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To: Senator Tim Owens, Chairman
Members of the Senate Judiciary Committee

From: Callie Jill Denton
Director of Public Policy

Date: March 12, 2012

RE: HB 2562 Concerning public health; relating to emergency care or assistance at the scene of an emergency or accident (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ supports the policy enacted within the current “good Samaritan” statute, K.S.A. 2011 Supp. 65-2891. KsAJ opposes HB 2562 because it goes beyond the sound policy rationale of the current law. It is an overly broad grant of immunity. And as drafted, HB 2562 could produce unintended consequences. If the Judiciary Committee advances HB 2562, we suggest it be amended.

KsAJ is unaware of any litigation in Kansas against a “good Samaritan.”

Many other states, like Kansas, have good Samaritan laws. KsAJ has been unable to confirm how many other states have enacted a “gross negligence” standard for citizens that lack minimal medical training, without also enacting additional conditions or limitations on the grant of immunity.

HB 2562 creates a new good Samaritan statute. HB 2592 applies to laypersons with little or no medical training that render aid at the scene of an accident. It shields laypersons from liability for any further injuries or damage they cause as a result of giving emergency care or assistance at the scene of an accident, except for damages that are caused by gross negligence or by willful or wanton acts or omissions. Laypersons would be permitted to give emergency care or assistance to a minor without first obtaining the consent of the minor’s parent or guardian.

HB 2562 as drafted is an expansion of immunity that goes well beyond the policy rationale enacted in the current good Samaritan law. If the Senate Committee advances HB 2562, KsAJ urges the Committee to amend the bill in the following manner:

1. Replace the “gross negligence” standard with the “ordinary care” standard.

The purpose of the current good Samaritan law is to encourage volunteer citizens with medical training to render care at the scene of an accident until medical transport and on-duty medical professionals arrive. The current law is limited to health care providers, who are defined as individuals with at least basic first aid skills: “...any person who holds a valid certificate for the successful completion of a course in first aid offered or approved by the American red cross, by the American heart association...”, K.S.A. 2011 Supp. 65-2891(e).

The current good Samaritan law provides immunity to persons with at least minimal medical training, except for damages that are caused by gross negligence or by willful or wanton acts or omissions. Under HB 2562, laypersons are provided the same immunity but they are not required to have any special training at all.

There is no public policy justification for establishing extraordinary immunity for untrained citizens. Untrained citizens could cause greater harm to an already injured person. Individuals that are incompetent or take risks that a reasonable person would not take should not be protected in the same manner as a medically trained “good Samaritan.”

The appropriate standard of care for volunteer good Samaritans without medical training (anyone that does not fit the definition of “health care provider” as defined in K.S.A. 2011 Supp. 65-2891(e)) is “ordinary care.” Untrained good Samaritans should be held accountable for exercising that degree of care which would be exercised by a reasonably prudent person, given all similar circumstances.

2. Redraft HB 2562 to eliminate the proposed free-standing “layperson” good Samaritan statute. Instead, amend the current good Samaritan law, K.S.A. 2011 Supp. 65-2891.

HB 2562 creates a separate good Samaritan statute for anyone that is not included within the definition of “health care provider” in K.S.A. 2011 Supp. 65-2891. The problem with creating a separate statute is two-fold: first, separate statutes will create confusion.

K.S.A. 2011 Supp. 65-2891 and HB 2562 are very similar, with the exception that one applies to certain health care providers and one applies to individuals that are not health care providers as defined in K.S.A. 2011 Supp. 65-2891. And the definition of “health care provider” in K.S.A. 2011 Supp. 65-2891 is different than definitions of “health care provider” found elsewhere in the statutory code. Courts will be forced to consider and harmonize these variables, in the event there is ever litigation.

A second problem is that by implication, the interpretation of “emergency care or assistance” is also significantly expanded under HB 2562. “Emergency care or assistance” can be construed as not limited to rendering medical care, which is contemplated under K.S.A. 2011 Supp. 65-

2891. The emergency care or assistance someone that is not a “health care provider” may provide at the scene of an accident could be directing traffic. Or, for example: Alice is having a medical emergency, and Bob drives Alice to the hospital. Bob has an auto accident on the way to the hospital, further injuring Alice. Bob’s insurer defends Bob as a “good Samaritan” rendering emergency care or assistance under HB 2562.

As HB 2562 is currently drafted, “emergency care or assistance” could be interpreted so broadly that it goes well beyond the policy purpose of the current good Samaritan law. If the Judiciary Committee advances HB 2562, the bill should be amended so “emergency care or assistance” may be clearly interpreted as competent medical care a reasonable person would provide under the same or similar circumstances during a medical emergency.

KsAJ is unaware of any litigation in Kansas against a “good Samaritan.” KsAJ respectfully requests that the House Judiciary Committee take no action on HB 2562 in its current form. In the alternative, KsAJ urges the Committee to amend HB 2562 so that it remains consistent with the public policy purpose of the current good Samaritan statute at K.S.A. 2011 Supp. 65-2891.

Proposed Substitute Bill

HB 2562

2.10.12

Amending K.S.A. 2011 Supp. 65-2891 by adding a new subsection:

Any person who is not otherwise covered by this section who gratuitously and in good faith renders emergency care at the scene of an emergency or accident shall not be liable for any civil damages as a result of any act or failure to act in rendering such emergency care where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

65-2891. Emergency care by health care providers; liability; standards of care applicable. (a)

Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) Any person who is not otherwise covered by this section who gratuitously and in good faith renders emergency care at the scene of an emergency or accident shall not be liable for any civil damages as a result of any act or failure to act in rendering such emergency care where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

(g)As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist, licensed physical therapist, and any physician assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physician assistants of the American board of medical examiners, any licensed athletic trainer, any licensed occupational therapist, any licensed respiratory therapist, any person who holds a valid attendant's certificate under K.S.A. 65-6129, and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered or approved by the American red cross, by the American heart association, by the mining enforcement and safety administration of the bureau of mines of the department of interior, by the national safety council or by any instructor-coordinator, as defined in K.S.A. 65-6112, and amendments thereto, and any person engaged in a postgraduate training program approved by the state board of healing arts.

65-2891. Emergency care by health care providers; liability; standards of care applicable. (a) Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein contained notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist, licensed physical therapist, and any physician assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physician assistants of the American board of medical examiners, any licensed athletic trainer, any licensed occupational therapist, any licensed respiratory therapist, any person who holds a valid attendant's certificate under K.S.A. 65-6129, and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered or approved by the American red cross, by the American heart association, by the mining enforcement and safety administration of the bureau of mines of the department of interior, by the national safety council or by any instructor-coordinator, as defined in K.S.A. 65-6112, and amendments thereto, and any person engaged in a postgraduate training program approved by the state board of healing arts.

History: L. 1965, ch. 385, § 1; L. 1969, ch. 300, § 1; L. 1971, ch. 214, § 1; L. 1973, ch. 252, § 1; L. 1975, ch. 326, § 1; L. 1976, ch. 277, § 1; L. 1977, ch. 220, § 1; L. 1986, ch. 231, § 32; L. 1988, ch. 252, § 1; L. 1988, ch. 246, § 18; L. 1988, ch. 253, § 1; L. 1993, ch. 146, § 1; L. 2000, ch. 93, § 1; L. 2002, ch. 203, § 17; L. 2003, ch. 128, § 24; L. 2004, ch. 117, § 5; L. 2004, ch. 180, § 9; July 1.

Revisor's Note:

Section was also amended by L. 2004, ch. 24, § 11, but that version was repealed by L. 2004, ch. 180, § 18.