

SESSION OF 2010

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR
SENATE BILL NO. 374**

As Recommended by Senate Committee on
Judiciary

Brief*

Sub. for SB 374 would create the Kansas Adverse Medical Outcome Transparency Act. The bill would make inadmissible, in any claim or civil action brought by or on behalf of a patient alleging an adverse outcome of medical care, any and all statements, activities, waivers of charges for medical care, or other conduct expressing benevolence, regret, mistake, error, sympathy, apology, commiseration, condolence, compassion, or a general sense of benevolence made by a health care provider, employee, or agent. Such statements or conduct would not constitute an admission of liability or an admission against interest.

A defendant in a medical malpractice action may expressly waive, in writing, the inadmissibility of statements made expressing benevolence, regret, mistake, error, sympathy, apology, commiseration, condolence, compassion, or a general sense of benevolence.

Background

2009 SB 32 was a bill introduced by the Sisters of Charity of Leavenworth Health System to conform Kansas law with "apology laws" in other states. It was modeled after the Colorado apology law. It would have prohibited a court from admitting statements, gestures, conduct, or benevolent acts, including a waiver of charges for medical care, expressing

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

apology, fault, sympathy, or condolence, which are made by a health care provider relating to the unanticipated outcome of medical care, as evidence of an admission of liability in civil actions. 2009 SB 32 was sent to the Kansas Judicial Council (KJC) for study during the 2009 Interim.

The KJC reviewed the apology statutes enacted in 35 other states and found that there has not been uniformity in the approaches taken. The KJC drafted a bill modeled after Hawaii's apology law. That bill, SB 374, as introduced, would have provided that the evidence of statements or gestures that express apology, sympathy, commiseration, or condolence concerning the consequences of an event in which the declarant was a participant is not admissible to prove liability for any claim growing out of the event.

The proponents of SB 374, as introduced, who presented testimony in the Senate Committee hearing were representatives of the KJC, the Kansas Association for Justice, the Kansas Medical Society, and the University of Kansas Hospital Authority.

Although listed as proponents of SB 374, as introduced, representatives of the Sisters of Charity of Leavenworth Health Systems and the Kansas Hospital Association advocated adoption of language modeled after South Carolina's law rather than Hawaii's law. The proposed substitute would create the Kansas Adverse Medical Outcome Transparency Act. A copy of a proposed substitute was attached to the written testimony of the Sisters of Charity of Leavenworth Health Systems.

There were no opponents of the bill who presented testimony in the Senate Committee hearing.

On final action on the bill in the Senate Committee, the proposed substitute by the Sisters of Charity of Leavenworth Health Systems was adopted.

The fiscal note provided on this bill, as introduced, states the judicial branch does not anticipate any fiscal effect to result from the passage of the bill.