

**REPORT OF THE JUDICIAL COUNCIL
FALSE CLAIMS ACT ADVISORY COMMITTEE
ON 2008 HB 2943**

NOVEMBER 19, 2008

BACKGROUND

In March 2008, Rep. Mike O'Neal, Chair of the House Judiciary Committee, requested that the Judicial Council study and make recommendations to the Legislature regarding 2008 HB 2943, which establishes the Kansas false claims act. The Judicial Council formed the False Claims Act Advisory Committee to undertake the study.

COMMITTEE MEMBERSHIP

The members of the Committee taking part in this study are as follows:

1. **Stephen E. Robison, Chair**; practicing attorney in Wichita and member of the Judicial Council.
2. **Rep. Sydney Carlin**, Manhattan; Sponsor of the bill.
3. **Robert Collins**, Topeka; K-TAF Policy Research Group.
4. **Patrick Hurley**, Topeka; Chief Counsel, Kansas Department of Administration.
5. **Loren Snell**, Topeka; Asst. Attorney General, Medicaid Fraud and Abuse Division.
6. **Deborah Stern**, Topeka; General Counsel, Kansas Hospital Association.
7. **Catherine Walberg**, Topeka; General Counsel, KaMMCO.
8. **Melanie Wilson**, Lawrence; Associate Professor, University of Kansas School of Law.
9. **Nancy Zogleman**, Leawood; Director, State Government Relations, Pfizer, Inc.

INTRODUCTION

The federal False Claims Act, 31 U.S.C. 3729 et seq., was passed in 1863 and has been used to fight a myriad of schemes aimed at stealing taxpayer dollars. A copy of the federal False Claims Act is attached to this report at page 23. In more recent years, the U. S. Department of Justice has used the False Claims Act to go after fraud in federal health care programs and has recovered billions of dollars.¹ States get a share of the recoveries in cases dealing with Medicaid fraud because the Medicaid program is funded jointly by state and federal governments (the federal government share is between 50% and 83%, depending on the state's per capita income). Despite some large recoveries, a huge amount of health care fraud goes unchecked. Experts estimate that anywhere from 3% to 10% of all health care spending is lost to fraud.² Seeking more state involvement in fighting Medicaid fraud, Congress included in the Deficit Reduction Act of 2005 ("DRA") a cash incentive to encourage states to pass false claims acts modeled on the federal act. Pursuant to § 6032 of the DRA, a new provision in the Social Security Act states that the federal government will decrease by 10% its share of the recovery in cases brought under a qualifying state false claims law. 42 U.S.C 1909. A copy of § 6032 of the DRA is attached to this report at page 38.

In order to be deemed in compliance with the DRA, a state false claims act must meet several requirements. One requirement is that the state act must provide for civil penalties at least as high as those in the federal law. Also required is the inclusion of "provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims" as those in the federal

¹ *Information On False Claims Litigation*, United States Government Accountability Office, <http://www.gao.gov/new.items/d06320r.pdf> (Accessed November 19, 2008).

² *The Problem of Health Care Fraud*, National Health Care Fraud Association, http://www.nhcaa.org/eweb/DynamicPage.aspx?webcode=anti_fraud_resource_centr&wpscode=TheProblemOfHCFraud#2 (Accessed November 19, 2008).

law. 42 U.S.C 1909(b)(2). Some states had false claims acts in place prior to the passage of the DRA, and others have passed new legislation in response to the incentive of an increased share of recovery in Medicaid fraud cases.

The requirement of including a qui tam provision, which allows “whistleblowers” to bring private causes of action and share in the recovery, has been a sticking point in some state legislatures. Opponents view the prospect of a new qui tam provision as a windfall for plaintiffs’ attorneys and are concerned that it would spur the filing of a high number of meritless actions. Supporters credit the qui tam provision of the federal law with the dramatic increase in the amount of taxpayer money recovered since the law was revised in 1986, and believe similar success is virtually guaranteed at the state level.³

When Rep. Sydney Carlin learned of the DRA’s incentive offer to states, she became interested in seeing Kansas qualify for an increased percentage of Medicaid fraud recoveries. Earlier versions of her proposal were drafted to meet all of the DRA’s requirements for qualifying for the 10% increase, but the version ultimately submitted as HB 2943 no longer contains a qui tam provision. It should be noted that, although Medicaid fraud was an important consideration for the drafters and for this Committee, HB 2943 has a broader application and covers any type of claim or demand for payment, property or services made to the state or a political subdivision of the state.

³ See John Gibeaut, *Seeking the Cure*, 92 A.B.A. J., 44 (October 2006).

COMMITTEE'S REVIEW OF 2008 HB 2943

2008 HB 2943 establishes a Kansas false claims act. The language in the bill is largely drawn from § 3729 of the federal False Claims Act. However, Sec. 3(a)(8) through 3(a)(11) are additions that are not found in the federal law. As noted earlier, HB 2943 also does not contain the qui tam and whistleblower provisions appearing in § 3730 of the federal act. A copy of the bill is attached to this report at page 18.

The Committee met on September 5, September 29, and November 19, 2008. In addition to review of the new false claims act proposed in 2008 HB 2943, the Committee reviewed the federal False Claims Act, the false claims laws from other states, Kansas common law on retaliatory discharge, and the Kansas whistleblower act.

Before considering the specific provisions of the bill, the Committee first debated the threshold issue of whether false claims legislation is needed in Kansas. There was no real opposition to the basic idea of enacting a false claims act. All Committee members agreed that fraud occurs and that all taxpayers are affected by the theft of public monies. As the Committee debated whether existing criminal statutes are sufficient, it was noted that the addition of civil provisions would be a valuable tool for the attorney general's office and could benefit even those under investigation for making false claims. The Committee acknowledged that a civil act could provide more flexibility for the attorney general's office on a case by case basis, even allowing a provider to stay in business as a case develops and progresses. The importance of the potential deterrent value of a false claims act was also noted. At the end of this discussion, the Committee unanimously agreed that it would support the proposal of a Kansas false claims act and agreed to move on to a more detailed consideration of the substance of HB 2943.

DRA Compliance

The original incentive for the drafters of HB 2943 was to enable Kansas to qualify for a 10% increase in recoveries from Medicaid fraud cases. In order to qualify for the 10% increase, a state false claims act must meet certain requirements that ensure the state act is substantially similar to the federal False Claims Act. The four requirements are:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act;
2. The law must contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732;
3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General; and
4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.⁴

Qui Tam

HB 2943 appears to meet the first and last of the four DRA requirements, but not the second or third. The Committee discussed the fact that Kansas would not qualify for the increased 10% in recoveries from Medicaid fraud in actions brought under a Kansas false claims act unless it met all of the requirements, including qui tam provisions. There were Committee members on both sides of this debate. Some members were strongly in favor of the protections that qui tam affords whistleblowers, noting that without such people willing to come forward, a great deal of fraud would simply remain undiscovered. It was also expressed that in the current economic climate, Kansas should take advantage of every opportunity to recover taxpayer dollars. On the other side of this

⁴ “Publication of OIG’s Guidelines for Evaluating State False Claims Acts,” 71 Federal Register 161 (21 August 2006), pp. 48552 - 48554.

debate were members who were very concerned about the potential for baseless suits and the high cost to defend them. These concerns were magnified when also considering that one can be found liable under HB 2943 without a finding of intent.

A suggestion was made to explore the possibility of some variation on qui tam in which the attorney general would serve as a gatekeeper for the lawsuits. The Committee agreed to review the false claims acts of other states to see how many had adopted qui tam and whether any variations on the federal qui tam provisions had thus far been deemed in compliance with DRA requirements.

This review showed that, to date, 20 states have submitted their false claims laws to the Office of Inspector General of the Department of Health and Human Services (“OIG”) for a determination of whether they meet the DRA requirements. A chart is attached to this report at page 39 showing which states have submitted their laws for certification and whether they have been deemed to be in compliance. Review of the six rejection letters sent out by OIG made clear that states must adhere very closely to the federal law in order to be certified. It is very unlikely that any variation in the structure of the qui tam section would be approved. Information about OIG review of state false claims acts and copies of the OIG response letters can be viewed at this web address: <http://www.oig.hhs.gov/fraud/falseclaimsact.asp>.

Although the Committee members who were opposed to qui tam expressed a willingness to at least consider some kind of modified or creative application of the principle, there was not sufficient support on the Committee for the idea of adding to HB 2943 qui tam and whistleblower provisions that mirror the federal law. The Committee acknowledged that the decision not to add qui tam provisions would guarantee that the legislation would not meet DRA requirements. However, the Committee still supports the adoption of a false claims act for the reasons previously stated.

COMMITTEE’S RECOMMENDATIONS REGARDING 2008 HB 2943

The Judicial Council False Claims Act Advisory Committee recommends several revisions to 2008 HB 2943. The recommended changes are set forth and discussed below. The complete text of the bill, with the Committee's suggested changes shown in underline and strikethrough type, immediately follows this report at page 11.

Sec. 2(e)

(e) "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

- (1) Has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; ~~and~~ or
- (3) acts in reckless disregard of the truth or falsity of the information.

The Committee unanimously agreed to changing the word "and" to "or." The federal False Claims Act uses "or" and the Committee believes this was simply an error in the bill that should be corrected to properly set forth the three subsections as alternatives.

Sec. 3(a)

Sec. 3. (a) A person who commits any of the following acts shall be liable to the state or any affected political subdivision thereof, for three times the amount of damages which the state or such political subdivision sustains because of the act of that person and shall be liable to the state for a civil penalty of not less than ~~\$5,500~~ \$1,000 and not more than \$11,000 for each violation. A person found to have committed any of the following acts shall be liable to the state or such affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. The following acts constitute violations for which civil penalties, costs and attorney fees may be recovered by a civil action under this act:

The penalty provisions of the bill engendered spirited debate among the Committee members at all three meetings. Some Committee members were very concerned about the \$5,500 minimum

penalty because the penalty is “per claim.” In a case involving health care, there could be hundreds of “claims” in a single day, and with a mandatory minimum set this high, the penalty becomes draconian. It was suggested that the mandatory minimum be deleted to give the judge the discretion to apply an appropriate amount of penalty for the circumstances of the case. Other Committee members argued just as strongly to retain the mandatory minimum penalty of \$5,500, noting that one of the great values of this act will be its deterrent value, and the penalty provisions are an integral part of that deterrence.

The penalty provision discussions included the idea of changing “shall” to “may” to give the courts more discretion and to softening the treble damages provision by amending it to say “up to” three times the amount of damages. Some changes were made and then changed back. Ultimately, the discussion focused on amending the minimum penalty amount. After much discussion, by a vote of 7 to 2, the minimum penalty was changed from \$5,500 to \$1,000 per claim.

Sec. 3(a)(8) to 3(a)(11)

These sections were added by the drafters of the bill and did not come from the federal False Claims Act. Some Committee members were in agreement with the inclusion of these sections in the bill, noting that these are known problem areas and are worthy of being set forth clearly. Other members countered that the added sections seem to target the pharmaceutical industry and that “kickback” in section 3(a)(8) is ambiguous and not clearly defined. It was acknowledged that all of the acts set forth in these sections are currently prosecuted under the federal law in the absence of this language. At the end of the discussion, the Committee unanimously agreed that these sections be removed entirely.

Sec. 3(b)

This section provides for a reduction in the damages that can be assessed when the person

alleged to have violated the act cooperates with the investigation. HB 2943, like the federal False Claims Act, provides that “the court may assess not less than two times the amount of damages” sustained by the state because of the false claim violation, which is a reduction from the usual treble damages. The Committee amended this section to read that “the court may assess not more than two times the amount of damages” sustained. The Committee agreed that cooperation with false claims investigations should be encouraged, and that providing for a maximum of two times the amount of damages is a better incentive than merely lowering the mandatory damages from treble to double.

Sec. 5(a)

Sec. 5. (a) A civil action under section 3, and amendments thereto, may not be brought more than ~~10~~ 6 years after the date on which the violation was committed.

In the discussion of the statute of limitations set forth in Sec. 5(a), some Committee members expressed that 10 years is far too long. However, it was noted that these cases take a long time to develop and that any period of time less than 5 years would not be practical. The Committee settled on 6 years, noting that this is the same amount of time that providers are required to keep records of Medicaid claim submissions in Kansas. The Committee approved the change in the statute of limitations on a vote of 6 to 3.

Sec. 6 Addition

Sec. 6. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner retaliated against in the terms and conditions of employment by his or her employer because of lawful acts undertaken in good faith by the employee on behalf of the employee or others, in furtherance of an action under this act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall be entitled to all relief necessary to make the employee whole. An employee may bring an action in the appropriate district court of the state of Kansas for the relief provided in this section. This section

shall not be construed to create any private cause of action for violations of this act, and is limited to the remedies expressly created by this section related to employment retaliation.

This section was added in response to concerns by some Committee members that, without a qui tam provision modeled after the federal act, employees who report or assist in a false claims investigation do not have adequate protection. The language in this section was originally copied from § 3730(h) of the federal law. It was argued by some Committee members that common law already provides a remedy for retaliatory discharge and that this section is not necessary. The majority of the Committee did not want to include language that could substantively impact existing common law and a sentence from the federal language that set forth specific relief, such as 2 times the amount of back pay, special damages, and litigation costs and reasonable attorneys' fees, was deleted. The Committee approved the addition of this section by a vote of 8 to 1. The one Committee member who opposed the language would have included the deleted sentence to ensure that whistleblowers are entitled to appropriate relief, including litigation costs and attorneys' fees, if the employer takes retaliatory action.

CONCLUSION

The Judicial Council False Claims Act Advisory Committee is unanimous in its support for the adoption of a false claims act in Kansas. The Committee recommended several amendments to 2008 HB 2943, which changes are set forth in this report. Although votes were split on some of the individual changes to the bill, the Committee unanimously approved submission to the Kansas Judicial Council of this report and the proposed legislation contained herein.

HOUSE BILL No. 2943

**AS REVISED BY THE
JUDICIAL COUNCIL FALSE CLAIMS ACT ADVISORY COMMITTEE**

1 **Section 1.** Sections 1 through ~~11~~ 12, and amendments thereto, shall be known and may be
2 cited as the “Kansas false claims act.”

3 **Sec. 2.** For purposes of this act:

4 (a) “Act” means the Kansas false claims act.

5 (b) “Claim” includes any request or demand, whether under contract or otherwise, for
6 money, property or services made to any employee, officer or agent of the state or any political
7 subdivision thereof or made to any contractor, grantee or other recipient if the state or any political
8 subdivision thereof provides any portion of the money, property or services which is requested or
9 demanded, or if the state will reimburse such contractor, grantee or other recipient for any portion
10 of the money or property which is requested or demanded.

11 (c) “Political subdivision” includes political or taxing subdivisions of the state, including
12 municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees,
13 subcommittees and other subordinate groups or administrative units thereof, receiving or expending
14 and supported, in whole or in part, by public funds and any municipality as defined in K.S.A. 75-
15 1117, and amendments thereto.

16 (d) “Person” includes any natural person, corporation, firm, association, organization,
17 partnership, business or trust.

18 (e) “Knowing” and “knowingly” mean that a person, with respect to information, does any
19 of the following:

20 (1) Has actual knowledge of the information;

21 (2) acts in deliberate ignorance of the truth or falsity of the information; ~~and~~ or

22 (3) acts in reckless disregard of the truth or falsity of the information.

23 **Sec. 3.** (a) A person who commits any of the following acts shall be liable to the state or any

1 affected political subdivision thereof, for three times the amount of damages which the state or such
2 political subdivision sustains because of the act of that person and shall be liable to the state for a
3 civil penalty of not less than ~~\$5,500~~ \$1,000 and not more than \$11,000 for each violation. A person
4 found to have committed any of the following acts shall be liable to the state or such affected
5 political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to
6 recover any of those penalties or damages. The following acts constitute violations for which civil
7 penalties, costs and attorney fees may be recovered by a civil action under this act:

8 (1) Knowingly presents or causes to be presented to any employee, officer or agent of the
9 state or political subdivision thereof or to any contractor, grantee or other recipient of state funds
10 or funds of any political subdivision thereof, a false or fraudulent claim for payment or approval;

11 (2) knowingly makes, uses or causes to be made or used, a false record or statement to get
12 a false or fraudulent claim paid or approved;

13 (3) defrauds the state or any political subdivision thereof by getting a false claim allowed or
14 paid or by knowingly making, using or causing to be made or used, a false record or statement to
15 conceal, avoid or decrease an obligation to pay or transmit money or property to the state or to any
16 political subdivision thereof;

17 (4) has possession, custody or control of public property or money used or to be used by the
18 state or any political subdivision thereof and knowingly delivers or causes to be delivered less
19 property or money than the amount for which the person receives a certificate or receipt;

20 (5) is authorized to make or deliver a document certifying receipt of property used or to be
21 used by the state or any political subdivision thereof and knowingly makes or delivers a receipt that
22 falsely represents the property received;

23 (6) knowingly buys or receives as a pledge of an obligation or debt, public property from any

1 person who lawfully may not sell or pledge the property;

2 (7) is a beneficiary of an inadvertent submission of a false claim to any employee, officer or
3 agent of the state or political subdivision thereof, or to any contractor, grantee or other recipient of
4 state funds or funds of any political subdivision thereof, who subsequently discovers the falsity of
5 the claim and fails to disclose the false claim and make satisfactory arrangements for repayment to
6 the state or affected political subdivision thereof within a reasonable time after discovery of the false
7 claim;

8 ~~(8) obtains unlawful remuneration through any violation of federal or state anti-kickback~~
9 ~~provisions contained in 42 U.S.C. 1320(a)-7b; 41 U.S.C. 51-54; and K.S.A. 21-3487, and~~
10 ~~amendments thereto, where kickback leads to the defrauding of any publicly funded Kansas~~
11 ~~healthcare plan;~~

12 ~~(9) knowingly sells to any publicly funded Kansas healthcare plan any expired or adulterated~~
13 ~~medicine or defunct medical equipment;~~

14 ~~(10) knowingly sells to any publicly funded Kansas healthcare plan any restocked or re-~~
15 ~~shelved medicine or medical equipment without having first fully reimbursed the first purchaser and~~
16 ~~fully disclosed the merchandise status to the new government purchasing agent;~~

17 ~~(11) promotes or markets any prescription drug, dosage or medical device in a way or for a~~
18 ~~purpose that is not approved by the federal food and drug administration and thereby, in any way~~
19 ~~wrongfully obtains remuneration from any publicly funded Kansas healthcare plan; or~~

20 ~~(12 8)~~ conspires to commit any violation set forth in paragraphs (1) through ~~(11 7)~~, above.

21 (b) Notwithstanding the provisions of subsection (a), the court may assess not ~~less~~ more than
22 two times the amount of damages which the state or any political subdivision thereof sustains
23 because of the act of the person in violation of paragraphs (1) through ~~(12 8)~~ of subsection (a) and
24 no civil penalty shall be imposed, if the court finds all of the following:

1 (1) The person committing the violation furnished officials of the state who are responsible
2 for investigating false claims violations with all information known to that person about the violation
3 ~~with~~ within 30 days after the date on which the person first obtained the information;

4 (2) the person fully cooperated with any investigation by the state; and

5 (3) at the time the person furnished the state with information about the violation, no criminal
6 prosecution, civil action or administrative action had commenced with respect to the violation and
7 the person did not have actual knowledge of the existence of an investigation into the violation. (c)
8 In a civil action brought pursuant to subsection (a), proof of specific intent to defraud is not required.

9 (d) This section does not apply to claims, records or statements made under the state revenue
10 and taxation code.

11 **Sec. 4.** (a) The attorney general shall diligently investigate a violation under section 3, and
12 amendments thereto. If the attorney general finds that a person has violated or is violating section
13 3, and amendments thereto, the attorney general may bring a civil action under this section against
14 that person. Further, the attorney general may utilize the assistance of city and county attorneys in
15 cases involving their respective political subdivisions or may utilize funds available pursuant to
16 section 8, and amendments thereto, to engage the services of private attorneys to assist in carrying
17 out the purposes of this act, or both, at times when the attorney general determines the need exists.
18 All local prosecutors and private attorneys shall only participate at the request, and under the
19 direction of, the attorney general.

20 (b) Nothing in this act shall be construed to create a private cause of action, except as
21 provided in Sec. 6.

22 **Sec. 5.** (a) A civil action under section 3, and amendments thereto, may not be brought more
23 than ~~10~~ 6 years after the date on which the violation was committed.

24 (b) A civil action under section 3, and amendments thereto, may be brought for activity prior

1 to the effective date of this act if the limitation period set in subsection (a) has not lapsed.

2 (c) In any action brought under section 3, and amendments thereto, the state shall be required
3 to prove all essential elements of the cause of action, including damages, by a preponderance of the
4 evidence.

5 (d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal
6 proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of
7 guilty or nolo contendere, shall estop the defendant from denying the essential elements of the
8 offense in any action which involves the same transaction as in the criminal proceeding and which
9 is brought under section 3, and amendments thereto.

10 **Sec. 6.** Any employee who is discharged, demoted, suspended, threatened, harassed, or in
11 any other manner retaliated against in the terms and conditions of employment by his or her
12 employer because of lawful acts undertaken in good faith by the employee on behalf of the employee
13 or others, in furtherance of an action under this act, including investigation for, initiation of,
14 testimony for, or assistance in an action filed or to be filed under this act, shall be entitled to all relief
15 necessary to make the employee whole. An employee may bring an action in the appropriate district
16 court of the state of Kansas for the relief provided in this section. This section shall not be construed
17 to create any private cause of action for violations of this act, and is limited to the remedies
18 expressly created by this section related to employment retaliation.

19
20 **Sec. 67.** (a) The provisions of this act are not exclusive and the remedies provided for in this
21 act shall be in addition to any other remedies provided for in any other law or available under
22 common law.

23 (b) This act shall be liberally construed and applied to promote the public interest.

1 **Sec. 7 8.** (a) Proceeds recovered as a result of an action filed pursuant to this act shall be
2 distributed in the following order:

3 (1) To refund moneys falsely obtained from the federal government, state government or
4 political subdivision thereof pursuant to subsection (b); and

5 (2) to the state treasurer for deposit in the state general fund pursuant to subsection (c).

6 (b) A portion of the recovery equal to the amount of moneys falsely obtained from the federal
7 government, state government, affected political subdivision thereof or state agencies, or a
8 combination thereof, shall be remitted to the appropriate entity shown to be defrauded, subject to
9 any further requirements established by federal or state law.

10 (c) That portion of any recovery remitted to the state treasurer pursuant to subsection (a)
11 shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and
12 amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire
13 amount in the state general fund and, subject to any relevant guidelines of the federal department
14 of health and human services' office of inspector general regarding repayment of fees or recoveries,
15 shall credit 10% of such remittance to the false claims litigation revolving fund, which is hereby
16 established in the state treasury. Moneys in the false claims litigation revolving fund may be
17 expended by the attorney general for the purpose of hiring necessary staff and to defray the costs
18 of investigating and litigating ongoing false claims cases and may be shared at the direction of the
19 attorney general with the Kansas medicaid fraud control unit, Kansas bureau of investigation or any
20 county, city or private attorneys who may be utilized or contracted with pursuant to section 4, and
21 amendments thereto, in carrying out the purposes of this act and any other operating expenses
22 incurred in administering the Kansas false claims act. All expenditures from the false claims
23 litigation revolving fund shall be made in accordance with appropriation acts upon warrants of the

1 director of accounts and reports issued pursuant to vouchers approved by the attorney general or the
2 attorney general's designee.

3 **Sec. ~~8~~ 9.** Liability pursuant to this act is joint and several for any violation done by two or
4 more persons.

5 **Sec. ~~9~~ 10.** Any action under this act may be brought in any county or district court in which
6 the defendant or, in the case of multiple defendants, any one defendant can be found, resides or
7 transacts business or in which any act prohibited by section 3, and amendments thereto, occurred.

8 **Sec. ~~10~~ 11.** If any provision of this act or the application thereof to any person or
9 circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act
10 which can be given effect without the invalid provision or application, and to this end the provisions
11 of this act are severable.

12 **Sec. ~~11~~ 12.** This act shall take effect and be in force from and after its publication in the
13 Kansas register.