

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 9, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Colloton
Representative Alford

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Representative Mast, Seventy-Sixth District, Emporia
Steve Graber, Attorney, Manhattan, Kansas
Kirk Sours, Concerned Citizen
Cynthia Smith, JD Advocacy Counsel, Sisters of Charity of Leavenworth Health System
Chad Austin, Vice President of Government Operations, Kansas Hospital Association
Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine, Topeka
Gary Reser, Kansas Veterinary Medical Association (KVMA)
Mitsi McFatrach, on behalf of Kansas Advocates for Better Care
Whitney Damron, on behalf of the Kansas Bar Association
Callie Denton, Kansas Association for Justice
Robert Harvey, AARP Kansas Volunteer

Others Attending:

See attached list.

The Hearing on **HB 2087 - Concerning the protection of rights granted under the constitution** was opened.

Matt Sterling, Staff Revisor, provided the committee with an overview of the bill. ([Attachment 1](#))

Representative Mast, Seventy-Sixth District, Emporia, addressed the committee in support of this bill, stating Article 6 of the U.S. Constitution contains the Supremacy clause, and that clause is of vital importance today as we see an international desire to merge into a global form of governance that defies the basic values we place on human life in the United States. She added many parts of the world are in conflict over what legal system should be recognized by other cultures and it is time we define which one must be recognized by the court systems in Kansas. ([Attachment 2](#))

Steve Graber, Attorney, Manhattan, Kansas appeared before the committee as a proponent, and shared with them some examples of the growing global reality which necessitates this bill. He stated if this bill, is enacted and applied, it would preempt any expectation of any immigrant from any nation that they can come to Kansas and yet live as if they were not here jurisprudentially but remained in their home land. ([Attachment 3](#))

Kirk Sours, a concerned citizen of Kansas, spoke before the committee, also encouraged passage of this bill, and stated there is a real storm coming regarding social issues within this country. He stated this bill would remind and direct the Courts within the State of Kansas to avoid referral to, consultation with, and permission of any Foreign or Cultural Law when deciding or hearing cases in Kansas and simply codifies the Constitution. ([Attachment 4](#))

The following Proponents provided written testimony:

Currie Myers, Retired Sheriff of Johnson County ([Attachment 5](#))
Christopher Holton, Vice President, Center for Security Policy ([Attachment 6](#))

There were no opponents.

After much discussion the hearing on **HB 2087** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 9, 2011 in Room 346-S.

Chairman Kinzer announced that **HB 2069** and **HB 2123** will be heard simultaneously because they are very similar.

The hearing on **HB 2069 - Enacting the Kansas adverse medical outcome transparency act** and on **HB 2123 - Enacting the Kansas adverse medical outcome transparency act** was opened.

Tamera Lawrence, Assistant Revisor of Statutes, provided an overview of the bill, advising the committee that **HB 2069** is identical to 2010 substitute for **SB 374**, and it is similar to **HB 2123**, but does have some differences, including additional types of apologetic expressions and allowing the defendant to waive the inadmissibility of such statements so the apology could be introduced as evidence. Both **HB 2069** and **HB 2123** would prevent apologies and similar statements made by healthcare providers from being admitted in civil actions. Current law allows apologies and other similar statements to be admitted as evidence in civil actions under the admissions exception to the Kansas hearsay rules. ([Attachment 7](#))

Cynthia Smith, JD, Advocacy Counsel, Sisters of Charity of Leavenworth Health System, addressed the committee as a proponent and provided some history behind this bill. She stated by keeping open the lines of communication between a patient and his or her doctors and hospital, when there is an adverse outcome of a medical procedure or treatment, an adversarial relationship and potentially costly lawsuits can be avoided. She also stated thirty-four states have an apology law in statute and much has been written about the success of these laws. She also provided additional documentation from various resources. ([Attachment 8](#))

Cynthia Smith also presented testimony on behalf of Thomas Theis, Attorney, Foulston Siefkin, LLP, Topeka, Kansas. Mr. Theis was originally scheduled to present oral testimony as a proponent, but due to the snow storm and subsequent rescheduling of the Hearing of **HB 2069**, he was unable to appear due to a conflicting court case schedule. She said Mr. Theis has defended well over a thousand cases alleging medical malpractice during his career and what the system has consistently overlooked is the emotional impact of these cases on the parties involved, both plaintiffs and defendants. Mr. Theis strongly supports this bill and believes it would likely play an important role in reducing non-meritorious litigation. ([Attachment 9](#))

Bill Sneed, Legislative Counsel, The University of Kansas Hospital Authority, was scheduled to present oral testimony but was delayed due to presenting testimony before another committee, and therefore Chairman Kinzer advised the committee to give consideration to his written testimony. ([Attachment 10](#))

Chad Austin, Vice President of Government Operations, Kansas Hospital Association (KHA), appeared as a proponent and stated the practice of medicine is both an art and a science and therefore the treatment of patients does not always proceed as planned. He stated the movement to increase transparency is welcomed by patients and by more and more regulatory and accreditation agencies that are requiring health care providers and health care institutions to discuss the outcomes of their medical care and treatment with their patients, including adverse events. He also stated studies have shown such discussions foster improved communications and respect between provider and patient, promote quicker recovery by the patient, and reduce the incidence of claims and lawsuits arising out of such events. ([Attachment 11](#))

Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine, Topeka, addressed the committee as a strong proponent and stated it is rather sad that our legal system has evolved to a point whereby we need a law passed to allow Doctors to express their condolences to patients and their families. He also stated many Osteopathic doctors practice in a family practice setting and frequently in rural communities and in many cases have been providing care to a family over generations and are therefore very connected to the family and when an "adverse outcome" occurs, the natural human response is to provide condolences, be it an apology or an expression of sympathy. He believes this bill will allow health care providers, their patients, and families to obtain closure. ([Attachment 12](#))

Gary Reser, Kansas Veterinary Medical Association (KVMA), spoke to the committee in support of the bill and urging them to add veterinarians to this bill. He quoted Kathleen Bonvicini, an associate director of the Institute for Healthcare, speaking to the American Veterinary Medical Association, as saying: "Being open and honest with clients about medical errors can help rebuild trust, preserve professional integrity, and reduce malpractice lawsuits." ([Attachment 13](#))

Representative Sloan was unable to attend the Hearing, however, he submitted written testimony

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 9, 2011 in Room 346-S.
in support of bill **HB 2123**. (Attachment 14)

The following proponents provided written testimony:

Dan Morin, Director of Government Affairs, Kansas Medical Society (Attachment 15)

Shelly Koltnow, JD, VP-Corporate Responsibility, VIA Christi Health (Attachment 16)

Tim Van Zandt, RN, MPA, Director of Public Affairs, Saint Luke's Health System (Attachment 17)

Mitsi McFatrigh, on behalf of Kansas Advocates for Better Care, appeared before the committee as an opponent, stating that for a health care provider to be shielded from a lawsuit because he or she has offered an apology for error or wrong-doing is an over protection of health care workers at the expense of someone already harmed. (Attachment 18)

Whitney Damron, appeared an an opponent on behalf of the Kansas Bar Association (KBA). He provided the committee with some background information stating the legislature first considered similar legislation in the 2009 session as **SB 32**, and the Committee on Judiciary requested a review of the proposal by the Kansas Judicial Council, and the bill died in committee, at conclusion of the 2010 session. In 2009, the Civil Code Advisory Committee of the Judicial Council reviewed apology statutes enacted in 35 other states before drafting their own version of the apology bill, which was presented to legislature in 2010 as **SB 374**. He stated the KBA did not take a position on **SB 374** as originally introduced, however a substitute bill was adopted by the Senate Committee on Judiciary and advanced out of committee. The KBA and others expressed strong concerns with the amended bill before it was scheduled for floor debate and it was eventually returned to Committee, where it died at the conclusion of the 2010 session. Following the 2010 session, the proponents of the bill before you today sought a review of their proposal in the form of an interim study. The Special committee on Judiciary heard from a number of conferees during the 2010 interim hearing process, and recommended the Judicial Council version from the 2010 session be adopted (2010 **SB 374**) as introduced, and has been introduced in the 2011 session as **SB 142**. In conclusion, he stated the KBA supports the work product of the Judicial Council, and if this committee believes legislation is necessary, they request adopting the language contained in **SB 374** as originally introduced in 2010. (Attachment 19)

Callie Denton, JD, Director of Public Policy, Kansas Association for Justice (KsAJ), presented testimony in opposition, on behalf of Gary D. White, KsAJ, stating if the committee chooses to adopt changes to the rules of evidence, KsJA recommends the Committee support the language of the bill recommended by the Kansas Judicial Council(**SB 142**). She stated they believe the Judicial Council is the appropriate expert body to make neutral policy recommendations regarding rules of evidence. (Attachment 20)

Robert Harvey, AARP Kansas Volunteer, a retired Judge and attorney, and a Kansas resident, addressed the committee as an opponent. He stated that from a patient perspective, the most important purposes of the medical malpractice system are to compensate negligently injured patients and deter unsafe health care practices that lead to injury and **HB 2069** and **HB 2123** will not provide those patient protections. (Attachment 21)

The hearing on **HB 2069** and **HB 2123** was closed.

The next meeting is scheduled for February 10, 2011.

The meeting was adjourned at 5:42 p.m.