

March 13, 2008

The Honorable Sharon Schwartz, Chairperson  
House Committee on Appropriations  
Statehouse, Room 517-S  
Topeka, Kansas 66612

Dear Representative Schwartz:

**SUBJECT:** Fiscal Note for HB 2943 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2943 is respectfully submitted to your committee.

HB 2943 would create the Kansas False Claims Act. Any person who makes a fraudulent claim to the state or a local government would be liable for three times the amount of damages, a civil penalty between \$5,500 to \$11,000, and attorney fees associated with the recoveries. The following actions, if intentional, would be defined as fraudulent claims:

1. Making a false claim for payment;
2. Using false records or submitting a false statement for payment;
3. Delivering less property or money than commissioned;
4. Mis-certifying the receipt of property;
5. Buying or accepting an obligation for public property from a person not authorized to sell or pledge the property;
6. Benefiting from a fraudulent claim and failing to disclose the false claim;
7. Obtaining illegal kickbacks under state and federal laws; or

8. Unethical sales of prescription drugs or medical devices to state health care plan participants.

The bill would also allow an assessment of at least twice the damages incurred by the state or political subdivision. A civil penalty would not be imposed if the person committing the violation turns over all known information within 30 days, fully cooperates with the investigation, and no legal action has commenced.

The Attorney General would investigate and pursue civil action for violations of this Act. The Attorney General could utilize city, county, and private attorneys for violations at the local level when needed. A civil action could be pursued up to ten years after the violation. Also, civil action could be sought for activities committed prior to the effective date of this act, if the limitation period has not lapsed.

Of the monies recovered, amounts representing the fraudulent payment and any associated federal penalties would be remitted to the affected state agency or local government. Recoveries beyond these amounts would be deposited into the newly created False Claims Litigation Revolving Fund. The new fund would finance the Attorney General's litigation costs. The Attorney General could also use the funds to finance any expenditures incurred outside its operations that assist with administering the Act. HB 2943 would take effect upon its publication in the *Kansas Register*.

According to the Office of Attorney General, HB 2943 would require 3.00 new FTE positions. The Office would require 1.00 Assistant Attorney General FTE position, 1.00 Investigator FTE position, and 1.00 Administrative Assistant FTE position. The Office estimates it would need \$124,000 in FY 2009 from the State General Fund to finance the 3.00 new FTE positions.

HB 2943 has the potential to increase the amount of money recovered for fraudulent claims for state agencies and local governments. This bill would also give the state additional monies to pursue fraudulent claims, because it could recover three times the amount of the damages, civil penalties, and attorney fees. However, there are no data on which to make an accurate estimate. Therefore, a fiscal effect cannot be determined.

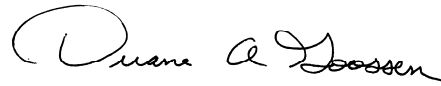
HB 2943 has the potential for increasing litigation in the courts because of the new violation created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with HB 2943 is not reflected in *The FY 2009 Governor's Budget Report*.

The Honorable Sharon Schwartz, Chairperson

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Sincerely,

A handwritten signature in cursive script that reads "Duane A. Goossen". The signature is written in black ink and is positioned above the printed name and title.

Duane A. Goossen  
Director of the Budget

cc: Matt Sinovic, Attorney General's Office  
Judy Moler, KS Association of Counties  
Larry Baer, LKM  
Jackie Aubert, SRS  
Mary Rinehart, Judiciary  
Scott Brunner, KHPA  
Jeff Wagaman, State Treasurer's Office  
Linda Durand, KBI