

Approved: June 30, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 Wednesday, February 15, 2012 in 346-S of the Capitol.

All members were present except:
Mitch Holmes

Committee staff present:
Katherine McBride, Office of Revisor of Statutes
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:
Kathy Taylor, Kansas Bankers Association
Jeanne Gawdun, Kansans for Life
Dr. Patrick Herrick, M.D., Ph.D
Michael Schuttloffel, Kansas Catholic Conference
Daniel H. Sutherland, R.Ph.
Virginia Phillips, Trust Women
Sarah Gillooly, M.A., Planned Parenthood and Mid Missouri
Holly Weatherford, ACLU of Kansas and Western Missouri

Others in attendance:
See attached.

Chairman Kinzer announced the bills that may be worked today included **HB 2483**, **HB 2533**, and **HB 2569**, if time permits, but the Committee will not be working **HB 2482** or **HB 2521**.

Chairman Kinzer opened the hearing on **HB 2621–Relating to secured transactions**. Katherine McBride provided a brief overview of the contents of the bill.

Chairman Kinzer advised changes to the Uniform Commercial Code (UCC) are a big deal, as they do not occur very often. This is an area where having a uniform law is important. These are changes suggested by the Uniform Law Commission. Most changes were adopted with little controversy. The Commission provided the state with two options on which approach to take, and one of these has been included in **HB 2621**. Regarding the other option, the Committee will

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want to discuss it as well.

Kathy Taylor testified in support of **HB 2621** advising the Kansas Bankers Association is in support of Alternative A verses Alternative B, as Alternative A brings more certainty. The issue is providing clarity with regard to the name of an individual debtor. Courts have struggled with determining whether a debtor's legal name is reflected on his or her birth certificate, driver's license, passport, or other identification. The requirement under UCC Article 9 that a financing statement provide the debtor's name is particularly important, as financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Alternative A requires that a financing statement provide the name indicated on the individual's unexpired driver's license or identification card issued by the state of the debtor's residence. There have been four bankruptcy and district court cases in Kansas where the courts have tried to define what a debtor's name was, and other states have also had trouble with this. Ms. Taylor noted her written testimony includes a White Paper from a group of individuals from the American Bankers Association who studied the alternatives and concluded Alternative A was the best choice. Also in her written testimony is a paper written by Barkley Clark, an expert regarding the UCC, who cites four reasons to adopt Alternative A, as well as a chart of states that have enacted Alternative A. Ms. Taylor advised there are 23 states considering legislation on UCC Article 9, and only three were considering Alternative B. (Attachment 1)

Chairman Kinzer closed the hearing on **HB 2621** and opened the hearing on **HB 2523–Health care providers, facilities, persons; right to refuse to participate in abortion procedures; changes.** Kathleen McBride provided an overview of the contents of the bill.

Jeanne Gawdun testified in support of **HB 2523** stating it protects healthcare professionals' Rights of Conscience. The bill is a narrowly tailored update to the current statutes K.S.A. 65-443 and 65-444, enacted in 1970 to allow physicians and hospitals to defer from the provision of abortions and sterilizations. The current statutory conscience protection applies to abortion. However, the abortion definition in K.S.A. 65-701 clearly does not apply to contraceptive drugs and devices. The need for **HB 2523** is even greater now the federal administration is trampling on religious liberty with a reproductive mandate cemented in the Health and Human Services rule last Friday. More information on this issue is included in Ms. Gawdun's written testimony. (Attachment 2)

Patrick R. Herrick, M.D., Ph.D, testified in support of **HB 2523** and shared his experience in the early 1990s as a new medical school graduate entering his residency in the area of Obstetrics and Gynecology. When he expressed to his colleagues and instructors that he did not want to perform sterilizations or prescribe intermittently abortifacient contraception, he was blackballed from the only residency program to which he was prepared to devote all his working hours.

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Learning surgical technique is crucial to the OB/Gyn resident, and he found he was not being informed by his instructor when procedures were being performed. When he did the extra legwork to be at a procedure, the attending physician would not speak to him nor show him how to perform the procedure. When his wife went into labor prematurely at eight months, the doctor who agreed to be her obstetrician refused to come to the delivery, despite the high risk. Luckily, a more accepting attending was on call and agreed to come to the delivery. Dr. Herrick ended up transferring to a family practice residency. (Attachment 3)

Michael Schuttloffel testified in support of **HB 2523** and stated he would be brief, as he was here yesterday testifying on the religious freedom bill, and much of what he said applies to this bill today. Mr. Schuttloffel stated yesterday he talked about protecting rights of conscience from government coercion, and in this bill, the issue is protecting the rights of conscience of medical personnel from being violated by their employers. Freedom of conscience is central to Americans, and it is what makes America the nation it is. It was the desire for freedom of conscience that was at the heart of our American founders. **HB 2523** is focused on two very unequal priorities, the priority of protecting freedom of conscience, and the ease of access to abortion. Mr. Schuttloffel asked the Committee to support the bill, as ultimately, no one should want to see Kansans go down the road of telling doctors and nurses they are only qualified to save lives if they are willing to destroy lives. (Attachment 4)

Daniel H. Sutherland testified in support of **HB 2523** advising he is Catholic, a father and grandparent, and has been a registered Pharmacist since 1997. He took The Oath of a Pharmacist, a vow to devote his professional life to the service of all humankind, considering the welfare of humanity and relief of human suffering as his primary concerns. He will apply his knowledge, experience and skills to assure optimal drug therapy outcomes for the patients he serves, keeping abreast of the developments to maintain competency in his profession. He will maintain the highest principles of moral, ethical, and legal conduct, embracing and advocating change in the profession of pharmacy that improves patient care, and he took these vows voluntarily with the full realization of the responsibility entrusted by the public. Mr. Sutherland stated he also takes these vows seriously. He has worked at retail pharmacies in Topeka, and since 1999, worked at the St. Mary's Pharmacy in St. Marys, Kansas. He and his wife, also a pharmacist, purchased the St. Mary's Pharmacy in 2004. As a practicing Roman Catholic, separating his business life from his religious convictions is not possible, and he doesn't have the capacity to check his conscience at the door of work. He believes the tenant of his faith that all life is sacred and additionally, all abortion is intrinsically evil. The Pharmacy Practice Act, K.S.A. 65-1637, provides no protection for the refusal to fill or refill a prescription based upon religious liberty and freedom of conscience, but does imply a pharmacist may refuse to fill a prescription according to their professional judgment, for example by refusing to fill a prescription due to a potentially dangerous drug-to-drug interaction. Mr. Sutherland stated he

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has only been partially successful in living his faith and practicing his profession. At his business, he has chosen not to carry emergency contraceptives, which is his line in the sand. He currently stocks and dispenses oral contraceptives but would like to remove them. He has not done so out of fear of being sued. He urged the committee to pass favorably **HB 2523** and amend K.S.A. 65-433. (Attachment 5)

Chairman Kinzer directed the Committee's attention to written testimony from Judy Smith, with Concerned Women for America of Kansas (Attachment 6), Dr. John Saxer, M.D. (Attachment 7) and Dr. Bruce Snider, M.D. (Attachment 8).

Virginia Phillips testified in opposition to **HB 2523** stating the bill is the pharmacist refusal and medical personnel non-referral act, which puts the rights of medical professionals over the rights of patients without constitutional justification. She pointed out her written testimony includes a Supporting Facts sheet that includes statistical information about contraception and women, including the fact that 60 percent of Kansans use some form of birth control other than a hysterectomy. **HB 2523** discriminates against private individual rights of Kansans to access basic medical care because it allows medical professionals to refuse to provide medication and services to women based on unfounded value judgments. (Attachment 9)

Sarah Gillooly testified in opposition to **HB 2523** stating she would like to start her testimony on common-ground issues first. Ms. Gillooly stated Planned Parenthood had facilities in Wichita, Hays, and Kansas City. Planned Parenthood has no objections to adding language that references, "medications that may induce an abortion" to the bill. In 1969 through 1998, when the statutes were written and applied, there was no an approved medication RU486, which induces abortion. Planned Parenthood does not object to adding language to make sure the conscience of providers who do not wish to provide abortion services are covered, regarding surgical and medical abortions. Planned Parenthood does believe the bill is not narrow at all, but is vague and confusing. Section 1 adds the word, "device", and it is unclear what is meant by the word, unless it is referring to IUDs, in which case it is a contraceptive. Some of the proponents indicated this was not referring to contraception. The bill in Section 1, lines 8-10 speak of medication/devices that have, "an effect of which the person reasonably believes may result in the termination of a pregnancy". It is unclear what the intent is of "an effect of which" and "reasonably believes". In Section 2, there are the same concerns, plus there is a provision that states, "health care facilities shall not be required to provide a referral for." This denies a physician fulfilling the professional and ethical responsibilities and denies a woman her rights in exercising her own conscience when seeking birth control, emergency contraception, or other medical services. Planned Parenthood urges the Legislature to look for a third way that respects the conscience of medical providers, while also respecting the conscience of Kansans who seek

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and deserve non-judgmental, science-based medicine. (Attachment 10)

Chairman Kinzer directed the Committee's attention to written testimony in opposition to **HB 2523** from Holly Weatherford, with the American Civil Liberties Union of Kansas and Western Missouri (Attachment 11), and from Kari Ann Rinker, with Kansas National Organization For Women. (Attachment 12)

Chairman Kinzer closed the hearing on **HB 2523**.

Chairman Kinzer asked the Committee to consider final action on **HB 2569—Legislative review of exceptions to disclosure of public records**. The Chairman asked if the Committee had time to review the information on the Open Records Act, which was previously handed out, and the consensus was the Committee had no objections to considering the bill. The bill deals with the Kansas Open Records Act exceptions.

*Representative Brookens moved, Representative Kuether seconded, to recommend **HB 2569** favorably for passage. Motion carried.*

Chairman Kinzer asked the Committee to consider final action on **HB 2483—Planning and zoning; appeals to district court; jurisdiction retained on remand**. The Chairman reminded the Committee this was the bill with one conferee from Johnson County who had a zoning issue that went up to the Kansas Court of Appeals, then it had to go back down through the Johnson County District Court, and the District Court did not keep jurisdiction of the case, so it resulted in the individual having to file a new case to preserve his appeal when it went back up to the Court of Appeals.

*Representative Pauls moved, Representative Kuether seconded, to recommend **HB 2483** favorably for passage.*

Representative Brookens stated this issue is kind of hard to talk about because this case was on appeal, it comes back down to the district court and then goes back down to the Board of Zoning Appeals. Representative Brookens expressed, to his way of thinking, it is appropriate for the district court to retain jurisdiction, which the court can do currently.

*Representative Brookens moved to amend **HB 2483** on Page 3, line 19, just before the italicized portion, and also on line 28, just before the italicized portion, to add in italics, "Unless the district court specifically orders to the contrary,".*

Representative Brookens stated there may be times when the district court wishes to make the specific finding the court is terminating, and he doesn't want the court's discretion eliminated. Reversing it makes sense, except in those cases where a court would want to terminate. We

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would assume they will retain jurisdiction. Otherwise the actual natural consequences are starting over again, and it could take one to two years to start from scratch.

Representative Patton stated if the district court retains jurisdiction and the Court of Appeals sends it back to the Board of Zoning Appeals, this becomes a situation where there are two tribunals working on it at the same time. Representative Brookens offered he thought when it was sent back down, it was sent back to the district court, which then sends it back to the Board of Zoning Appeals. The testimony suggests this is the way it works, with sort of a pass through from the district court to the Board of Zoning Appeals. Representative Patton questioned what was gained by having the district court retain jurisdiction, if the case goes back to the Board of Zoning Appeals anyway. Representative Brookens stated when the case came back up from the Board of Zoning Appeals, the district court was found to have no jurisdiction to review it without starting a brand new case—the briefing, the petition, the service and everything had to be reinitiated. Chairman Kinzer suggested after the case goes back to the Board of Zoning Appeals, and someone is still not happy and wants to appeal that decision, then the district court could review, or a new case would have to be filed. Representative Patton suggested this would lead to procedural problems if there is not a formal appeal from the Board. Chairman Kinzer offered the process should be the same as the first time it was appealed. Representative Brookens added there would be briefs and the same judge, so the individual appealing would not have to start from square one, but could work on the limited issue of whatever reason it was sent back down for.

Chairman Kinzer stated, theoretically, one would not have to file a new case, especially in a district where there are multiple court judges, one would get the same judge who was familiar with the issue. Representative Brookens inquired whether it would be appropriate to ask the Kansas Bar Association to look at this issue and perhaps the Committee would do nothing. Chairman Kinzer stated there is already a motion, and Representative Brookens can keep his motion to amend or withdraw it, whichever was his choice. If the decision is to keep the motion, then the Committee decides whether to pass it, and if the Committee decided not to report the bill favorably, he could put it on the list to ask Judicial Council or somebody else to look at it. Those discussing the bill came to consensus even in discussing the issue, they were somewhat confused in trying to clarify the process. As a result, Representative Brookens stated he would withdraw his amendment. Chairman Kinzer stated if there is no second on his motion to amend, it would not move forward.

Representative Brookens moved to amend HB 2483 on Page 3, line 19, just before the italicized portion, and also on line 28, just before the italicized portion, to add “unless the district court specifically orders to the contrary.”. There was no second. Motion failed.

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Representative Pauls stated she would like to have a bill passed out with Representative Brookens amendment included in it. From her perspective, on the surface of the issue that occurred, it should not have happened. She recalled the gentlemen who testified really felt he got burned by the situation. He had advised the Committee he did not gain any personal advantage by coming to testify, but he was pleading for the Committee to resolve this issue so other people would not have the same bad situation occur in having to file a second time. Representative Pauls expressed she had no doubt a lot of personal cost and time was involved for this gentleman. Representative Pauls suggested the bill be amended and passed favorably out of the house. Then, when it is over on the Senate side, if there is any kind of problem the Kansas Bar Association or Judicial Administrators perceive, it could be further addressed at that time. Representative Pauls stated she feels this individual went to a lot of effort to have this brought up, and she could see how frustrating this could be if what happened to him could not be addressed for the sake of others who might have to go through the same process.

Representative Pauls moved, Representative Kuether seconded, to amend **HB 2483** on Page 3, line 19, just before the italicized portion, and also on line 28, just before the italicized portion, to add “Unless the district court specifically orders to the contrary,”.

Representative Bruchman moved to table the bill. Chairman Kinzer advised there was already a motion, and now there is a substitute motion to that motion. The Committee will have to act on the Pauls motion first, so the Bruchman motion is not in order, as they cannot consider a substitute on a substitute. After the Pauls motion is acted on, the Bruchman motion may be considered.

Representative Bowman asked for a clarification on the amendment. Chairman Kinzer stated the amendment would create a situation where the district court would retain jurisdiction, but it would grant the district court the discretion to make an affirmative election to not do that, in particular cases where it didn't make sense to do it. The default position would be the district court would retain jurisdiction unless the district court judge specifically disclaimed it.

Representative Pauls moved, Representative Kuether seconded, to amend **HB 2483** on Page 3, line 19, just before the italicized portion, and also on line 28, just before the italicized portion, to add “Unless the district court specifically orders to the contrary,”. Motion carried.

Representative Bruchman moved, Representative Rubin seconded, to table **HB 2483**.

Chairman Kinzer stated a motion to table is a non-debatable motion to be voted on.

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*Representative Bruchman moved, seconded by Representative Rubin, to table **HB 2483**. Motion carried, 9 to 6.*

Chairman Kinzer advised the Committee would not be working any more bills, but he was planning on the Committee staying until 6:15 p.m. tomorrow, if necessary, to work the bills previously mentioned. Additionally, bills which might be worked include **HB 2260**, **HB 2106**, **HB 2521**, **HB 2562**, **HB 2647**.

The next meeting is scheduled for February 16, 2012.

The meeting was adjourned at 5:10 p.m.