

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 149**

As Agreed to April 5, 2017

Brief*

SB 149 would create and amend law related to the Attorney General, the Scrap Metal Theft Reduction Act, and the Office of the Inspector General within the Kansas Department of Health and Environment, as follows.

Attorney General—Appellate Briefs

The bill would create law concerning criminal matters or postconviction cases in the Kansas Supreme Court or the Kansas Court of Appeals. Specifically, the bill would require a copy of each brief to be served on the Kansas Attorney General and would prohibit briefs from being filed by or on behalf of the State or any officer or agent of the State unless the approval of the Attorney General or a member of the Attorney General's staff is endorsed on the brief.

Attorney General—Legal Representation Charges

The bill would create law allowing the Attorney General to determine, fix, establish, and collect legal representation charges for legal services provided to state agencies, as defined by the bill. The Attorney General would be able to determine the charges to any agency based on a schedule of fees and costs published by the Attorney General or by

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

agreement with the state agency. Any schedule of fees adopted by the Attorney General could not exceed the limits established in KSA 22-4507, which relates to compensation and reimbursement for legal services provided to indigent defendants.

The bill would create the Attorney General's State Agency Representation Fund (Fund) and would require charges collected under the provisions of the bill be placed in the Fund. Moneys in the Fund could be used by the Attorney General only for operations of the Office of the Attorney General.

The bill would specify that it would not obligate the Attorney General to provide legal services to any state agency. The Attorney General would be authorized to adopt rules and regulations as necessary to implement the provisions of the bill.

The bill would define several terms:

- "Legal representation charges" would mean costs, fees, expenses, or other financial liability incurred by the Attorney General, including, but not limited to, attorney fees, to provide legal services to a state agency;
- "Legal services" would mean any form of legal advice, representation, or counseling involving an attorney-client relationship, including, but not limited to, general counsel services and representation of a state agency in an administrative law matter. It would include services provided at the discretion of the Attorney General and legal services required to be provided by the Attorney General. It would not include any representation provided pursuant to the Kansas Tort Claims Act or the defense of civil rights claims pursuant to KSA 75-6116; and

- “State agency” would mean any department of state government, or any agency thereof, that collects fees for licensing, regulating, or certifying a person or profession.

Scrap Metal Theft Reduction Act Amendments

The bill would amend the Scrap Metal Theft Reduction Act (Act) to delay, until January 1, 2019, a requirement that the Attorney General establish and maintain a database as a central repository for information required to be provided under the Act (current law requires establishment of the database before July 1, 2016). The Act would also declare certain provisions of the Act unenforceable until January 1, 2019. The delayed provisions would include:

- The statute allowing imposition of a civil penalty of \$100-\$5,000 on any scrap metal dealer who violates any of the provisions of the Act;
- A provision requiring scrap metal dealers to forward information to the database described above;
- A provision changing the permissible range of scrap metal dealer registration fees from \$100-\$400 to \$500-\$1,500; transferring the authority to set such fees from the board of county commissioners or governing body of the city to the Attorney General; and requiring the fee be paid for each particular place of business;
- A provision changing the permissible range of renewal fees from \$25-\$50 to “not more than \$1,500” and transferring the authority to set such fees from the governing body of a city or board of county commissioners to the Attorney General;

- A provision disqualifying a person for registration if the person does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license; and
- A provision allowing a criminal history records check for applicants for registration, including fingerprinting provisions.

The bill would amend a provision requiring a dealer to photograph the seller and the item(s) being sold and to keep such photographs with the record of the transaction by removing the requirement that the seller be photographed. The bill would further amend this provision to allow the Attorney General to impose a civil penalty of \$100-\$5,000 for each failure to comply with these requirements between the effective date of the bill and January 1, 2019. The bill would add the same civil penalty provision for a failure to comply with an existing paragraph requiring a scrap metal dealer to include a copy of the seller's identification card or document containing such identifying number in the register of information the dealer is required to maintain. Finally, the bill would add the same civil penalty provision to an existing statute prohibiting certain actions by a scrap metal dealer or employees or agents of the dealer. [Note: These penalties could be imposed under the general civil penalty provision in current law that would be delayed by the bill.]

Transfer of the Office of the Inspector General

The bill would enact and amend law to transfer the Office of the Inspector General (IG's Office) within the Kansas Department of Health and Environment (KDHE) to the IG's Office within the Office of the Attorney General (AG's Office). The powers, duties, functions, records, and property of the IG's Office within KDHE would be transferred to the IG's Office within the AG's Office. References to the IG's Office within KDHE in statute, contract, or other document would be

deemed to apply to the IG's Office within the AG's Office. The bill would replace references to the Secretary of Health and Environment or KDHE regarding the IG's Office with the Attorney General or AG's Office, as applicable. The bill would also make technical amendments. Additional details follow.

Transfer of Inspector General's Office

The orders and directives of the IG's Office within KDHE existing on the effective date of the bill would continue in effect and be deemed to be those of the IG's Office within the AG's Office until revised, amended, repealed, or nullified. All unexpended balances of appropriations of the IG's Office within KDHE on the effective date of the bill would be transferred to the AG's Office for use by the IG's Office within the AG's Office to carry out the powers, duties, and functions transferred under the bill. The transfer would not abate any suit, action, or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced by or against any existing agency mentioned in the bill or against any state officer in the officer's official capacity or in relation to the discharge of the officer's official duties. No criminal actions commenced or which could have been commenced by the State would be abated by effect of this bill. The Governor would resolve any conflicts arising as to the disposition of any power, function, or duty or the unexpended balance of any appropriation as a result of any abolishment, transfer, attachment, or other change made by the bill or under the bill's authority, with the Governor's decision being final.

Definitions

The bill would clarify the definition of "attorney general" by referencing the State of Kansas. The definition of "department" referencing KDHE would be deleted.

Inspector General Position

Change in classification, salary, and appointment.

The Inspector General position, upon transfer to the AG's Office, would change from classified to unclassified, with an annual salary in an amount equal to the annual salary paid by the State to a district court judge. The Inspector General would be appointed by the Attorney General, instead of KDHE, and the appointment would continue to be subject to Senate confirmation. The bill would allow the Attorney General to remove the Inspector General from office for cause prior to the expiration of the Inspector General's term of office. The Inspector General would report to the Attorney General.

Duties. The bill would clarify the duties of the Inspector General would extend to oversight, audits, investigations, performance reviews, and independent and ongoing evaluations of the state's programs for Medicaid, MediKan, and the Children's Health Insurance Program or their successor programs. The bill would delete references to programs administered by KDHE, clients of KDHE, or the department and replace the language with "such a program or programs" or "state agency or agencies which administer such program or programs."

The bill would clarify the Inspector General would be required to conduct independent and ongoing evaluation of these programs or their successor programs over which the Inspector General has oversight as follows:

- Investigate fraud, waste, abuse, and illegal acts directly relating to such programs;
- Audit state programs (not only KDHE), contractors, vendors, and health care providers related to ensuring appropriate payments are made for services rendered and to the recovery of overpayments;

- Investigate fraud, waste, abuse, or illegal acts committed by clients of the programs or by consumers of services of such programs; and
- Monitor the adherence to the terms of any contract between a state agency (not only KDHE) and any organization with which the state agency has entered into a contract to make claims payments.

Access to information. The bill would clarify the Inspector General, among other authorized access, would be required to have access to all pertinent information, confidential or otherwise, and to all personnel and facilities of a state agency (not only KDHE) and state vendors necessary to perform the duties of the IG's Office as directly related to the programs over which the Inspector General has oversight.

Reporting and investigation requirements. If credible evidence of fraud, waste, abuse, or illegal acts are found, the Inspector General would be required to report its findings to the Attorney General.

The Inspector General would be required to report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to any agency contracting with or responsible for licensing or regulating those persons or entities. In addition to other entities to which the provision of a report would be required, the Inspector General would also be required to make annual reports, findings, and recommendations regarding the IG's Office's investigations into reports of fraud, waste, abuse, and illegal acts relating to any such programs to the appropriate state agency and the Attorney General.

The bill would add civil actions to the list of those actions for which the Inspector General would be required to conduct investigations in a manner that ensures preservation of evidence. The Inspector General would be required to notify the Attorney General if the Inspector General determines a possible false claim relating to fraud in the provision or

administration of the programs over which the Inspector General had oversight has occurred.

KDHE Closed Meeting with Inspector General

Language relating to KDHE recessing for a closed, executive meeting to discuss with the Inspector General any information, records, or other matters involved in any investigation or audit would be deleted, as this language is no longer applicable. The bill would add that all information and records of the Inspector General made, maintained, or kept under any investigation or audit under the provisions of the bill would also be confidential, except as required or authorized under the bill.

Conference Committee Action

The Conference Committee agreed to the House version of SB 149, regarding the Attorney General, appellate briefs, and legal representation charges for state agencies. The Conference Committee further agreed to add:

- The contents of HB 2047, as amended by the House Committee on Health and Human Services, transferring the Office of the Inspector General; and
- Provisions taken from the Senate Committee of the Whole amendments to HB 2153, regarding the Scrap Metal Theft Reduction Act, modified to add a civil penalty provision to the statute prohibiting certain actions by a dealer and to move a civil penalty provision regarding an identification card requirement.

Background

SB 149—Appellate Briefs

SB 149 was introduced at the request of the Office of the Attorney General. In the Senate and House Committees on Judiciary hearings, the Attorney General explained the bill would codify current Supreme Court Rule 6.10, which has been in effect since at least the 1970s. Recently, however, the Supreme Court indicated it would repeal the rule, effective September 1, in an effort to “clean up” court rules. The Attorney General stated the rule helps to avoid briefs from the State on both sides of an issue and allows the Office of the Attorney General to refer briefs back to counties for modification, if needed.

No other testimony was provided.

The Senate Committee recommended the bill be placed on the Consent Calendar.

The House Committee amended the bill by adding language modified from SB 107, as amended by Senate Committee, regarding legal representation charges by the Attorney General. Further background information regarding SB 107 is provided below.

According to the fiscal note prepared by the Division of the Budget, the Office of the Attorney General indicates enactment of SB 149 would have no fiscal effect as it would codify current practice.

SB 107—Legal Representation Charges by the Attorney General

SB 107 was introduced in the Senate Committee on Federal and State Affairs at the request of the Attorney General. In the Senate Committee hearing, the Attorney

General appeared in support of the bill. A representative of the Kansas Department of Corrections appeared as neutral on the bill and suggested an amendment to the bill. No other testimony was provided.

The Senate Committee adopted amendments:

- Specifying the defense of civil rights claims pursuant to KSA 75-6116 would not be included in the definition of “legal services”; and
- Specifying any schedule of fees adopted by the Attorney General could not exceed the limits established in KSA 22-4507, which relates to compensation and reimbursement for legal services provided to indigent defendants.

As of the date of House Committee action on SB 149, SB 107 was below the line on General Orders in the Senate. The House Committee held an informational briefing on SB 107 at which the Attorney General provided testimony supporting the bill. The Secretary of Corrections provided neutral testimony.

The House Committee added the language of SB 107 to SB 149 after modifying it by limiting the definition of “state agency” to departments or agencies that collect fees for licensing, regulating, or certifying a person or profession. As introduced and amended by Senate Committee, SB 107 defined “state agency” to include the state, any department or branch of state government, or any agency, authority, institution, or other instrumentality of the State.

According to the fiscal note provided by the Division of the Budget on SB 107, as introduced, the bill would have a fiscal effect on the Office of the Attorney General (Office) and state agencies, boards, and commissions that use the Attorney General’s services. However, an exact fiscal effect is unknown until a schedule of fees is determined. The bill would allow the Office to receive additional revenue to fully

offset expenditures from providing legal services to state agencies. Current law provides no mechanism for the Office to do this, so it must rely on State General Fund appropriations or special revenue funds intended for other purposes. State agencies, boards, and commissions that currently use the Office's services would incur additional expenditures; however, the total costs are not yet known. The Office of Judicial Administration states that, under current law, the Office has routinely accepted Judicial Branch cases including tort, *mandamus*, *habeas*, and federal civil cases. The Judicial Branch does not expect this practice would change as result of enactment of the bill. If the Office determines certain cases are outside of the Kansas Tort Claims Act and declines to offer representation in those cases, the Judicial Branch estimates it would need approximately \$61,000 from the State General Fund to contract for outside representation. Any fiscal effect associated with enactment of the bill is not reflected in The *FY 2018 Governor's Budget Report*.

HB 2047—Transfer of Office of the Inspector General

HB 2047 was introduced by the House Committee on Health and Human Services at the request of Representative Ward. In the House Committee hearing, Representative Ward and representatives of the Disability Rights Center of Kansas, InterHab, the KanCare Advocates Network, and Kansas Action for Children appeared in support of the bill. The proponents generally stated the need for oversight of KanCare, the state's Medicaid program, by an independent Inspector General, as was the original intent when the IG's Office was created. The proponents noted the position has been unfilled for nearly three years.

Neutral testimony was provided by a representative of KDHE who stated KDHE has worked diligently to fill the Inspector General position, but there has been a lack of suitable candidates, resulting in the position being vacant since June 2014. The representative stated, if it is the will of

the Legislature to move the Inspector General position to the AG's Office, KDHE will support that change. Written-only neutral testimony was provided by the Attorney General indicating the reorganization would be ineffective without adequate and reliable funding to hire the skilled personnel necessary to carry out the Inspector General's functions, which would require the IG's Office be fully funded from independent State General Fund (SGF) appropriations.

No opponent testimony was provided.

On February 17, 2017, the House Committee on Health and Human Services amended the bill to make a technical amendment and requested the bill, as amended, be referred to the House Committee on Appropriations for consideration.

The bill, as amended by the House Committee on Health and Human Services, was referred to the House Committee on Appropriations, which took no action on the bill and rereferred the bill to the House Committee on Health and Human Services.

On March 20, 2017, the House Committee on Health and Human Services recommended the bill favorably for passage, as amended. The amendment to the bill was the technical amendment previously adopted by the House Committee.

According to the revised fiscal note prepared by the Division of the Budget on HB 2047, as introduced, KDHE indicates enactment of the bill would result in the reduction of 3.00 FTE positions in FY 2018 and FY 2019, but no dollars; these positions are within KDHE, but are unfilled. In previous budgets, expenditures for the IG's Office were paid from the IG's Office SGF account. For FY 2017, \$69,689 is available in the account from a reappropriation of unexpended FY 2016 funds. No funds or expenditures were requested for this account in FY 2018 or FY 2019.

The AG's Office revised estimate for carrying out the provisions of the bill is \$476,110 from the SGF and 4.00 FTE positions in FY 2018. This amount includes \$429,847 for the salaries and wages of 1.00 Inspector General FTE position (\$155,333), 2.00 financial analyst FTE positions (\$202,942), and 1.00 legal assistant FTE position (\$71,572). The total amount also includes \$46,263 for other operating expenses, including one-time costs of \$11,830 for office furniture and IT purchases and ongoing costs of \$34,433 for office rent, travel, training, professional licensing, office supplies, and IT services. In the original fiscal note, the AG's Office had estimated total expenditures of \$318,490 from the SGF in FY 2018, which included \$279,341 for salaries and wages expenditures for 3.00 FTE positions. The AG's Office increased the estimated number of FTE positions needed by 1.00 FTE and determined it would need two financial analysts rather than a fraud analyst.

For FY 2019, total costs for the AG's Office would be \$464,280, which includes salaries and wages for 4.00 FTE positions and ongoing operating expenses. In the original fiscal note, the AG's Office estimated total expenditures for FY 2019 would be \$308,210. The AG's Office states annual expenditures could be offset as a result of savings realized from investigating and identifying fraud, waste, and abuse.

The fiscal note states that if the intent of the bill is for no fiscal effect for the SGF, the AG's Office would have to finance the new office within existing resources, or the KDHE budget would have to be reduced in an area other than the IG's Office. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.

HB 2153—Scrap Metal Theft Reduction Act Amendments

As introduced, amended by the House Committee on Judiciary, and amended by the Senate Committee on Judiciary, HB 2153 contained only provisions regarding fee funds.

The Senate Committee of the Whole adopted an amendment to HB 2153 containing the amendments to the Scrap Metal Theft Reduction Act. The amendment also changed the effective date of the bill to publication in the *Kansas Register*. According to the carrier of the amendment, certain stakeholders had requested the delay, but a bill with similar provisions (SB 239) had been introduced too late in the Session to receive a hearing.

No fiscal note was available for the provisions amending the Scrap Metal Theft Reduction Act at the time of Conference Committee action.

attorney general; appeals; briefs; legal representation charges; legal services; state agencies; Attorney General's State Agency Representation Fund; Scrap Metal Theft Reduction Act; database; enforceability delays; civil penalties; Department of Health and Environment; Office of the Inspector General; transfer

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