

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Friday, February 20, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Edward Pugh -arrived 9:45 a.m., left 10:08 a.m.  
Senator Lana Oleen (E)

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:

Kyle Smith, Kansas Bureau of Investigation  
Alonzo Washington, Omega Seven, Inc.  
Rev. Ronald Lassiter, Faith Temple Church of God in Christ  
Chaplin Jean Sullivan, MO/KS Coalition for Prison Reform  
Cathy Thomas, Bias Busters of Kansas and mother of deceased inmate, Anthony Stapleton-Shawnee County  
Rev. Angela Waters, MO/KS Coalition for Prison Reform  
Elizabeth Gillispie, Shawnee County Department of Corrections  
Sharon Vaughn, mother of deceased inmate, William Vaughn, Shawnee County  
Jennifer Guydos, best friend of Anthony Stapleton  
Pat Stapleton, nephew was Anthony Stapleton  
Betty Stapleton, grandmother of Anthony Stapleton  
Danielle Smith, sister to Anthony Stapleton  
Sherra Stapleton, cousin to Anthony Stapleton  
John Taylor, friend of Anthony Stapleton  
Kevin Drain, concerned Topeka citizen

Others attending: See attached list.

**Final Action:**

**SB 424 - Transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause**

Chairman Vratil called for discussion and final action on **SB 424**. He stated there was a balloon amendment offered by the Kansas Bar Association to address some of the concerns expressed by Columbia National Title Insurance Company and other title companies during the hearing on this bill. He explained the amendment requires that the transfer of property be by warranty deed into an *inter vivos* trust in which one of the assets is the homestead of the beneficiary of the trust and the beneficiary of that trust is also an occupant of that homestead. Under those circumstances, the title insurance policy would remain in effect and provide coverage to the trustee of the trust so as to avoid the need for a new title insurance policy and a new title insurance policy premium. (Attachment 1)

Senator Schmidt made a motion to adopt the amendment, seconded by Senator Donovan, and the motion carried.

Senator Schmidt made a motion to pass SB 424 out favorably as amended, seconded by Senator Umbarger, and the motion carried.

**SB 183 - The interstate compact for juveniles**

Chairman Vratil called for discussion and final action on **SB 183**. The Chairman explained the bill and its history. Senator Goodwin stated it was imperative that Kansas become a part of the interstate compact on juveniles for the same reason Kansas passed the adult compact. She said she thought there were juveniles falling through the cracks, nobody giving them treatment, nobody monitoring them, or nobody doing

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Friday, February 20, 2004, in Room 123-S of the Capitol.

anything with the juveniles once they crossed the state line. She encouraged the Committee members to pass this proposed legislation.

Senator Haley made a motion to pass **SB 183** favorably as recommended, seconded by Senator O'Connor, and the motion carried.

**SB 437 - Raising small claims limitation to \$5,000, with an increase every 3 years based on the consumer price index**

Chairman Vratil called for discussion and final action on **SB 437**. The Chair explained the bill proposed to increase the threshold for claims filed in small claims court from \$1,800 to \$5,000 and includes a cost of living escalator for an increase every 3 years. Copies of Fiscal Note for **SB 437** were distributed to members. (Attachment 2)

Senator O'Connor made a motion for an amendment to change the date on line 20 from January to July, amend the CPI to round to the nearest \$100 instead of odd cents, and delete the Small Claims Petition and Defendant's Claim forms from the Statute since it is in a book of forms. The motion was seconded by Senator Donovan, and the motion carried.

Senator O'Connor made a motion to recommend **SB 437** favorably as amended, and seconded by Senator Haley. Following brief Committee discussion, the Chair called for a vote on the amended bill. The motion carried.

**SB 429 - Worthless checks; more than once within a seven-day period**

Chairman Vratil called for discussion and final action on **SB 429**. The Chair explained the bill, and said he did not know of any proposed amendments regarding the proposed bill. Senator Umbarger stated that he was not speaking in opposition to the bill, but handed out some information on bills the Legislature has passed regarding worthless checks. Following brief discussion, Senator Haley made a motion to table the bill. Motion carried. (Attachment 3)

**SB 438 - Automated teller machine robbery; aggravated automated teller machine robbery**

Chairman Vratil called for discussion and final action on **SB 438**. He explained the bill, and stated no amendments had been submitted or requested. Following Committee discussion, Senator Goodwin made a motion to table the bill to a date uncertain. Motion carried.

**SB 469 - Inmate deaths, requiring investigation and report of findings**

Chairman Vratil opened the hearing on **SB 469**. Kyle Smith, Kansas Bureau of Investigation, testified in support of the bill, and explained it would require the KBI to conduct investigations of in-custody deaths. He said currently the KBI is called upon by most agencies to investigate questionable in-custody deaths as a means of ensuring public confidence by having an outside agency conduct the investigation. He suggested the following points be made into amendments and presented them in balloon format attached to his written testimony: (1) inserting in line 16 after the comma, "or of a juvenile who is in the custody of and resides in a facility operated by a juvenile justice administration, (2) in place of the word "The", line 18, beginning the sentence, "A report of the...", (3) on line 23, following the word "jail" insert "or in a facility contracted through the county", (4) on line 25 replace "The" with "a report of the....", and on replacing Section 3 with: "The provisions of this act requiring an investigation by the Kansas Bureau of Investigation shall not apply if the apparent cause of death is from natural causes and an autopsy conducted by the coroner or other qualified pathologist confirms the conclusion that the death was from natural causes." (Attachment 4)

Reverend Ronald Lassiter, Faith Temple Church of God in Christ, spoke in favor of **SB 469**. (Attachment 5)

Chaplin Jean Sullivan, MO/KS Coalition for Prison Reform, testified in support of **SB 469**. She explained that she was a volunteer Chaplin with the Department of Corrections for the State of Missouri for 12 years, and has been retired for two years. She said she was brought out of retirement because of some very suspicious deaths that occurred in the Missouri Department of Corrections. The Chaplin stated

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Friday, February 20, 2004, in Room 123-S of the Capitol.

that the Missouri deaths have been kept very quiet, and that she has long supported bills like **SB 469** because of the need for accountability. She told the Committee that Missouri is currently under federal investigation by the Department of Justice in Washington, D.C., Civil Rights Division, Special Litigation Section. She shared with the Committee the various happenings within the Missouri Department of Corrections, and strongly urged the Committee to put in place a check and balance system to protect the citizens of Kansas from what Missouri is experiencing. (no written testimony submitted)

Cathy Thomas, Bias Busters of Kansas and mother of deceased inmate, Anthony Stapleton, Shawnee County, testified in support of having outside mandatory investigations when a person dies in government custody. She related her son's medical history, and the problems she experienced with trying to get him medical attention because of his mental state. She expressed concern for the number of deaths at the Shawnee County Jail in Topeka, and stated that children's deaths require mandatory investigation when in parental custodial care. She concluded by saying suicides are preventable with the right programs and policies in place and utilized. ([Attachment 6](#))

Reverend Angela Waters, MO/KS Coalition for Prison Reform, spoke in favor of **SB 469**. ([Attachment 7](#))

Elizabeth Gillespie, Director of the Shawnee County Department of Corrections, testified in support of **SB 469**. She explained that Shawnee County is unique because the Shawnee County Department of Corrections manages the adult detention center as well as the juvenile detention center, and is a separate agency from the Shawnee County Sheriff's Office. Ms. Gillespie stated that this bill would bring efficiency and consistency to the process of inmate death investigations by having one agency responsible for conducting the necessary investigations. ([Attachment 8](#))

The following conferees submitted written testimony in support of **SB 469**:

Sharon Vaughn, mother of Shawnee County deceased inmate, William Vaughn, ([Attachment 9](#))  
Jennifer Guydos, best friend of Anthony Stapleton ([Attachment 10](#))  
Pat Stapleton, aunt to deceased inmate, Anthony Stapleton ([Attachment 11](#))  
Betty Stapleton, grandmother of Anthony Stapleton ([Attachment 12](#))  
Danielle Smith, sister to Anthony Stapleton ([Attachment 13](#))  
Sherra Stapleton, cousin to Anthony Stapleton ([Attachment 14](#))  
John Taylor, friend of Anthony Stapleton ([Attachment 15](#))  
Kevin Drain, concerned Topeka citizen ([Attachment 16](#))

Roger Werholtz, Secretary, Kansas Department of Corrections, testified as a neutral conferee on **SB 469**. He explained that the proposed legislation creates a new requirement that the KBI initiate an investigation into any inmate death that occurs in a facility under the jurisdiction of the Department of Corrections; or a city or county jail. He said that this bill does not make a distinction between the causes of death, i.e. natural cause, suicide, homicide, or accidental. He added that circumstance of any death involves privacy issues, and that those privacy interests of both the deceased and the surviving family should be considered. ([Attachment 17](#))

Jo Rene Kerns, Executive Vice President, Correct Care Solutions, submitted written testimony as a neutral conferee on **SB 469**. ([Attachment 18](#))

Senator Anthony Hensley, co-sponsor of the bill, spoke briefly in support of the balloon amendment submitted by the KBI.

Following discussion and questions, the Chairman closed the hearing on **SB 469**.

Copies of the Judiciary Sub-Committee Report, chaired by Senator Schmidt, were distributed and Chairman Vratil asked the members to review the report in advance of the next meeting as action would be taken at that time. ([Attachment 19](#))

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Friday, February 20, 2004, in Room 123-S of the Capitol.

The next scheduled meeting is Monday, February 23, 2004.

Chairman Vratil adjourned the meeting at 10:30 a.m.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tue, Feb. 20, 2004

NAME	REPRESENTING
Dan Murray	Federico Consulting
Bill Henry	KCUA
Sherry Kottmann-Thompson	KDOC
Lawrence Perry, MD	KDOC
Roger Werhertz	Dept. of Corrections
Ginette Selensky	Visitor
Connie Lewis	Visitor
ELIZABETH GILLESPIE	SHAWNEE COUNTY
Michael Fitzgerald	Shawnee County
Matthew Goddard	Heartland Community Bankers Assoc.
Hal Hudson	NFIB/KS
Christene Beece	JJA
JIM FRAZIER	JJA
Kathy Purte	Judicial Branch
Jo Anne Wynn	Visitor
JEREMY S BARCLAY	KDOC



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Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
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www.ksbar.org

February 18, 2004

TO: Members of the Senate Judiciary Committee

FROM: Jim Clark, KBA Legislative Counsel

RE: Proposed Amendments to SB 424

Attached is a proposed amendment to SB 424. The proposal makes three changes to the original bill:

1. It adopts suggested changes made by Leola Foster of the Columbia National Title Insurance Company (attached), which hopefully make the bill acceptable to that industry.
2. It strikes language relating to other forms of insurance.
3. It borrows language in federal law that prohibits exercise of due on sale clauses when residential property is transferred into a trust (also attached).

The Kansas Bar Association remains concerned about the status of property and liability insurance coverage on a residence placed into a revocable trust. Those concerns can best be allayed through negotiations with the appropriate insurance companies and their representatives in the future. The immediate, known threats to residential property placed into trust: loss of title insurance coverage and loss of the homestead exemption, are dealt with in the proposed amendment. The Kansas Bar Association asks that the amendment be adopted and the bill recommended favorably, as amended.

Thank you.

Senate Judiciary

2.20.04  
Attachment 1

SENATE BILL No. 424

By Committee on Judiciary

2-2

9 AN ACT concerning trusts; relating to the transfer of property into a  
10 trust.

11

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

13 Section 1. (a) The transfer of real or personal property to a trust shall  
14 not affect the coverage of any title, liability, comprehensive or other in-  
15 surance, and the trustee shall also be deemed to be so insured. Transfer  
16 to a trust shall not affect any homestead exemption or redemption rights  
17 and shall not cause a due on sale or similar clause to be effective under  
18 a mortgage or security interest, if the transferor is the primary income  
19 beneficiary of the trust at the time of the transfer.

20 (b) This section shall be a part of and supplemental to the Kansas  
21 uniform trust code.

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

The transfer by warranty deed of real ~~or personal~~ property that qualifies as a homestead, into an *inter vivos* trust in which the settlor is and remains a beneficiary and occupant of the property, shall not affect the coverage of any title, ~~liability,~~ comprehensive or other insurance, and the trustee shall also be deemed to be so insured and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original-named insured. Transfer of such property into a trust shall not affect any homestead exemption or redemption rights, nor shall it cause a due on sale or similar clause to be effective under a mortgage or security interest, if the transferor is a the primary income beneficiary of the trust at the time of the transfer.

# Senate Bill No. 424

By Committee on Judiciary

2-2

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AN ACT concerning trusts: relating to the transfer of property into a trust.

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

Section 1. (a) The transfer by warranty deed of real or personal property to a trust shall not affect the coverage of any title, liability, comprehensive or other insurance, and the trustee shall also be deemed to be so insured and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original-named insured. Transfer to a trust shall not affect any homestead exemption or redemption rights and shall not cause a due on sale or similar clause to be effective under a mortgage or security interest, if the transferor is the primary income beneficiary of the trust at the time of the transfer.

(b) This section shall be a part of and supplemental to the Kansas uniform trust code.

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

Without the above changes, the title insurance company is placed in the position of insuring acts suffered and assumed by other parties without our knowledge and which in our opinion would constitute unsound underwriting practices, and a violation of K.S.A. 40-236 (b). Without the above changes the financial soundness of insurance companies would be affected to the detriment of all consumers.

Senate Bill 424 could be misleading to the Kansas consumer. The general consuming public will rely on Senate Bill 424 and draft and record their own deeds to the TRUST believing the TRUST has good title because the TRUST is an insured on a title policy. After the grantor has conveyed to the TRUST and the grantor has died, it is time consuming, expensive and sometimes impossible to correct defects and errors that could have been easily corrected while the grantor was alive.

For the above reasons, we ask the committee to not approve the Senate Bill and allow it out of committee. In the alternative, we request that at least the changes underlined in the above copy of the Senate Bill be used to amend the Senate Bill as presented





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Laws: Cases and Codes : U.S. Code : Title 12 : Section 1701j-3

Search Title 12

- United States Code
o TITLE 12 - BANKS AND BANKING
n CHAPTER 13 - NATIONAL HOUSING

U.S. Code as of: 01/22/02

Section 1701j-3. Preemption of due-on-sale prohibitions

Related Re

(a) Definitions

For the purpose of this section -

(1) the term 'due-on-sale clause' means a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent;

(2) the term 'lender' means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;

(3) the term 'real property loan' means a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property; and

(4) the term 'residential manufactured home' means a manufactured home as defined in section 5402(6) of title 42 which is used as a residence; and

(5) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Loan contract and terms governing execution or enforcement of due-on-sale options and rights and remedies of lenders and borrowers; assumptions of loan rates

(1) Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c) of this section, enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.

(2) Except as otherwise provided in subsection (d) of this section, the exercise by the lender of its option pursuant to such a clause shall be exclusively governed by the terms of the loan

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contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.

(3) In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this section shall be interpreted to prohibit any such assumption.

(c) State prohibitions applicable for prescribed period; subsection (b) provisions applicable upon expiration of such period; loans subject to State and Federal regulation or subsection (b) provisions when authorized by State laws or Federal regulations

(1) In the case of a contract involving a real property loan which was made or assumed, including a transfer of the lien property subject to the real property loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such State has rendered a decision (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment if such decision applies State-wide) prohibiting such exercise, and ending on October 15, 1982, the provisions of subsection (b) of this section shall apply only in the case of a transfer which occurs on or after the expiration of 3 years after October 15, 1982, except that -

(A) a State, by a State law enacted by the State legislature prior to the close of such 3-year period, with respect to real property loans originated in the State by lenders other than national banks, Federal savings and loan associations, Federal savings banks, and Federal credit unions, may otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such State law so provides; and

(B) the Comptroller of the Currency with respect to real property loans originated by national banks or the National Credit Union Administration Board with respect to real property loans originated by Federal credit unions may, by regulation prescribed prior to the close of such period, otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such regulation so provides.

(2)(A) For any contract to which subsection (b) of this section does not apply pursuant to this subsection, a lender may require any successor or transferee of the borrower to meet customary credit standards applied to loans secured by similar property, and the lender may declare the loan due and payable pursuant to the terms of the contract upon transfer to any successor or transferee of the borrower who fails to meet such customary credit standards.

(B) A lender may not exercise its option pursuant to a due-on-sale clause in the case of a transfer of a real property loan which is subject to this subsection where the transfer occurred prior to October 15, 1982.

(C) This subsection does not apply to a loan which was originated by a Federal savings and loan association or Federal savings bank.

(d) Exemption of specified transfers or dispositions

With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon -

(1) the creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(2) the creation of a purchase money security interest for household appliances;

(3) a transfer by devise, descent, or operation of law on the

death of a joint tenant or tenant by the entirety;

(4) the granting of a leasehold interest of three years or less not containing an option to purchase;

(5) a transfer to a relative resulting from the death of a borrower;

(6) a transfer where the spouse or children of the borrower become an owner of the property;

(7) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(8) a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(9) any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.

(e) Rules, regulations, and interpretations; future income bearing loans subject to due-on-sale options

(1) The Federal Home Loan Bank Board, in consultation with the Comptroller of the Currency and the National Credit Union Administration Board, is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(2) Notwithstanding the provisions of subsection (d) of this section, the rules and regulations prescribed under this section may permit a lender to exercise its option pursuant to a due-on-sale clause with respect to a real property loan and any related agreement pursuant to which a borrower obtains the right to receive future income.

(f) Effective date for enforcement of Corporation-owned loans with due-on-sale options

The Federal Home Loan Mortgage Corporation (hereinafter referred to as the "Corporation") shall not, prior to July 1, 1983, implement the change in its policy announced on July 2, 1982, with respect to enforcement of due-on-sale clauses in real property loans which are owned in whole or in part by the Corporation.

(g) Balloon payments

Federal Home Loan Bank Board regulations restricting the use of a balloon payment shall not apply to a loan, mortgage, advance, or credit sale to which this section applies.

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[Code of Federal Regulations]  
[Title 12, Volume 5]  
[Revised as of January 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 12CFR591.5]

[Page 455-456]

TITLE 12--BANKS AND BANKING

CHAPTER V--OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

PART 591--PREEMPTION OF STATE DUE-ON-SALE LAWS--Table of Contents

Sec. 591.5 Limitation on exercise of due-on-sale clauses.

(a) General. Except as provided in Sec. 591.4 (c) and (d)(4) of this part, due-on-sale practices of Federal savings associations and other lenders shall be governed exclusively by the Office's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) Specific limitations. With respect to any loan on the security of a home occupied or to be occupied by the borrower,

(1) A lender shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-on-sale clause upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property: Provided, That such lien or encumbrance is not created pursuant to a contract for deed;

(ii) The creation of a purchase-money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase will allow the exercise of a due on sale clause);

(v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:

(A) A transfer to a relative resulting from the death of the borrower;

(B) A transfer where the spouse or child(ren) becomes an owner of the property; or

(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or

(vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.

(2) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender

(i) Declares by written notice that the loan is due pursuant to a due-on-sale clause or

(ii) Commences a judicial or nonjudicial foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such clause.

(3) A lender shall not impose a prepayment penalty or equivalent fee

February 16, 2004

The Honorable John Vratil, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 522-S  
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 437 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 437 is respectfully submitted to your committee.

HB 437 would raise the limit for a small claims filing in court from \$1,800 to \$5,000. On January 1, 2007, and every three years thereafter, the limit would be increased by the Judicial Administrator by a percentage equal to the previous three year average of the Consumer Price Index.

Estimated State Fiscal Effect				
	FY 2004 SGF	FY 2004 All Funds	FY 2005 SGF	FY 2005 All Funds
Revenue	--	--	\$30,495	\$76,360
Expenditure	--	--	\$21,891	\$21,891
FTE Pos.	--	--	--	--

The Judiciary estimates that the increase in the claim limit would create \$76,360 in new court revenue, of this amount \$19,920 would go to the counties, \$30,495 would go to the State General Fund, and the remaining \$25,945 would be divided among 12 fee funds in the Judiciary's budget. This increased revenue would be the result of a 16.0 percent increase in small claims court case filings. The estimate of cases filed is based on the historical trend regarding other increases to the small claims court maximum claim amount. An additional \$21,891 would be needed to fund temporary help for the Judiciary in FY 2005 as a result of the

Senate Judiciary

2-20-04

Attachment 2

The Honorable John Vratil, Chairperson  
February 16, 2004  
Page 2—437

increased case filings. Any fiscal effect resulting from this bill would be in addition to amounts included in *The FY 2005 Governor's Budget Report*.

Sincerely,

Duane A. Goossen  
Director of the Budget

cc: Brandy Wheeler, Judiciary

February 19, 2004

**To:** Senator Dwayne Umbarger

**Office No.:** 401-S

**From:** Mike Heim, Principal Analyst

**Re:** Worthless Checks

SB429

There is both a criminal and a civil penalty for giving worthless checks.

The 2002 Legislature amended the criminal statute (KSA 21-3707) to raise the service charge amount from \$10 to \$30 for each check.

The 2000 Legislature amended the civil penalty (KSA 60-2610 and 60-2611) for giving a worthless check to require the plaintiff to include in the petition a statement alleging the amount that the defendant may tender as satisfaction of the claim. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. The amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100. A dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment.

The 2001 Legislature amended the civil penalty to do the following:

- Expand the liability for writing a worthless check to include interest at the statutory rate;
- Change the law that refers to the use of restricted mail for a written demand to first class mail;
- Provide that a service charge for a worthless check shall not exceed \$30; and
- Add an element to the definition of giving a worthless check that includes a check for which the maker has not tendered to the holder's agent the money demanded within the allowable time limit.

I hope this is useful.

MH/jl

*Sen. Dwayne Umbarger*

Enclosures



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Testimony in Support of SB 469  
Before the Senate Judiciary Committee  
Kyle G. Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
February 20, 2004

Phill Kline  
*Attorney General*

Senator Vratil and Members of the Committee,

The Kansas Bureau of Investigation is not looking for more work but we are in support of SB 469, a bill that would require the KBI to conduct investigations of in-custody deaths. In the vast majority of cases, this bill will not change standard procedures. Currently the KBI is called upon by most agencies to investigate questionable in-custody deaths as a means of ensuring public confidence by having on outside agency conduct the investigation. Most of those agencies that do not request our assistance do so because they have sufficient resources in the form of their own professional standards unit.

The sound public policy of checks and balances makes our assumption of this additional duty logical and appropriate. Law enforcement professionals take great pride in holding ourselves to a higher standard and we should not shirk from a careful and thorough review of our actions. But even more importantly, this legislation would help ensure the public confidence and trust that is so essential for us to carry out our duties in the community.

I have spoken with Senator Schmidt about this bill and would like to suggest some amendments for the committee to consider. (See attached balloon).

1. Should juveniles in the custody of the Juvenile Justice Authority be included in the scope of this bill?
2. Language in section 1 probably covers private facilities that are under contract with the secretary of corrections, but there is no similar language for private facilities under contract with local cities or counties.
3. To avoid interfering with criminal investigations and charges of undue pretrial publicity, we would suggest that the bill be clarified in Section 2 that a "report

Senate Judiciary

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summarizing the” findings be submitted so that there is no danger of the entire investigative report being divulged prematurely.

4. Our understanding of the motivation for this bill was to bring in outside review of ‘questionable’ or ‘suspicious’ deaths that occur while in custody. In our fiscal note we estimated about 5 death investigations a year and that we were probably doing most of those already. However, D.O.C. has clarified with us that they also have 20 or so ‘natural’ deaths each year from heart attacks, cancer and other medical conditions. If ‘natural’ is the cause of death is obvious and confirmed by an autopsy performed by an appropriate coroner or pathologist, we would suggest that those cases not be included in this act as a waste of investigative resources.

Thank you for your time and consideration. I would be happy to stand for questions.

SENATE BILL No. 469

By Senators Schmidt and Hensley

2-6

7-3

9 AN ACT requiring investigation and report of findings regarding inves-  
10 tigation into the circumstances of inmate deaths in department of cor-  
11 rections facilities and jails.

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

14 Section 1. Whenever death occurs of an inmate, who is in the cus-  
15 tody of the secretary of corrections and who resides in a correctional  
16 facility or boot camp operated by or contracted through the secretary, an  
17 investigation regarding the circumstances of the death shall be initiated  
18 by the Kansas bureau of investigation. ~~The findings of the investigation~~  
19 shall be made available to the chairperson of the senate and house judi-  
20 ciary committees of the Kansas legislature and shall be subject to the  
21 open records act, K.S.A. 45-215, and amendments thereto.

or of a juvenile who is in the custody of and resides in a facility operated by the juvenile justice administration.

A report of the

22 Sec. 2. Whenever the death of a prisoner in the custody of a city or  
23 county and residing in jail occurs, an investigation regarding the circum-  
24 stances of the death shall be initiated by the Kansas bureau of investi-  
25 gation. ~~The findings of the investigation shall be made available to the~~  
26 chairperson of the senate and house judiciary committees of the Kansas  
27 legislature and shall be subject to the open records act, K.S.A. 45-215,  
28 and amendments thereto.

or in a facility contracted through the county

A report of the

29 Sec. ~~3.~~ 4 This act shall take effect and be in force from and after its  
30 publication in the statute book.

Sec. 3. The provisions of this act requiring an investigation by the Kansas bureau of investigation shall not apply if the apparent cause of death is from natural causes and an autopsy conducted by the coroner or other qualified pathologist confirms the conclusion that the death was from natural causes.



# FAITH TEMPLE CHURCH OF GOD IN CHRIST

Rev. Ronald K. Lassiter, Pastor

*"Where there is no vision,  
the people perish . . ."—Prov. 29:18*

1162 Lincoln Street  
Topeka, Kansas 66604

February 17, 2004

To: The Honorable Kansas Senate Judiciary Committee

I, Reverend Ronald K. Lassiter, Sr., am providing this testimony in favor of Senate Bill #469.

It is good reasoning to have an independent investigation simply because independent investigators are not connected and I am hoping that the Kansas Bureau of Investigation (KBI) is independent enough to accomplish that goal.

As we well know, for any entity to investigate themselves, the temptation is great to cover up and/or smooth over though I believe we have some good people throughout our systems from the local to the national.

This measure will provide inmates and their families with human treatment and healthcare.

Thank you for your consideration.

Sincerely,

Reverend Ronald K. Lassiter

Senate Judiciary

2-20-04  
Attachment 5

Cathy Thomas  
1194 Boswell  
Topeka Kansas 66604  
(785)354-8643

Good Morning, My name is Cathy Thomas I am here today to tell you how important a outside mandatory investigation is when a person dies in government custody. My son Anthony Stapleton was being detained at the Shawnee County Jail. I was so concerned about his mental well being. When he first went in I contacted his probation officer and asked him to make sure Tony was on suicide watch. After a few weeks Tony quit eating and a guard called me at home and said they had made an agreement with Tony, if he could talk to me on the phone he would start eating again. I was very concerned they had let him go three days without eating, but the guards assured me he was on a "special" module and would be Ok. On several occasions I talked to the guards on the phone because of letters or conversations I had with Tony, but they always assured me he would be ok because he was on this "special" unit.

Two days before Thanksgiving I talked to a guard and he informed me that I needed to let Tony "Grow Up". The day after Thanksgiving 2002 my son hung himself in this "special" module. I asked jail personal how this could happen since my son was on suicide watch. They said they would have an internal investigation.

The only communication I got from the jail was a phone call to tell me he was dead and a letter that gave me 30 days to pick up his belongings or they would be discarded in the trash. The facts speak for themselves, but the number of deaths at the Shawnee County Jail in such a short period of time speaks volumes. When a child dies in parental custodial care, there is a mandatory outside investigation, but when somebody's child dies in Govt. custody they investigate themselves. The only people that would object to an outside investigation are the people that have something to hide. Our neighbors to the north (Nebraska) have the humanity and fairness to establish a Federal Grand Jury investigation when a person dies in govt. custody. Even with a record number of inmates being detained,. Since they implemented this policy their amount of inmate deaths has decreased. Suicides are preventable with the right programs and policies in place and as long as jail personnel are following these policies and procedures. This has been proven by the research Lindsay Hayes has done, the number one expert in the Country on suicides in jails and prisons.

Senate Judiciary

2-20-04  
Attachment 6

Thank you for an opportunity to come before you to offer a plea of help for the people whose lives are in jeopardy every day while living in custody in our prisons and jails. There have been far too many victims of abuse, neglect and "unknown causes", victims who leave loved ones behind to suffer with the pain of knowing that their loved one is not here because of a senseless act. We have a responsibility to the victims and the accused to protect and help each one to survive.

I know there are many statistics that you have been given, even on today, and that this is not merely a morale, and an ethical issue, but it is also an economic one. I would like to perhaps add an opinion to a workable solution.

History tells us that we have to make change if we expect things to change. I propose that we start by changing the way that we look at prisoners. First, these are human beings who have for one reason or other been caught up in the system. A person convinced against their will is of the same opinion still, therefore, if we give prisoners a reason to change, and convince them that it is something they will want to do-we stand a chance to be effective.

This plan may take time, but we have to start some place. Most prisoners do not have an adequate education to support themselves on the outside and they also lack resource and incentive. If we change our attitude and standard procedures about school and other skills that are necessary to survive, we may be able to rehabilitate and help our society at the same time.

If we make it mandatory that all inmates receive an education, we will have educated citizens in our communities when they return. The inmates will pay for their education by working in their field once they complete their sentence as community service, with a stipend that will help support their family. The ex-inmate will be able to gain experience and self respect while the community will receive labor and skills which will offset programs that are under funded or community based. This will also build pride in the community and help decrease hopelessness. The inmates will be less likely to return to prison and will decrease the amount of elderly that we would have to take care of.

As part of the present solution, I would like to suggest we look into schools who have nursing programs, counseling programs, and other resources that inmates need. Recruiting students to work will help both the students and the institutions. Students would work under the supervision of experienced staff and would get a real world education, which they cannot receive from books. The experienced staff that is currently working would still be able to remain and would be recognized as a skilled professional and would earn the pay they deserve. The inmate would receive quality care. There are many more components that can be worked into this plan to make it a win/win for al, but do to the time I would like to respectfully submit this in the present form.

Respectfully Submitted,

  
Angela M. Waters

Senate Judiciary

2.20.04

Attachment 7

PRISON BROTHERS IN NEED

Brothers in prison have a terrible time  
with no one to fight,  
not for their rights,  
so they must suffer,  
time after time

Brothers behind bars  
night after night  
I know it's got to be  
A terrible sight

Some are there innocent enough  
and still the guards  
give them the rough stuff

If you were there  
and no one would fight for you  
what would you be tempted to do  
Kill yourself? Some Do!!!

People are not animals to be caged in a pen  
let's stop building the fire  
and throwing them in

Who will fight for the brothers  
living with wounds and scars?  
Who will fight for the brothers  
dying behind the bar?  
Will you?

c By Angela M. Waters



**Shawnee County  
Department of Corrections**

501 S.E. 8th Street - Topeka, Kansas 66607 - (785) 291-5100

**Elizabeth Gillespie, Director**

Adult Detention Facility - 501 SE 8th - Topeka, Kansas 66607 - (785) 291-5000 - FAX (785) 233-7765  
Youth Detention Facility - 401 SE 8th - Topeka, Kansas 66607 - (785) 233-6459 - FAX (785) 291-4963

DATE: February 20, 2004

TO: Senate Judiciary Committee

FROM: Elizabeth Gillespie, Director *Elizabeth Gillespie*  
Shawnee County Department of Corrections

SUBJECT: **Senate Bill 469**

On behalf of Shawnee County, I am testifying today in support of Senate Bill 469. I am the Director of the Shawnee County Department of Corrections and have served in this capacity since August 2000. Shawnee County is unique because the Shawnee County Department of Corrections is the agency that manages the adult detention center as well as the juvenile detention center. Our department is a separate agency from the Shawnee County Sheriff's Office. In most other counties of this state, the sheriff's office also manages the adult jail.

The Shawnee County Department of Corrections has always requested the Shawnee County Sheriff's Office to investigate the death of an adult inmate or juvenile resident. Because the Sheriff's Office is considered a "sister" county agency, the County has recently received some criticism that the results of the investigations may be biased. For those who know Sheriff Richard Barta and his professional staff, such claims of bias are completely unfair and false. The investigators of the Shawnee County Sheriff's Office have done an excellent job in investigating past deaths. In most other counties of the state where the sheriffs operate the jails, the sheriffs have always requested the Kansas Bureau of Investigation to investigate inmate deaths.

We are supporting this bill because we believe that having one agency responsible for conducting all inmate death investigations will bring efficiency and consistency to the process. It also may help with future data collection for numbers and causes of deaths of inmates throughout the state.

Senate Judiciary

2-20-04  
Attachment 8

Finally, I can tell you with absolute confidence that the administrators of the state's correctional facilities and the county sheriffs that I know personally throughout the state share great concerns about the deaths of inmates in their facilities and do everything within their powers and resources to prevent them. Like people in all walks of society, inmates do become ill and die for medical reasons. They also commit suicide despite our best efforts to prevent. As you consider this proposed legislation, I ask that you recognize the compassion and the efforts of the staff that perform very difficult jobs in the management of inmates. Deaths of inmates in the custody of jails and state facilities should not automatically be considered suspicious. If you decide to move this bill to the next stage, please do so because it provides for more efficiency and consistency, not because you believe that the staff who operate these facilities are ignoring the medical and mental health needs of inmates or because you believe that previous investigations have been biased.

Thank you. I appreciate your time today and am available to answer any questions you may have.

EG:eg



Sharon Vaughn  
2732 SE 33<sup>rd</sup> Terr  
Topeka Kansas 66605  
(785) 267-5286

I am in support of the Scroggins Initiative Bill that makes it a mandatory outside investigation whenever anybody dies in Govt. custody. My son William Vaughn was detained at the Shawnee County Jail on Oct.3, 2003 on misdemeanor charges. He asked to be segregated from the other inmates after having problems with staff. Even though my son could have bonded out something conspired between him and staff and then he was no longer bondable. The way I found out my son was dead on Oct. 4<sup>th</sup>, one day later, at 9:40p.m. Was when they sent a chaplain to my house. Even though my son was at the hospital for an hour before he died. I was not notified till after 9:30p.m. . I never got to tell my son goodbye, I never received any written communication from the jail about my son's death.

Two weeks following my son's death I went to the jail and tried to get my son's personal belongings, I was confronted by 3 officers; one of them said I could not pick up his belongings until after their own internal investigation. A jail investigation of their own self, is like letting a fox in a chicken house, I was then told if I didn't leave the jail they could arrest me on a old bunch warrants concerning a over due bill. When my son passed away an inmate had contacted me and told me that the guards were an hour late doing their 15 min mandatory health and well being checks. Before you pass this bill is it going to take a well known or privileged son or daughter to die?

The Shawnee County Jail was not only deliberately indifferent to the needs of my son, but they were deliberately indifferent to the needs of many inmates who have lost their life in the Shawnee County Jail.

Senate Judiciary

2-20-04  
Attachment 9

Jennifer Guydos  
1516 Garfield  
Topeka Kansas 66604  
(785) 221-2313

I am here in support of the bill to make it a mandatory outside investigation whenever someone dies in Govt. custody. I was one of Anthony Stapleton's best friends. I know from contacting his mother on several occasions she never received any answers on how this could happen when he was on suicide watch.

I was at her home the day she received the letter in the mail from the Shawnee County Jail, as she was opening the letter she was commenting on how she will get the answers she deserved. Instead it was a letter giving her 30 days to pick up his belongings or they would be disposed of. To me it was like they were discarding his life like they ~~were~~ going to his belongings. This bill is not only important for an inmate but also to his family. I hope you don't throw this bill in the trash like the Shawnee County jail did with Anthony Stapleton's life.

Senate Judiciary

2-20-04

Attachment 10

Pat Stapleton  
5601 SW 57<sup>th</sup>  
Topeka Kansas  
(785) 221-1944

My nephew Anthony Stapleton was allowed to hang himself on the suicide watch in the Shawnee County Jail. Our family never had one question answered, even though he died through deliberate indifference of the Shawnee County Jail.

All my sister received was a phone called saying he had died and a letter to pick up his belongings or they would throw his things in the trash after 30 days. Without a mandatory investigation the families never get answers they deserve. Its like they are not accountable to anybody and you can only hope their reports reflect the truth on what happened that led to the inmates' death.

Senate Judiciary

2-20-04  
Attachment 11

Betty Stapleton  
5408 SW 24<sup>th</sup>  
Topeka Kansas 66604  
(785) 272-3373

I am here today in support of the Bill to make it mandatory for an outside investigation when someone dies in Government custody. My grandson Anthony Stapleton was one of the most important people in my life, now he is gone and we don't have the answers why. The Shawnee County Jail was deliberately indifferent to the needs of my grandson.

If they weren't then he would be with us today. I can no longer see, touch, or talk to Tony again and I want answers on what happened. It is only fair to pass this bill since we are dealing with human lives. This bill will not bring my grandson back, but maybe it will answer questions for families in the future.

Senate Judiciary

2-20-04  
Attachment 12

Danielle Smith  
1194 Boswell  
Topeka Kansas 66604  
(785) 354-8643

My brother Anthony Stapleton was in the Shawnee County Jail. While he was on suicide watch our family was being assured he would be ok and not to worry, he hung himself. Out of respect for my brother the bill should be passed to make it mandatory for an independent outside investigation whenever anybody dies while in Governments custody.

If they had followed their own policies and procedures then my brother would not be dead. They were deliberately indifferent to the needs of my brother. When I do not do things right I'm to be held accountable for it and so should they. I hope and pray this bill gets passed so other families will have the answers they deserve.

Senate Judiciary

2-20-04

Attachment

13

Sherra Stapleton  
1516 Garfield  
Topeka Kansas  
(785) 221-2313

It's been my experience at my young age of 25 in attending ceremony after ceremony that we are not taking care of our family and friends. A lot of people are dying in jail without any outside investigation and we have a moral obligation as citizens to insure that no person held in jail is abused, killed, or allowed to kill themselves.

Every American has this right guaranteed to us by the Constitution and Bill of Rights. Inmates are dying by record numbers at the Shawnee County Jail and if I realize this as a young adult then other older people should realize this too. Something is broke and needs to be fixed. By passing the Scroggins Initiative Bill we can challenge ourselves and society by speaking out about the deliberate indifference to the inmates that are dying.

Senate Judiciary  
2.20.04  
Attachment 14

John Taylor  
1194 Boswell  
Topeka Kansas  
66604  
785-354-8643

As a teenager I know how important it is to report to my parents when I do something wrong. If I was not made to be accountable I don't think I would always do the right thing or report it in a truthful way. When my parents didn't care what I did and I did not have to report to anybody or be held accountable for anything I did then I was not doing the right thing, and that part of my life was not going well. It was not until I was taken out of that situation and put in a situation where I had to report the truth and be held accountable for what I had did; that my life took a turn for the better .It is kind of like the Scroggins Bill. Until the jails and prisons are made to tell the truth and be held accountable by making it a mandatory outside investigation, will the truth be known and they start doing the right thing to do. When jail and prison personnel know that if an inmate dies and that somebody besides there co-workers will be looking to see if they did there job, only then will the deaths become fewer in numbers. If I realize this as a teenager then it would seem to me adults should realize this to. I hope and pray you pass the mandatory outside investigation bill when somebody dies in government custody.

Senate Judiciary

2.20.04  
Attachment 15

Kevin Drain  
1627 Withdean Rd  
Topeka Kansas  
(785) 232-1912

I am here in support of the Scroggins Initiative Bill, to make it a mandatory independent outside investigation whenever anybody dies in Govt. custody. Nebraska by passing this bill has proved that even at a record number of inmates they have had a reduction of inmate deaths. Until Kansas jails and prisons are made to be accountable other than to themselves we are going to have a record high number of deaths, it's like you're a supervisor at a job and they ask you to do your own evaluation. The Shawnee County Jail was not only deliberately indifferent to Anthony Stapleton's needs, but to several inmates who have lost their lives there. I too believe the only people who would not be in favor of the bill would be the people who have something to hide.

Senate Judiciary

3.20.04

Attachment 16





# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 469  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

February 20, 2004

SB 469 creates a new requirement that the Kansas Bureau of Investigation (KBI) initiate an investigation into any inmate death that occurs in a facility under the jurisdiction of the Department of Corrections; or a city or county jail. The findings of the investigation are to be reported to the chairperson of the Senate and House Judiciary Committees of the Kansas Legislature. Additionally, the reports would be available to the public.

SB 469 does not make a distinction between the causes of death (i.e. natural cause, suicide, homicide, or accidental). Therefore, SB 469 requires a KBI investigation into all of the aforementioned examples of death within a KDOC correctional facility, boot camp, or jail.

Pursuant to KSA 22a-233, the Secretary of Corrections and facility wardens or administrators are given the authority to order an autopsy of any person who dies while in their respective custody. The autopsy is required to be performed by a "qualified pathologist." Pursuant to this statutory authority, the Department conducts an autopsy for every death that occurs within the Department's facilities. Additionally, all deaths are subject to a mortality review by the agency's external contract monitor, the Kansas University Physicians, Inc. In

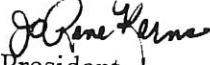
regard to deaths that give rise to a suspicion of homicide, the Department coordinates a criminal investigation into the death with the KBI. The Department conducts a departmental review on all suicides that take place within the Department facilities.

Within the past three years, the Department had seventy-three (73) deaths occur within state correctional facilities. Of those deaths, five (5) were suicides (by hanging), one (1) was an accidental death (due to overdose), and sixty-seven (67) were due to natural cause. Each one of the deaths went through the aforementioned autopsies and review processes.

The circumstance of any death involves privacy issues. Natural deaths through disease involve personal medical information. Suicides of course involve psychological information. The Department believes that the privacy interests of both the deceased and the surviving family should be considered. Deaths by homicide also have unique interests related to criminal prosecution, which are reflected in the confidentiality afforded to investigative reports.

The Department believes that its current practices reflect those privacy interests while at the same time ensuring that proper investigations in custodial deaths are conducted. The Department believes that sufficient methods and review processes are in place with regard to inmate deaths. In its deliberations on SB 469, the Department urges the Committee to consider the Department's practices and the privacy interests involved.

To: Chairman Vratil and Members of the Senate Judiciary Committee

From: Jo Rene Kerns   
Executive Vice President  
Correct Care Solutions

RE: Senate Bill No. 469

Date: February 17, 2004

Mr. Chairman and Members of the Committee:

Correct Care Solutions ("CCS") is a private corporation that provides medical and mental health care and treatment to inmates incarcerated within the State's correctional facilities. As such, it is the authorized custodian of medical records for inmates incarcerated therein.

Senate Bill No. 469 would require an investigation by the Kansas Bureau of Investigation into the circumstances of all inmate deaths in Department of Correction's facilities and jails. It further would require the findings to be made available to the chairperson of the Senate and House Judiciary Committees and would require the findings to be subject to the Kansas Open Records Act, K.S.A. 45-215, et seq.

This bill would require the disclosure of personal medical, psychiatric, psychological, and/or substance abuse treatment records of readily identifiable inmates. These records are excluded from the duty to disclose by at least five exceptions found within the Kansas Open Records Act at K.S.A. 45-221.

The first exception specifically prohibits disclosure of such information. K.S.A. 45-221(a)(1) provides that a public agency shall not be required to disclose records that are specifically prohibited or restricted from disclosure by federal law. Congress has now implemented the Health Information Portability and Accountability Act ("HIPAA"), a federal law that was enacted to protect the privacy interest of a person's medical records. In general, HIPAA prohibits the disclosure of a person's medical information except under certain stringent exceptions. It further requires that in the event an exception applies, that reasonable efforts must be made to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request. 45 CFR 164-502. More importantly, it provides that to the extent HIPAA is contrary to state law, which it would be if this Bill is passed, HIPAA preempts the provision of state law. 45 CFR 160.203.

Senate Judiciary

3-20-04  
Attachment 18

Senate Judiciary Committee  
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Re: Senate Bill No. 469  
Page 2

The second exception that applies to the records maintained by CCS is K.S.A. 45-221(a)(2). That exception provides that a public agency is not required to disclose records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure. The medical records of inmates that are maintained by CCS are protected by the physician-patient privilege found within K.S.A. 60-427. As such, they fall within this exception and should not be subject to the disclosure requirement. Attorney General Opinion 139 (1987) addressed this issue in the context of intake medical examinations performed on inmates of county jails. It concluded that even these benign records may invoke the physician-patient privilege to prevent disclosure of confidential information. The Kansas Court of Appeals also relied on this provision in finding that a deceased's medical records are covered by the physician-patient privilege and could be made available only to the holder of the privilege. Burroughs v. Thomas, 23 Kan.App.2d 769 (1997)

The third exception to disclosure that applies is K.S.A. 45-221(a)(3). That exception provides that a public agency is not required to disclose records that consist of medical, psychiatric, psychological or alcoholism or drug dependency treatment records that pertain to identifiable patients. Clearly, the records maintained by CCS fall squarely within this exception to disclosure.

The fourth exception that applies is K.S.A. 45-221(a)(29). That exception provides that a public agency is not required to disclose correctional records pertaining to an identifiable inmate other than general information. That section specifically excludes from the disclosure requirement mental health or substance abuse counseling records of an inmate or release. Again, mental health and/or substance abuse counseling records are the types of records maintained by CCS. They must be excluded from the disclosure requirement.

Finally, the fifth exception that applies is K.S.A. 45-211(a)(30). That exception provides that a public agency is not required to disclose public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. An inmate's medical records should not be considered "public records." It is difficult to image a clearer invasion of one's personal privacy than allowing for public disclosure of the contents of one's medical files.

It should be noted that currently all deaths of inmates are investigated by the county coroner. The coroner's findings and investigative records, other than the inmate's privileged medical records, were found in the Burroughs case to be subject to disclosure upon proper request pursuant to the Kansas Open Records Act. In addition to this oversight, the Secretary of Corrections has jurisdiction over a third party review board that is statutorily authorized to monitor the delivery of health care at correctional

Senate Judiciary Committee  
February 17, 2004  
Re: Senate Bill No. 469  
Page 3

institutions. (K.S.A. 60-4915(a)(4)(B). This organization's findings and other records are statutorily privileged and are not subject to release to any person or entity. K.S.A. 65-4915(b). The Kansas Bureau of Investigation would not qualify as a proper party to hold this "peer review" privilege. Therefore, the integrity of any internal investigation could not be protected by the peer review privilege. Thus, two mechanisms of review are already in place that allow for disclosure of information while excluding protected personal information. These two methods of oversight ensure protection of the policy of the public's right to know versus an individual's right to personal privacy. It is not necessary to permit a third method for review.

In order to ensure that inmates will know that their communications with health care providers are privileged so that they can continue to receive appropriate quality health care, they must be assured that they will be afforded the same privacy protections as all citizens. CCS is committed to protecting the privacy interests of its patients. Your attention to this serious matter is greatly appreciated.

February 16, 2004

**Judiciary Subcommittee  
Senator Derek Schmidt  
Friday, February 13, 2004**

1. **SB 343** would repeal KSA 65-441a, the hospital conversion law, enacted in 2003 as SB 44 (Attachment 1), dealing with the purchase of Health Midwest by HCA, Inc.

**Proponents.** The repeal of KSA 65-441a was supported by Ron Hein, legislative council for HCA, Inc. (Attachment 2) and by the Kansas Hospital Association (Attachment 3). The 2003 law was declared unconstitutional by the Johnson County District Court.

**Subcommittee Action.** The Subcommittee recommended the full Committee act favorably on SB 343.

2. **SB 357** would enact the Model Notary Public Act of 2002 as recommended by the National Notary Association. The bill would repeal current Kansas law, which is loosely based on the Model Notary Act of 1973.

**Proponents.** The 38-section bill was supported by a representative of the Kansas Secretary of State's Office (Attachment 4).

**Subcommittee Action.** The Subcommittee recommended the full Committee decide the following four areas:

1. The amount of the surety bond to be required. Current law requires \$7,500, the bill increases this to \$25,000 (page 4, line 13).
2. The education and exam requirements (page 6, lines 27 to 35).
3. The severity of the criminal penalty for violations of the law by the notary and others (page 10, lines 12 to 42).
4. Whether the law should contain the short form certificate for notarial acts (pages 14 and 15).

MH/dg

Enclosures

## Transfer of Hospital Assets

**SB 44** concerns hospitals and provides for the transfer of hospital assets to a foundation created under the act. The term "hospital" is defined to include: those defined in KSA 65-425 that are not-for-profit pursuant to section 501(c)(3) of the Federal Internal Revenue Code and are licensed by the Department of Health and Environment; or Health Midwest, Inc. and any other similarly situated hospital holding company; or a licensed Kansas not-for-profit hospital that is a subsidiary or affiliate of a domestic or foreign hospital holding company.

The bill requires that, whenever there is a proposed change in control of a not-for-profit hospital by sale, merger, integration, or any other event that may result in a change or loss of the hospital's federal tax exempt status or forfeiture or amendment of the hospital's articles of incorporation that alters the original purpose of the hospital, and before there is any transfer or depletion of the hospital's assets, a new foundation must be formed and all Kansas assets of the hospital must be transferred to the foundation.

The foundation must be a Kansas not-for-profit corporation created for the purpose of determining the disposition of the transferred assets in a manner that effectuates as nearly as possible the manifested general charitable intention of the donor or donors. The board of directors of the foundation consists of 18 members appointed as follows: five by the Governor, five by the Attorney General, three by the President of the Senate, three by the Speaker of the House of Representatives, one by the Minority Leader of the Senate, and one by the Minority Leader of the House of Representatives. Board members must be a resident of one of the counties comprising the hospital's service area, serve without compensation and for a three year term.

The bill prohibits any foundation created under the act from making any loans to board members, officers, employees, and any other person or entity employed by or having a contract with the foundation. Further, the foundation shall not engage in any self-dealing for the benefit of any board member, officer, employee, or other person or entity having a contract with the foundation. Finally, the foundation, board members, officers, and employees are prohibited from any direct or indirect engagement in lobbying or otherwise attempting to influence legislation, advocating the nomination, election or defeat of any candidate for public office, or attempting to influence the outcome of any ballot initiative or issue. However, the foundation, board members, officers, employees or grant recipients are permitted to publicize the decisions and actions of the foundation, and to express individually held opinions as long as they are not expressed as being held by the foundation itself.

The provisions of the bill apply from and after January 1, 2003, and the bill is effective upon publication in the *Kansas Register*.



Donald A. Wilson  
President

**TO:** Senate Judiciary Subcommittee on SB 343

**FROM:** Thomas L. Bell  
Executive Vice President

**RE:** SB 343

**DATE:** February 13, 2004

The Kansas Hospital Association appreciates the opportunity to comment in support of Senate Bill 343. This bill would repeal the provisions of SB 44, passed during the 2003 legislative session.

There are several reasons to pass SB 343. First, the legislation that was enacted last session was done so with the intent to quickly affect a specific case – the purchase of Health Midwest by HCA. That case is over, and SB 44 has served its main purpose.

Second, last year the Johnson County District Court declared that SB 44 was unconstitutional. The Court found that SB 44 purported to confiscate the assets of a nonprofit corporation and, as such, was in derogation of private property rights and rights of individual ownership. The Court also found that the legislation would constitute a taking without compensation under the Kansas and U.S. Constitutions.

Finally, while SB 44 served the short-term purposes of the Legislature, it does not establish good, long-term policy for the state of Kansas. SB 44 fails in several respects to achieve the legitimate goal of government to oversee the disposition of charitable trust assets in the event of a sale of a private, non-profit hospital. The Bill is vague with regard to definitions and process and overly specific with regard to resulting control of assets sold, not to mention the fact that it contains serious constitutional shortcomings as noted by Judge Foster.

Clearly, government has an interest here. The fact that Kansas law in this area is currently in a state of confusion also argues for some type of legislative intervention. At the same time, any legislation must provide for certainty of process, flexibility of results and analysis of the transaction against predetermined criteria. Ideally, appropriate legislation would permit the Attorney General to review the proposed sale of a non-profit



hospital in an organized, established process that permits public input, but provides for a decision in light of predetermined criteria. The parties to the transaction should be allowed to suggest methods for preserving the charitable trust for the beneficiaries of that trust, and the resulting organization should be structured in a manner to assure community input. That organization should be charged with fulfilling the charitable trust's original purpose to the extent possible.

Rather than the detailed approach of SB 44 in structuring a resulting foundation, ideal legislation should allow flexibility of structure. One size does not fit all in developing a mechanism to maintain the charitable assets for their original purpose. For example, the charitable purpose to be preserved may well be different for nonprofit hospitals associated with a faith community than one created from an individual donation or one that is an unaffiliated private nonprofit. Thus, the resultant organization created to manage the charitable trust after a sale would necessarily be organized differently in each instance.

Any legislation should set forth an application and disclosure process, which would include information such as: the names of the buyer and seller; the purchase price and other terms; a financial and economic analysis from an independent appraiser; and the acquisition agreement. The legislation should also provide criteria for the Attorney General to use to determine whether the hospital board exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms of the sale and whether the acquisition affects the continued existence of accessible, affordable health care facilities that are responsive to the needs of the community.

The first step in the establishment of an efficient and appropriate long-term policy for our state is the repeal of SB 44. We look forward to providing any assistance we can as the Legislature moves forward. Thank you for your consideration of our comments.

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## Senate Judiciary Sub-Committee

Testimony re: SB 343

Presented by Ronald R. Hein

on behalf of

HCA, Inc.

February 13, 2004

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for HCA, Inc. which is the nation's leading provider of healthcare services, composed of approximately 191 locally managed hospitals and 82 outpatient surgery centers, including four hospitals in Kansas, Wesley Medical Center, Menorah Medical Center, Overland Park Regional Medical, and Allen County Hospital.

HCA supports SB 343, which repeals K.S.A. 2003 Supp 65-441a, the hospital conversion law which was passed in 2003.

As you probably recall, this legislation was enacted during the period of the acquisition of Health Midwest, and its system of hospitals in Missouri and Kansas, by HCA. The bill was conceptualized, drafted, and passed in an inordinately fast period of time. Time was of the essence at that point because there were concerns that the Missouri Attorney General was going to be able to exert greater control over the proceeds of the sale of the assets than was appropriate. Kansas wanted to insure that any foundation created with proceeds applicable to the sale of HMW assets on the Kansas side of the border was appropriate for the fair market value of those assets located in Kansas.

In light of the urgency at that time, there were provisions put in the legislation which we believe are not sound public policy. At the time the legislation was being enacted, we communicated our concerns with the legislation to legislators, the Governor's staff, and others. However, HCA did not take a position on the bill, and made no effort to oppose the legislation because we understood the need for Kansas to protect their rights vis-a-vis the State of Missouri.

I also want to make it clear that HCA's interest in this type of legislation is not with the proceeds or the disposition of the proceeds. HCA's concern is with the process that governs any attempt at a merger and acquisition between two or more hospitals. Oftentimes, timing is very important in these types of transactions in order to protect the value of the assets during what is oftentimes a tumultuous time for the hospital which is

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Senate Judiciary Committee

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for sale. A process which takes too long can jeopardize the sale itself and ultimately can adversely affect the value of the assets, causing harm to all the parties involved, including the State of Kansas and any potential beneficiaries of the proceeds of the sale.

Therefore, we would strongly urge the legislature to pass this legislation thus repealing the current conversion statute. There is already in existence common law which permits the Attorney General to intervene in hospital conversions, to review the transaction to insure that the process and the value being paid is fair and equitable, and to protect the state's interests. Therefore, the repeal of this statute will not leave the state or the Attorney General without a remedy.

However, with that said, we have already conveyed to the Attorney General, and are conveying now to the legislature, our willingness to meet with General Kline, the Governor, the legislature, and others, to help to craft legislation to deal with the conversion process. Since our company has been involved in this process in this state and others on numerous occasions, we would offer to bring our expertise to the table and to provide whatever information we can to help insure that any legislation which is enacted provides an appropriate process for all of the parties involved, including the citizens of Kansas.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



TESTIMONY OF THE SECRETARY OF STATE  
ON SB 357  
THE MODEL NOTARY PUBLIC ACT  
FEBRUARY 13, 2004

Mr. Chairman and Members of the Subcommittee:

I appreciate the committee's introduction of and hearing on SB 357, which would enact the Model Notary Public Act of 2002.

The Model Notary Public Act of 2002 was drafted by a group of experts impaneled by the National Notary Association. The drafting committee included lawyers, professors, and bankers, along with experts in real estate and electronic/digital commerce, a Secretary of State, an Attorney General, and the former Register of Deeds of Johnson County, Kansas.

The Model Act modernizes the statutes governing notaries public. It updates the Model Notary Act of 1984 and the Model Notary Act of 1973, and adds technological changes to accomplish electronic transactions. Current Kansas notary laws are loosely based on the 1973 act, but do not include any amendments from the 1984 act, and therefore our act is sorely behind on revisions.<sup>1</sup>

Because the act is a "model" and not a "uniform" act, it is not intended to create a uniform law from state to state; rather, it is intended to serve as a "model" for states to use in revising their notary laws. The Secretary of State has studied the model act over the course of three years. Our conclusion is the model act will improve Kansas notary laws and therefore should be adopted. We have omitted some sections of the model act, which I will explain.

Background Information on the Role of Notaries Public

The purpose of a notary public is to ensure against forgery and fraud by confirming that the person signing the document is in fact the person he says he is. Important documents used in business deals, real estate sales, automobile sales, and other transactions must be reliable evidence of the parties' commitment to the transaction. Proof of the signature's authenticity is necessary to ensure the legitimacy and validity of the transaction.

Notarization does not prove the truthfulness or validity of the underlying document. Notarization only serves to authenticate the *signature* on the document.

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<sup>1</sup> Kansas notary law also includes the Uniform Law on Notarial Acts as promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. SB 357 includes some cosmetic changes to the uniform act, but the substantive provisions of that act remain unchanged. Sections 28-36 of the bill contain the UNLA provisions.

The purpose of a notary public has evolved to include the duty to check the signer's ability to understand the document and the signer's willingness to sign the document. Kansas statutory law does not specifically require that the notary public determine the signing party's ability to understand or willingness prior to the notarization. The Model Act adds this component to a notary's duties.

**The Secretary of State recommends the adoption of the Model Act for the following reasons:**

Clear and Precise Direction to Notaries

The Model Act clarifies the role of a notary public by providing clear and precise guidance for the performance of notarial acts. Vague and ambiguous sections of current law would be replaced with specific requirements that are easy to understand and follow. A better understanding of notarial duties will encourage notaries to perform their duties correctly.

Increased Bond Amount

Current Kansas law requires notaries to obtain a \$7,500 bond. The \$7,500 amount dates back to 1984. The Model Act recommends a \$25,000 bond. It should be noted that no other state currently requires a \$25,000 bond, although this fact may change as states adopt the Model Act. The highest bond among the states is California at \$15,000, and the amount most often used among the states is \$10,000.

The drafting committee increased the bond amount to cover potential losses caused by notary misconduct. As values increase, so do the potential losses caused by notary negligence or mistake. The current amount of \$7,500 does not cover the average cost of a new car, for example, and a person who loses ownership of his car due to a fraudulent car title would be afforded a better chance of recovering losses with a \$25,000 bond.

Current Kansas law allows two personal sureties in place of a bond, meaning that two individuals may agree to cover the losses. Our bill draft eliminates this alternative to the bond because these two persons are not required to prove financial ability, and therefore this provision affords little to no protection to the public.

Education and Testing

The Model Act requires that notaries take a course of instruction and pass an examination prior to receiving their commissions. The Secretary of State chose to include this provision of the model act because of the number of complaints our office receives involving notary misconduct. We provide a handbook of laws and responsibilities to all notaries, but it is obvious more active education is required. Effective training and testing would confirm that notaries have a basic understanding of their duties.

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### Criminal Sanctions

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The Model Act includes criminal sanctions against notaries and employers who misuse their notaries' commissions. While assessing criminal sanctions against notaries seems to be a bold addition, notary misconduct causes losses to individuals and should be punished.

### **Our bill does not include the following provisions of the Model Act:**

#### Separate Chapter on Electronic Notaries

The Model Act separates regular notaries public from electronic notaries, resulting in a much longer law with duplicative provisions. Our office saw no reason to separate out the two types because the only difference is the manner in which the document is notarized (an inked signature on paper versus a digital/electronic signature on an e-document). Because technology in this area is not fixed, but is ever evolving, we delegated many of the requirements for electronic notarizations to rules and regulations. Rule and regulation authority would provide us the flexibility to move to more robust technology in future years if advantageous to notarial transactions.

#### Required Journals

The Model Act requires notaries to maintain a journal in which they memorialize information about each notarization they perform. The journal protects the notary from allegations of misconduct, and also provides evidence proving or disproving an alleged notarization. Although the Secretary of State recommends journals to all notaries—and and, in fact, the notaries in our office all maintain journals—we do not believe that government should mandate this action. However, 18 states have enacted a journal requirement.

#### **Technical Points, Corrections**

Lastly, I want to note for the committee's information that the revisor has included within the bill draft sections of Kansas law that are not being amended. The purpose of including these provisions is to relocate them into one uniform and comprehensive notary law. Thus the bill includes some sections that have no substantive changes. I also request some technical corrections to the bill draft, which are attached.

I appreciate the opportunity to appear on SB 357 and I would be happy to answer questions.

Kathy Sachs, E-Government  
Deputy Assistant Secretary of State

Melissa Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

**TECHNICAL CORRECTIONS TO SB 357  
PROPOSED BY THE SECRETARY OF STATE**

1. Page 2, line 20. Strike "is" and insert "in"
  2. Page 3, line 26. Strike "a" and insert "an" (subject to Revisor's style rules)
  3. Page 6, line 43. Strike "by or for it"
  4. Page 14, line 1. Strike "must" and insert "shall"
  5. Page 14, lines 29, 40; Page 15, lines 9, 20, 30. Strike parenthesis around "County"
  7. Page 16, lines 2-4. Should repealer include 53-101, 53-102, 53-103, 53-104, 53-105, 53-105a, 53-106, 53-107, 53-109, 53-113, 53-114, 53-115, 53-116, 53-117, 53-118, 53-119, 53-120, statutes that are being replaced with new provisions of SB 357.
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