

Approved: April 10, 1998  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 4:07 p.m. on March 26, 1998 in Room 254E of the Capitol.

All members were present except: Senator Donovan (excused)

Committee staff present: Mike Heim, Legislative Research Department  
Gordon Self, Revisor  
Mary Blair, Committee Secretary

Conferees appearing before the committee: none

Others attending: see attached list

The minutes of March 25 a.m. and March 25 p.m. meetings were approved on a motion by Senator Bond and a second by Senator Harrington. Carried.

### **HB 2531 - Prevention of assisted suicide act**

The Chair opened discussion on **HB 2531**. A matter of concern expressed by some Committee Members was New Section 6 in the bill which "creates a cause of action," according to Revisor Self. Senator Goodwin stated she felt this section would allow family members to litigate against one another. Researcher Heim reviewed his research into the issue of deleting this Section of the bill. (attachment 1) Discussion followed. Senator Feleciano pointed out a clerical error on page 2, line 13 of the bill and moved to add the letter "d" to the word entitle. Senator Pugh seconded. Carried. Senator Goodwin reiterated her concern about New Section 6, citing research she had done on the issue, and made a motion that New Section 6, lines 17-25 be deleted from the bill. Senator Bond seconded. Motion defeated 3-5 with 2 members abstaining. Senator Goodwin requested introduction of a balloon amendment to the bill which amends New Section 6 so that "a cause of action shall not be maintained against a person who is a relative by blood, adoption or marriage of the person who did or would commit suicide." (attachment 2) Discussion followed. Senator Feleciano made a motion to place a period after damages on line 23 page 2 and strike the remaining verbiage. Following discussion on this Senator Feleciano withdrew his motion. There was no action on the request for introduction of the balloon amendment. Following further discussion, Senator Harrington moved to pass the bill out favorably as amended. Senator Gilstrap seconded. Motion carried 8-2.

The meeting adjourned at 4:35 p.m. The next meeting is on call of the Chair.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/26/98 P.M.

NAME	REPRESENTING
Jeanne L. Lewdun	KFL
Dolyn Johnson	KFL
Anne Wilshap	Kc
Adam Melstys	Kc
Helen Randall	Whitney Searson, PA
Tom Bruno	Assor. of KS. Hospice
Meg Draper	Ks Medical Society
KEITH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Rm. 545N-Statehouse, 300 SW 10th Av  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

KSLegRes@lr01.wpo.state.ks.us

http://www.kumc.edu/kansas/ksleg/KLRD/klrd.html

March 26, 1998

**To:** Senator Tim Emert  
Senator Nancey Harrington

**Office No.:** 356-E  
128-S

**From:** Mike Heim, Principal Analyst

**Re:** Civil Cause of Action—Assisted Suicide

I discussed the issue of deleting the civil cause of action in the assisted suicide bill (H.B. 2531) and the chances that the Kansas courts would recognize such a cause of action absent a statute with both Professor Bill Westerbeke, a University of Kansas tort law expert, and with Jerry Palmer, Topeka attorney with extensive tort law experience. Both expressed doubt that the Kansas Supreme Court on its own would recognize a tort law cause of action against a person who violated the assisted suicide criminal statute.

Professor Westerbeke pointed out that a wrongful death action is simply a statutory vehicle to bring an underlying tort action before the court. For example, the underlying tort action in the recent *O. J. Simpson* case in California was a common law intentional tort of battery against the victims brought before the court using the statutory vehicle of a wrongful death action. He said the underlying cause of action in the case of assisted suicide also would be battery. He said the Kansas court has been very reluctant to recognize new civil causes of action based on statutory violations in the past and would likely not recognize a wrongful death action based on battery in connection with a violation of the assisted suicide law.

Mr. Palmer pointed out that a wrongful death action can only be brought in situations where the deceased could have brought a tort action himself or herself, had he or she lived against the tortfeasor. In a typical automobile negligence action where a person dies as a result of the negligence of another, the deceased, had he lived, could have brought a negligence action himself. He said there was a logical impossibility involved in the assisted suicide issue since he did not think a person who attempted suicide and failed and was assisted by another could then turn around and bring a tort action against the person who tried to help in the suicide.

I hope this is useful.

MH/pb

#23954.01(3/26/98{11:45AM})

*Senate Judiciary*  
*3-26-98*  
*att/*

5 July 2006  
3-2-98  
[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1997

## HOUSE BILL No. 2531

By Committee on Calendar and Printing

3-14

Proposed Amendments to House Bill No. 2531

12 AN ACT enacting the prevention of assisted suicide act; concerning the  
13 assisting of suicide; providing criminal penalties; providing civil rem-  
14 edy; providing injunctive relief; amending K.S.A. 21-3406, 65-2006 and  
15 65-2896b and K.S.A. 1996 1997 Supp. 65-1120, 65-1436, 65-1627 and  
16 65-2836 and repealing the existing sections.

17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. Sections 1, 2, 4, 5, 6, 7 and 14, and amendments  
19 thereto, shall be known and may be cited as the "prevention of assisting  
20 assisted suicide act."

21 New Sec. 2. As used in this act:

22 (a) "Licensed health care professional" means a person licensed to  
23 practice medicine and surgery, licensed podiatrist, registered physician  
24 assistant, licensed nurse, dentist or licensed pharmacist.

25 (b) "Suicide" means the act or instance of taking one's own life vol-  
26 untarily and intentionally.

27 Sec. 3. K.S.A. 21-3406 is hereby amended to read as follows: 21-  
28 3406. Assisting suicide is intentionally advising, encouraging or assisting  
29 another in the taking of the other's life which results in a suicide or  
30 attempted suicide. Assisting suicide is a severity level 9, person felony:

31 (1) *Knowingly by force or duress causing another person to commit*  
32 *or to attempt to commit suicide, or;*

33 (2) *with the intent and purpose of assisting another person to commit*  
34 *or to attempt to commit suicide, knowingly either:*

35 (A) *Providing the physical means by which another person commits*  
36 *or attempts to commit suicide, or*

37 (B) *participating in a physical act by which another person commits*  
38 *or attempts to commit suicide.*

39 *Assisting suicide under subsection (1) is a severity level 3, person felony.*

40 *Assisting suicide under subsection (2) is a severity level 9, person felony.*

41 New Sec. 4. (a) A health care professional who administers, pre-  
42 scribes or dispenses medications or procedures to relieve another person's  
43

Senat Judiciary  
3-26-98  
att 2

20-22

1 pain or discomfort, even if the medication or procedure may hasten or  
2 increase the risk of death, does not violate K.S.A. 21-3406 and amend-  
3 ments thereto unless the medications or procedures are knowingly ad-  
4 ministered, prescribed or dispensed **with the intent** to cause death.

5 (b) Withholding or withdrawal of a life-sustaining procedure does not  
6 violate K.S.A. 21-3406 and amendments thereto.

7 New Sec. 5. (a) A cause of action for injunctive relief may be main-  
8 tained against any person who is reasonably believed to be about to violate  
9 or who is in the course of violating K.S.A. 21-3406 and amendments  
10 thereto by any person who is:

11 (1) The spouse, parent, child or sibling of the person who would  
12 commit suicide.

13 (2) Entitled to inherit from the person who would commit suicide.

14 (3) A health care provider of the person who would commit suicide.

15 (4) A public official with appropriate jurisdiction to prosecute or en-  
16 force the laws of this state.

17 New Sec. 6. A cause of action for civil damages may be maintained  
18 against any person who violates or who attempts to violate K.S.A. 21-3406  
19 and amendments thereto may be maintained by any person given standing  
20 by section 5 and amendments thereto who is the spouse, parent, child,  
21 sibling, or entitled to inherit from the person or who is the per-  
22 sonal representative of the person who did or would commit sui-  
23 cide for compensatory damages and exemplary damages, whether or not  
24 the plaintiff consented to or had prior knowledge of the violation or at-  
25 tempt.

(a)

, other than a person described in subsection  
(b),

26 New Sec. 7. Reasonable attorney fees shall be awarded to the pre-  
27 vailing plaintiff in a civil action brought pursuant to section 5 or 6 and  
28 amendments thereto, or in a proceeding for a judgment of contempt of  
29 court for violating an injunction issued under section 5 and amendments  
30 thereto. If the defendant prevails, and the court determines that a plaintiff  
31 brought the suit or the proceeding for a judgment of contempt frivolously  
32 or in bad faith, reasonable attorney fees shall be awarded to the defend-  
33 ant.

(b) A cause of action as provided in  
subsection (a) shall not be maintained against  
a person who is a relative by blood, adoption  
or marriage of the person who did or would  
commit suicide.

34 Sec. 8. K.S.A. 1996 Supp. 65-1120 is hereby amended to read as  
35 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may  
36 deny, revoke, limit or suspend any license, certificate of qualification or  
37 authorization to practice nursing as a registered professional nurse, as a  
38 licensed practical nurse, as an advanced registered nurse practitioner or  
39 as a registered nurse anesthetist that is issued by the board or applied for  
40 under this act or may publicly or privately censure a licensee or holder  
41 of a certificate of qualification or authorization; if the applicant, licensee  
42 or holder of a certificate of qualification or authorization is found after  
43 hearing: