

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 27, 2011, in Room 784 of the Docking Building.

All members were present except:

Representative Holmes
Representative Kuether
Representative Suellentrop

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:

Stephen Howe, Tenth Judicial District Attorney-Olathe
Scott Schultz, Associate General Counsel-Kansas Office of the Securities Commissioner
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriff's Association and Kansas Peace Officers Association
Representative Colloton
Dr. Marc Inciardi, Department of Radiology, University of Kansas Medical School
Ashley Inciardi, KU Medical Student
Robert Stiles, Director of Primary Care Program, Kansas department of Health and Environment

Others Attending:

See attached list.

Chairman Kinzer requested a bill, on behalf of Representative Dillmore, concerning expungement of arrest records; docket fee; amending K.S.A. 2010 Supp. 22-2410 and repealing the existing section.

The request was accepted without objection by the committee.

The Hearing on **HB 2010 – Offenses and conduct giving rise to forfeiture** was opened.

Jill Wolters, Staff Revisor, presented an overview of the bill. ([Attachment 1](#))

Stephen Howe, Tenth Judicial District Attorney- Olathe, addressed the committee in support of the bill, stating it would allow them to seize the cash or property obtained from illegal acts. ([Attachment 2](#))

Scott Schultz, Associate General Counsel for the Kansas Office of the Securities Commissioner, testified before the committee in favor of the bill stating it would provide law enforcement with the necessary tools to better deter the commission of financial crimes throughout the state.

In addition, they further propose additional amendments to K.S.A. 60-4104 and K.S.A. 60-4117 to include violations of the Kansas Uniform Securities Act, such as securities fraud, in the list of covered forfeiture offenses. ([Attachment 3](#))

Ed Klumpp, on behalf of Kansas Association of Chiefs of Police, Kansas Sheriff's Association and Kansas Peace Officers Association, submitted written testimony in support of the bill. ([Attachment 4](#))

There were no opponents.

The Hearing on **HB 2010** was closed.

The Hearing on **HB 2029 – Charitable health care provider defined to include ultrasound technologist** was opened.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on January 27, 2011, in Room 784 of the Docking Building.

Jill Wolters, Staff Revisor, presented an overview of the bill. ([Attachment 5](#))

Representative Colloton addressed the committee in support of the bill and explained, under the Kansas Tort Claims Act, the voluntary work of physicians and many other health care workers receive immunity when working in a clinic that serves the indigent, and this bill would add ultrasound technologists to the specific list of health care workers covered under this act. ([Attachment 6](#))

Dr. Marc Inciardi, Department of Radiology, University of Kansas Medical Center, spoke to the committee in support of this bill. He explained, as radiologists, they provide staff coverage for ultrasound examinations at the Jay Doc facility, which provides care for indigent patients and is operated by KU medical students, under the supervision and guidance of physicians who volunteer their services. He asks the committee to include ultrasound technologists who perform the ultrasound examinations to the specific list of health care workers that receive immunity from any claims arising from this volunteer work. ([Attachment 7](#))

Ashley Inciardi, a third year KU Medical Student, appeared before the committee, giving background information about Jay Doc, a clinic located in Kansas City, Kansas that serves the indigent population, providing services at no cost to the patient. In the desire to expand the services to provide ultrasound examinations, the issue immediately arose that ultrasound technologists who volunteer their time scanning patients were not included in the health care workers that receive immunity from malpractice claims. ([Attachment 8](#))

Barbara Atkinson, M.D., University of Kansas Medical Center and School of Medicine submitted written testimony in support of the bill. ([Attachment 9](#))

Robert Stiles, Primary Care Director, Kansas Department of Health and Environment (KDHE), spoke to the committee as a neutral position stating that currently all professions eligible to enter into agreements with the Secretary of KDHE are licensed through one of the Kansas licensee boards. This bill proposes to include a new profession in the definition of "charitable health care provider" in K.S.A. 75-6102, and one issue that would need to be resolved, prior to enrolling ultrasound technologists in the Charitable Health care Provider Program, is that it does not appear there is a statutory definition for "ultrasound technologist"; therefore, it would be necessary to define the term either in statute or regulation prior to beginning to enroll this group as charitable health care providers. ([Attachment 10](#))

Callie Jill Denton, Kansas Association for Justice, submitted written testimony in opposition of the bill. ([Attachment 11](#))

The Hearing on **HB 2010** was closed.

Chairman Kinzer advised the committee he plans to work **HB 2028** and **HB 2030** on Monday, January 31.

The next meeting is scheduled for January 31, 2011.

The meeting was adjourned at 4:30 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 1-27-11

[illegible]

Office of Revisor of Statutes

300 S.W. 10th Avenue
Suite 24-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee

From: Jill Ann Wolters, Senior Assistant Revisor

Date: January 27, 2011

Subject: HB 2010, covered offenses and conduct giving rise to forfeiture

Under the Kansas standard asset seizure and forfeiture act, K.S.A. 60-4101, et seq., the plaintiff's attorney (defined generally as a county or district attorney or attorney general) may file a civil action to seize property of an individual or individuals who are involved in unlawful conduct and offenses. No criminal prosecution is necessary for a civil forfeiture to occur. The act provides for the disposition of the forfeited property and the use of the proceeds of the sale of the property. Examples of property which may be forfeited include: real property (subject to some limitation); cash and negotiable instruments; weapons; computers; contraband; controlled substances; and counterfeit items.

Covered offenses and conduct currently included under the law are listed on page 1, lines 10 through 36, page 2 lines 1 through 28. This bill would add the following offenses and conduct:

- embezzlement or intent to injure or defraud by a bank or trust company officer or employee
- mistreatment of a dependent adult
- giving a worthless check
- forgery
- making false information
- criminal use of a financial card
- unlawful acts concerning computers
- identity theft
- identity fraud.

House Judiciary

Date 1-27-11

Attachment # 1

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

January 26, 2011

House Judiciary Committee
Attention: Lance Kinzer, Chairman
District 14 State Capital, Room 531N
Topeka, Kansas 66612

Re: House Bill 2010

Dear Chairman Kinzer,

Thank you for the opportunity to submit our written response in support of HB 2010.

Over the last several years, our office has prosecuted numerous fraud cases where we were unable to seize assets that were used to facilitate the crime and/or were derived directly from the crime due to the lack of an asset forfeiture statute to cover these types of cases. Perpetrators use computers, printers, check or credit card software, scanners, cameras, shredders, skimmers and electronic storage devices to obtain and use victim's personal information and or financial information to steal from them. Many times these perpetrators use these monies to purchase personal property or deposit them into their shell companies' bank accounts.

During many of these large scale embezzlement cases, we are able to freeze bank accounts with cash obtained from the defendant's illegal acts. However, we are unable to identify all of the victims of the crime due to a variety of factors. Thus, funds remain in the account after the restitution has been paid out. The forfeiture statute would allow us to seize the cash or property obtained from their illegal acts. This would prevent the perpetrator from profiting from their criminal conduct. The forfeiture statute could be used for the benefit of the law enforcement agencies and county and district attorney's offices.

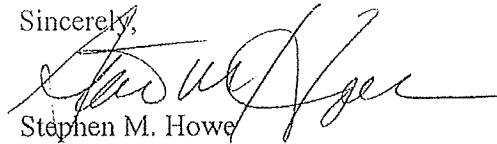
A good example of the potential benefits of this amendment to the current forfeiture statute is our prosecution of the company ASP in 2009. This company legally obtained bank routing information, primarily from senior citizens, for the purpose of providing health discount cards. They would then repeatedly transfer money from the victim's account without their permission. We were able to seize approximately \$270,000 worth of assets from a multi-million dollar fraud scam. Approximately \$76,000 could be directly traced to victims. We have been able to secure the remaining \$194,000 through an inter-agency agreement with the United States Secret Service by utilizing the federal forfeiture process.

This bill would allow us to do what the federal law enforcement officers already have authority to do, while keeping the proceeds at the state and local level. This would allow us to quickly reimburse victims and also move forward with a state forfeiture action.

There are numerous cases throughout the year that law enforcement and prosecutors could benefit from this amendment. It would have little, if any, negative impact financially on the State or local governments. In fact, it could insure that victims are paid in full, result in a windfall to those same law enforcement agencies, and eliminate the perpetrators ability to profit from their illegal activity.

We would ask this committee to support this bill as drafted. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,



Stephen M. Howe
Johnson County District Attorney
P.O. Box 728
Olathe, KS 66051



TESTIMONY IN SUPPORT OF HOUSE BILL 2010
Covered Offenses and Conduct Giving Rise to Forfeiture
Judiciary Committee Kansas House

Scott Schultz
Office of the Securities Commissioner
Associate General Counsel
January 27, 2011

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill 2010 which would add additional white collar and other offenses to the list of those that are eligible for forfeiture under K.S.A. 60-4104.

Inclusion of these offenses will provide law enforcement with the necessary tools to better deter the commission of financial crimes throughout the state. The office supports this bill and further proposes additional amendments to K.S.A. 60-4104 and K.S.A. 60-4117 to include violations of the Kansas Uniform Securities act, such as securities fraud, in the list of covered forfeiture offenses.

Most of the committee is probably aware that the Securities Commissioner's office employs law enforcement officers in its enforcement division and staff attorneys in its legal division to investigate and prosecute securities crimes that occur throughout the state. We are a one-stop shop for securities inquiries, which enables complaints to be efficiently investigated and referred for prosecution by our attorneys. These attorneys then prosecute the offenses by means of administrative, civil, or criminal state and federal court prosecutions. They serve as special assistant attorneys general while prosecuting in state court.

In order to accommodate the inclusion of securities offenses in this legislation, it is further proposed that amendments be made to K.S.A. 60-4117. This would create a securities fraud prosecution revolving fund for our office for investigation and prosecution and provide for the majority of the forfeiture funds to be distributed to victims of securities violations with the securities enforcement restitution fund. The addition is restrictive in that it would enable this office to prosecute forfeiture cases that involve only securities violations. This amendment has been attached to this written testimony for your review. Attorney General Derek Schmidt and Johnson County District Attorney Steve Howe are supportive of these proposed amendments.

Adoption of these amendments would give the agency an additional legal remedy to combat securities fraud in our communities and enable it to better retrieve ill-gotten gains from the perpetrators, similar to that in the other financial crimes that are proposed today. This office

has subpoena authority of business records. We routinely subpoena bank records and are able to track the flow of funds into a target's account, thereby proving use of proceeds. The attached photo is a luxury home built with investor money. The defendant, Scott Kaye, was prosecuted by this office in Sedgwick County District Court and sent to prison for convictions of securities fraud. The restitution ordered was \$1.67 million. With forfeiture authority this home, worth several hundred thousand dollars, may have been sold and the proceeds used to repay Kaye's victims. Restitution to victims of securities crimes would be our priority in utilizing forfeiture authority.

I will be glad to answer any questions and thank you for your consideration.

Attachments: 1. Proposed Amendments to HB 2010; and
2. Photo of Scott Kaye's home in Wichita

Proposed Amendments to HB 2010
Requested by the Office of the Securities Commissioner

AN ACT concerning civil procedure; relating to covered offenses and conduct giving rise to forfeiture; amending K.S.A. 2010 Supp. 60-4104, **K.S.A. 2010 Supp. 60-4117**, and repealing the existing ~~section~~ **sections**.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2010 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

(a) All offenses which statutorily and specifically authorize forfeiture;

(b) violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto;

(c) theft ~~which is classified as a felony violation pursuant to K.S.A. 21-3701~~, *section 87 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, ~~in which the property taken was livestock~~;

(d) ~~unlawful~~ criminal discharge of a firearm, ~~K.S.A. 21-4219 as defined in subsections (a)(1) and (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto;

(e) violations of K.S.A. 2010 Supp. 21-36a16, and amendments thereto;

(f) gambling, ~~K.S.A. 21-4303~~ *section 215 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and commercial gambling, ~~K.S.A. 21-4304 as defined in subsection (a)(1) of section 217 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto;

(g) counterfeiting, ~~K.S.A. 21-3763~~ *section 111 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(h) violations of ~~K.S.A. 21-4019~~ *section 178 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(i) medicaid fraud, ~~K.S.A. 21-3844 et seq.~~ *sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(m) ~~furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. 21-3451~~ *violations of section 58 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(n) ~~unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, K.S.A. 21-4315~~ *as defined in subsections (a) and (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(o) ~~unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, K.S.A. 21-4319~~ *as defined in subsections (a) and (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(p) ~~prostitution, K.S.A. 21-3512~~ *section 229 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, promoting prostitution, K.S.A. 21-3513* *section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and patronizing a prostitute, K.S.A. 21-3515* *section 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and*

(q) ~~human trafficking, K.S.A. 21-3446, and amendments thereto,~~ *and aggravated human trafficking, K.S.A. 21-3447* *section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(r) *violations of K.S.A. 9-2012, and amendments thereto;*

(s) *mistreatment of a dependent adult, section 52 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(t) *giving a worthless check, section 107 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(u) *forgery, section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(v) *making false information, section 110 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(w) *criminal use of a financial card, section 114 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(x) *violations of section 125 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and*

(y) *identity theft and identity fraud, as defined in subsections (a) and (b) of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and*

(z) violations of the Kansas uniform securities act, K.S.A. 17-12a101 et. seq.

Sec. 2. K.S.A. 2010 Supp. 60-4117 is hereby amended to read as follows: Except as provided in K.S.A. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

(4) salvage the property, subject to any lien preserved by the court.

(b) When firearms are forfeited under this act, the firearms in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another law enforcement agency for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) The proceeds of any sale shall be distributed in the following order of priority:

(1) For satisfaction of any court preserved security interest or lien, or in the case of a violation, as defined by subsection (h) of K.S.A. 60-4104, and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;

(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's

office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget;

(B) if the plaintiff's attorney is the attorney general and the conduct and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund. Moneys paid into the medicaid fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the attorney general for use by the attorney general in the investigation and prosecution of medicaid fraud and abuse; or

(C) if the conduct and offense giving rise to forfeiture is pursuant to subsection (z) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the securities fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys paid into the securities fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the office of the securities commissioner for use by the commissioner in the investigation and prosecution of violations of the Kansas uniform securities act. Expenditures from the securities fraud prosecution revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the securities commissioner or by a person or persons designated by the securities commissioner; or

(D) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency.

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If Except as provided in paragraph (d)(5), if the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas attorney general's state medicaid fraud forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas attorney general's state medicaid fraud forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person

or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

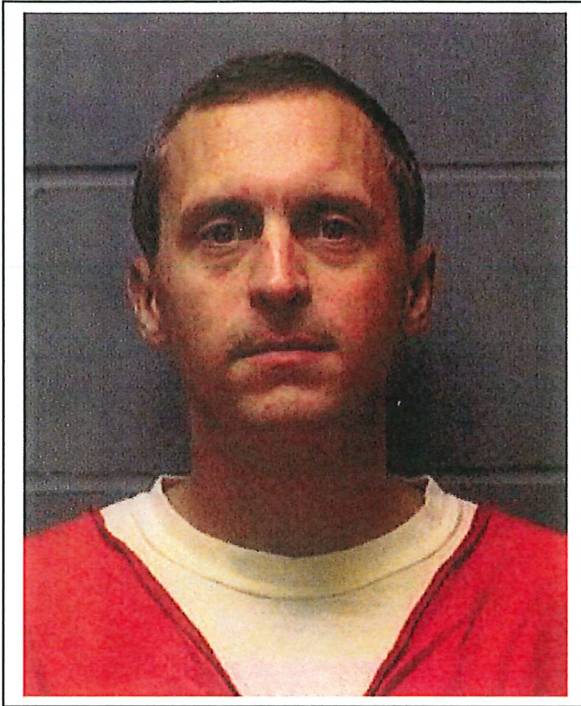
(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

(4) Moneys in the Kansas attorney general's medicaid fraud forfeiture fund shall defray costs of the attorney general in connection with the duties of investigating and prosecuting medicaid fraud and abuse.

(5) If the conduct and offense giving rise to forfeiture is pursuant to subsection (z) of K.S.A. 60-4104, and amendments thereto, the entire amount shall be deposited into the securities enforcement restitution fund and shall be used by the securities commissioner to pay restitution to victims as approved by the court.

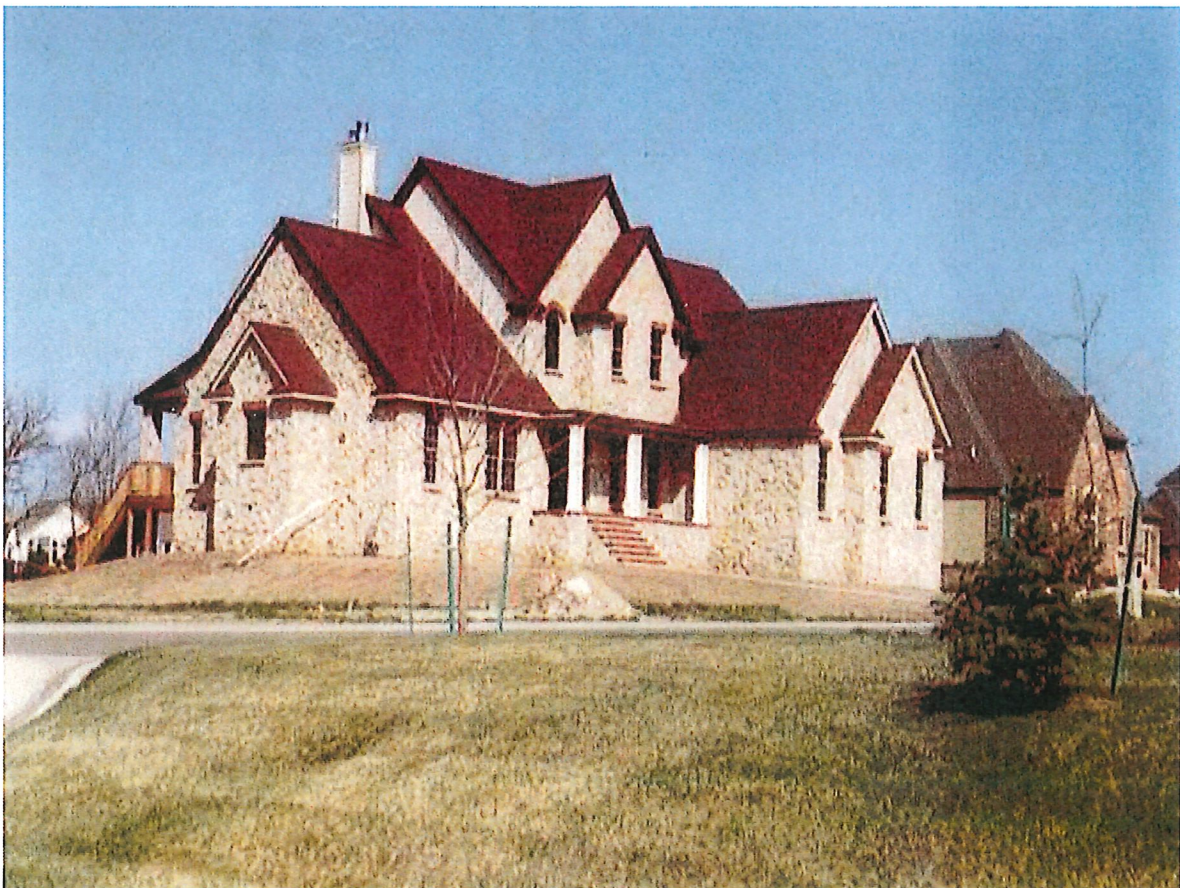
Sec. 3. K.S.A. 2010 Supp. 60-4104 is and K.S.A. 2010 Supp. 60-4117 are hereby repealed.

Sec. ~~3~~ 4. This act shall take effect and be in force from and after its publication in the statute book.



Scott Kaye

- **Hedge Fund Ponzi Scheme**
- **Used proceeds to build house**
- **Restitution: \$1,676,414.38**





**Kansas Association of
Chiefs of Police**

PO Box 780603
Wichita, KS 67278
(316)733-7301



**Kansas Sheriffs
Association**

PO Box 1853
Salina, KS 67402
(785)827-2222



**Kansas Peace Officers
Association**

PO Box 2592
Wichita, KS 67201
(316)722-8433

**Testimony to the House Judiciary Committee
In Support of HB2010
Conduct Giving Rise to Forfeiture
January 27, 2011**

Chairman Kinzer and Committee Members,

The Kansas Association of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association support HB2010. There is no question forfeiture has a deterrent effect on crime. It takes away the profitability of the crime at minimal cost to government.

We support the additional criminal acts added to the forfeiture laws. Especially the crimes of forgery, criminal use of a financial card, identity thefts, and computer crimes. Law enforcement is overwhelmed with reports of these crimes. In most of the larger agencies there are more of these cases than can be investigated. These crimes are huge criminal industries which are difficult and time consuming to investigate and prosecute.

The expansion of the theft provision will be particularly helpful in addresses some of the current theft trends such as metal thefts. These crimes are continuing to plague all parts of Kansas costing Kansas governments, businesses, industries and utilities hundreds of thousands of dollars a year.

We welcome this additional tool to address these crimes.

Ed Klumpp
Kansas Association of Chiefs of Police, Legislative Committee Chair
Kansas Sheriffs Association. Legislative Liaison
Kansas Peace Officers Association, Legislative Liaison
E-mail: eklumpp@cox.net
Phone: (785) 235-5619
Cell: (785) 640-1102

House Judiciary
Date 1-27-11
Attachment # 4

Office of Revisor of Statutes
300 S.W. 10th Avenue
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Topeka, Kansas 66612-1592
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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Jill Wolters, Senior Assistant Revisor
Date: January 21, 2011
Subject: HB 2029, ultrasound technologists included as charitable health care providers under the Kansas Tort Claims Act

House Bill No. 2029 would allow ultrasound technologists working under the supervision of a licensed physician to be included as charitable health care providers under the Kansas Tort Claims Act. If such technologist had entered into an agreement with the secretary of health and environment or an indigent health care clinic and pursuant to such agreement, gratuitously renders professional services to a medically indigent person, such technologist is covered by the Tort Claims Act.

House Judiciary
Date 1-27-11
Attachment # 5

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 24-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Interested Persons
From: Jill Wolters, Senior Assistant Revisor
Date: January 21, 2011
Subject: The Tort Claims Act, 75-6102 et seq. concerning charitable health care providers

Under the Kansas Tort Claims Act, a government entity can be held liable for damages caused by employee's acts or omissions. K.S.A. 75-6103 states that each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment. K.S.A. 75-6102 defines "government entity" and "employee."

The definition of employee found in K.S.A. 75-6102, includes charitable health care providers. If a charitable health care provider enters into an agreement with the secretary of health and environment or an indigent health care clinic and pursuant to such agreement, gratuitously renders professional services to a medically indigent person, such charitable health care provider is covered by the Tort Claims Act. This means that the State of Kansas can be held liable for damages caused by the charitable health care providers's negligent or wrongful act or omission, if that charitable health care provider was acting within the scope of his or her employment. The State of Kansas will provide a defense and indemnification for any claims arising out of such professional services.

K.S.A. 75-6105 limits the liability to \$500,000 for any number of claims arising out of a single occurrence or accident. Further, the governmental entity is not liable for punitive or exemplary damages or for interest prior to judgment.

The Tort Claims Act covers the following medical professionals:

K.S.A. 75-6102 (e) "Charitable health care provider" means

1. person licensed by the state board of healing arts as an exempt licensee or a federally active licensee
2. person issued a limited permit by the state board of healing arts
3. physician assistant licensed by the state board of healing arts
4. mental health practitioner licensed by the behavioral sciences regulatory board and
5. health care provider as the term "health care provider" is defined under K.S.A. 65-4921 (See below)

K.S.A. 65-4921 (c) "Health care provider" means:

1. Those persons and entities defined as a health care provider under K.S.A. 40-3401 (See below)
2. a dentist licensed by the Kansas dental board
3. dental hygienist licensed by the Kansas dental board
4. professional nurse licensed by the board of nursing
5. practical nurse licensed by the board of nursing
6. mental health technician licensed by the board of nursing
7. physical therapist licensed by the state board of healing arts
8. physical therapist assistant certified by the state board of healing arts
9. occupational therapist licensed by the state board of healing arts
10. occupational therapy assistant licensed by the state board of healing arts
11. respiratory therapist licensed by the state board of healing arts

K.S.A. 2010 Supp. 40-3401(f). "Health care provider" means a

1. person licensed to practice any branch of the healing arts by the state board of healing arts (See below) with the exception of physician assistants (However, p.a.'s are covered under the 75-6102 (e) definition)
2. person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts
3. person engaged in a postgraduate training program approved by the state board of healing arts
4. medical care facility licensed by the department of health and environment
5. health maintenance organization issued a certificate of authority by the commissioner of insurance
6. podiatrist licensed by the state board of healing arts
7. optometrist licensed by the board of examiners in optometry
8. pharmacist licensed by the state board of pharmacy
9. licensed professional nurse who is authorized to practice as a registered nurse anesthetist
10. licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153
11. professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection
12. Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized
13. partnership of persons who are health care providers under this subsection, a Kansas not-for-

profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection

14. nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine

15. dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899

16. psychiatric hospital licensed under K.S.A. 75-3307b

17. mental health center or mental health clinic licensed by the secretary of social and rehabilitation services

EXCEPTIONS: health care provider does not include (1) any state institution for the mentally retarded, (2) any state psychiatric hospital, (3) any person holding an exempt license issued by the state board of healing arts [However, exempt licensees are covered under the 75-6102 (e) definition] or (4) any person holding a visiting clinical professor license from the state board of healing arts.

K.S.A. 65-4921

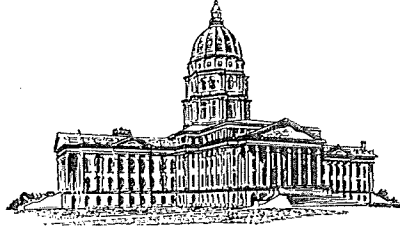
"Health care provider" means:

1. Those persons and entities defined as a health care provider under K.S.A. 40-3401 (see above)
2. a dentist licensed by the Kansas dental board
3. dental hygienist licensed by the Kansas dental board
4. professional nurse licensed by the board of nursing
5. practical nurse licensed by the board of nursing
6. mental health technician licensed by the board of nursing
7. physical therapist licensed by the state board of healing arts
8. physical therapist assistant certified by the state board of healing arts
9. occupational therapist licensed by the state board of healing arts
10. occupational therapy assistant licensed by the state board of healing arts
11. respiratory therapist licensed by the state board of healing arts

Persons licensed to practice any branch of the healing arts by the state board of healing arts

1. Medical Doctors (MD)
2. Osteopathic Doctors (DO)
3. Chiropractic Doctors (DC)
4. Podiatric Doctors (DPM)
5. Physician Assistants (PA)
6. Physical Therapists (PT)
7. Physical Therapist Assistants (PTA)
8. Occupational Therapists (OT)
9. Occupational Therapy Assistants (OTA)
10. Respiratory Therapists (RT)
11. Athletic Trainers (AT)
12. Naturopathic Doctors (ND)
13. Contact Lens Distributors
14. Radiologic Technologists (LRT)

STATE OF KANSAS
HOUSE OF REPRESENTATIVES



PAT COLLOTON
28TH DISTRICT

STATE CAPITOL, ROOM 142-W
TOPEKA, KANSAS 66612
(785) 296-7631
pat.colloton@house.ks.gov

COMMITTEE ASSIGNMENTS
CORRECTIONS AND JUVENILE JUSTICE, CHAIRMAN
JUDICIARY
JOINT COMMITTEE ON CORRECTIONS AND
JUVENILE JUSTICE OVERSIGHT

2513 W. 118TH STREET
LEAWOOD, KANSAS 66211
(913) 339-9246
pat@patcolloton.com

January 21, 2011

House Judiciary Committee
State Capitol
Topeka, KS 66612

Chairman Kinzer and Judiciary Committee Members:

Under the Kansas tort claims act the voluntary work of physicians and other health care workers receive immunity when working in a clinic that serves the indigent. The Jay Doc facility near KU Hospital serves indigent patients in that area and is staffed by various volunteers from KU Hospital as well as KU medical students. Ultrasound exams are performed at the Jay Doc facility and untrasound technologists are used to help perform ultrasound examinations. Ultrasound technologists were not yet included in the specific list of health care workers covered under the tort claims act and HB 2029 amends the list to add them.

In order to provide full coverage for the health care workers at the Jay Doc facility I urge adoption of HB 2029.

Respectfully submitted,

A handwritten signature in cursive script that reads "Pat Colloton".

State Rep. Pat Colloton

House Judiciary

Date 1-27-11

Attachment # 6

The University of Kansas Medical Center

Judson R. Bertsch, M.D.
Kevin D. Brown, M.D.
Zachary S. Collins, M.D.
Larry T. Cook, Ph.D.
Glendon G. Cox, M.D., M.B.A., M.H.S.A.
Kendrick C. Davidson, M.D., F.A.C.R.
Reginald W. Dusing, M.D.
Crosby L. Gernon, M.D.
Gary W. Hinson, M.D.
Marc F. Inciardi, M.D.
Phillip L. Johnson, M.D.

School of Medicine
Department of Radiology
Mail Stop 4032
3901 Rainbow Boulevard
Kansas City, Kansas 66160-7234
913-588-6805
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Stanton J. Rosenthal, M.D., F.A.C.R.
Professor and Chairman

Steven M. Lemons, M.D.
Norman L. Martin, M.D., F.A.C.R.
Lucas J. Meek, M.D.
Kirk A. Miller, D.O.
Douglas L. Nelson, M.D.
Mark L. Redick, M.D.
Alan R. Reeves, M.D.
Pauline R. Sleder, M.D.
William P. Smith, M.D.
Louis H. Wetzel, M.D.
Wendell Y. Yap, M.D.

January 21, 2011
House Judiciary Committee
State Capitol
Topeka, KS 66612

Chairman Kinzer and Judiciary Committee Members:

I am radiologist and work at the KU Hospital in Kansas City, Kansas. As radiologists we provide staff coverage for ultrasound examinations performed at the Jay Doc facility. The Jay Doc facility provides care for indigent patients and is operated by KU medical students under the supervision and guidance of physicians such as myself. Our work is uncompensated and voluntary.

Physicians and many allied health care workers receive immunity from any claims arising from this volunteer work but the ultrasound technologists are not currently included. I am asking that the law be changed to include this important group of health care workers who perform ultrasound examinations on patients at the Jay Doc facility. HB 2029 amends the law to provide this protection for ultrasound technologists and I respectfully request the legislature to make this change in the law.

I urge your favorable consideration of HB 2029.

Respectfully,



Marc F. Inciardi, M.D.
Breast Imaging Section
Department of Radiology

House Judiciary
Date 1-27-11
Attachment # 7

January 24, 2011

House Judiciary Committee
State Capitol
Topeka, KS 66612

Chairman Kinzer and Judiciary Committee Members:

My name is Ashley Inciardi, and I am currently a third year medical at the University of Kansas School of Medicine, studying at the University of Kansas Hospital in Kansas City, KS.

As background, the Jay Doc clinic was established in 2003 to serve the indigent population of the Kansas City metro area. It is located at 300 Southwest Blvd in KC, KS. All services are provided at no cost to the patient. Jay Doc is a member of the Kansas City Safety Net Coalition and is the only completely free clinic in the coalition. General clinic is held twice a week and patients are often referred for specialty nights such as Women's Health, Diabetes, Ophthalmology and Physical Therapy. It is the only entirely student operated facility of its kind in the United States. Medical students at all levels volunteer their time to help the patients while at the same time learning to become better doctors. Finally, all patient's assessments and treatment plans are reviewed and approved by board certified staff physicians donating their time as well. Jay Doc also has student volunteers in Social Services that equip patients with referrals to other Safety Net clinics so that they can find a medical home for ongoing health care. It truly is a great benefit for this population with limited access to medical care as the clinic serves over 2000 patients per year.

While a second year student, I thought about expanding the scope of the services of the Jay Doc clinic. We established a "Radiology" night whereby patients who were seen and often referred for ultrasound examinations could come back another night for an ultrasound performed at the Jay Doc clinic. One of the issues that immediately arose was medical liability coverage for the ultrasound technologists who volunteer their time scanning patients. While staff physicians, residents, medical students, radiology technologists, and other allied personnel who volunteer their time at the Jay Doc clinic receive immunity from malpractice claims, ultrasound technologists do not.

I am asking that the law be changed to include this important group of health care workers who perform ultrasound examinations on patients at the Jay Doc facility. HB 2029 amends the law to provide this protection for ultrasound technologists and I respectfully request the legislature to make this change in the law.

I urge your favorable consideration of HB 2029.

Respectfully,



Ashley Inciardi

House Judiciary

Date 1-27-11

Attachment # 8



Written testimony from
Barbara F. Atkinson, MD
Executive Vice Chancellor, University of Kansas Medical Center
Executive Dean, University of Kansas School of Medicine
before the
House Judiciary Committee
January 27th, 2011

Dear Committee Members:

This letter is in support of HB 2029, which would amend the definition of Charitable Health Care Providers under the Kansas Tort Claims Act (K.S.A. 75-6102(e)) to include ultrasound technologists. The Charitable Health Care Provider program allows health care providers who provide volunteer health care services to the medically indigent to be included for liability purposes under the Kansas Tort Claims Act. Currently, ultrasound technologists are not included.

Our students at the University of Kansas Medical Center operate two charitable care clinics in Kansas City and one in Wichita that would benefit from passage of HB 2029 and expanded tort protections for ultrasound technologists.

JayDoc Free Clinic, which operates in Kansas City, is a student-run safety net clinic that provides preventive and non-urgent medical care, including prenatal care, to the uninsured of the Kansas City metropolitan area at no cost to the patients. JayDoc Free Clinic operates general clinics two nights a week, staffed by more than two dozen volunteers, including physicians, medical students, allied health students, interpreters and community volunteers. Like other safety net clinics, JayDoc patients may be referred to other area medical providers or JayDoc-operated specialty clinics for continued care.

Unlike other safety clinics, however, JayDoc is unique in that it is entirely governed by a board of KU medical students. Students also provide patient care, under the supervision of volunteer faculty physicians. Last spring, JayDoc began offering limited, monthly radiology services to qualified patients and hope to expand this capability by offering on-site ultrasound diagnostic imaging as needed to improve their acute care services.

Also unlike other clinics, JayDoc does not screen patients for ability to pay. All care provided by the clinic is free to every patient. JayDoc, which is funded entirely by donations and local grants, is the only completely free clinic in the Kansas City area.

House Judiciary

Date 1-27-11

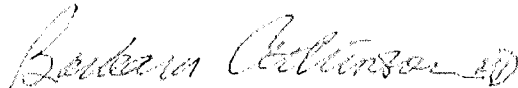
Attachment # 9

Each year, more than 2,000 people (mostly residents of Wyandotte County) depend on the medical care they receive from JayDoc volunteer physicians and students, while our students receive valuable hands-on training in their medical disciplines.

KU medical students in Wichita operate a similar clinic, the JayDoc Community Clinic, which offers free care every Saturday to more than 500 patients each year. KU Health Partners also provides care to the uninsured and underinsured through Silver City Health Center in Kansas City. We believe that extending protections to ultrasound technologists providing charitable care through HB 2029 could help our clinics and students better meet the needs of more patients.

The Kansas tort claims act helped to ensure that many health care providers could continue to provide charitable care, and we believe that expanding the same protections to ultrasound technologists will ensure that more Kansans have access to high-quality health care. We urge you to pass HB 2029 favorably and without amendment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara F. Atkinson".

Barbara F. Atkinson, MD
Executive Vice Chancellor, KUMC
Executive Dean, KU School of Medicine



Robert Moser, MD, Acting Secretary

Department of Health & Environment

Sam Brownback, Governor

Testimony on House Bill 2029

**Presented to
House Judiciary Committee**

**By
Robert Stiles, Primary Care Director
Kansas Department of Health and Environment**

January 27, 2011

Chairman Kinzer and members of the committee, I am Robert Stiles, the Primary Care Director in the Kansas Department of Health and Environment. Thank you for the opportunity to speak on House Bill 2029.

This bill proposes to include a new profession in the definition of "charitable health care provider" in KSA 75-6102, "an ultrasound technologist working under the supervision of a person licensed to practice medicine and surgery." This addition would allow enrolled ultrasound technologists to enter into an agreement with the Secretary of the Kansas Department of Health and Environment to receive coverage under the Kansas Tort Claims Act when gratuitously providing care to medically indigent individuals. Medically indigent individuals include uninsured individuals in a family unit earning less than 200 percent of the federal poverty level and individuals enrolled in Medicaid or HealthWave.

Currently, all professions eligible to enter into agreements with the Secretary of KDHE are licensed through one of the Kansas licensure boards. Current professions eligible to participate include all professions licensed by the Kansas Board of Healing Arts, nurses, dentists, dental hygienists, mental health technicians, optometrists, pharmacists, and licensed mental health practitioners. There is currently one licensed profession in Kansas for which it is possible to obtain certification related to ultrasound, licensed radiologic technologists with certification from the American Registry of Radiologic Technologists (ARRT) in sonography, mammography, or breast sonography. Radiologic technologists are currently eligible for the Charitable Health Care Provider Program as they are one of the professions licensed by the Kansas Board of Healing Arts.

One issue that would need to be resolved prior to enrolling ultrasound technologists in the Charitable Health Care Provider Program is that it does not appear that there is a statutory definition for "ultrasound technologist." It would be necessary to define the term either in statute or regulation prior to beginning to enroll this group as charitable health care providers.

House Judiciary

Date 1-27-11

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While this issue remains to be resolved, it appears that the addition of ultrasound technologists to the list of eligible professions would require only minor modifications to Charitable Health Care Provider Program procedures and materials and would not require additional staffing or costs to KDHE.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.

To: Representative Lance Kinzer, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton
Director of Public Policy

Date: January 27, 2011

Re: HB 2029 Concerning the Tort Claims Act (OPPONENT)

The Kansas Association for Justice is a statewide, nonprofit organization of trial lawyers. KsAJ members support protection of the right to trial by jury and fair laws that protect all parties in a dispute.

HB 2029 amends the Kansas Tort Claims Act by expanding the definition of "charitable health care provider" to include ultrasound technologists.

The Tort Claims Act is a law that says the state will be accountable for negligent or harmful conduct of state employees, which includes "charitable health care providers". Under the act, the maximum liability of the State relating to any single occurrence or accident, for both economic and non-economic damages, is \$500,000. In addition, the State is not liable for punitive damages or prejudgment interest. The Act also contains a number of exceptions, which are specific circumstances when the State bears no liability at all.

Proposals to expand immunity or exceptions under the Tort Claims Act increase the State's legal and financial liability and reduce legal protections for Kansans. KsAJ urges the Committee to oppose HB 2029.

Financial burden on taxpayers. When an employee of the State is alleged to have been negligent and caused injury, the job of defending the employee falls to the Attorney General. The State's litigation and defense costs increase as more private citizens and entities are defined

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Date 1-27-11
Attachment # 11

as state "employees." If the employee is negligent, the State pays damages to the injured party. All costs are passed on to taxpayers.

The State assumes increased risk management costs, litigation defense costs, and potentially the costs of settlements and damages for all new private citizens it defines as "employees" under the Tort Claims Act. However, it is speculation that these costs will be outweighed by a reduction in costs elsewhere in the state budget.

In addition, the Tort Claims Act already applies to indigent health care clinics and health departments and their employees. So the State has already "bargained for" the costs of liability insurance in a contract with charitable health care providers, or perhaps paid for insurance premiums to cover liability. It is unreasonable for the State to pay twice.

Growth in government. Adding private citizens and entities to the Tort Claims Act forces taxpayers to underwrite the costs of litigation and any damages awarded injured persons. Right now, these costs are appropriately paid for by private liability insurance coverage. In addition, increasing the State's liability and risk management accountabilities is a slippery slope. It is difficult to know where to draw the line once more and more private citizens are defined as state "employees."

Less responsive to Kansas citizens. The purpose of the Act is to provide relief to citizens that are injured by a negligent act of the State. But it is a disservice to taxpayers for the State to expand its liabilities by assuming the responsibilities of private citizens. At the same time, injured Kansans should not be deprived from seeking justice because private citizens have been granted the protection of the limited remedies of the Act.

Lawsuit protection for charitable medical professionals is already the law. Medical professionals providing free or reduced cost care may *already* have limited immunity for medical errors or negligence. The current protections are found in the Tort Claims Act and also at KSA 60-3601, which provides for limited immunity for volunteers for certain non-profit organizations.

Claims brought directly to the Legislature instead of a jury. The State is free to waive its immunity and subject itself to greater liability than provided in the Tort Claims Act. If a citizen feels that Tort Claims Act immunity barred or limited their claim unjustly, he or she may seek introduction of legislation to address their specific case. KsAJ believes the civil justice system and citizen juries are the most appropriate venue for resolving such disputes. The purpose of the Tort Claims Act is to provide

an effective, responsive remedy for citizens; the Legislature is not meant to serve as a jury.

The Kansas Association for Justice respectfully requests that the House Judiciary Committee oppose HB 2029 and any other proposals to amend the Kansas Tort Claims Act.