

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 10, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Jeff King- excused
Representative Annie Kuether- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association,
Kansas Peace Officers Association
Jason E. Maxwell, Haskell County Counselor,
Amanda Lowe, President/CEO, Health Partnership Clinic of Johnson County

Others attending:

See attached list.

The hearing on **SB 533 - Electronic citations, complaints and notices to appear** was opened.

Jason Long, Office of the Revisor of Statutes, addressed the committee explaining this bill creates a statutory method of electronic citation for violations of the Uniform Act Regulating Traffic on Highways, the Kansas Code of Procedure for Municipal Courts and the Code for Enforcement of County Codes and Regulations. (Attachment 1)

Ed Klumpp, appeared as a proponent on behalf of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association and Kansas Peace Officers Association. He listed the advantages of electronic citations, such as improved accuracy, elimination of handwriting legibility issues, elimination of data entry by courts or prosecutors, more timely transmittal of citation data to the courts, reduces incomplete paperwork and eliminates lost paperwork. He also stressed this bill does not require any law enforcement agency, prosecutor, or court to utilize electronic citations but merely provides the mechanism for maximizing the efficiency of those systems for the jurisdictions that choose to use it. (Attachment 2)

There were no opponents.

The hearing was closed on **SB 533**.

The hearing on **SB 537 - Liens and claims against property; actions concerning validity** was opened.

Jason Long, Office of the Revisor of Statutes, explained this bill creates a new private cause of action for a person who is aggrieved by an alleged violation of K.S.A. 58-4301, which provides a procedure for expedient judicial review of a lien or claim against real or personal property to determine the validity of the lien or claim. In addition, upon finding of a violation, the court shall order damages in an amount up to \$10,000 for each violation, and award costs and reasonable attorney's fees to the prevailing party. (Attachment 3)

Jason E. Maxwell, Haskell County Counselor, spoke before the committee as a proponent and explained this bill was drafted to address numerous documents that had been filed by one individual in Haskell County, Kansas. He said the old statute does not have any remedies available other than the right to set aside the lien or claim and no deterrent that would keep the violator from taking the exact same action again. The aggrieved person cannot even recover his or her attorney fees or costs.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 10, 2010, in Room 346-S of the Capitol.

This new legislation would allow, damages up to \$10,000, and, the district court could also enter an order restraining the person from filing fraudulent liens or claims or any future claims without court approval.

(Attachment 4)

Ed Klumpp, on behalf of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association, appeared before the committee as a proponent and stated this bill is justified based on fraudulent liens reportedly being filed targeting public officials and is done in many cases to purely harass and cause hardships on the persons against whom the lien was filed. He believes this bill proposes a civil remedy as well as the tools for a court to protect against repeat fraudulent claims as well as protecting the right of filing future legitimate liens. (Attachment 5)

There were no opponents.

The hearing on **SB 537** was closed.

The hearing on **SB 305 - Kansas tort claims act; charitable health care providers** was opened.

Matt Sterling, Office of the Revisor of Statutes, provided an explanation of the bill to the committee, stating it would amend K.S.A. 2009 Supp. 75-6102, the definitions used in the Kansas Tort Claims Act. This bill would change the definition of charitable health care providers to include mental health practitioners who are licensed by the Behavioral Sciences Regulatory Board. It would also replace the Department of Social and Rehabilitation Services with the Kansas Health Policy Authority as the agency that operates programs for medically indigent persons or individuals receiving medical assistance.

He further explained K.S.A. 75-6102 was amended by the Legislature in 2009 and this bill is a carryover bill from the 2009 session and does not reflect the changes to 75-6102 made by the legislature last year. Therefore, if the committee intends to work **SB 305**, there would need to be a substitute bill containing the current version of 75-6102. (Attachment 6)

Amanda Lowe, President/CEO, Health Partnership Clinic of Johnson County addressed the committee on behalf of the Kansas Association for the Medically Underserved (KAMU). She further explained KAMU's purpose and stated they provide services at 41 Safety Net Clinics along with 29 satellite sites to over 200,000 underserved Kansans. This bill amends the Kansas Tort Claims Act relating to charitable health care providers. The specific amendment they are asking for support is on page 2 of the bill, lines 31 and 32 where the definition of "Charitable health care provider" has been amended to include the addition of "a mental health practitioner licensed by the behavioral sciences regulatory board". This addition to the definition of who is covered in the Charitable Care Act will allow Mental Health professionals to volunteer their time in Safety Net Clinics. (Attachment 7)

Written testimony in support of the bill was provided by:

Dr. Jason Eberhart-Phillips, State Health Officer and Director Division of Health, Kansas Department of Health and Environment (Attachment 8) and Callie J. Denton JD, Director of Public Affairs, on behalf of Kansas Association for Justice. (Attachment 9)

There were no opponents.

After further discussion, Chairman Kinzer asked the staff to provide additional information from last year regarding the Kansas Tort Claims Act, medical caps for lawsuits under this act in order to satisfy some of the various questions, before the committee works the bill.

The hearing on **SB 305** was closed.

SB 371 - Increasing the property damage amount that would allow the prevailing party to receive attorney fees.

Representative Goyle made the motion to report **SB 371** favorably for passage.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 10, 2010, in Room 346-S of the Capitol.

Representative King seconded the motion, Motion carried.

SB 372 - Amending the Kansas Act for Obtaining a Guardian or a Conservator, or both.

After further discussion by the committee, it was decided to delay final action by the committee until some additional questions could be resolved regarding the authority of the court if the person is a non-resident.

SB 373 - Clarifying which municipal ordinance violations require the payment of an assessment.

Representative Pauls made the motion to report **SB 373** favorably for passage.

Representative Brookens seconded the motion. Motion carried.

The next meeting is scheduled for March 11, 2010.

The meeting was adjourned at 4:50 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 03-10-10

NAME	REPRESENTING
Ron BROWN	FRATERNAL ORDER OF POLICE
Jason Maxwell	Haskell County
Bill Lower	Haskell County
Eugene Ochs	Haskell Co.
Raymond Brown	Haskell Co. Commissioner
Marilyn Nichols	Shawnee Co. Register of Deeds
Sean Miller	CAPITOL STRATEGIES

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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Interstate Cooperation
Kansas Statutes Annotated
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Brief on Senate Bill 533
Electronic Citations

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

March 10, 2010

SB 533 creates a statutory method of electronic citation for violations of the Uniform Act Regulating Traffic on Highways, the Kansas Code of Procedure for Municipal Courts and the Code for Enforcement of County Codes and Resolutions. Under the bill citations could be issued through an electronic data device which would file the citation data electronically with the court. The bill also provides for what constitutes an electronic signature of the issuing officer and an agreement to appear by the person being issued the citation.

Section 1 creates this system of electronic citations for the Uniform Act Regulating Traffic on Highways. Section 2 creates the same system for the Kansas Code of Procedure for Municipal Courts. Section 3 creates the same system for the Code for Enforcement of County Codes and Resolutions. Section 4 amends K.S.A. 40-3104, which pertains to the requirement that motor vehicle owners obtain liability insurance, so that it conforms with the electronic citation system.



**Kansas Association of
Chiefs of Police**

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(316)733-7301



**Kansas Sheriffs
Association**

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Salina, KS 67402
(785)827-2222



**Kansas Peace Officers
Association**

PO Box 2592
Wichita, KS 67201
(316)722-8433

March 10, 2010

**Testimony to the House Judiciary Committee
In Support of SB533**

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association support the provisions of SB533. We requested this bill on behalf of the Kansas Criminal Justice Information Systems and the Kansas Department of Transportation's Traffic Records Coordinating Committee. Those organizations have been working on statewide standards for electronic citations for more than a year and have now progressed to a point of understanding the statutory needs to make an e-citation system functional and efficient. This bill represents those needs.

Electronic citations are citations issued by law enforcement officers by using an electronic medium instead of the traditional handwritten paper process. There are currently 4-5 Kansas municipal agencies using electronic citations and there are several other city and county agencies exploring their use.

The advantages of electronic citations include:

- Improved accuracy.
- Elimination of handwriting legibility issues.
- Elimination of data entry by courts or prosecutors.
- More timely transmittal of citation data to the courts.
- Eliminates lost paperwork.
- Reduces incomplete paperwork.

In an electronic citation process the officer enters the offender and vehicle information into the computer device. This can be accomplished by auto-entry of computer data from the license tag and/or driver's license query, or by swiping or scanning the data strip on a driver's license or vehicle registration. The violation is entered by selecting the applicable statute or ordinance. Other required data is entered into the device such as location, date and time. The software can then apply the appropriate court name and appearance times. A paper copy of the citation is then printed out to provide to the accused.

With existing law, a second printout is required for the officer to sign which must then travel the traditional routing to the prosecutor or courts and be matched up to the case. There are currently no provisions for a promise to appear other than also using this second printed hardcopy of the citation. In an electronic system these are not necessary and create an obstacle to the efficiency of electronic citations.

This bill includes provisions to allow for electronic signature by the officer utilizing the existing provisions in the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq. It also provides for a method to collect a verbal promise to appear, and clarifies other conflicts between the paper process and an electronic citation process. It does this by adding a statute providing the legal basis for achieving the requirement in the existing law when using an electronic citation system. The bill does not require any law enforcement agency, prosecutor, or court to utilize electronic citations. It merely provides the mechanism for maximizing the efficiency of those systems for the jurisdictions that choose to use it. The provisions of the bill do not make any change in the existing paper process. As a result, while there may be costs to implement electronic citations by the jurisdictions choosing to do so, passing this bill does not create a requirement for any expense for anyone

House Judiciary

Date 3-10-10

Attachment # 2

.hat fiscal feasibility can be examined by each jurisdiction as they explore implementation of an e-citation system.

Section 1 of the bill addresses the needs for e-citations in KSA chapter 8 governing citations in district courts. Section 2 of the bill addresses the needs for e-citations in KSA chapter 12 governing citations in municipal courts. Section 3 of the bill addresses the needs for e-citations in KSA chapter 19 governing citations for county resolution violations. Section 4 addresses the provision in KSA chapter 40 which requires attaching an insurance verification form to a citation for motor vehicle liability insurance violations and allows for that information to be submitted either on paper or electronically in conjunction with an e-citation.

In developing this bill, we conferred with the Kansas Highway Patrol, courts, prosecutors, court clerks, and others. We also considered the pros and cons of an electronic signature versus a digital signature. The focus was to not change the existing paper process statutes to avoid unintended consequences to the use of the existing paper citations.

Our associations urge you to recommend SB533 favorably to the full House. Passing this bill supports local law enforcement, government efficiency, and accuracy in the criminal justice system.

Ed Klumpp
Legislative Liaison
Kansas Association of Chiefs of Police
Kansas Sheriffs Association
Kansas Peace Officers Association
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Brief on Senate Bill 537
Private Cause of Action For Violation of K.S.A. 58-4301

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

March 10, 2010

SB 537 creates a new private cause of action for a person who is aggrieved by an alleged violation of K.S.A. 58-4301. K.S.A. 58-4301 (which is in section 2 of the bill) provides a procedure for expedient judicial review of a lien or claim against real or personal property to determine the validity of the lien or claim. Such review may be sought by a person with an interest in the real or personal property, or a debtor or obligor, who has reason to believe the lien or claim is fraudulent.

Section 1 of the SB 537 provides that any person aggrieved by the filing of an alleged fraudulent lien or claim may bring a civil action against the filer for damages and injunctive relief. The plaintiff must prove that the defendant knew or should of have known that the lien or claim violated K.S.A. 58-4301. Any such civil action is to be conducted separately from any action under K.S.A. 58-4301.

Upon a finding of a violation of K.S.A. 58-4301, the court shall order damages in an amount up to \$10,000 for each violation, and award costs and reasonable attorney's fees to the prevailing party. The court may also order an injunction prohibiting the defendant from filing any liens or claims in the future without court approval and from filing any liens or claims in violation of K.S.A. 58-4301.

The Senate Committee on Judiciary made two amendments. First, on page 1, in line 19, the committee added the phrase “by a preponderance of the evidence” to quantify the plaintiff’s burden of proof. Second, on page 2, in lines 1-4, the committee added a provision allowing any person aggrieved by a violation of an injunctive order issued pursuant to section 1 to bring a contempt action.

Written Testimony in Support of Senate Bill 537
Jason E. Maxwell, Haskell County Counselor

I. Overview

Senate Bill 537 was drafted to address numerous documents that had been filed by one individual in Haskell County, Kansas. These documents stated that the individual was owed money from county, state and bank officials and typically stated that he had a lien or some form of interest in the official's property.

The individual had been the subject of numerous collection actions and at least one foreclosure. He represented himself in the actions and was unsuccessful in defending the actions. After this, he first began filing documents that indicated that he had been wronged by the judge. New documents indicated that he had been wronged by the sheriff due to the sheriff's assistance in recovery of assets pursuant to the court's orders. Eventually, the documents that he filed covered many of the employees in the courthouse. Numerous documents have been filed with the District Court, Register of Deeds, Secretary of State and the Disciplinary Administrator's Office.

II. Documents Filed

A. Persons Targeted. The documents that have been filed since 2005 have included liens and/or claims targeting the following people:

1. Twenty-two (22) current and former officials/employees of Haskell County;
2. Four (4) district judges;
3. Three (3) non-judicial district court employees;
4. One (1) local bank officer;
5. Five (5) attorneys; and
6. One (1) bankruptcy trustee.

This is only a list of the persons that are listed in the county counselor file. There may be other documents that have been filed.

B. Organizations Targeted. Some of the documents have included liens or claims against the following:

1. Haskell County Sheriff;
2. Haskell County Court Clerk;
3. Board of County Commissioners of Haskell County; and
4. Centera Bank.

C. Titles of the Documents. The documents are not typically titled like normal

legal documents. Some of the titles of documents are:

1. *Notice;*
2. *Demand;*
3. *Notice of Demand;*
4. *Bill for Restitution and Damages;*
5. *Affidavit and Notice of Default;*
6. *Judicial Notice;*
7. *UCC Financing Statement;*
8. *Letter of Inquiry with Affidavit of Merits;*
9. *Non-negotiable Registered Affidavit of Claim and Associated Security Agreement;*
10. *Demand for Payment;*
11. *Public Notice;*
12. *Application for Writ of Quo Warranto;* and
13. *Certificate of Dishonor and Breach of Contract Notice.*

D. Nature of the Documents. Regardless of the title, the documents typically have three elements. First, the documents allege that person has violated their duties of office or oath as an attorney, trustee or judge either by commission or omission. Second, the person owes him money. Third, he either has an interest in that person's assets or he has a claim against the person's insurance policy and/or bond. It should be noted that none of the documents have been filed as a mechanic's or a materialmen's lien. There have been documents that have been filed with the court clerk, but none of them were filed in such a manner to meet the lien filing requirements.

III. Damages From Fraudulent Liens or Claims

- A. When either selling or refinancing a home, the aggrieved person cannot close due to a cloud on the title. Either or both parties could lose financing while waiting to clear the title.
- B. When the aggrieved person has sold their crops or livestock, their payment could be withheld due to a fraudulent financing statement. This could cause the farmer/rancher to fail to make a payment to the bank in a timely fashion. The end result could be a foreclosure.
- C. In either event, the aggrieved person will be forced to spend time and money to remove the cloud on their title.

III. Current Remedy

Currently, the basic remedy is to set aside the lien or claim pursuant to K.S.A. 58-4301. This statute does not have any remedies available other than the right to set aside the lien or claim. There is no deterrent that would keep the violator from taking the exact same action again. The aggrieved person cannot even recover their attorney fees or costs.

IV. Senate Bill 537

A. **Remedies/Damages.** The legislation would add the following remedies for someone who was the subject of a fraudulent lien:

1. Damages up to \$10,000.00;
2. Costs and Attorney Fees;

B. **Restraining Order.** The district court could also enter an order restraining the from filing any fraudulent liens or claims. The court could also restrain the person from filing any future liens or claims of any kind without court approval. This order could be modified or terminated by the court that enters the order.

C. **Due Process.** The new statute would require normal civil service to begin the action.

VI. Amendments

Senate Bill 537 was amended to add the following language in the New Section as stated on the first page in the following regard:

A. Subsection (b) should be amended to read as follows:

In such an action, the burden shall be on the plaintiff *to prove by a preponderance of the evidence* that the defendant knew or should have known that the documents filed or recorded were in violation of K.S.A. 4301, and amendments thereto.

B. Subsection (g) should be amended to reflect that the first paragraph would be labeled as (g)(1) and the following subsection should be added as (g)(2):

A contempt action under this section may brought by any person who is aggrieved as a result of the violation of the court order entered pursuant to subsection (e) regardless of whether the person was a party to the original proceeding.

The language in the first amendment was added to give the district judge direction in regards to the burden of proof. The second amendment was necessary to allow enforcement of the order by persons other than parties to the original action. In general, a non-party may not bring a contempt action for violation of a restraining order pursuant to K.S.A. 60-906.

Respectfully Submitted,
Jason E. Maxwell



OFFICERS

Todd Ackerman
President
Marysville Police Dept.

March 10, 2010

Ron Olin
Vice President
Lawrence Police Dept.

**Testimony to the House Judiciary Committee
In Support of SB537 Concerning Liens**

Jim Daily
Sergeant at Arms
Newton Police Dept.

Chairman Kinzer and Committee Members,

Mike Keller
Treasurer
Andover Police Dept.

The problem of the filing of false liens is not a new one. It comes up every few years. About 12 or so years ago, there was a group in north central Kansas filing unjustified liens against law enforcement officers, chiefs of police, sheriffs, and other public officials. These people had no basis for the filing of their lien which was done purely to harass and cause hardships on the persons against whom the lien was filed. As a result there was legislative action to expedite the determination of validity of a lien to allow the person whom the lien was placed against to more quickly remove these fraudulent liens. That legislation helped and the activity stopped for a short period. Since then there have been isolated cases of this abuse.

Sean Wallace
Secretary/Parliamentarian
Ark City Police Dept.

James Hill
SACOP Representative
Salina Police Dept.

Bob Sage
Immediate Past President
Rose Hill Police Dept.

Doyle King
Executive Director
KACP

Today, we have further activity of this nature and again, a legislative remedy is being sought. This is well justified based on the fraudulent liens reportedly being filed targeting public officials. This bill proposes a civil remedy as well as the tools for a court to protect against repeat fraudulent claims. Importantly, this is done in a way that also allows the person filing a fraudulent lien to file legitimate liens in the future with court approval. So this bill balances the protection against fraudulent claims with the right of filing future legitimate liens.

**REGIONAL
REPRESENTATIVES**

Ralph Oliver
Region I
KU Public Safety Dept.

It is sad this legislation is necessary, but clearly it is. We urge the committee to recommend this bill favorably for passage.

Sam Budreau
Region II
Chanute Police Dept.

Ronnie Grice
Region III
KSU Public Safety Dept.

John Daily
Region IV
Bel Aire Police Dept.

Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
Phone: (785) 640-1102

James Braun
Region V
Hays Police Dept.

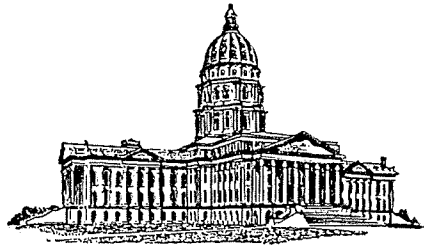
Vernon Ralston
Region VI
St. John Police Dept.

House Judiciary
Date 3-10-10
Attachment # 5

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 10, 2010
Subject: Senate Bill No. 305

Senate Bill 305 would amend K.S.A. 2009 Supp. 75-6102, the definitions used in the Kansas Tort Claims Act. SB 305 would change the definition of charitable health care providers to include mental health practitioners who are licensed by the Behavioral Sciences Regulatory Board. The bill also would replace the Department of Social and Rehabilitation Services with the Kansas Health Policy Authority as the agency that operates programs for medically indigent persons or individuals receiving medical assistance.

K.S.A. 75-6102 was amended by the Legislature in 2009. SB 305 is a carryover bill from the 2009 session and does not reflect the changes to 75-6102 made by the legislature last year. Therefore, if the committee intends to work SB 305, there would need to be a substitute bill brought containing the current version of 75-6102.

Testimony on:

SB 305

Presented to:

House Judiciary Committee

By:

Amanda Lowe, President/CEO
Health Partnership Clinic of Johnson County

March 10, 2010

For additional information contact:

KAMU
1129 S Kansas Ave., Ste. B
Topeka, KS 66612
Ph: (785) 233-8483
Fax: (785) 233-8403

Good afternoon Mr. Chairman and members of House Judiciary. I am **Amanda Lowe, President/CEO of the Health Partnership Clinic of Johnson County, speaking on behalf of the Kansas Association for the Medically Underserved (KAMU)**. I appreciate the opportunity to visit with you this morning about SB 305.

Established as a 501(c)(3) non-profit organization in 1989, KAMU was designated the Primary Care Association of Kansas by the Bureau of Primary Health Care in 1991 and maintains that designation today. As the PCA, KAMU represents 45 members, including 41 safety net clinics. The 41 Safety Net Clinics along with their 29 satellite sites provide Kansans a total of 73 access points. Membership includes public and private non-profit primary care clinics, Federally Qualified Health Centers (FQHC's), one Federally Qualified Health Center Look-Alike, local health departments and the Statewide Farmworker Health Program.

KAMU's purpose is to grow and strengthen safety net clinics so that all Kansans will have a primary health care "home". This home is a place where people receive comprehensive primary, dental and behavioral health care, which cover the spectrum of preventative, acute and chronic health care needs. In addition, this primary health care home is defined by sustained relationships. Clients of our clinics receive care from people who know them. Together, they create a partnership for healthy lifestyles.

KAMU's mission is "to support and strengthen its member organizations through advocacy education and communication." KAMU members share a mission of providing needed health care services for all people regardless of their ability to pay.

Today our 41 Safety Net Clinics in Kansas provide primary medical care to over 200,000 underserved Kansans. Those Kansan's who are uninsured, underinsured, unemployed, and need health care regardless of their ability to pay come to our clinics for their primary health care needs.

SB 305 amends the Kansas tort claims act relating to charitable health care providers. The specific amendment we are requesting your support for is on page 2 of the bill, lines 31 and 32. The definition of "Charitable health care provider" has been amended to include the addition of "a mental health practitioner licensed by the behavioral sciences regulatory board". This addition to the definition of who is covered in the Charitable Care Act will allow Mental Health professionals to volunteer their time in Safety Net Clinics. This amendment was adopted by the Senate Public Health and Welfare Committee last year.

We are asking that you support this bill as it passed the Senate. By supporting SB 305, it will support and strengthen the Safety Net Clinics' ability to provide services to our most vulnerable Kansans by using professional volunteers.

Thank you Mr. Chairman and I will be glad to stand for questions.

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Mark Parkinson, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

Written Testimony on Senate Bill 305

Presented to
House Judiciary Committee

By
Dr. Jason Eberhart-Phillips
State Health Officer and Director Division of Health,
Kansas Department of Health and Environment

March 10, 2010

Chairman Kinzer and members of the committee, I am Dr. Jason Eberhart-Phillips, State Health Officer and Director of Health for the Kansas Department of Health and Environment. Thank you for the opportunity to present written testimony on Senate Bill 305.

This bill proposes to include “a mental health practitioner licensed by the behavioral sciences regulatory board” in the definition of “charitable health care provider” in KSA 75-6102. Mental health practitioners licensed by the Behavioral Sciences Regulatory Board include social workers, professional counselors, masters-level psychologists, and marriage and family therapists. The addition of this group in the definition would allow them to enter into an agreement with the Secretary of the Kansas Department of Health and Environment (KDHE) to receive coverage under the Kansas Tort Claims Act when gratuitously providing care to “medically indigent” individuals.

The term, “medically indigent,” includes uninsured individuals in a family unit earning under 200 percent of the federal poverty level and individuals enrolled in Medicaid or HealthWave. At present, providers eligible to enter into agreements with the Secretary of KDHE include all professions licensed by the Kansas Board of Healing Arts, nurses, dentists, dental hygienists, mental health technicians, optometrists, and pharmacists.

The addition of licensed mental health practitioners to the definition of those eligible to enter into agreements with the Secretary of KDHE could have potential benefits for medically indigent Kansans through facilitating the provision of mental health services to these individuals. The addition of these mental health practitioners to the list of providers eligible for agreements would not require any additional staffing or financial costs for KDHE. Thank you for the opportunity to provide these written comments.

Professions currently eligible for Agreements with the Secretary of the Kansas Department of Health and Environment to provide charitable health care services to medically indigent individuals—named in KSA 75-6102, KSA 65-4921, and KSA 40-3401

Kansas Board of Healing Arts

- Medical Doctors
- Osteopathic Doctors
- Chiropractic Doctors
- Podiatric Doctors
- Physicians' Assistants
- Physical Therapists
- Physical Therapist Assistants
- Occupational Therapists
- Occupational Therapy Assistants
- Respiratory Therapists

Kansas State Board of Nursing

- Professional Nurses (RN, ARNP, CRNA)
- Practical Nurses (LPN)
- Mental Health Technicians

Kansas Board of Examiners in Optometry

- Optometrists

Kansas State Board of Pharmacy

- Pharmacists

Kansas Dental Board

- Dentists
- Dental Hygienists

“Health Care Providers” named in KSA 40-3401

- Medical care facilities, HMOs, professional corporations, limited liability companies, provider partnerships, not-for-profit corporations, non-profit corporations, psychiatric hospitals, and mental health centers/clinics

Professions that the original amendment to SB 305 would make eligible for Agreements with the Secretary of the Kansas Department of Health and Environment to provide charitable health care services to medically indigent individuals

Kansas Behavioral Sciences Regulatory Board

- Psychologists
- Masters Level Psychologists
- Licensed Clinical Psychotherapists
- Licensed Associate Social Workers
- Licensed Baccalaureate Social Workers
- Licensed Master Social Workers
- Licensed Clinical Social Workers
- Professional Counselors
- Licensed Clinical Professional Counselors
- Marriage and Family Therapists
- Licensed Clinical Marriage and Family Therapists

Individuals that the amendment to SB 305 made during the Senate Public Health and Welfare Committee Meeting would make Charitable Health Care Providers

Officers, directors, employees, agents of domestic not-for-profit corporations accredited by the joint commission, inc. and licensed by the department to health and environment to provide child placing, case management, psychiatric residential treatment, and psychiatric hospital services reimbursed through contracts with the state of Kansas.



Your rights. Our mission.

To: Representative Lance Kinzer, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton JD
Director of Public Affairs

Date: March 10, 2010

Re: SB 305 Tort Claims Act As Further Amended by the Senate Judiciary Committee
(PROPONENT)

The Kansas Association for Justice is pleased for the opportunity to appear before the House Judiciary Committee regarding SB 305. The Kansas Association for Justice respectfully requests that the House Judiciary Committee support SB 305 without additional amendments.

The Kansas Association for Justice has been privileged to work with the Kansas Association for the Medically Underserved for the past three years on SB 305. We appreciated KAMU's invitation to assist in drafting legislation that would not expand the scope of the Tort Claims Act but would encourage the treatment of mental illness in Kansas' safety net, primary care clinics, by mental health practitioners.

SB 305 amends the Kansas Tort Claims Act. The Tort Claims Act is a unique and limited remedy for those that have been hurt by the negligent or wrongful act or omission of a state employee acting on behalf of the State. The Tort Claims Act is a limited remedy because damages are capped at \$500,000, meaning that is the maximum liability of the State relating to any single occurrence or accident, for both economic and non-economic damages. Also, the State has no liability under the Act for interest prior to judgment or for punitive damages. The Act also contains a number of exceptions, which are specific circumstances when the State bears no liability at all.

When SB 305 was heard in 2009 by the Senate Public Health and Welfare Committee, amendments were added by the committee that expanded and changed the focus of SB 305 entirely. The Kansas Association for Justice opposed the 2009 amendments. The 2009 amendments were subsequently removed in 2010 by the Senate Judiciary Committee, returning the bill to its original, narrowly tailored scope.

The Kansas Association for Justice understands SB 305 to be very limited: it impacts only Kansas' safety net, primary care clinics and mental health practitioners providing care in such clinics. The Kansas Association for Justice believes the policy of SB 305 is consistent with other provisions of the Act relating to the provision of charitable health care. Therefore, the Kansas Association for Justice believes SB 305 does not establish a new policy or expansion of immunity under the Act, or that significant numbers of practitioners will be impacted.

The Kansas Association for Justice respectfully requests that the House Judiciary Committee pass SB 305 out favorably without additional amendments.

House Judiciary

Date 3-10-10

Attachment # 9