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Testimony in Support of Senate Bill 23
Presented to the Senate Committee on Financial Institutions and Insurance
By Kansas Attorney General Derek Schmidt

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Chairman Longbine, members of the committee, thank you for this opportunity to testify in support of Senate Bill 23.

Background

As some Committee members may recall, last year the Kansas Insurance Department and the Office of the Securities Commissioner proposed legislation, Senate Bill 340, which was heard in this Committee on January 28, 2016. In general, that legislation proposed closer integration and cooperation between those two agencies.

I testified in opposition to that measure because I thought it failed to address the critical need for strong enforcement of the criminal laws related to insurance and securities and because I thought the bill was technically flawed. This Committee declined to advance the bill last year but encouraged me to work with the other agencies involved in an attempt to resolve concerns.

Over the interim period, we did just that. I was grateful for the collaboration with the Commissioner of Insurance and the Securities Commissioner, as well as with other agencies as appropriate, and I am pleased to report to the Committee that Senate Bill 23 contains the result of those nearly year-long discussions.

I think Senate Bill 23 is good public policy, and I support it. I also note Governor Brownback has recommended its adoption as part of his budget submission.

Need for Capacity to Prosecute Financial Crimes (especially against Elder Persons)

At the state level, Kansas capacity to prosecute financial crimes is slim. At the Attorney General's Office, until last year we had no criminal prosecutors dedicated to financial crimes.¹ This is because it always has made sense for the attorney general's criminal litigation division to

¹ Our Consumer Protection Division has resources and authority to enforce against scams and rip-offs targeting Kansans, including elder Kansans, and does so robustly. But that authority is for civil enforcement, not criminal prosecution. For more information about our Consumer Protection Division see www.InYourCornerKansas.org

focus on prosecuting major person felonies – homicides, child sex crimes, etc. – as a first priority. Because there is consistently more demand than resources available for our prosecution services for those major violent crimes, no resources have remained available to prosecute financial crimes.

However, there is a significant need and demand for financial crimes prosecution. While a small number of large and well-resourced local prosecutors' offices have dedicated financial crimes capacity, most local prosecution offices do not.

Because financial crimes can be complex and the prosecution can consume significant time and resources, those lightly resourced local offices frequently ask us for assistance. But historically, we almost always have declined because our own limited prosecution resources were dedicated to major violent crimes.

The demand for our help in prosecuting financial crimes, particularly against elder persons, is substantial and growing. The portion of the Kansas population age 65 and older rose to 14.6 percent in 2015, up from 13.2 percent in 2010.² To translate percentages into actual people, in 2015 about 397,000 Kansans – a number greater than the entire population of the City of Wichita³ – were age 65 or older,⁴ up from about 356,000 in 2000.⁵ Put another way, in those 15 years, the raw number of Kansans age 65 and older increased by the equivalent of the entire population of Hutchinson.⁶ The number of Kansans age 65 and older is projected to more than double – to more than 800,000 people – over the next 50 years.⁷ As the population of elder Kansans continues to grow, so too will the number of financial crimes committed against that population.

Consolidation of Financial Crimes Prosecution at Office of the Attorney General

Senate Bill 23 would begin to address that need by reorganizing existing state prosecution resources so we can use them more efficiently and effectively. Specifically, it would relocate existing prosecution resources from the Office of the Securities Commissioner and the Kansas Insurance Department to the Attorney General's Office. The public policy purpose is to centrally locate state-level financial crimes prosecution capacity at the Attorney General's Office so we can gain economies of scale. Rather than having criminal prosecutors who handle financial crimes scattered in small numbers in other state agencies, Senate Bill 23 would put them together at the Attorney General's Office. In that way, the bill breaks down silos, and I am confident it will result in a more efficient and effective use of the financial crimes prosecution resources already existing within state government.

² See <http://www.census.gov/quickfacts/table/PST045215/20>

³ Wichita's population was 389,965 on July 1, 2015. See <http://www.census.gov/quickfacts/table/PST045215/2079000>.

⁴ About 397,000 Kansans were age 65 and older in 2015. See <http://kff.org/other/state-indicator/distribution-by-age/?dataView=1¤tTimeframe=0&selectedDistributions=65&selectedRows=%7B%22nested%22:%7B%22kansans%22:%7B%7D%7D%7D>

⁵ See <http://www.ipsr.ku.edu/ksdata/ksah/population/2pop6.pdf>

⁶ Hutchinson's 2015 population was estimated at 41,569. See <http://www.ipsr.ku.edu/ksdata/ksah/population/2pop32a.pdf>

⁷ See <http://www.cedbr.org/content/2016/eConnection/Kansas%20Elderly%20Population%20Article.pdf>

If Senate Bill 23 is enacted, my intention is to house these relocated prosecutors in our existing Fraud and Abuse Litigation Division. Currently, that Division houses the Abuse, Neglect and Exploitation Unit that the Legislature overhauled last year with the enactment of Senate Bill 408. Senate Bill 23 would promote a policy of placing as many of the State's existing state-level prosecution resources as possible together in order to gain efficiencies and allow stronger enforcement of the criminal statutes that prohibit financial crimes. I am confident that the benefits of cross-training, co-location, integrated case management and similar benefits will produce a prosecution team in which, to borrow the old phrase, the whole really is greater than the sum of existing parts.

Other Provisions of Senate Bill 23

Major provisions of Senate Bill 23 related to improved enforcement of the law include the following:

- As discussed above, it moves existing prosecutors from the Kansas Insurance Department and the Office of the Securities Commissioner to the Attorney General's Office and, critically, redirects part of the existing fee-funds from those offices to pay for the relocated prosecutors.
- It strengthens the authority of the Attorney General's Office to coordinate with financial investigations conducted by the Kansas Insurance Department and Office of the Kansas Securities Commissioner.
- It updates and streamlines existing provisions of law that authorize the attorney general to prosecute specific financial crimes related to the Kansas Department of Labor and the Kansas Banking Commissioner. Those agencies have reviewed the proposed changes and have advised us they have no objection to them.

In addition to strengthening enforcement of the laws against financial crimes, as discussed above, Senate Bill 23 reorganizes the relationship between the Kansas Insurance Department and the Office of the Securities Commissioner. This reorganization is found principally in Section 11 of the bill as introduced. Because this reorganization, which is the revised version of the legislation first introduced last year, addresses operational matters between those two agencies and does not directly involve the Attorney General's Office, I will let the Commissioner of Insurance and the Securities Commissioner discuss it. I will say, however, that I am satisfied that the concerns I raised last year about technical problems with the prior reorganization language have been adequately addressed in Senate Bill 23 and I am comfortable with this year's provisions.

Conclusion

Mr. Chairman, thank you for this opportunity to testify. In my view, Senate Bill 23 would be a major step forward in our state's ability to prosecute financial crimes – including, but not limited to, insurance crimes, securities crimes, and financial abuse of elder persons and disabled adults. And it accomplishes all of that through a more effective use of existing resources. For that reason, I strongly support it, and I encourage the Committee to do so as well.

I would stand for questions.