

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 24, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Neal Whitaker, Kansas Motor Carriers Association
Tim Madden, Kansas Department of Corrections
Jim Clark, Kansas Bar Association
Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas

Tom Whitaker, Kansas Motor Carriers Association, appeared before the committee with a bill request which would prevent indemnification clauses in motor carrier transportation contracts in which one party indemnifies and hold harmless a second party's negligence or wrongful act. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, requested a bill that would repeal the provisions of Kansas' anti-trust laws. Representative Kinzer made the motion to have the request introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

Jim Clark, Kansas Bar Association, appeared before the committee with two bill requests:

- would state that no order shall be entered into the national criminal information center protection file without a hearing as provided by K.S.A. 60-3106, unless the defendant waives such a hearing or fails to appear at the hearing
- amend the taking of DNA samples, that there must be probable cause determined by a magistrate

Representative Watkins made the motion to have the requests introduced as committee bills. Representative Kinzer seconded the motion. The motion carried.

Tim Madden, Kansas Department of Corrections, appeared before the committee with two bill requests:

- relating to the costs in criminal cases, by eliminating reimbursement of jury fees by the department of corrections
- allowing state employees to purchase products made by correctional industries in Kansas

Representative Owens made the motion to have the requests introduced as committee bills. Representative Whitham seconded the motion. The motion carried.

Representative Patton requested a bill that would increase the penalties for burglary . He made the motion to have his request introduced as a committee bill. Representative Kinzer seconded the motion. The motion carried.

Representative Colloton requested a bill amending the assist seizure and forfeiture statute . She made the motion to have her request introduced as a committee bill. Her motion was seconded. The motion carried.

Representative Owens requested a bill that would allow wills to be astistated by a notary without any witnesses. He made the motion to have his request introduced as a committee bill. Representative Kinzer seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 24, 2007 in Room 313-S of the Capitol.

HB 2010 - Uniform anatomical gift act

Chairman O'Neal announced that the committee would discuss the proposed bill with the agreed to recommended changes being forwarded to the National Conference of Commissioners on Uniform State Laws (ULC) for comments and approval.

The committee discussed in detail the word "who" new section 9(a)(8), which states "an adult who exhibited special care and concern", would apply too and which priority it should be.

It was the intention of the ULC that if there are no family members left, someone who knew the person could make a donation. The language was taken from the Uniform Health Care Decisions Act which reads: "If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available to act as surrogate."

The committee requested that the chairman ask the ULC to approve using the language from the Uniform Health Care Decisions Act and moving #8 to #9 in the list of priority.

The committee discussed new section 18, and the change from current Kansas standard from "good faith" to "attempts at good faith". Kansas adopted in 1968 the current good faith language. At that time immunity was intended to be extended to persons which generally and substantively act in accordance with the '68 Act. The ULC was concerned that if Kansas keeps their current "good faith" language it would have a chilling effect since Missouri has the "attempts in good faith" provision and the two states work closely together.

The committee requested that the chairman ask the ULC what would be covered under the "attempts in good faith" that is not covered currently by "good faith" and would they accept the following change to that provision; "a person who acts in good faith in accord with the terms of this act or the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject of prosecution in any criminal proceeding for such person's act."

Section 7 (b) has confusing language, in that it uses the word "individual" many times. The committee asked the chairman to check with ULC to see if (b) could read "another 'person' acting at the direction of the individual if the individual is physically unable to sign," could be used in place of it.

There was concern with the penalty provisions for the sale of organs. This provision is bracketed, meaning that states can fill in the appropriate penalty provisions. Kansas currently does not have a provision dealing with the prohibition of the sale or purchase of anatomical gifts. Representative Kinzer suggested that the committee might want to consider making it a severity level 5, presumptive imprisonment.

The committee also directed the chairman to ask whether Kansas protocol would need to be stricken in favor of federal rules.

The Chairman announced that he would forward the suggested changes to the ULC and wait a response before he worked the bill.

The committee meeting was adjourned at 5:00 p.m. The next meeting was scheduled for January 25, 2007.