

Approved: August 25, 2011  
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on March 7, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Nick Badgerow, Kansas Judicial Council  
Bob Williams, Executive Director Kansas Association of Osteopathic Medicine  
Whitney Damron, Kansas Bar Association  
Callie Jean Denton, Kansas Association for Justice  
Cynthia Smith, Advocacy Counsel, Sisters of Charity of Leavenworth Health System  
Chad Austin, Kansas Hospital Association  
Mitzi McFatrach, Kansas Advocates for Better Care

Others attending:

See attached list.

The Chairman opened the hearings on **HB 2029 -- Charitable health care provider defined to include ultrasound technologist.**

Jason Thompson, Staff Revisor, reviewed the bill. He stated that the bill would amend the Kansas Tort Claims Act by including ultra sound technologists in the definition of charitable health care provider.

Written testimony in support of **HB 2029** was submitted by Robert Stiles, Director of Primary Care Director, KDHE, (**Attachment 1**) and Dr. Barbara Atkinson, MD, University of Kansas Medical Center (**Attachment 2**). Written testimony in opposition to **HB 2029** was submitted by Callie Jean Denton, Kansas Association for Justice (**Attachment 3**).

The Chairman closed the hearings on **HB 2029**.

The Chairman opened the hearings on **SB 142 -- Making expressions of apology, sympathy, commiseration or condolence inadmissible as evidence of an admission of liability or an admission against interest and HB 2069 -- Enacting the Kansas adverse medical outcome transparency act.**

The Chairman requested that conferees who desired to appear on **SB 142** and **HB 2069** to express their comments and testimony in support of, or opposition to, the bills when first recognized.

Jason Thompson, Staff Revisor, reviewed **SB 142**. He noted that during the 2010 Legislative Interim the Special Committee on Judiciary endorsed the concept contained in **SB 142**, which is based upon the law in Hawaii. He stated that the provisions of **SB 142** apply to medical outcomes and certain health care providers.

Jason Thompson, Staff Revisor, reviewed **HB 2069**. He stated the bill was based upon the law in South Carolina. He also noted that it was broader in application than **SB 142**.

Nick Badgerow testified in support of **SB 142** and expressed concern with **HB 2069** (**Attachment 4**). He stated that under **SB 142**:

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 7, 2011, in Room 548-S of the Capitol.

- The evidentiary exclusion does not extend to outright admissions of fault.
- The evidentiary exclusion is not limited to health care providers.
- The court has the discretion to exclude or include mixed expressions of apology and fault.

Mr. Badgerow's greatest concern with **HB 2069** is that admissions of fault, liability, mistake or error would be excluded from evidence.

Bob Williams testified in support of **SB 142** (Attachment 5).

Whitney Damron testified in support of **SB 142** and in opposition to **HB 2069** (Attachment 6). He concurred with the comments of Mr. Badgerow and added that the exclusion provided under **SB 142** is limited to statements in which the declarant is a participant.

Callie Jean Denton testified in support of **SB 142** and in opposition to **HB 2069** (Attachment 7). She stated that **SB 142** strikes an appropriate balance between encouraging open communication and heart-felt apologies while at the same time allowing juries to consider truthful and relevant evidence.

Mitzi McFatrach testified in support of **SB 142** and in opposition to **HB 2069** (Attachment 8).

Cynthia Smith testified in support of **HB 2069** and in opposition to **SB 142** (Attachment 9). She stated that doctors and lawyers feel that an apology is an admission of guilt, and therefore, they do not apologize. She stated that **HB 2069** is based on South Carolina law. She expressed concern with the House amendments. Ms. Smith included suggested amendments to **HB 2069** in her testimony.

Ms. Smith stated that **SB 142** would not reduce litigation and would not change behavior.

Chad Austin testified in support of **HB 2069** (Attachment 10). He also supported the amendments suggested by Cynthia Smith.

Written testimony in support of **HB 2069** was submitted by Shelley Koltnow, VP Corporate Responsibility, Via Christi Health (Attachment 11), William Sneed, Legislative Counsel, University of Kansas Hospital Authority (Attachment 12) and Thomas Theis (Attachment 13).

Senator King stated that he did not believe that an apology law is necessary, but he is concerned that the bill does not provide that a statement or gesture that implies fault is not excluded.

Senator Vratil asked if the following statements would be excluded under the bills:

- "I'm sorry for the outcome and to the extent to which I contributed to that outcome."

Mr. Badgerow responded, "It is not admissible."

- "I'm sorry. I'll never use that procedure again."

Mr. Badgerow responded, "It is admissible."

The Chairman called the committee's attention to the fiscal notes for **SB 142** and **HB 2069**.

The Chairman closed the hearings on **SB 142** and **HB 2069**.

**Committee Action:**

The Chairman turned the committee's attention to **HB 2028 -- Uniform trust code; insurable interest of trustee**.

Senator King distributed copies of a proposed amendment that strikes the language concerning the requirement that the substantial interest be engendered by love and affection (Attachment 14).

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 7, 2011, in Room 548-S of the Capitol.

Senator King moved, Senator Vratil seconded, that the proposed amendment be adopted. The motion was adopted.

Senator Haley moved, Senator King seconded that **HB 2028** be passed as amended. The motion was adopted.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 8, 2011.