

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 50**

As Amended by House Committee of the Whole

**Brief\***

SB 50, as amended, would create an unconscionable act or practice under the Kansas Consumer Protection Act related to the unauthorized practice of law and amend law regarding membership of the Advisory Committee to the Kansas Commission on Interstate Cooperation and the Joint Committee on Special Claims Against the State, as follows.

***Unauthorized Practice of Law***

The bill would make it an unconscionable act or practice under the Kansas Consumer Protection Act, whether or not it involves a consumer, consumer transaction, or supplier, for a person who is not licensed or otherwise authorized by the Kansas Supreme Court to practice law in Kansas to do any of the following:

- Commit any act or omission prohibited by the Kansas Supreme Court, by court rule, or by common law, as being the unauthorized practice of law;
- Hold out to the public or otherwise represent, expressly or by implication, that such person is admitted to practice law in Kansas;
- Solicit payment or other consideration, whether in case or in-kind, for services that would constitute the unauthorized practice of law in Kansas if

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\*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>

performed at or about the time of such solicitation;  
or

- Offer or attempt to do any act prohibited by the above provisions.

The bill would define “person” to mean an individual, corporation, agency, partnership, association, or other legal entity that knowingly commits (or aids or abets a person to commit) acts or omissions that violate the above provisions, and a person subject to the bill’s provisions would be deemed a “supplier” as defined in the Consumer Protection Act. An individual, sole proprietor, partnership, corporation, limited liability company, the State, or a subdivision or agency of the State aggrieved by a violation of the above provisions would be deemed a “consumer” as defined in the Consumer Protection Act.

Any remedies or penalties imposed pursuant to the above provisions would be in addition to, and not instead of, any remedies or penalties available under the contempt power of any court.

The above provisions would not apply to statewide, judicial district, or municipal court supervised public assistance offices and programs, victims assistance programs operated by a county or district attorney, court clerk, county law library, legal aid services providers, legal outreach programs operated by a state or local bar association, or an employee of any such entity acting within the scope of employment.

***Membership of the Advisory Committee to the Kansas Commission on Interstate Cooperation and the Joint Committee on Special Claims Against the State***

The bill would amend the law concerning the members of the Advisory Committee to the Kansas Commission on Interstate Cooperation (the Commission) and the Joint

Committee on Special Claims Against the State (Joint Committee). The bill would clarify the Commission would be composed of the chairpersons of the House and Senate Committees on Judiciary, if such chairpersons are members of the Kansas Bar. If the chairperson of the House Committee on Judiciary or the chairperson of the Senate Committee on Judiciary is not a member of the Kansas Bar and there is not another member of the respective Committee on Judiciary who is a member of the Kansas Bar (and could therefore fill this position under current law), the bill would allow the Speaker of the House (in the case of the House Committee) or the President of the Senate (in the case of the Senate Committee) to designate the Revisor of Statutes to serve on the Commission in lieu of a House or Senate member, respectively, for the Speaker's or President's then-current term as a legislator. The Revisor would be permitted to designate an assistant revisor to serve in lieu of the Revisor.

Additionally, the bill would strike the requirement that at least one representative member and one senator member of the Joint Committee be attorneys licensed to practice law in the State of Kansas. The bill would also make technical amendments.

The bill would be in effect upon publication in the *Kansas Register*.

## **Background**

### ***SB 50—Legislative Membership***

SB 50 was introduced at the request of Senator Haley. In the Senate Committee on Judiciary hearing, an assistant revisor explained the members of the Commission are the official representatives or delegates for the State of Kansas to the National Conference of Commissioners on Uniform State Laws. Senator Haley answered questions about the bill. No other testimony was provided.

The Senate Committee adopted an amendment to allow a Senate Committee on Judiciary chairperson who is not a member of the Kansas Bar to appoint, with the advice of the Senate President, a former legislator who is a member of the Kansas Bar to serve on the Commission in lieu of the chairperson when there is not another member of the Senate Committee on Judiciary who is a member of the Kansas Bar. The bill, as introduced, would have allowed the Senate President to appoint any member of the Kansas Bar, with the advice of the Senate Committee on Judiciary chairperson.

The Senate Committee of the Whole adopted an amendment to allow a Senate Committee on Judiciary chairperson who is not a member of the Kansas Bar to appoint a current legislator who is a member of the Kansas Bar to serve on the Commission in lieu of the chairperson.

In the House Committee on Judiciary hearing, an assistant revisor presented an overview of the bill and answered questions. No testimony was provided.

The House Committee adopted an amendment changing the procedure for appointment to the Commission to allow the Revisor (or assistant revisor) to be designated to serve when there is not an attorney legislator and standardizing the procedure for such designation for both the House and Senate.

The House Committee also added modified language from HB 2397, making the unauthorized practice of law an unconscionable act or practice under the Kansas Consumer Protection Act. Further background information regarding HB 2397 is provided below.

The House Committee of the Whole adopted an amendment clarifying the definition of “person” in the section related to the unauthorized practice of law.

According to the fiscal note prepared by the Division of the Budget, the Kansas Legislature indicates SB 50, as

introduced, would have no fiscal effect. Fiscal information for HB 2397 is provided below.

### ***HB 2397—Unauthorized Practice of Law***

HB 2397 was introduced by the House Committee on Federal and State Affairs. In the House Committee on Judiciary hearing, the Attorney General and a representative of the Kansas Bankers Association testified in support of the bill, stating that the bill would help strengthen enforcement in cases involving the unauthorized practice of law, such as a recent situation in which an out-of-state law firm sent demand letters to Kansas banks that included an offer to represent the banks against certain legal claims. Written-only proponent testimony was submitted by Heartland Credit Union Association, Kansas Association of Realtors, Kansas Chamber of Commerce, Kansas Cooperative Council, and Kansas Trial Lawyers Association. A representative of the Kansas District Judges Association (KDJA) presented neutral testimony and requested an amendment protecting certain advocates, court employees, and public assistance personnel from possible private causes of action. The Kansas Bar Association submitted written-only neutral testimony.

Before adding the language of HB 2397 into SB 50, the House Committee modified the language using part of the KDJA's proposed amendment.

According to the fiscal note prepared by the Division of the Budget on HB 2397, the Office of the Attorney General (Office) indicates it would receive additional complaints in its Consumer Protection Division, but the Office cannot estimate the number of additional complaints that may be filed. If the number of additional complaints is high, the Office may require additional investigators or attorneys. Some of the costs incurred may be offset by additional revenues collected from penalties. Any fiscal effect is not reflected in *The FY 2018 Governor's Budget Report*.