

Approved: 4/1/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 17, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Bob Brookens- 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:

None

Others attending:

See attached list.

The hearing on **SB 215 - Non-gubernatorial appointments subject to confirmation; procedure** was opened.

Theresa Kiernan, Office of the Revisor of Statutes gave a review of the bill. This bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Derek Schmidt who serves as the Chairperson of the Senate Confirmation Oversight Committee. She explained prior to the creation of the Biosciences Authority in 2004, nearly all of the positions which were subject to Senate confirmation were appointed by the governor. Since 2004, there have been many entities created whose members are subject to confirmation and who are appointed by legislators. In 2008, **SB 21** was enacted to fill the gaps that existed in the confirmation process of non-gubernatorial appointments. During the 2008 interim, it was discovered that a couple of the issues needed to be addressed further. Those issues are addressed in this bill as follows:

- The KBI would be required to conduct a background investigation on all appointees to positions which are subject to confirmation by the Senate. Current law only requires the KBI to do a background check at the direction of the Governor.
- The bill would allow information received from the KBI to be disclosed to the Governor's staff if the appointing authority is the Governor.
- Under current law a person may not be appointed to a position which is subject to confirmation unless the person is current in the payment of taxes and consents to the release of tax information. This bill would amend K.S.A. 75-4315d to provide that an appointee would consent to the release of a tax certification by the Kansas Department of Revenue that the person is, or is not, current in the payment of taxes. Currently, the actual tax information is required to be released.
- This bill would clarify that only the information received from KDOR and the KBI, except conviction data, would be confidential. The confidential information may be released only to the appointee, the appointing authority, the chairperson and vice-chairperson of the Confirmation Oversight Committee.
- this bill also makes a correction in the reference to the Ranking Minority Member of the Confirmation Oversight Committee. The Minority Leader of the Senate serves as the Vice Chairperson of the Committee.

She also attached a suggested technical amendment to the bill. (Attachment 1)

No conferees testified.

The hearing on **SB 215** was closed.

SB 8 - Kansas tort claims act; medical students enrolled at University of Kansas Medical Center.

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Senior Assistant Revisor, Jill Wolters gave a briefing on the bill. (Attachment 2)

Representative Ward made the motion to report SB 8 favorably for passage.
Representative King seconded the motion. Motion carried.

Committee members expressed their concerns of adding others such as foster care, etc. to this bill and recommended separate legislation be pursued for next session.

SB 45 - Kansas power of attorney act amendments. SB 44 - Kansas false claims act.

Representative Crow made the motion to report SB 45 favorably for passage.
Representative Keuther seconded the motion.

Representative Crow made a substitute motion to amend the bill (Balloon 1, page 1) to add to Page 1, Section 1 (3), Line 35 “expressed in the presence of a notary public”. (Attachment 3)
Representative King seconded the motion. Motion carried.

Representative Watkins made the motion to add (Balloon 1, page 3) “nor shall the attorney in fact place the attorney in fact’s name as an owner on any of the accounts”, Page 3, Line 2. (see Attachment 3)
Representative Whitham seconded the motion.
With permission of the second, Representative Watkins withdrew his motion.

Representative Watkins made the motion to report SB 45 favorably for passage as amended.
Representative Kuether seconded the motion. Motion carried.

SB 44 - Kansas false claims act.

Representative Goyle made the motion to report SB 44 favorably for passage.
Representative Crow seconded the motion.

Representative Whitham made the substitute motion to amend the bill with technical amendments to page 3, Line 14 (d) to strike “made under the state revenue and taxation code”and add “related to state taxation law made pursuant to chapter 79 of the Kansas Statutes Annotated, and amendments thereto”, (Balloon text44ball). (Attachment 4)
Representative Patton seconded the motion.

Chairman Kinzer made the motion to amend the bill to add to Page 3, Section 3, Line 13 “An innocent mistake shall be a defense to an action under this act” (Balloon 3). (Attachment 5)
Representative Ward seconded the motion. Motion carried.

In discussion, Chairman Kinzer advised that Florida added this language to their false claims act. He also provided the committee with another option of striking Page 3, Section 3, Line 12 (c) “In a civil action bought pursuant to subsection (a), proof of specific intent to defraud is not required,” (Balloon 4) (Attachment 6). The committee supported the Chairman’s motion over this option.

Representative Patton made the motion to amend the bill on Page 3, Section 5(a), Line 32 to strike the word “committed” and add the word “discovered”, (Balloon 2). (Attachment 7).
Representative King seconded the motion.
With permission of the second , Representative Patton changed the word from “discovered” to “discovered or reasonably should have been discovered”.
A show of hands showed nine yes votes. Motion carried.

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Chairman Kinzer made the motion to amend the bill on Page 3, Section 5(c), Line 38 to strike “a preponderance of the” and add “clear and convincing”, (Balloon 5). (Attachment 8).

Representative Ward seconded the motion.

Representative Kleeb moved the motion to amend the bill to “Clear and convincing”

Representative Watkins seconded the motion

Motion fails.

Representative Kuether made the motion to report **SB 44** favorably for passage as amended.

Representative Whitham seconded the motion. Motion carried.

SB 87 - Agencies; disclosure of certain records; administrative procedure; judicial review.

Melissa Doeblin, Staff Revisor, gave an overview of the bill.

Representative Whitham made the motion to report **SB 87** favorably for passage.

Representative Crow seconded the motion.

Representative Pauls made the substitute motion to amend the bill, Page 7, (47) Line 25 to add the word “abuse”, as shown in Balloon 1. (Attachment 9)

Representative Colloton seconded the motion.

Motion carried.k

Representative Whitham made the motion to amend the bill, Page 10, Section 8, Line 24, to strike the word “the”, and add “For all agencies, except for the state court of tax appeals, the”, as shown in Balloon 3. (Attachment 10)

Representative King seconded the motion. Motion carried.

Representative Patton made the motion to amend the bill, Page 10, Section 6 (b), Line 9, to add “The burden of proof provided in this subsection shall not apply to standard of care cases conducted by the board of healing arts”.

Representative Jack seconded the motion. Motion carried.

Representative Pauls made the motion to strike Section 20, (3) (A) thru (E), Lines 18 through 29, page 19.

Representative Crow seconded the motion. Motion carried.

Representative Colloton made the motion to add “and to determine the credibility of witnesses” on Section 14, (d), line 6 on page 16.

Representative Talia seconded the motion. Motion carried.

Representative Pauls made the motion to report **SB 87** favorably for passage as amended.

Representative Colloton seconded the motion.

Motion carried.

The next meeting is scheduled for March 18, 2009.

The meeting was adjourned at 5:20 p.m.