

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 10, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Jeff King- 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:

Randy Hearrell, Kansas Judicial Council  
Patrick Hurley, Kansas Judicial Council-False Claims Act Advisory Committee  
Loren Snell, Attorney General's Office  
Jerry Schlaugter, Kansas Medical Society  
Jim Bush, Judicial Council-Probate Law Advisory Committee  
Joe Ewert, Kansas Association of Homes and Services for Aging  
Gilbert Cruz, Kansas State-Long Term Care Ombudsman

Others attending:

See attached list.

The hearing on **SB 44 - Kansas false claims** act was opened.

Randy Hearrell, Executive Director, Kansas Judicial Council, spoke as a proponent. Patrick Hurley, Chief Counsel, Kansas Department of Administration, was a member of that Committee and was scheduled to appear as an opponent and explain the bill but was delayed, therefore Randy Hearrell presented for him. He explained in March 2008, former Chair of the House Judiciary Committee, Representative Mike O'Neal, requested the Judicial Council study and make recommendations to the Legislature regarding 2008 HB 2943, which established a Kansas False Claims Act. The Kansas Judicial Council formed the False Claims Act Advisory Committee to undertake the study. Originally, the desire was to obtain for Kansas a higher percentage of monies recovered in Medicaid fraud cases. The federal Deficit Reduction Act (DRA) of 2005 included a cash incentive to encourage states to pass false claims acts modeled on the federal False Claims Act. The pertinent provision of the DRA states that the federal government will decrease by 10% its share of the recovery in cases brought under a qualifying state false claims law. There were also strict requirements in order to be deemed in compliance with the DRA. Although Medicaid fraud was an important consideration for both 2008 HB 2943 and the Judicial Council False Claims Act, this bill has a broader application and covers any type of claim or demand for payment, property or services made to the state or a political subdivision of the state. Attached to his testimony is the Committee's report, which was approved by the Judicial Council on December 9, 2008. (Attachment 1)

Loren Snell, Deputy Attorney General and Director of the Medicaid Fraud Division of the office of Attorney General spoke as a proponent. He further stated the Attorney General, Steve Six, is a strong proponent of this legislation and believes it will enable their office to better prosecute fraud and waste, while at the same time recouping taxpayer money. In regards to a *qui tam* provision, it is the position of the Attorney General's office that this bill should be passed as written, without such a provision, at this time. (Attachment 2)

Jerry Schlaugter, spoke as a proponent on behalf of the Kansas Medical Society. He expressed appreciation for being allowed to participate in the study and stated they can support the bill as written. They objected to including the *qui tam* section because they believed it would encourage the filing of unmeritorious allegations of fraud by private individuals since they, and their attorneys, would stand to gain financially from any settlements or judgments arising from the action. He stressed their support for this legislation is predicated on maintaining the language which is found in Section 4 (b) on page 3, lines 28-29, which makes it clear that,

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except for the whistleblower protection found in Section 6, nothing in the act shall be construed to create a private cause of action. They believe this approach is appropriate because it relies on the Attorney General to bring an action for violations of the Act, presumable after an investigation and a showing that there is a reasonable basis to suspect actual fraud. They believe that strikes an appropriate balance between protecting the public and not subjecting providers to meritless and costly litigation. (Attachment 3)

Chad Austin, Vice President, Government Relations, on behalf of Kansas Hospital Association provided written testimony in support of this bill. (Attachment 4)

Questions were asked by various members of the Committee with answers being provided by Randy Hearrell, Loren Snell and Jerry Slaughter.

The hearing on SB 44 was closed.

The hearing on **SB 45 - Kansas power of attorney act amendments** was opened.

Randy Hearrell, Kansas Judicial Council, spoke briefly as a proponent of the bill and to introduce Jim Bush of the Judicial Council. Jim Bush, Judicial Council-Probate Law Advisory Committee, provided the background information for this bill. In 2003 the Kansas Power of Attorney Act was passed by Legislature. The act was drafted by the Kansas Judicial Council's Probate Advisory Committee (PLAC) and recommended by the Judicial Council. In July of 2006, the National Conference of Commissioners on Uniform State Laws approved the Uniform Power of Attorney Act. The PLAC reviewed the Uniform Power of Attorney Act and noted that in several respects the Kansas Act was more comprehensive and therefore did not recommend the adoption fo the Uniform Act at this time, however, the PLAC did propose three amendments to the Kansas Power of Attorney Act which are based on the Uniform Act. (Attachment 5)

Joe Ewert, Government Affairs Coordinator for the Kansas Association of Homes and Services for Aging spoke in favor of the bill. He stated their members witness financial elder abuse every day and far too often is perpetrated by those who operate as a Power of Attorney and do not distinguish their funds from those of another for which they have taken responsibility. He added that this bill does not address the penalties for failing to meet these expectations, however, they believe this bill will strengthen the ability of those investigating these crimes to effectively prosecute. (Attachment 6)

Gilbert Cruz, Kansas State-Long Term Care Ombudsman (LTC) spoke in support of the bill. He said LTC represents the rights of nearly 28,000 individuals located in adult care homes throughout Kansas comprised of nursing home facilities, assisted living facilities, board and care homes, residential health care facilities, home plus facilities, adult day cares and LTC units in hospitals. He stated stronger laws are needed to offer a pathway in dealing with the growing number of fiduciary abuse cases which is a serious matter to the residents residing in adult care homes throughout Kansas and they strongly encourage the committee to pursue this cause to protect the health and property of residents. (Attachment 7)

### **SB 34 - Continuation of certain exceptions to disclosure under the open records act.**

Representative King made the motion to report SB 34 favorably for passage. Representative Jack seconded the motion.

Representative Grange made the substitute motion to amend the bill and provided the committee with a balloon that covers the insertion of language to provide directives for confidentiality and disclosure regarding wage and salary surveys. (Attachment 8)

Representative Goyle seconded the motion. Motioned carried.

Representative Goyle made a motion to extend the sunset date of all the items under discussion in this bill to the year 2013. Representative Kuether seconded the motion.

With permission of the second, Representative Goyle changed the sunset date to 2014 in order to add five years from the current year. Motion carried.

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Representative Kuether made the motion to report **SB 34** favorably for passage as amended. Representative Brookens seconded the motion. Motion carried.

The next meeting is scheduled for March 11, 2009.

The meeting was adjourned at 5:40 p.m.