

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 3:30 pm on Monday, February 16, 2015, 112-N of the Capitol.

All members were present except:

- Representative Janice Pauls – Excused
- Representative John Rubin – Excused
- Representative Brett Hildabrand, appointed substitute member to the committee
- Representative J. R. Claeys, appointed substitute member to the committee

Committee staff present:

- Lauren Douglass, Legislative Research Department
- Robert Allison-Gallimore, Legislative Research Department
- Jason Thompson, Office of Revisor of Statutes
- Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

- Natalie Chalmers, Assistant Solicitor General
- Jeff Kruske, Office of Securities Commissioner
- Ryan Kriegshauser, Office of Securities Commissioner

Others in attendance:

[See Attached List](#)

Chairperson Barker welcomed Representative J.R. Claeys and Representative Brett Hildabrand to the committee. Representative Claeys is sitting in for Representative Janice Pauls and Representative Hildabrand for Representative John Rubin.

Representative James Todd moved for the adoption of the January 26, 2015 minutes, seconded by Representative Kyle Hoffman. The minutes were approved.

Hearing on: HB2105 — Creating the Kansas comprehensive money laundering act.

Chairperson Barker opened the hearing on **HB2105**. Jason Thompson, Office of Revisor of Statutes, gave an overview of the bill.

Chairperson Barker recognized Natalie Chalmers, Assistant Solicitor General, as a proponent of **HB2105 (Attachment 1)**. She has included an amendment as an attachment to her testimony. This amendment has been approved by the Office of the Securities Commissioner and is to assure that there is no overlap between this general money laundering bill and the RICO money laundering terrorism and money laundering drug crimes. Subsection (b)(10) clarifies that the term "felony" does not include money laundering terrorism or money laundering drug crime. They are making this a lesser included offense of RICO so that there is no question about overlap with the specific offense doctrine and the identical offense doctrine.

Questions were asked by Representatives Jim Ward, Steven Becker, and John Carmichael.

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Jeff Kruske, General Counsel for the Office of the Securities Commissioner, testified as a proponent of **HB2105** ([Attachment 2](#)). Questions were asked by Representative John Carmichael.

Chairperson Barker noted that there were no further conferees and closed the hearing on **HB2105**.

Hearing on: HB2106 — Amending criminal penalties under the Kansas uniform securities act.

Chairperson Barker opened the hearing on **HB2106**. Jason Thompson, Office of Revisor of Statutes, gave an overview of the bill. Chairperson Barker had questions concerning the penalties.

Chairperson Barker recognized Ryan Kriegshauser, Director of Policy at the Office of Securities Commissioner, as a proponent of **HB2106** ([Attachment 3](#)). Representative James Todd asked questions of the proponent. Jeff Kruske, General Counsel of the Office of the Securities Commissioner, responded.

Chairperson Barker closed the hearing on **HB2106** after seeing there were no further proponents and no opponents or neutrals to the bill.

Possible action on bills previously heard

HCR5004 - A proposition to amend Article 3; relating to the judiciary; providing for direct partisan election of supreme court justices and court of appeals judges; abolishing the supreme court nominating commission.

Chairperson Barker told the committee to open their folders on **HCR5004**. An overview was given by Jason Thompson, Office of Revisor of Statutes.

Representative Mark Kahrs moved to report HCR5004 favorably for passage, seconded by Representative John Whitmer.

Representative Mark Kahrs stated that he likes **HCR5004**. It provides for direct partisan elections of Supreme Court Justices and Court of Appeals judges. It abolishes the Supreme Court Nominating Commission. It will unify the selection process of appellate judges. From the time of statehood in 1863 until 1958, judges and Supreme Court justices were elected. He is unaware of any competent evidence of political corruption as it relates to the election of judges or showing that elected judges are any less competent than those chosen through any other selection process. He believes that our current merit system fails the democratic test that every citizen stands equal before the law. The current merit system allows a select few lawyers to hold a majority on the Nominating Commission and to make that decision for all Kansas citizens. His opinion is that the Kansas Bar Association's Board of Governors has not acted in good faith in working with others to try to fix the Nominating Commission. Twenty-two states elect their supreme court justices. Kansas is the only state where the majority of members of the Nominating Commission are from the bar association. He believes the Nominating Commission is

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broken and undemocratic and urges the committee to pass **HCR5004**.

Representative John Whitmer stated what concerns him about the current selection process is that it all boils down to is that 3,000 to 4,000 lawyers elect the majority of the Commission which consists of five people, and those five select the three nominees that the Governor has to choose from. None of the conferees who were asked why the people should not be allowed to vote gave a good reason for not allowing it. He believes the people should be allowed to vote.

Representative Travis Couture-Lovelady supports **HCR5004**, as well as a number of other proposals that make the selection process more democratic.

Representative Steven Becker stated it became apparent to him during the hearings on this issue that the difference between the legislative process and the judicial process and the role of political ideology is that those who are on the Judiciary Committee are in the Legislature because of their political ideology. That's what drives their decisions. In the judiciary system, of which he has some experience, a judge or a justice is required and must put his political ideology aside when making a decision. Decisions are based upon the evidence and the law as the Court finds it, and that's it. There is no political ideology entering into the decision-making process. He thinks the proposed bill will inject political ideology into the system since it will involve political campaigning. He strongly opposes **HCR5004**.

Representative Jim Ward stated that Kansas has good judges that give quality opinions that have been recognized by the U.S. Supreme Court and by the vast majority of the bar association as providing quality justice to the citizens of Kansas. The merit selection process works. The Kansas Bar Association represents its members, and the vast majority of lawyers believe the merit selection of judges is the best way to accomplish justice. The judicial selection reform issue is not driven by citizens unhappy with their judiciary; it is driven by politicians who want to control decisions. That is wrong, and we should turn down **HCR5004**.

Representative John Carmichael stated that there is nothing wrong with our system of justice. There is no outcry to throw out the judges of the court. The only complaint is that some people don't like the way the court ruled in two or three cases. Judging is a difficult job because judges do not answer to the electorate or the popular will. Instead judges are required to follow the Constitution and the law. It is the obligation of judges to disregard public opinion and to not bend and sway to the electorate. He believes having partisan elections is the least desirable of all the options involved. Every state around Kansas has adopted the merit system. The system is not broke so it doesn't need to be fixed. He also stated that if something does need to be done, that it should wait until next year or the year after so that it is not being done in a politically charged environment where people are upset about certain court decisions.

Representative Charles Macheers stated that partisan elections broaden the diversity of the people who

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are going to try for a judgeship. Some of the people he talked to who are involved with the process felt that with our current system, the pool of people to choose from was limited because they felt it was rigged. They did not feel that they would get a fair hearing. Politicization is actually accountability to the people. He believes it is very important to have some accountability to the people. Also, out of all the states that have nominating commissions, Kansas is the only one with the Missouri plan where the bar association has the majority of members. There are 15 states that have non-partisan elections and seven states that have partisan elections. He asked the Chairperson for a call of the question.

*Chairperson Barker called for a vote on the question. He determined that **HCR5004** passed favorably.*

*Representative John Carmichael called for division. Chairperson Barker asked that those in favor of **HCR5004** raise their right hands. Thirteen voted in favor. He then asked that those opposed to **HCR5004** raise their right hands. Nine voted against the bill.*

Some of the committee members asked that their votes be recorded. The following voted in favor of **HCR5004**: Representatives Becky Hutchins, Mark Kahrs, John Whitmer, Leslie Osterman, and Randy Powell.

The following committee members voted in opposition to **HCR5004**: Representatives Pam Curtis, Dennis Highberger, Steven Becker, John Carmichael, Jim Ward, and Annie Kuether.

HCR5005 - A proposition to amend Article 3 relating to the judiciary; allowing the governor to appoint supreme court justices and court of appeals judges, subject to senate confirmation; abolishing the supreme court nominating commission.

Chairperson Barker asked the committee to open their folders on **HCR5005**. Jason Thompson, Office of Revisor of Statutes, gave an overview of the resolution. He noted that there is a balloon amendment which clarifies the current system ([Attachment 4](#)).

*Representative Travis Couture-Lovelady moved to report **HCR5005** favorably for passage, seconded by Representative Craig McPherson.*

*Chairperson Barker moves that the amendment to **HCR5005** explained by the Revisor be passed, seconded by Representative John Whitmer. The amendment passed favorably.*

Chairperson Barker asked if there was further discussion. Representative Blaine Finch voiced his opposition to **HCR5005**. He feels it is more secretive and less open than the current system. It is also less democratic. He urges the committee to consider other alternatives to modify the current system.

Representative John Carmichael agrees with Representative Finch regarding **HCR5005**. There is no basis to replace the current system of judicial selection. Our appellate courts are among the best in the

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nation.

Representative Dennis Highberger noted that several of his colleagues are strong believers in federalism. One of the advantages of federalism is that states are free to craft their own solutions to the problems they face. That's what Kansas did, and it has worked very well for the last 50 years. He finds it more than a little ironic that we're being asked to throw out the Kansas model and, instead, imitate the federal government.

Representative John Whitmer stated that nothing is being thrown out; they are just going to let the citizens of Kansas decide. If they were good enough to elect the legislators, we should defer to them and let them make the decision.

Representative Travis Couture-Lovelady stated that **HCR5005** is his preferred method of judicial selection. He moved to report **HCR5005**, as amended, favorably for passage, seconded by Representative John Whitmer. A vote was taken, and Chairperson Barker stated he thought **HCR5005** had passed. A division vote was called for, and Chairperson Barker asked for members to vote by raising their right hands. Thirteen voted in favor of **HCR5005** and nine opposed. **HCR5005**, as amended, passed favorably.

The following representatives asked to have their vote in favor of **HCR5005** recorded: Representatives John Whitmer, Becky Hutchins, J.R. Claeys, Travis Couture-Lovelady, Brett Hildabrand, Charles Macheers, Mark Kahrs, Craig McPherson, Randy Powell, Leslie Osterman, and Kyle Hoffman.

The following representatives asked to have their vote in opposition to **HCR5005** recorded: Representatives Pam Curtis, Dennis Highberger, Annie Kuether, Jim Ward, John Carmichael, and Steven Becker.

The meeting was adjourned at 4:40 p.m. The next scheduled meeting will be on February 17, 2015.