

Approved: 3/31/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 11, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Joe Patton- excused
Representative Kevin Yoder- excused

Committee staff present:

Melissa Doeblin, 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
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Jim Pottorff, Chief Counsel-University of Kansas
Don Gronniger, Legal Counsel for KVC Behavioral Health Care
Melissa Ness, St Francis Community Services
Keith Rickard, Executive Director of the Guidance Center Leavenworth, Kansas
Callie Hartle, Kansas Association for Justice
Phil Perry, Homebuilders Association of Greater Kansas City
Ed Klumpp, Kansas Association of Chiefs of Police and Kansas Peace Officers Association
John Federico, Kansas Cable Telecommunications
Sandie Bayless, Westar
Patrick Broxterman, Assistant Attorney General

Others attending:

See attached list.

The hearing on **SB 8 - Kansas tort claims act; medical students enrolled at University of Kansas Medical Center** was opened.

Proponents:

Jim Pottorff, Chief Counsel-University of Kansas, appeared before the committee as a proponent and asked them to support this bill which would amend KSA 75-6102 to include medical students enrolled at the University of Kansas Medical Center who are in clinical training at the University of Kansas Medical Center or other health care institutions in the definition of employee under the Kansas Tort Claims Act.

(Attachment 1)

Don Gronniger, Legal Counsel for KVC Behavioral Health Care, spoke in favor of the bill but also asked for an amendment to include foster homes and many organizations that provide various services for populations previously served by the State. (Attachment 2)

Melissa Ness, St Francis Community Services, stated they provide services for troubled youth and their families, with a range of services from family preservation, reintegration / foster care and foster care homes. While in support of the bill, they also would like it amended to extend tort claims coverage to child welfare providers who are under contract with the state to provide services the state would otherwise provide. (Attachment 3)

Keith Rickard, Executive Director of the Guidance Center at Leavenworth, Kansas, spoke in support of the bill but also requested the bill be modified to add community mental health centers. He stated it would relieve them from a significant financial burden and at the same time make them more competitive for the professionals they must hire to provide psychotherapy and other mental health service. (Attachment 4)

Callie Hartle, Kansas Association for Justice, appeared to urge the Committee to reject the proposed

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amendments to add immunity under the tort claims act to contractors providing child welfare and foster care services. She pointed out several statements for the Committee to consider:

- 1) Kansas privatized foster care services in 1997 for many reasons, not the least of which was litigation.
- 2) Kansas pays litigation costs of defending liability claims against entities that are protected by the tort claims act.
- 3) the proposed amendments set a dangerous precedent and asks the question if other contractors also will want tort claims immunity.
- 4) The tort claims act is intended to protect the state-not the private sector.

Eliminating liability does not improve the performance of private contractors, it instead insulates private contractors from accountability. ([Attachment 5](#))

There were no opponents.

The hearing on **SB 8** was closed.

The hearing on **SB 237** - Scrap metal, regulations concerning selling and buying was opened.

Phil Perry, Staff VP of Governmental Affairs for Homebuilders Association of Greater Kansas City, spoke as a proponent and said this bill accomplishes three things, 1) expands the scope of materials covered under the law, 2) requires additional record keeping by the buyer, and, 3) increases penalties for violation of the law. He also stated this would help bring Kansas law in line with surrounding states, specifically Missouri. This bill is modeled after an ordinance the Unified Government of Wyandotte County and Kansas City, Kansas recently adopted. Legitimate scrap dealers participated and want to help keep the unscrupulous dealers out of the business to protect their reputation. ([Attachment 6](#))

Ed Klumpp, on behalf of the Kansas Association of Chiefs of Police and Kansas Peace Officers Association spoke in favor of the bill. Utility companies, businesses, homebuilders, property owners, school districts and governmental entities of our state lose hundreds of thousands of dollars to these thefts each year. He showed the Committee pictures of missing manhole covers and the danger this creates. He also said thieves are finding new ways to circumvent the law and are stealing utility poles, roadway signs/posts, guard rails and even the seats from stadium bleachers. ([Attachment 7](#))

Mr. Klumpp also offered a balloon to clearly identify a "junk vehicle" as a vehicle "not requiring a title as provided in chapter 8 of the Kansas Statutes Annotated, and amendments thereto". He further explained there is a separate bill, **HB 2258**, that deals strictly with automobiles that have to be titled. ([Attachment 8](#))

John Federico, President and Legislative Counsel for the Kansas Cable Telecommunications appeared before the Committee in strong support of the bill. He stated the theft of copper and other materials creates disruption of service and costly repair and replacement parts and materials. What was once a nuisance is now a severe economic service and safety issue. ([Attachment 9](#))

Written Only Proponents:

Eric Stafford, Director of Governmental Affairs for the Associated General Contractors of Kansas provided written testimony in support of the bill. ([Attachment 10](#))

Sandie Bayless, representing Westar Energy, provided written testimony in support of the bill because it provides additional deterrent to the theft of metals. ([Attachment 11](#))

There were no opponents.

The hearing on **SB 237** was closed.

The hearing on **SB 159 - Enforcement of tobacco settlement** was opened.

Patrick Broxterman, Senior Assistant Attorney General in the Tobacco Enforcement Unit, appeared in strong

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support of the bill. He stated this bill is complementary to the tobacco Master Settlement Agreement (MSA) escrow statutes. The MSA is an agreement between fifty-two states and territories and multiple Participating Tobacco Manufactures. To receive this money, all Settling States, including Kansas, must “diligently enforce” certain laws and that currently the PM’s are challenging every Settling State on the diligent enforcement of its MSA escrow laws. This bill amends K.S.A. 50-6a04 and proposes eighteen new sections. It provides enhanced enforcement of the MSA Escrow Statutes and thus helps ensure continued receipt of MSA payouts. The majority of other MSA Settling States have already adopted most of this legislation. (Attachment 12)

Mr. Broxterman also requested some clarification corrections (identified as Balloon 1). (Attachment 13)

There were no opponents.

The hearing on **SB 159** was closed.

SB 70 - Trusts; unitrust conversion; uniform principal and income act.

Representative Whitham made the motion to report SB 70 favorably for passage. Representative Pauls seconded the motion.

Representative King made the substitute motion to amend the bill, (identified as Balloon 2), on page 4, after line 23, by inserting the following: “New Sec. 2, (a) the income standard established in section 1, and amendments thereto does not create a presumption or implication that a trustee who distributes less than 3% or more than 5% is breaching a trustee’s fiduciary duty to a beneficiary. (B) This section shall be part of and supplemental to the uniform principal and income act (1997), and by renumbering the remaining section accordingly. (Attachment 14)

The motion was seconded by Representative Jack. Motion carried.

Representative Whitham made the motion to report SB 70 favorably for passage as amended. Representative Jack seconded the motion. Motion carried.

The next meeting is scheduled for March 12, 2009.

The meeting was adjourned at 5:10 p.m.