

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 9, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Jason Watkins- 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:

Bill Colby, Kansas Judicial Council-End of Life Decisions Advisory Committee  
Honorable Judge Tony Powell, Kansas Judicial Council-End of Life Decisions Advisory Committee  
Jerry Slaughter, Kansas Medical Society  
Sandy Kuhlman, Kansas Hospice Palliative Organization  
Mae Lovell, AARP Kansas  
Steve Sutton, Board of Emergency Medical Services  
Deborah Stern, Kansas Hospital Association  
Pam Scott, Kansas Funeral Directors Association  
Senator Terry Bruce  
Representative Raj Goyle  
Kris Ailslieger, Kansas Attorney General's Office  
Ann Swegle, Kansas County and District Attorney Association  
Phillip Cosby, National Coalition for the Protection of Children and Families  
Scott Bergthold, Attorney from Tennessee, via phone,  
Charles O'Hara, Attorney, Wichita, Kansas  
Ron Hein, Motion Picture Association of America  
Philip Bradley, Kansas Licensed Beverage Association  
Representative Joe Patton  
Douglas G. Zillinger, Property Owner, Phillips and Graham Counties,  
Jeffrey Dunaway, Homeowner  
Wes Ashton, Black Hills Energy and on behalf of various utilities  
Dan Jacobson, AT&T Kansas  
Mike Murry, EMBARQ

Others attending:

See attached list.

The hearing on **HB 2109 - Kansas uniform health care decisions act** was opened.

Proponents:

Bill Colby, a member of the Kansas Judicial Council-End of Life Decisions Advisory Committee, appeared before the committee as a proponent and provided an overview of the bill. In December 2005, the Judicial Council assigned to its End of Life Decisions Advisory Committee the task of reviewing Kansas statutes relating to durable powers of attorney for health care decisions and other advance directives with the goal of consolidating these statutes into a single act, along with new provisions as appropriate. Mr. Cosby provided six concepts the new Act was built around. (Attachment 1)

Honorable Judge Tony Powell, also a member of the Kansas Judicial Council-End of Life Decisions Advisory Committee, also testified in support of the bill. He said the bill recognizes several important provisions such as the right of an individual to decide all aspects of his or her health care, second the bill recognizes the right of an individual to tailor the scope of this agency authority as broadly or as narrowly as the individual chooses

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and give such powers to an agent and third, simplifies and facilitates the ability of an individual to issue an advance directive. In order to avoid the controversy which surrounded the Terri Schiavo case, an individual must clearly and specifically authorize the discontinuation of food and water. The bill also allows health care providers to decline to comply with a health care decision for reasons of conscience, and the legislation does not authorize mercy killing, assisted suicide or euthanasia. ([Attachment 2](#))

Jerry Slaughter, Kansas Medical Society, appeared in support of the bill. He also offered several suggested amendments that he believes would add greater clarity to the bill. ([Attachment 3](#))

Sandy Kuhlman testified on behalf of Kansas Hospice and Palliative Care Organization and the Kansas LIFE Project, in support of the bill and also spoke on the repeal of the Pre-Hospital DNR directive and stated the only reliable substitute is Physician orders. She said one model gaining recognition in many states is the POLST (physician orders for life sustaining treatment) paradigm. ([Attachment 4](#))

Mae Lovell, spoke in support of the bill on behalf of the AARP Kansas Executive Council and stated the AARP believes all states should enact laws with a comprehensive approach to health care decision making, such as the provisions in the Uniform Health Care Decisions Act. ([Attachment 5](#))

Steve Sutton, Board of Emergency Medical Services, supports the bill and said it does not affect the operations training, or scope of practice of emergency medical service attendants, however, the bill does afford the Board the ability in the future to revise its current regulations in relation to do not resuscitate orders (DNR) and living wills. He stated the language will allow the Board to continue its discussions on implementing a requirement for the development of protocols to address the overall provisions of "advanced directives". ([Attachment 6](#))

Deborah Stern, Kansas Hospital Association spoke in favor of the bill and said it has been positively received by the health care community, but she also asked that consideration be given to revisions to Section 8, 9 and 14. ([Attachment 7](#))

### Neutral:

Pam Scott, Kansas Funeral Directors and Embalmers Association spoke as a neutral position on the bill because the bill does not contain provisions to allow the agent for health care decisions to make decisions concerning autopsy or disposition of the body of the principal upon death. Therefore, she offered several proposed amendments that would allow the intent of K.S.A. 65-1734 to remain intact. ([Attachment 8](#))

There were no opponents.

The hearing on **HB 2109** was closed.

Hearing on **HB 2250 - Rules of evidence; admissibility of prior acts or offenses of sexual misconduct** was opened.

### Proponents:

Senator Terry Bruce spoke in support of the bill and said KSA 60-455 must be changed to allow for the successful prosecution of heinous crimes. He stated the bill is an admirable goal and a good step forward, however, the court could still apply the strikingly similar standard. He offered a draft of a Senate bill he had worked on to address the elevated standard issue created in State v Prine and suggested it could be used to help address this concern. ([Attachment 9](#))

Representative Raj Goyle supported the bill and stated the Kansas Supreme Court recognized this flaw in our evidentiary laws in the State v Prine and explicitly invited the Legislature to take action to close this loophole. Simply put, prior bad acts of sexual misconduct should be allowed to be entered as evidence. ([Attachment 10](#))

Kris Aillsieger, Assistant Solicitor General on behalf of the Kansas Attorney General's office stated the Attorney General's office strongly supports this bill. The language in this bill came primarily from the federal rules and the advantage of using this language is that it has already been tested in the courts. ([Attachment 11](#))

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Ann Swegle, Deputy District Attorney spoke as a neutral on the bill on behalf of Nola Tedesco Foulston, District Attorney Eighteenth Judicial District and the Kansas County and District Attorneys Association. They are pleased that consideration is being given to make K.S.A. a more useful tool but intend to offer suggestions as to how the statute should be further amended. ([Attachment 12](#))

The hearing on **HB 2250** was closed.

The Hearing on **HB 2144 - Establishing the community defense act** was opened.

### Proponents:

Phillip Cosby, National Coalition for the Protection of Children and Families, appeared before the committee as a strong proponent and pointed out the negative effects of Sexually Oriented Businesses(SOB)on communities. He further stated communities are overwhelmed or intimidated and do not have the means to stand up against this industry that boasts their revenue is greater than all professional sports, football, baseball and basketball combined. Mr. Cosby also stated this statute was crafted by one of the most successful constitutional SOB ordinance attorneys in the nation. ([Attachment 13](#))

Scott Bergthold, Attorney from Chattanooga, Tennessee, testified as a proponent via phone, discussed the types of secondary effects these businesses have on the community (provided each committee member with a supporting CD),and also provided information about cases that upheld similar regulations. ([Attachment 14](#))

Note: Attachment 14 includes a list of contents of six three ring notebooks of additional supporting documentation along with a CD. This information may be reviewed by contacting Jerry Ann Donaldson, Legislative Research Department at 785-296-3181.

### Opponents:

Charles O'Hara, Attorney, Wichita, Kansas spoke as an opponent and stated there is no need for a state law and that the local community standards should control and gave examples for the communities of Wichita and Derby. ([Attachment 15](#))

Ron Hein appeared as an opponent on behalf of Motion Picture Association of America (MPAA). He stated the MPAA administers the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R, or NC-17 ratings to motion pictures to help parents determine which motion pictures their children should see. He respectfully urges the committee to either delete the reference to the MPAA and the reference to the ratings system and such ratings, in Section 3(e), or to recommend the bill adversely. ([Attachment 16](#))

Philip Bradley, Kansas Licensed Beverage Association, spoke as an opponent stating this bill covers several areas including retail establishments and also entertainment venues that should be split into separate measures. He urges the committee to not advance this bill but if the committee wanted to pursue this act, suggested a sub-committee be appointed and offered to work with such group. ([Attachment 17](#)) Note: Attachment 17 includes a list of contents of thirteen spiral bound notebooks of additional supporting documentation. This information may be reviewed by contacting Jerry Ann Donaldson, Legislative Research Department at 785-296-3181.

### Written:

John C Peterson, Capitol Strategies, LLC submitted written testimony as an opponent on behalf of the following: Tuck Duncan, Kansas Wine and Spirits Wholesalers Association; Larrie Ann Lower, Wine Institute; Neal Whitaker, Kansas Beer Wholesalers Association, John Bottenberg, MillerCoors LLC; Philip Bradley, Kansas Licensed Beverage Association; John Peterson, Anheuser-Busch Companies Inc. ([Attachment 18](#))

The hearing on **HB 2144** was closed.

The hearing on **HB 2167 - Landowners' bill of rights, utility company work on property** was opened.

### Proponents:

Representative Joe Patton spoke as a proponent of the bill because several constituents had negative encounters with utility companies when entering the property owners easement land and the intent of this bill is to provide some guidelines for this encounter to allow some input from the homeowner while facilitating good customer

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service. He also suggested sub-contractors may not be following the policy of the actual utility company. ([Attachment 19](#))

### Written:

Douglas G. Zillinger, Property Owner, Phillips and Graham Counties, provided written testimony in support of this bill, regarding an experience with an Oil Industry. ([Attachment 20](#))

Jeffrey Dunaway, provided written testimony in support of this bill as a homeowner. ([Attachment 21](#))

### Opponents:

Wes Ashton, Black Hills Energy testified in opposition of the bill. With respect to the committee to avoid repetition, he also spoke on behalf of Atmos Energy, Kansas Gas Service-a division of Oneok, Midwest Energy, Westar, KEC, KMU and KCP&L. He stated the written notice would create undue burden and the KCC already addresses any customer complaints and monitors utility companies. ([Attachment 22](#))

Dan Jacobson, President of AT&T Kansas also testified in opposition to the bill and said they leave a bright colored door hanger notice which has a contact phone number on it. Their employees have card identification to identify themselves and are also regulated by the KCC. ([Attachment 23](#))

Mike Murry, EMBARQ spoke in opposition of the bill and said it would cause delays in service. He also pointed out this bill would not cover cable television companies as they are not a utility. ([Attachment 24](#))

### Written:

Darci Meese, Water District # 1, Johnson County provided written testimony in opposition of the bill. ([Attachment 25](#))

Ron Gaches, Gaches, Braden and Associates, provided written testimony in opposition, on behalf of Southern Star Pipelines. ([Attachment 26](#))

The hearing on **HR 2167** was closed.

The next meeting is scheduled for February 10, 2009.

The meeting was adjourned at 5:35 p.m.