of Memorandum from Attorney General's Office is attached (See Attachment V).



Shawnee County Office of County Counselor

DOUGLAS F. MARTIN
County Counselor
JOSEPH W. ZIMA
First Asst. County Counselor
LINDA P. JEFFREY
Asst. County Counselor

Shawnee County Courthouse
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TESTIMONY BY SHAWNEE COUNTY COUNSELOR DOUGLAS F. MARTIN

March 23, 1988

HOUSE BILL # 2931

SENATE JUDICIARY COMMITTEE

Thank you for the opportunity to testify today before your committee.

I am Douglas Martin, the Shawnee County Counselor and I am here to testify in favor of House Bill # 2931. This bill would allow the Shawnee County Coroner access to information that he needs to perform his statutory duties as the coroner. It is the responsibility of district coroners to hold inquests upon the dead bodies of such persons whose deaths appear to have been caused by unlawful means.

At the present time, K.S.A. 65-5601 through 5603 provide a privilege for information in the possession of certain state treatment facilities. Such privilege prevents coroners from access to information that they often need in conducting their investigations. Because K.S.A. 65-5603 is so broad in its scope, it prevents disclosure even when a coroner might have probable cause to require the information.

K.S.A. 65-5601 through 5603 apply only to State and Local treatment facilities which

- include:
- a) community mental health centers;
 - b) State sychiatric hospitals;
 - c) State institutions for the mentally retarded;
 - d) and community mental retardation facilities.

Under the present law, privileged information in the hands of these institutions cannot be given to coroners even when there is a possible crime. There are presently eleven (11) exceptions that allow disclosure, but disclosure is not allowed to coroners. We believe this should be remedied by this bill. A review of these eleven

Att. I

TESTIMONY OF DOUGLAS F. MARTIN

March 23, 1988

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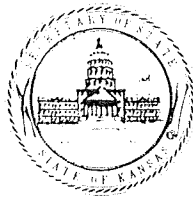
exceptions which allow disclosure show that they are warranted. However, we believe that the need by coroners who are examining unnatural deaths is more important than the already existing exceptions.

The privilege granted to individuals in these state institutions is, in my opinion, most unusual. Ordinarily, there is no doctor-patient privilege when there is the possibility that information might be connected to a felony. The doctor-patient privilege only extends to civil cases and misdemeanors. Thus, coroners have little problem in securing information from doctors, hospitals and institutions that are not covered by the provisions of K.S.A. 65-5601 et seq.

By enacting House Bill No. 2931, this committee would be taking a responsible step to allow enforcement of criminal laws when death is involved; while at the same time protecting the rights of individuals who are being treated at certain state and local institutions.

Thank you.

I would be happy to answer any questions you might have.



Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE ON SB 696

BY: DANTON B. RICE - LEGAL COUNSEL

March 23, 1988

Senate bill 696 will rewrite the current charitable solicitations act to correct several administrative and constitutional defects. This bill was drafted with the assistance of the Attorney General's office and a representative of that office will submit testimony regarding the enforcement provisions.

One of the most important changes contained in the bill is the inclusion of a definition of the term "solicitation." Excluded from the definition are grants of funds received by organizations from members or affiliates and unsolicited contributions.

Additional changes have been made to the list of organizations which are exempt from registration under the act. Added to the previous statute is an exemption for any organization which does not intend to or does not actually solicit or receive contributions from more than 100 persons. Further, an organization may now collect up to \$10,000 before the act is triggered. The previous statute applied to any organization that collected more than \$5,000 and did not meet any of the other exemption sections.

The final administrative change made is the extensive modification of the registration procedure for organizations that are required to file under the act. The registration statement will include significantly more useful information and will expire on the last day of the sixth month following the fiscal year end of a corporation. The previous statute required an initial filing and subsequent annual fiscal reports.

The Secretary of State strongly supports SB 696 because it will make our charitable solicitation act easier to administer and will provide the Attorney General the tools necessary to effectively enforce the act.

Att. II



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

TESTIMONY OF LOU ALLEN
ASSISTANT ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION

BEFORE THE SENATE JUDICIARY SUBCOMMITTEE
HEARING ON S.B. 696

March 23, 1988

Mr. Chairman & Members of the Committee:

I am here this morning to support Senate Bill 696. This bill repeals and replaces the Kansas Charitable Solicitation Act.

Attorney General Stephan strongly favors passage of Senate Bill 696.

Senate Bill 696 modifies and increases the powers and authorities of the Attorney General to allow for more effective investigation and prosecution for violations of the act.

There has been a noticeable increase in the last several years of charitable organizations soliciting contributions from Kansans. Some of the most recent fundraising drives have utilized the technique of sending goods not ordered by the potential contributor with an invoice for those goods.

Att. III

Telephone appeals are more prevalent, and such solicitors may request donations by credit card. Many charitable organizations solicit contributions by direct mail appeals. Some utilize contests and sweepstakes to get contributions. With these appeals for contributions have come an increase in deceptive and unconscionable acts and practices. Passage of this bill would allow the Attorney General to recover damages sustained by contributors for such deceptive and unconscionable acts and practices in the same way as the Attorney General may now recover damages under the Consumer Protection Act.

A recent example: an elderly individual was contact by phone to purchase 300 bumper stickers allegedly for the benefit of missing children. The company soliciting the contribution was a professional fundraiser from California. The alleged charitable organization also was from California. Neither organization was properly registered in the State of Kansas. The individual purchased the bumper stickers, and after giving her credit card number contacted the Consumer Protection Division of the Attorney General's Office to inquire about the organizations that had solicited her. When she found that they had not complied with our statutory requirements to solicit, she tried to cancel her donation. She filed a complaint with our office and we wrote a letter to the charitable organization asking that her credit card be

reimbursed for the contribution solicited by the non-registered fundraiser. Her credit card was credited for \$260. Had the organization not reimbursed this contributor, our only recourse under the current charitable solicitations act, would have been to revoke the organizations' registrations. Since they didn't bother to register in the first place, to say the least, this is an ineffective remedy.

We are seeing more and more direct mail appeals from organizations that upon first impressions appear to be non-profit and charitable. However, after further investigation we determine they are for-profit organizations that are soliciting contributions for their lobbying efforts or for personal profit.

Also there are charitable organizations that hire professional fundraisers that utilize sweepstakes or contest techniques in their solicitations. Potential contributors are notified that they are entered in a sweepstakes and/or contest and that they need only contribute a certain amount of money to insure that they are eligible. After that contribution, they are recontacted to keep contributing and insure their eligibility for the prizes.

Passage of this bill will not harm well-intentioned legitimate charities. On the contrary, it would be of great benefit to them by providing the Attorney General with the

enforcement tools to combat those organizations which deceive contributors.

The Attorney General does want you to be cognizant of the fact that we believe this bill would have a fiscal impact on the Attorney General's Office. To carry out the duties under the bill, it would require a full-time attorney to enforce charitable laws. We have attached our fiscal note to our written testimony. We believe this is a small price to pay for the benefit derived from taking enforcement action against deceptive solicitors of funds.

Finally, we would suggest replacement of the misdemeanor penalties in Section 11(b) with civil penalties parallel to those found in the Consumer Protection Act at K.S.A. 50-636. Suggested language is attached. From the Attorney General's experience with consumer protection, we have found that it is only possible to negotiate reimbursement for consumers where the ethical concerns involved in criminal prosecution are not present. Further, Fifth Amendment protections involved in criminal prosecutions would hamper our ability to require solicitors to provide us with information.

In summary, the Attorney General supports Senate Bill 696 and urges its passage as a means of providing the enforcement options necessary to deter unconscionable and deceptive solicitations for allegedly charitable contributions.

SUGGESTED LANGUAGE

In lieu of Section 11(b) the following language should be inserted:

b) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved consumer, or the state, for the payment of a civil penalty, in a sum set by the Court of not more than two thousand dollars (\$2,000) for each violation. An aggrieved contributor is not a required party in actions brought by the Attorney General pursuant to this section.

c) Any person who willfully violates the terms of any injunction or court order issued pursuant to this act shall forfeit and pay a civil penalty of not more than ten thousand dollars (\$10,000) per violation, in addition to other penalties that may be imposed by the Court, as the Court shall deem necessary and proper. For the purposes of this section, the District Court issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the name of the state, may petition for recovery of civil penalties.

d) In administering and pursuing actions under this act, the Attorney General is authorized to sue for and collect reasonable expenses and investigation fees as determined by the Court. Civil penalties or contempt penalties sued for and

recovered by the Attorney General shall be paid into the general fund of the state.



3-23-88
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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

M E M O R A N D U M

To: Michael F. O'Keefe, Director of the Budget
Attn: Susan Duffy

From: Neil A. Woerman, Chief of Staff

Re: Fiscal Note Request; S.B. 696

Date: March 7, 1988

The bill would repeal the current charitable solicitations act and replace it with a more effective and enforceable law. Enforcement would be under the jurisdiction of the attorney general, as it is under the current law. Because the current law is relatively toothless, the attorney general's functions have primarily been to offer information and on occasion investigate. If the proposed bill becomes law, we believe the attorney general will have much greater opportunity to take actions against questionable charities soliciting funds in Kansas.

While one attorney in consumer protection now spends approximately 1/8 to 1/4 time on charitable solicitation and charitable trust (see fiscal note on S.B. 565) matters, if both this bill and S.B. 565 pass, we believe it reasonable to make such matters the full-time responsibility of one attorney. This would have the effect of providing consumers with much greater protection against questionable charities and charitable trusts which were not being carried out properly. Without providing this additional staffing, the purposes of the acts cannot properly be effectuated.

Att. V

Thus, the fiscal impact on this office would include employment of one additional attorney, furnishings and equipment for such attorney, investigation and prosecution support and other operating expenditures. Estimated costs:

Salaries & wages (including benefits):	\$33,345
Furnishings and equipment:	2,500
Remodeling costs:	1,000
Investigation & prosecution support:	5,000
Other operating expenditures:	<u>5,000</u>
	\$46,845