

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on, February 14, 2011, in Room 346-S of the Capitol.

All members were present except:
Representative Ward

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:
Representative Lance Kinzer
Derek Schmidt, Attorney General, State of Kansas
Kyle Smith, Assistant Attorney General, State of Kansas

Others attending:
See attached list.

HB 2029 - Charitable health care provider defined to include ultrasound technologist

Representative Colloton made the motion to report HB 2029 favorably for passage. Representative Ryckman seconded the motion.

Representative Colloton presented a balloon to the committee.

Chairman Kinzer made a substitute motion, to amend the bill, per the balloon,

on page 2, line 33, following "surgery" by inserting a comma; on Line 32, following "technologist" by inserting "currently registered in any area of sonography credentialed through the American registry of radiology technologists, the American registry for diagnostic medical sonography or cardiovascular credentialing international and".
Representative Osterman seconded the motion.

Representative Colloton made the motion to report HB 2029 favorably for passage as amended. Representative Smith seconded the motion. Motion carried.

HB 2027 - Rules and regulations filing act

Chairman Kinzer called attention to a memo distributed to the committee from Representative Carl Holmes, stating he is very knowledgeable regarding Administrative Procedures Act and recommended the members take time to read the memo. (Attachment 1)

Chairman Kinzer referred the committee to the additional correspondence received from Judge Steve Leben, on behalf of the Judicial Council Administration Law Advisory Committee, in response to the questions raised by the committee during the hearing on January 25 and when the committee previously worked on the bill on February 3. (Attachment 2)

Based on the additional information received from Judge Leben, Chairman Kinzer made a substitute motion to amend Section 1, (b) (2) (A) of the bill to read as follows:

An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that no such order shall be used as precedent in any subsequent adjudication against a nonparty unless the order is:
(i) Designated by the agency as precedent;
(ii) listed in a publically available index, maintained by the agency and published on its website, of all orders designated as precedent;
(iii) published by posting in full on an agency website in a format capable of being

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 14, 2011 in Room 346-S.

searched by key terms; and
(iv) made available to the public in such other manner as may be prescribed by the
secretary of state.

In addition, he stated the word “not” should be added to read “such order shall *not* be used’.
Representative Rubin seconded the motion. Representative Pauls suggested a change to take the word
“no” out of line 21. The change was made with the permission of the first and the second. Motion
carried.

Representative Rubin made a substitute motion to amend the bill to strike the word “nonparty” and insert
“person who was not a party to the original adjudication.” Representative Brookens seconded the motion.
Motion carried.

Representative Patton made a substitute motion to amend the bill to strike Section 4 covering “Guidance
Documents”. Representative Smith seconded the motion. Discussion followed and motion failed.

Representative Brookens made a substitute motion to amend the bill, Page 1, Line 23, to add:

“(v) not overruled by a court or later adjudication.”

Representative Rubin seconded the motion. Motion carried.

Representative Pauls made a motion to report **HB 2027** favorably for passage as amended.
Representative Keuther seconded the motion. Motion carried.

The Hearing on **HCR 5006 - State constitutional amendment concerning appropriations of money and**
expenditure of funds appropriated by law by the legislative branch was opened.

Proponents:

Chairman Kinzer addressed the committee as the originator and proponent of this bill, providing background information to the committee and explaining why he believes it is important to pass this legislation. He stated he believes the *Montoy* decision in 2005 represents a violation of the separation of powers that should exist between the legislative and judicial branches of government and in our system the Legislature alone may spend the peoples' money, because it is the Legislature that is accountable to the people. He also included a copy of Stephen R. McAllister, Professor, University of Kansas School of Law, *Amicus* Brief, *Montoy v. Kansas* with his testimony. ([Attachment 3](#))

Derrick Sontag, State Director, Americans For Prosperity-Kansas, provided written testimony in support of the bill. ([Attachment 4](#))

Mark Tallman, Kansas Association of School Boards (KASB), provided written testimony in opposition of the bill. ([Attachment 5](#))

The hearing on **HCR 5006** was closed.

The Hearing on **HB 2196 - Amending the rules of evidence regarding expert testimony in sexually violent predator commitment cases** was opened.

Kyle Smith, Assistant Attorney General, State of Kansas, appeared before the committee in support of this bill, on behalf of Assistant Attorney General, Christine Ladner, who is responsible for prosecution of sexually violent predators (SVP). This bill would save costs and streamline presentation of evidence by amending the rules of evidence in SVP cases to mirror the Federal Rules of Evidence. The public policy purpose of this bill is to reduce the number of times a child victim must testify about the crimes committed against him or her. ([Attachment 6](#))

Derek Schmidt, Attorney General, State of Kansas, provided written testimony in support of the bill. ([Attachment 7](#))

There were no opponents.

The hearing on **HB 2196** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 14, 2011 in Room 346-S.

The next meeting is scheduled for February 15, 2011.

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