

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 24, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Dan Williams - Excused

Committee staff present:

Jill Wolters, Revisor of Statutes

Diana Lee, Revisor of Statutes

Jerry Ann Donaldson, Kansas Legislative Research Department

Cindy O'Neal, Secretary

HB 2880 - Office of Judicial Administration/judicial branch updates

Staff informed the committee that technical amendments were needed on page 1, line 38 "a majority of" is not necessary; page 2, line 1 reference to (a)(3) and should reference (b)(3).

Representative Goering made the motion to adopt the technical amendments. Representative Patterson seconded the motion. The motion carried.

Representative Loyd made the motion to strike on page 6, subsection (g) "regulations". Representative Jack seconded the motion. The motion carried.

Representative Owens provided the committee with a balloon. (Attachment 1) He made the motion to adopt the balloon. Representative Pauls seconded the motion. There was a request that the balloon be divided.

- Part A - pertaining to the compensation of the county personnel performing comparable duties and responsibilities, the motion carried.
- Part B - change "shall" to "may" with regard to adopting rules and regulations, the motion carried.
- Part C - restoring the "chief justice of the" throughout the bill, the motion failed.

Representative Patterson made the motion to report **HB 2880** favorably for passage, as amended. Representative Davis seconded the motion. The motion carried.

HB 2813 - disposition of records deceased physician

The Kansas Medical Society and the Kansas Board of Healing Arts have been working together on language that was mutually acceptable by both. However, they will continue to work on more suggestions to be considered in the Senate. They provided suggested amendments. (Attachment 2)

Representative Patterson made the motion to adopt the proposed amendments. Representative Loyd seconded the motion. The motion carried.

Representative Patterson made the motion to report **HB 2813** favorably for passage. Representative Goering seconded the motion. The motion carried.

HB 2577 - authorized representatives for health care records included deceased patients spouse or heirs at law

Representative Jack made the motion to report **HB 2577** favorably for passage. Representative Patterson seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 24, 2004 in Room 313-S of the Capitol.

HB 2296 - dram shop

Representative O'Neal provided the committee with a balloon amendment having the bill apply to everyone not just minors and striking the mandatory server training program. (Attachment 3)

Representative Patterson made the motion to adopt the balloon. Representative Jack seconded the motion. The motion carried.

A balloon was provided from Ron Hein which makes clear that the plaintiff has the burden of proof, and eliminating those who can sue. (Attachment 4) Representative Goering made the motion to adopt the balloon amendments, substituting "alcohol" for "drink" and "defendant" to "licensees." Representative Yoder seconded the motion. It was requested that the amendment be divided.

- Part A - amendment on page 1 - the motion carried.

Representative Jack made the motion to strike the first and second sentence and delete "minor or" so it would apply to any incapacitated person. Representative Patterson seconded the motion. The motion carried.

- Part B - amendment on page 2 eliminating individuals from those who can sue. The motion failed.

Representative Rehorn made the motion to change "may" to "shall" on page 1, line 31. Representative Long-Mast seconded the motion. The motion carried.

Representative Klein moved to define incapacitated as found in K.S.A. 41-715, "physically or mentally incapacitated by the consumption of liquor." Representative Owens seconded the motion. The motion carried.

Representative Patterson made the motion to move the effective date to December 31, 2004. Representative Long-Mast seconded the motion. The motion carried.

Representative Rehorn made the motion to have staff draft the bill so it is clear that it does not apply to liquor stores. Representative Klein seconded the motion. The motion carried.

Representative Patterson made the motion to report **Substitute HB 2296** favorably for passage. Representative Crow seconded the motion. The motion failed 8-8.

The committee showed no interest in working **HB 2789 - statistics on restitution ordered and paid by criminal offenders & HB 2802 - hearsay exception provided for videotaped statements of certain elderly adults who are unavailable at trial.**

The committee meeting adjourned. The next meeting was scheduled for March 3, 2003.

HOUSE BILL No. 2880

By Committee on Judiciary

2-13

Proposed amendment

Drafted on February 17, 2004

9 AN ACT concerning the courts; amending K.S.A. 20-101, 20-162, 20-
10 318, 20-320, 20-361, 20-3014 and 75-3122 and K.S.A. 2003 Supp. 20-
11 158 and 20-319 and repealing the existing sections; also repealing
12 K.S.A. 20-152, 20-153, 20-154, 20-161, 20-321, 20-322, 20-323 and 20-
13 351a.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 20-101 is hereby amended to read as follows: 20-
17 101. The supreme court shall be a court of record, and in addition to the
18 original jurisdiction conferred by the constitution, shall have such appel-
19 late jurisdiction as may be provided by law ~~and~~. During the pendency of
20 any appeal, on such terms as may be just, ~~the supreme court~~ may make
21 an order suspending further proceedings in any court below, until the
22 decision of the supreme court. As provided by section 1 of article 3 of
23 the Kansas constitution, the supreme court shall have general adminis-
24 trative authority over all courts in this state ~~and~~. The supreme court and
25 each justice thereof shall have such specific powers and duties in exer-
26 cising ~~and such~~ administrative authority as may be prescribed by law. The
27 chief justice shall be the ~~spokesman~~ spokesperson for the supreme court and shall ex-
28 ercise the court's general administrative authority over all courts of this
29 state. The chief justice shall have the responsibility for executing and
30 implementing the administrative rules and policies of the supreme court,
31 including supervision of the personnel and financial affairs of the court
32 system, and delegate such of this responsibility and authority to personnel
33 in the state judicial department as may be necessary for the effective and
34 efficient administration of the court system.

35 Sec. 2. K.S.A. 2003 Supp. 20-158 is hereby amended to read as fol-
36 lows: 20-158. The chief justice of the supreme court shall be responsible
37 for the preparation of the budget for the judicial branch of state govern-
38 ment, ~~with the advice and approval of a majority~~ of the justices of the
39 supreme court and with such assistance as the chief justice may require
40 from the judicial administrator, the chief judge of the court of appeals
41 and the chief judge of each judicial district. Each district court and the
42 court of appeals shall submit their budget requests to the chief justice in
43 such form and at such time as the chief justice may require. *The budget*

spokesperson

1 *recommendation established pursuant to subsection (a)(3) of K.S.A. 20-*
 2 *319, and amendments thereto, shall form the basis for the district court*
 3 *budget request for the development of the annual budget request for the*
 4 *judicial branch. The chief justice shall submit to the legislature the annual*
 5 *budget request for the judicial branch of state government for inclusion*
 6 *in the annual budget document for appropriations for the judiciary. Such*
 7 *budget shall be prepared and submitted in the manner provided by K.S.A.*
 8 *75-3716 and 75-3717 and amendments thereto. Such budget shall include*
 9 *the request for expenditures for retired justices and judges performing*
 10 *judicial services or duties under K.S.A. 20-2616 and amendments thereto*
 11 *as a separate item therein.*

12 Sec. 3. K.S.A. 20-162 is hereby amended to read as follows: 20-162.

13 (a) The supreme court shall establish by rule a judicial personnel classi-
 14 fication system for all nonjudicial personnel in the state court system and
 15 for judicial personnel whose compensation is not otherwise prescribed by
 16 law. ~~Said personnel classification system shall take effect on July 1, 1979,~~
 17 ~~and shall prescribe the compensation for all such personnel.~~ No county
 18 may supplement the compensation of district court personnel included
 19 in the judicial personnel compensation system. Such compensation shall
 20 be established so as to be commensurate with the duties and responsi-
 21 bilities of each type and class of personnel. In establishing the compen-
 22 sation for each type and class of personnel, the supreme court shall take
 23 into consideration: (1) ~~The compensation of such personnel prior to Jan-~~
 24 ~~uary 1, 1979.~~ (2) The compensation of personnel in the executive branch
 25 of state government who have comparable duties and responsibilities. ~~(3)~~
 26 ~~(2) the compensation of similar personnel in the court systems of other~~
 27 ~~states having comparable size, population and characteristics.~~

compensation of the

28 (b) The following personnel shall not be included in the judicial per-
 29 sonnel classification system:

- 30 (1) County auditors.
- 31 (2) coroners.
- 32 (3) court trustees and personnel in each trustee's office, and
- 33 (4) personnel performing services in adult or juvenile facilities used
- 34 as a place of detention or for correctional purposes.

35 The compensation for the above personnel shall be paid by the county
 36 as prescribed by law.

37 (c) The judicial personnel classification system also shall prescribe the
 38 powers, duties and functions for each type and class of personnel, which
 39 shall be subject to and not inconsistent with any provisions of law pre-
 40 scribing powers, duties and functions of such personnel.

41 (d) In conjunction with the judicial personnel classification system,
 42 the supreme court shall prescribe a procedure whereby personnel subject
 43 to *said* *such* classification system who are removed from office by their

; and (3) the county personnel performing comparable duties and responsibilities

1 appointing authority will have an opportunity to seek reinstatement.

2 ~~On or before December 1, 1978, the supreme court shall submit~~
3 ~~to the legislative coordinating council a detailed personnel classification~~
4 ~~and pay plan for district court employees that are to be included in the~~
5 ~~judicial personnel classification system. The plan shall detail each indi-~~
6 ~~vidual position by classification, pay grade and pay step as compared to~~
7 ~~the employee's present salary. In assignment of positions to particular~~
8 ~~steps within the assigned pay grade, the plan shall place each employee~~
9 ~~at the step which is the next highest over the employee's current salary.~~
10 ~~If an employee is earning more than the highest step on a given grade,~~
11 ~~his or her salary shall remain at the current level.~~

12 Sec. 4. K.S.A. 20-318 is hereby amended to read as follows: 20-318.
13 There is hereby created within the state of Kansas, a judicial department
14 for the supervision of all courts in the state of Kansas. The supreme court
15 shall divide the state into separate sections, not to exceed six (6) in num-
16 ber, to be known as judicial departments, each of which shall be assigned
17 a designation to distinguish it from the other departments. A justice of
18 the supreme court shall be assigned as departmental justice for each ju-
19 dicial department.

20 (a) There is created hereby the position of judicial administrator of
21 the courts, who shall be appointed by the chief justice of the supreme
22 court, ~~with the advice and approval of the justices of the supreme court~~
23 ~~and to serve at the will of the chief justice supreme court.~~ The judicial
24 administrator shall have a broad knowledge of judicial administration and
25 substantial prior experience in an administrative capacity. No person ap-
26 pointed as judicial administrator shall engage in the practice of law while
27 serving in such capacity. Compensation of the judicial administrator shall
28 be determined by the justices, but shall not exceed the salary authorized
29 by law for the judge of the district court. The judicial administrator shall
30 be responsible to the ~~chief justice of the~~ supreme court of the state of
31 Kansas, and shall implement the policies of the court with respect to the
32 operation and administration of the courts, under the supervision of the
33 chief justice. ~~Said~~ The administrator shall perform such other duties as
34 are provided by law or assigned ~~him or her~~ by the supreme court or the
35 chief justice. Expenditures from appropriations for district court opera-
36 tions to be paid by the state shall be made on vouchers approved by the
37 judicial administrator. All claims for salaries, wages or other compensation
38 for district court operations to be paid by the state shall be certified as
39 provided in K.S.A. 75-3731, ~~and amendments thereto,~~ by the judicial
40 administrator.

chief justice of the

chief justice of the

41 (b) (1) On or before July 1, 2005, and every four years thereafter,
42 the judicial administrator of the courts, with the assistance of the staff of
43 the office of judicial administration, shall prepare and utilize a compre-

1 *heusive and uniform nonjudicial personnel plan for the district courts*
2 *based upon minimum levels of personnel necessary to ensure public access*
3 *to the district courts and to perform the essential and statutory duties of*
4 *the courts. This plan shall be the basis on which to determine the place-*
5 *ment of nonjudicial personnel for each judicial district.*

6 (2) *The plan shall:*

7 (A) *Be based upon statistically sound objectives, historical caseloads,*
8 *and the need to ensure a uniform and adequate distribution of nonjudicial*
9 *personnel in the courts;*

10 (B) *include personnel needs for the various offices of the clerks of the*
11 *district court, court services and court reporters, and administrative as-*
12 *sistance for the judges' offices and the administration of a judicial district*
13 *as a whole;*

14 (C) *include personnel for special programs as needed by individual*
15 *districts. Personnel for special programs shall not detract from or be in*
16 *degradation of the minimum personnel levels required to operate the es-*
17 *sential and statutory duties of the district courts as a whole;*

18 (D) *utilize all classifications and types of cases in establishing*
19 *caseloads;*

20 (E) *utilize information collected pursuant to subsection (a)(1) of*
21 *K.S.A. 20-319, and amendments thereto; and*

22 (F) *not be based upon historical personnel levels of the district courts.*

23 (c) *Annually, on or before January 15, in order to properly advise the*
24 *administrative and legislative branches of government, the office of judi-*
25 *cial administration shall publish the caseload of each judicial district,*
26 *including all classifications and types of cases; the judicial personnel and*
27 *nonjudicial personnel of each judicial district and district court offices,*
28 *including the clerk's and court services offices; and the caseloads for any*
29 *special needs programs of an individual judicial district that are allowed*
30 *by the plan. Such publication shall be submitted to the governor and*
31 *chairpersons of the judiciary committees of both houses of the legislature.*

32 *Sec. 5. K.S.A. 2003 Supp. 20-319 is hereby amended to read as fol-*
33 *lows: 20-319. (a) There is hereby created within the state of Kansas, a*
34 *judicial department for the supervision of all courts in the state of Kansas.*
35 *The supreme court shall divide the state into separate sections, not to*
36 *exceed six in number, to be known as judicial departments, each of which*
37 *shall be assigned a designation to distinguish it from the other depart-*
38 *ments. A justice of the supreme court shall be assigned as departmental*
39 *justice for each judicial department.*

40 (b) *A justice assigned to each department shall:*

41 (1) *With the help and assistance of the judicial administrator, make*
42 *a survey of the conditions of the dockets and business of the district courts*
43 *in the justice's department and make a report and recommendations on*

1 the conditions and business to the chief justice *to be included in the*
2 *information utilized pursuant to K.S.A. 20-318, and amendments thereto.*

3 (2) Assemble the judges of the district courts within the justice's de-
4 partment, at least annually, to discuss such recommendations and other
5 business as will benefit the judiciary of the state. When so summoned,
6 the judges of the district courts in the various departments shall attend
7 such conferences at the expense of the state. Such judges shall be entitled
8 to their actual and necessary expenses while attending such conferences
9 and shall be required to attend the conferences unless excused by the
10 departmental justice for good cause.

11 (3) *With the help and assistance of the chief judges in the judicial*
12 *districts assigned to such justice's department, oversee the development*
13 *of the budget for each judicial district and make a report and recommen-*
14 *dation on the budget requests to the chief justice.*

15 ~~(4)(c)~~ Departmental justices shall have authority within their de-
16 partments to assign any district judge or district magistrate judge to hear
17 any proceeding or try any cause, within the judge's jurisdiction, in other
18 district courts. Any departmental justice may request the assistance of any
19 district judge or district magistrate judge from another department.

20 ~~(4)(d)~~ The departmental justices shall supervise all administrative
21 matters relating to the district courts within their departments and re-
22 quire reports periodically, covering such matters and in such form as the
23 supreme court may determine, on any such matter which will aid in pro-
24 moting the efficiency or the speedy determination of causes now pending.
25 Departmental justices shall have the power to examine the dockets, re-
26 cords and proceedings of any courts under their supervision. All judges
27 and clerks of the several courts of the state shall promptly make such
28 reports and furnish the information requested by any departmental justice
29 or the judicial administrator, in the manner and form prescribed by the
30 supreme court.

31 ~~(4)(e)~~ In order to properly advise the three branches of government on
32 the operation of the juvenile justice system, each district court shall fur-
33 nish the judicial administrator such information regarding juveniles com-
34 ing to the attention of the court pursuant to the Kansas code for care of
35 children as is determined necessary by the secretary of social and rela-
36 bilitation services and the director of the statistical analysis center of the
37 Kansas bureau of investigation, on forms approved by the judicial admin-
38 istrator. Such information shall be confidential and shall not be dissemi-
39 nated or publicly disclosed in a manner which enables identification of
40 any individual who is a subject of the information.

41 ~~(4)(f)~~ The departmental justice shall assign to each chief judge in the
42 justice's department such duties as are necessary to carry out the intent
43 of just, speedy and inexpensive litigation for the litigants of the state.

1 *(g) The chief justice of the supreme court and judicial department*
2 *justices ~~shall~~ adopt rules and regulations as are deemed necessary to carry*
3 *out the provisions of this section.*

may

4 Sec. 6. K.S.A. 20-320 is hereby amended to read as follows: 20-320.
5 The chief justice shall analyze and study and summarize such reports and
6 recommendations of the judicial departments as are submitted to him the
7 chief justice pursuant to K.S.A. 20-319, and amendments thereto and
8 promptly submit a summary thereof, and the recommendations of the
9 judicial departments and judicial administrators, and shall cause a. A copy
10 of all reports, summaries and recommendations to shall be filed as public
11 record in the office of the clerk of the supreme court and shall, at the
12 beginning of every legislative session, shall submit a written report to the
13 governor of the state, and to the judiciary committees of both houses of
14 the legislature.

15 Sec. 7. K.S.A. 20-361 is hereby amended to read as follows: 20-361.
16 (a) The state shall pay the salaries of all nonjudicial personnel of the
17 district courts of this state, except for personnel enumerated in subsection
18 (b) of K.S.A. 20-162 and amendments thereto, and no. A county may not
19 supplement the compensation of district court personnel paid by the
20 state. For employees of the district court who were employees of such
21 court on December 31, 1978, a full month's proportion of the employee's
22 annual pay shall be paid for the state payroll period ending on January
23 17, 1979, notwithstanding that such period is shorter than the normal
24 state payroll period. With regard to judicial and nonjudicial personnel of
25 the district courts whose salary is payable by the state, the state shall
26 provide for unemployment security coverage, employer contributions for
27 retirement, workmen's compensation coverage, health insurance cover-
28 age and surety bond coverage.

29 (b) The supreme court shall establish a formal pay plan for court
30 reporters serving district judges. Within the limits of legislative appro-
31 priations therefor, compensation of such court reporters shall be paid by
32 the state in an amount prescribed by the pay plan established by the
33 supreme court and no county may supplement the compensation of such
34 court reporters. The plan shall detail each reporters position by classifi-
35 cation, pay grade and pay step.

36 Sec. 8. K.S.A. 20-3014 is hereby amended to read as follows: 20-
37 3014. Each judge of the court of appeals may appoint a law clerk and also
38 may appoint one (1) a secretary or stenographer. The persons so ap-
39 pointed shall serve at the pleasure of the judge appointing them. Subject
40 to the approval of the chief justice of the supreme court, the court of
41 appeals may employ such other clerical personnel as may be necessary to
42 carry out the duties and functions of the court. The compensation of all
43 persons appointed or employed under this section shall be fixed in ac-

chief justice of the

1 conformance with a pay plan adopted by the supreme court. Such pay plan
2 shall contain a schedule of salary and wage ranges and steps designed for
3 such purpose.

4 Sec. 9. K.S.A. 75-3122 is hereby amended to read as follows: 75-
5 3122. The supreme court is hereby authorized to appoint two bailiffs
6 each of whom shall receive an annual salary to be fixed by the court. Each
7 justice of the supreme court is hereby authorized to appoint a law re-
8 search clerk and a secretary who shall each receive an annual salary fixed
9 by the court. The annual salary of each secretary shall be fixed by the
10 supreme court within the limitations of appropriations made therefor.
11 The compensation of all persons appointed under this section shall be
12 fixed by the supreme court in accordance with the pay plan established
13 under K.S.A. 20-161.

14 Sec. 10. K.S.A. 20-101, 20-152, 20-153, 20-154, 20-161, 20-162, 20-
15 318, 20-320, 20-321, 20-322, 20-323, 20-351a, 20-361, 20-3014 and 75-
16 3122 and K.S.A. 2003 Supp. 20-158 and 20-319 are hereby repealed.

17 Sec. 11. This act shall take effect and be in force from and after its
18 publication in the statute book.

KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS, GOVERNOR

February 24, 2004

The Honorable Michael O'Neal
Chair, House Committee on the Judiciary
Room 170-W
Statehouse

Re: House Bill No. 2813

Dear Representative O'Neal:

Thank you for the allowing time for Board staff to meet with representatives of the Kansas Medical Society to resolve questions concerning House Bill 2813. I have attached a balloon that indicates acceptable language. The amendments are as follows:

- a. Section 1(a)(2)(b), page 1, line 31, strike "failed to renew a license";
- b. Section 1(a)(2)(b), line 32, after the word "suspended," add "had a license cancelled,";
- c. Section 1(a)(2)(b), line 33, strike the words "board has reason to believe that" and replace with "the health care provider is unable or refuses to allow";
- d. Section 1(a)(2)(b), line 33, strike "can not";
- e. Section 1(a)(2)(b), line 34, after the words "records", add "as authorized by law,";
- f. Section 1(d), page 2, line 5, add the sentence "The court may make all additional orders necessary to protect the health care provider's property interests in the records.";
- g. Section 1(e)(1), line 7, after the word "Shall", add the words "be a fiduciary and";
- h. Section 1(e)(7), line 27, strike the word "may" and replace with the word "shall";
- i. Section 1(f), line 34, after the word "provider", add the words "relating to the records";

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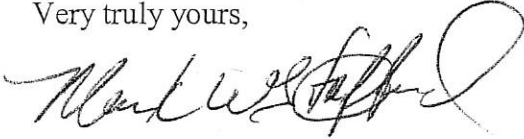
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JOHN P. WHITE,

- j. Section 1, page 2, line 35, add a new subsection (g) as follows: "Nothing in this act shall prohibit the health care provider or the health care provider's authorized representative from gaining access and copying a record created by the health care provider." and
- k. Section 1(g), line 35, renumber the existing subsection to (h).

The Board thanks you and the Committee for its support, and requests that the Committee adopt the bill with these amendments.

Very truly yours,



Mark W. Stafford
General Counsel

HOUSE BILL No. 2813

By Committee on Judiciary

2-11

9 AN ACT concerning health care records; relating to the abandonment
10 thereof.

11

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

13 Section 1. (a) As used in this section:

14 (1) "Health care provider" means a person licensed to practice any
15 branch of the healing arts by the state board of healing arts, a podiatrist
16 licensed by the state board of healing arts, a professional corporation
17 organized pursuant to the professional corporation law of Kansas by per-
18 sons who are authorized by such law to form such a corporation and who
19 are health care providers as defined by this subsection, a Kansas limited
20 liability company organized for the purpose of rendering professional
21 services by its members who are health care providers as defined by this
22 subsection and who are legally authorized to render the professional serv-
23 ices for which the limited liability company is organized, a partnership of
24 persons who are health care providers under this subsection, a Kansas
25 not-for-profit corporation organized for the purpose of rendering profes-
26 sional services by persons who are health care providers as defined by
27 this subsection.

28 (2) "Board" means the state board of healing arts.

29 (b) If the board is notified or has independent knowledge that a
30 health care provider has abandoned health care records, abandoned such
31 health care provider's practice, died, ~~failed to renew a license,~~ had such
32 health care provider's license revoked or suspended, or dissolved a busi-
33 ness entity and the board has reason to believe that patients can not access
34 such patient's health care records, ~~the board shall immediately petition~~
35 the court for appointment of a custodian of the health care records. The
36 petition shall nominate a person or business entity who is capable and
37 willing to serve as the custodian of health care records.

38 (c) Notice of hearing on the petition shall be served on the health
39 care provider at the last known address and if the health care provider is
40 a business entity, on the registered agent of such business entity. If the
41 health care provider has died and an administrator of the estate has been
42 appointed, notice shall be served on such administrator. Notice shall be
43 served as in civil cases.

had a license
cancelled

the health care
provider is unable
or refuses to allow

as authorized by law

The court may make all additional orders necessary to protect the health care provider's property interests in the records.

1 (d) At the hearing, if the court finds the health care records have
2 been abandoned, the court shall appoint a person or business entity as
3 the custodian of the health care records and responsible for the safe-
4 keeping thereof, and shall order the delivery and possession of the health
5 care records to the appointed custodian of health care records.

6 (e) The record's custodian: _____ be a fiduciary and

7 (1) Shall act in the place of the health care provider to furnish to the
8 patient or the patient's authorized representative copies of health care
9 records, pursuant to K.S.A. 65-4970 through 65-4973, and amendments
10 thereto, and shall be authorized to collect any fee for disclosure author-
11 ized by K.S.A. 65-4971, and amendments thereto;

12 (2) shall have exclusive possession of the health care records until
13 further order of the court;

14 (3) may destroy the records in the ordinary course of business when
15 the health care provider's duty to maintain such records has ceased;

16 (4) shall act in the place of the health care provider to maintain con-
17 fidentiality of records and shall be liable if the custodian maliciously
18 breeches the confidentiality;

19 (5) shall not guarantee or be liable for the accuracy or completeness
20 of the health care records;

21 (6) shall not be liable in a civil action for damages or other relief
22 arising from the performance of the responsibilities set forth in this sec-
23 tion except upon clear and convincing evidence that the custodian of
24 records maliciously altered or destroyed health care records; and

25 (7) shall act as the health care provider for the purposes of physician-
26 patient privilege, pursuant to K.S.A. 60-427, and amendments thereto,
27 and may assert any privilege acting as the physician _____ shall

28 (f) At any time after the appointment of a custodian, the health care
29 provider, administrator of the health care provider's estate or board may
30 petition the court to amend, modify or dissolve the order concerning the
31 custodian of health care records. The court shall amend the order when
32 it reasonably appears the health care provider or administrator of the
33 health care provider's estate is prepared to assume the duties of the health
34 care provider.

35 (g) This section shall be part of and supplemental to the Kansas heal-
36 ing arts act. _____ relating to the records

37 Sec. 2. This act shall take effect and be in force from and after its
38 publication in the statute book.

(h)

(g) Nothing in this act shall prohibit the health care provider or the health care provider's authorized representative from gaining access and copying a record created by the health care provider.

Section of 2003

HOUSE BILL No. 2296

By Committee on Judiciary

2-11

Proposed amendment
Chairman O'Neal
February 22, 2004

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

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

Section 1. (a) An aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, if a jury or court finds the following: (1) That the ~~person~~ consumed the alcoholic beverages sold by the licensee on the premises of the licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the harm sustained by the aggrieved party; and (3) the harm was a foreseeable consequence of the negligent service of alcoholic liquor or cereal malt beverage by the licensee. In any action thereon, evidence of acts or conduct by the licensee in violation of these statutes may be admissible. Any claim under this section shall survive death for purposes of K.S.A. 60-1901, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

minor or incapacitated person

(b) Any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto.

(c) In any claim under subsection (a) for breach of the duties imposed by K.S.A. 21-3610, and amendments thereto, evidence of the defenses codified in subsection (d) of K.S.A. 21-3610, and amendments thereto, as applicable, may be admissible for the purpose of determining comparative negligence under K.S.A. 60-258a, and amendments thereto.

(d) Except as expressly provided in subsections (a) and (c), there shall be no claim under K.S.A. 60-258a, and amendments thereto, for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, and alleged negligence or fault for furnishing or selling alcoholic liquor or cereal malt beverages shall not be admissible in an action under K.S.A. 60-258a, and amendments thereto.

damages

(e) As used in this section:

(1) "Aggrieved party" means a person who sustains ~~harm~~ as a consequence of the acts or conduct of a minor, but does not include: (A) Such minor or incapacitated person ~~absent clear and convincing evidence that the furnishing or sale of the alcoholic liquor or cereal malt beverage~~

or incapacitated person

1 ~~with knowing or intentional~~ or (B) any person who aided or abetted in
2 the furnishing or sale of the alcoholic liquor or cereal malt beverage to
3 the minor or incapacitated person.

4 (2) ~~“Ham” has the meaning provided by subsection (d) of K.S.A. 60-~~
5 ~~3902, and amendments thereto.~~

6 ~~(3) “Licensee” means a licensee under the Kansas liquor control act,~~
7 ~~the club and drinking establishment act or the provisions of article 27 of~~
8 ~~chapter 41 of the Kansas Statutes Annotated, and amendments thereto.~~

9 ~~(4) Any other terms shall have the meanings as provided by K.S.A.~~
10 ~~21-3610 and 41-715, and amendments thereto, as applicable.~~

(3)

11 ~~Sec. 2. As used in sections 2 through 10, and amendments thereto:~~

Strike all of Sections 2 through 11, renumber Sec. 12 as Sec. 2.

12 (a) “Director” means the director of the division.

13 (b) “Division” means the division of alcoholic beverage control of the
14 department of revenue.

15 (c) “Licensed premises” means:

16 (1) Premises licensed under the Kansas liquor control act, the club
17 and drinking establishment act or the provisions of article 27 of chapter
18 41 of the Kansas Statutes Annotated, and amendments thereto; or

19 (2) premises where a caterer licensed under the club and drinking
20 establishment act offers for sale, sells or serves alcoholic liquor.

21 (d) “Licensee” means a licensee under the Kansas liquor control act,
22 the club and drinking establishment act or the provisions of article 27 of
23 chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

24 (e) Other terms have the meanings provided by K.S.A. 41-102, and
25 amendments thereto.

26 Sec. 3. Except as otherwise provided by law, on or after July 1, 2003:

27 (a) Any person who is employed by a licensee and who participates
28 in any manner in the sale of alcoholic liquor or cereal malt beverage for
29 consumption and not resale or in the mixing or serving of alcoholic liquor
30 or cereal malt beverage for consumption on licensed premises shall be
31 required to have a valid, unexpired server permit issued by the director.

32 (b) No licensee shall permit any person employed by the licensee to
33 sell alcoholic liquor or cereal malt beverage for consumption and not
34 resale or to mix or serve any alcoholic liquor or cereal malt beverage on
35 the licensee’s licensed premises unless such person has a valid, unexpired
36 server permit issued under this act.

37 (c) A permittee shall make the server permit available at any time
38 while on duty for immediate inspection by any agent employed by the
39 division or by any other law enforcement officer.

40 Sec. 4. (a) A server permit shall be a purely personal privilege, valid
41 only upon licensed premises, for the period of time stated in the permit.
42 A server permit may be suspended or revoked for any reason specified
43 in section 7, and amendments thereto.

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Section of 2003

HOUSE BILL No. 2296

By Committee on Judiciary

2-11

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

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

Section 1. (a) An aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, if a jury or court finds the following: (1) That the purchaser consumed the alcoholic beverages sold by the licensee on the premises of the licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the harm sustained by the aggrieved party; and (3) the harm was a foreseeable consequence of the negligent service of alcoholic liquor or cereal malt beverage by the licensee. In any action thereon, evidence of acts or conduct by the licensee in violation of these statutes may be admissible. Any claim under this section shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(b) Any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto.

(c) In any claim under subsection (a) for breach of the duties imposed by K.S.A. 21-3610, and amendments thereto, evidence of the defenses codified in subsection (d) of K.S.A. 21-3610, and amendments thereto, as applicable, may be admissible for the purpose of determining comparative negligence under K.S.A. 60-258a, and amendments thereto.

(d) Except as expressly provided in subsections (a) and (c), there shall be no claim under K.S.A. 60-258a, and amendments thereto, for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, and alleged negligence or fault for furnishing or selling alcoholic liquor or cereal malt beverages shall not be admissible in an action under K.S.A. 60-258a, and amendments thereto.

(e) As used in this section:

(1) "Aggrieved party" means a person who sustains harm as a consequence of the acts or conduct of a minor, but does not include: (A) Such minor or incapacitated person, absent clear and convincing evidence that the furnishing or sale of the alcoholic liquor or cereal malt beverage

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The plaintiff shall have the burden of proving that the defendant knew that the minor or incapacitated person was a minor or an incapacitated person at the time the drink was served to such person. Blood alcohol content obtained at a different time than the point when the drink was served and evidence that the minor or incapacitated person was furnished alcohol without additional evidence that the defendant acted knowingly or intentionally shall not constitute prima facie evidence of liability under this act.

NO. 0817 P. 2

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1 was knowing or intentional; or (B) any person who aided or abetted in
2 the furnishing or sale of the alcoholic liquor or cereal malt beverage to
3 the minor or incapacitated person.

4 (2) "Harm" has the meaning provided by subsection (d) of K.S.A. 60-
5 3302, and amendments thereto.

6 (3) "Licensee" means a licensee under the Kansas liquor control act,
7 the club and drinking establishment act or the provisions of article 27 of
8 chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

9 (4) Any other terms shall have the meanings as provided by K.S.A.
10 21-3610 and 41-715, and amendments thereto, as applicable.

11 Sec. 2. As used in sections 2 through 10, and amendments thereto:

12 (a) "Director" means the director of the division.

13 (b) "Division" means the division of alcoholic beverage control of the
14 department of revenue.

15 (c) "Licensed premises" means:

16 (1) Premises licensed under the Kansas liquor control act, the club
17 and drinking establishment act or the provisions of article 27 of chapter
18 41 of the Kansas Statutes Annotated, and amendments thereto; or

19 (2) premises where a caterer licensed under the club and drinking
20 establishment act offers for sale, sells or serves alcoholic liquor.

21 (d) "Licensee" means a licensee under the Kansas liquor control act,
22 the club and drinking establishment act or the provisions of article 27 of
23 chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

24 (e) Other terms have the meanings provided by K.S.A. 41-102, and
25 amendments thereto.

26 Sec. 3. Except as otherwise provided by law, on or after July 1, 2003:

27 (a) Any person who is employed by a licensee and who participates
28 in any manner in the sale of alcoholic liquor or cereal malt beverage for
29 consumption and not resale or in the mixing or serving of alcoholic liquor
30 or cereal malt beverage for consumption on licensed premises shall be
31 required to have a valid, unexpired server permit issued by the director.

32 (b) No licensee shall permit any person employed by the licensee to
33 sell alcoholic liquor or cereal malt beverage for consumption and not
34 resale or to mix or serve any alcoholic liquor or cereal malt beverage on
35 the licensee's licensed premises unless such person has a valid, unexpired
36 server permit issued under this act.

37 (c) A permittee shall make the server permit available at any time
38 while on duty for immediate inspection by any agent employed by the
39 division or by any other law enforcement officer.

40 Sec. 4. (a) A server permit shall be a purely personal privilege, valid
41 only upon licensed premises, for the period of time stated in the permit.
42 A server permit may be suspended or revoked for any reason specified
43 in section 7, and amendments thereto.

; or (C) any person who was present with the minor or incapacitated
person at the time of the furnishing or sale of the alcoholic liquor or
cereal malt beverage to the minor or incapacitated person