

Approved: May 11, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Monday, February 6, 2012 in 346-S of the Capitol.

All members were present except:

Annie Kuether
Mitch Holmes
Pat Colloton
Dan Collins

Committee staff present:

Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Jason Watkins, Kansas Court Reporters Association
Coleen Boxberger, President, National Court Reporters Association
Kristin Anderson, Vice Chair, National Court Reporters Association
Representative Caryn Tyson
Tuck Duncan, Kansas Wine and Spirits Wholesale Association
Janet Wise, Kansas Association of Beverage Retailers

Others in attendance:

See attached.

Chairman Kinzer opened the meeting and advised this was the last day for bill introductions. With no bill introductions requested, Chairman Kinzer opened the hearing on **HB 2484—Certified shorthand reporters; deposition in Kansas**. Jason Thompson provided an overview of the bill.

Jason Watkins testified in support of **HB 2484**, stating the bill is a simple fix returning to Kansas statute the requirement that anyone taking a deposition in Kansas be certified by the Kansas Supreme Court. Prior to July 1, 2010, this was in the statute. *2010 HB 2656* was intended to be a recodification of the Kansas Civil Procedure Code to more closely mirror the Federal Civil Procedure Code. The bill was 200 pages and dealt with many issues in the Code. It was not

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until the Attorney General received numerous complaints about a non-certified reporter and the damage done to the official records in depositions she had taken that it was discovered the certification requirement had been dropped. ([Attachment 1](#))

Coleen Boxberger testified in support of [HB 2484](#) and advised she has been an active court reporter since 1996. The court reporters use the special machine and train from two to four years to become a certified court reporter. The certification is important so attorneys and judges can be confident in the official transcriptions they are getting. Court reporters are officers of the court and are authorized to place people under oath. They are also responsible for exhibits marked throughout a deposition, which periodically contain sensitive personal information, such as medical records and tax statements. ([Attachment 2](#))

Chairman Kinzer asked Ms. Boxberger what the certification process was. Ms. Boxberger advised there is a Certified Court Reporter Board under the Supreme Court. There are judges and court reporters on the board. They determine who is eligible to take the test and conduct the testing. There is a written knowledge test and a skills test. There are three parts to the skills test: there are two-voice testimonies with question and answer parts given at a speed of 225 words per minute, a solid matter test of a jury charge given at 200 words per minute, and a medical testimony given at 180 words per minute. These are all five-minute tests and the court reporters must have 95 percent accuracy on their skills tests. The certification testing fee is \$125 and is offered each May and October. The Kansas Court Reporter Board reciprocates with the national Court Reporter Board testing so if a court reporter has passed the national test certification, they are required to take the written test in Kansas, but would not have to repeat the skills test.

Kristin Anderson testified in support of [HB 2484](#), and advised she has been a court reporter in the Kansas City area, serving ten years in the court system and the last two years working as a freelance reporter. Ms. Anderson often takes depositions in federal court and she attaches a state certification on the back of each deposition filed with the court. At the federal court level, court reporters must hold an RTR (real time reporter) certification as a minimum requirement. Court reporters are entrusted with corporate secrets, medical records, company patents, and documents not intended for release to the general public. Schooling, interning, and training prepare court reporters to appreciate the importance of this trust and confidentiality, as well as how critical each spoken word is in a deposition and how it can impact the outcome of a case. Ms. Anderson shared Kansas has a CCR board in place that monitors testing and compliance with licensing for the official reporters. Licensing in Kansas requires an annual monetary fee of \$50 which funds the testing and continuing education. Court reporters cannot have a felony on their record and be certified. ([Attachment 3](#))

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Chairman Kinzer noted there is written testimony submitted by Jeffrey Goering, Civil Presiding Judge, 18th Judicial District. ([Attachment 4](#))

Chairman Kinzer closed the hearing on **HB 2484** and opened the hearing on **HB 2521—Imposition of civil penalties for alcohol and tobacco violations**. Jason Thompson provided an overview of the bill.

Representative Caryn Tyson testified in support of **HB 2521**, stating she had a constituent who was given a citation for improperly marking cigarettes to be returned to the vendor. The citation from the Division of Alcohol Beverage and Control (ABC) came 11 months after the visit from the ABC. Representative Tyson stated the bill would impose a 90 day limit to impose a penalty, therefore improving the effectiveness of the ABC, as an enforcement division, and the licensees will benefit by knowing in a reasonable timeframe whether a citation had a civil penalty and what corrective action should be taken. ([Attachment 5](#))

Tuck Duncan testified in support of **HB 2521** on behalf of the Kansas Wine & Spirits Wholesalers Association. When an incident occurs, a notice from the ABC is mailed within 30 days to the licensee. Minors would go in and make purchases as part of undercover stings, and licensees would not hear anything about it for a long time. This citation is jurisdictional, and if they do not do this, they cannot go to the next step in the process, where licensees receive a Notice of Hearing on Administrative Action, which is where the licensee would have an opportunity to appeal. This is what the licensees are reporting they do not find out about for 11 to 15 months. The problem is identified at the hearing, the witnesses are identified, and it is the first opportunity for the licensee to be prepared with a defense which is too late. An example would be a hearing that occurs a year later and the server of the liquor may not even still be an employee at the business. Licensees have a right to appeal, but they cannot until they know what the issue is. The 90-day window would help the licensee prepare a credible response to the issue at hand. ([Attachment 6](#))

Janet Wise testified in support of **HB 2521**, on behalf of the Eastern Kansas Association of Beverage Retailers, stating the Association supports reasonable time frames for civil penalties under the Liquor Control Act. Association members are responsible for very specific regulations relating to selling to legal customers, conducting wholesale transactions with legal on-premises businesses, having the state and local licenses posted, hiring and registering legal employees, tagging kegs, collecting and remitting liquor enforcement taxes, and avoiding any open containers on the licensed premises. A mistake in any one of these areas can result in a civil penalty. Some members of the Association have reported long delays in the process- sometimes incurring additional violations before the initial incident has been addressed. It would be very helpful if the follow-up procedures could be completed within 90 days. ([Attachment 7](#))

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Chairman Kinzer noted there is written testimony in opposition from Patrick Broxterman, Office of the Attorney General. (Attachment 8)

Chairman Kinzer closed the hearing on **HB 2521**.

Chairman Kinzer reminded the Committee of the procedures the Committee would use in working bills and announced the first bill to be addressed was **HB 2121–Relating to the coroner’s permit to cremate**. Jason Thompson provided a brief overview of the bill.

*Representative Rubin moved, Representative Alford seconded, to recommend **HB 2121** favorably for passage.*

*Representative Brookens moved, Representative Ward seconded, to amend **HB 2121** with an amendment.*

Representative Brookens moved to amend the bill and distributed copies of the amendment to the Committee. (Attachment 9) The amendment addressed issues the interested parties had asked be added to the bill, which were addressed in new subsections (a) through (d).

*Representative Brookens moved, Representative Ward seconded, to amend **HB 2121** with an amendment. Motion carried.*

Representative Brookens requested an amendment that would make amendments to his previous amendment, changing line 4 of paragraph (b) of the amendment, where the word “coroner” is listed, by adding the words “or the funeral director in possession of the body.” In the same line, after the words “such coroner,” add the words “or funeral director.” Also, directly below two lines where it says “If such coroner,” add the words “or funeral director,” and below that three lines where it says “such coroner,” add the words “or funeral director,” and on the last line where it says “about the coroner’s” add the words “or funeral director’s”. There was no second on Representative Brookens motion and the amendment failed.

*Representative Brookens moved, Representative Rubin seconded, to recommend **HB 2121** be favorably passed as amended. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2253–Private rights of action; restrictions**. Jason Thompson provided an overview of the bill. The bill would add a new section concerning civil procedure known as the Transparency and Lawsuits Protection Act, and would state no legislative act shall create a private right of action unless such a right is

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expressly stated in the legislation. Jason offered under the current practice, if individuals file lawsuits under a statutory right of action, sometimes the courts will find a private right of action is lawful and sometimes the courts will not. This currently is an issue of law for the courts to decide. This bill would provide that, without an express statement of a private right of action, the courts would not find a private right of action as lawful.

Representative Tietze questioned how the bill would affect past legislation and whether the Committee would need to consider this private right of action in past legislation. Chairman Kinzer stated the Kansas Supreme Courts have been reluctant to recognize private causes of action and implied causes of action, and advised the bill would not change too much in terms of the existing state of the law.

Representative Rubin moved, Representative Suellentrop seconded, to recommend **HB 2253** favorably for passage.

Representative Patton moved, Representative Brookens seconded, to amend **HB 2253** with a balloon amendment.

Representative Patton made a motion to amend the bill in section 1(b) to say, "It is the intent of the legislature that no statute, rule, regulation, ordinance, or enactment of the legislature or of any unit of local government shall create a private right of action unless such right is expressly stated therein." Additionally, a new section (d) would be added that says, "Nothing in this act shall be construed to prevent the breach of any duty imposed by law from being used as the basis for a cause of action under any theory of recovery otherwise recognized by law, including but not limited to, theories of recovery under the law of torts or contract." Representative Suellentrop seconded the motion. (Attachment 10) There was discussion on the amendment, and Representative Patton and Representative Suellentrop withdrew the motion and second.

Representative Patton moved, Representative Suellentrop seconded to amend **HB 2253** with a revised balloon amendment that states in section 1(b) "It is the intent of the legislature that no statute, rule or regulation or other enactment of the state shall create a private right of action unless such right is expressly stated therein." The amendment would also include the new section (d) as previously stated.

Representative Boman requested a clarification of the overall bill. Chairman Kinzer advised the intent of the bill is clarifying when there are causes for civil action. Chairman Kinzer offered when the legislature passes a statute, such as a misdemeanor offense, the statute generally

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provides the state can take some action if someone violates the statute. This bill clarifies when the legislature passes a bill and it does not have attached to it an explicit statement that the legislature intended to create a civil cause of action, then no such action is created.

Representative Patton moved, Representative Brookens seconded, to amend **HB 2253** with the revised balloon amendment. Motion carried.

Representative Brookens moved, Representative Rubin seconded, to recommend **HB 2253** favorably for passage as amended. Motion carried.

Chairman Kinzer requested the Committee consider **HB 2473–Civil procedure; pleadings and discovery**. Jason Thompson provided a brief overview of the bill, an act concerning civil procedure, relating to discovery, which was requested by the Kansas Judicial Council. The statute was amended in 2010 to align closer to the federal rules, and there were some additional recommendations to further align closer to the federal rules which are in the bill.

Representative Patton moved, Representative Brookens seconded, to recommend **HB 2473** be favorably passed.

Chairman Kinzer moved, Representative Brookens seconded, to amend **HB 2473** with a balloon amendment.

Chairman Kinzer offered a balloon amendment to **HB 2473** and copies were passed out to the Committee. (Attachment 11) The federal rule, with which the Kansas legislation is intending to align more closely with—because they use expert reports, is the reason for the amendment. Chairman Kinzer was contacted by Professor Concannon, Professor at Washburn University School of Law in Topeka, after the Committee hearing and suggested it would make sense to include extending the circumstance of using expert reports signed by witnesses. Professor Concannon suggested the language to include, which is reflected in the amendment.

Chairman Kinzer moved, Representative Brookens seconded, to amend **HB 2473** with a balloon amendment. Motion carried.

Representative Brookens moved, Representative Ward seconded, to recommend **HB 2473** favorably for passage as amended. Motion carried.

The next hearing is scheduled for Tuesday, February 7, 2012.

The meeting was adjourned at 4:49 p.m.

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