

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 15, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Clyde Graeber - Excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Nancy Lindberg, Assistant to the Attorney General
Phyllis Fast, Architect, Attorney General's Office for ADA Enforcement
Helen Stephens, Kansas Peace Officers
Gene Johnson, Sunflower Alcohol Safety Action Project, Inc.
Alan Cobb, Conlee Consulting Group
Robert Fox, Deputy General Counsel, Kansas Corporation Commission
John Rosenberg, Western Resources, Inc.
Chip Wheelen, Kansas Medical Society
Robert Epps, Commissioner, Income Support/Medical Services, SRS
John Badger, Chief Counsel, SRS
Kyle Smith, Attorney General's Office, KBI
Tuck Duncan, Medevac Medical Services

Nancy Lindberg, Assistant to the Attorney General, appeared before the committee to request a bill that would establish a statewide victim/witness protection fund. (Attachment #1)

Representative Scott made a motion to have this introduced as a committee bill. Representative Rock seconded the motion. The motion carried.

Phyllis Fast, Architect, Attorney General's Office for ADA Enforcement, appeared before the committee to request a bill that would clean-up the Kansas Architectural Accessibility Standards Act. The request would clarify terms and dates in the Act by adopting federal language. (Attachment #2)

Representative Robinett made a motion to have this request introduced as a committee bill. Representative Mays seconded the motion. The motion carried.

Helen Stephens, Kansas Peace Officers, appeared before the committee to request a bill that would give back to Wildlife & Parks the law enforcement powers that they had prior to 1987 and to have Chapter 8 powers pertaining to traffic. (Attachment #3)

Representative Plummer made a motion to have this request introduced as a committee bill. Representative Robinett seconded the motion. The motion carried.

Gene Johnson, Sunflower Alcohol Safety Action Project, Inc. appeared before the committee to request a bill introduction. Judge William Carpenter, requested changes to K.S.A. 22-3609, which would add a new section (5) with the following language: "The trial of Municipal Court Appeals Cases shall be to the Court in the cases in which judgement of the Municipal Court did not impose sentence or confinement in jail." Old section (5) would become new section (6). (Attachment #4)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 15, 1993.

Representative Mays made a motion to introduce this request as a committee bill. Representative Everhart seconded the motion. The motion carried.

Alan Cobb, Conlee Consulting Group, appeared before the committee to request a bill introduction that would eliminate the \$5,000 cap on liens for hospital services. (Attachment #5)

Representative Goodwin made a motion to introduce this request as a committee bill. Representative Pauls seconded the motion. The motion carried.

Chairman O'Neal advised the committee that the Uniform Law Commission had two bill requests. The first would be to update the Uniform Anatomical Gift Act, by using the 1987 updates. A second request would be the introduction of The Uniform Declaratory Judgements Act, which has been passed by 30 states.

Representative Scott made a motion to have these requests introduced as a committee bill. Representative Adkins seconded the motion. The motion carried.

Representative Jim Garner requested two bill requests for Joan Hamilton to be introduced as committee bills. The first would be to include "District Attorney" in K.S.A. 22-3101. The next would add an amendment to K.S.A. 65-4135 which would include the language to state "...or something purporting to be a written instrument...". (Attachment #6)

Representative Garner made a motion to introduce these requests as committee bills. Representative Rock seconded the motion. The motion carried.

Representative Macy requested a bill introduction that would place more restrictions on possession of firearms by convicted felons.

Chairman O'Neal suggested that this request be amended in HB 2332.

Representative Rock requested a committee bill that would delete the portion of the Insurance Law that requires employers to provide help to employees through health care, with drug & alcohol rehabilitation treatment programs.

Representative Rock made the motion to accept this as a committee bill. Representative Pauls seconded the motion. The motion carried.

Hearings on HB 2413 were opened regarding public utilities past issuances being made voidable by the commission.

Robert Fox, Deputy General Counsel, Kansas Corporation Commission, appeared before the committee in support of the bill. He requested that the term "void" be changed to "voidable by the commission". (Attachment #7)

John Rosenberg, Western Resources, Inc. appeared before the committee neither as a proponent nor opponent to the bill. He requested an amendment to K.S.A. 66-125(a) that would delete lines 20-22. He also requested an amendment in the last sentence of subsection (a) to read: "In lieu of securing a certificate from the Commission". (Attachment #8)

Hearings on HB 2413 were closed.

Hearings on HB 2409 were opened dealing with services rendered under the state medical assistance program.

Chip Wheelen, Kansas Medical Society, appeared before the committee in support of the bill. He stated that physicians chose not to participate in the State Medical Assistance Program because of the low rates of reimbursement, hassle factors and liability exposure. With this bill they have attempted to make it clear that when payment for recommended services are denied, the Secretary assumes liability for that decision. The payment decision is not considered discretionary under the Tort Claims Act. An example would be, the patient who is determined

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 15, 1993.

eligible under the Medicaid program, does not receive the recommended medical care made by the physician, who is participating in the Medicaid program, for services that are covered under the Medicaid program and they suffer injury as a result of the failure to render that medical care. They could, under the bill, recover their damages by suing the State of Kansas through the Tort Claims Act. As of now this liability exists only for the treating physician. (Attachment #9)

Chairman O'Neal questioned what the typical situation was where SRS was not making payment on someone who is eligible and is a covered service.

Wheelen stated that the typical situation would be limitations on services, such as cases where the patient has a history of strep and needs a tonsillectomy and SRS says no because it's not appropriate and that other procedures should be done first.

Chairman O'Neal stated that there are really two aspects: the liability of the physician and the liability of the state.

Wheelen said that they have tried to incorporate language that if injury occurs from the result of failure to render the care recommended by the physician, the patient would have the opportunity to recover from the Tort Claims Act.

Robert Epps, Commissioner, Income Support/Medical Services, SRS appeared before the committee as an opponent of the bill. The prior approval method is used frequently in Medicaid cases. SRS does not prohibit a physician from admitting a patient to the hospital for a procedure. It just states that it is not reimbursable under Medicaid. (Attachment #10)

Chairman O'Neal asked if there is always a physician who signs off in the review process, and who makes up the standing orders.

Epps answered that a physician always signs off in the review process. The standing orders are made by physicians, ultimately.

Chairman O'Neal also suggested that the immunity of the SRS doctor consultants should be removed so a jury can look at all of the facts and determine whether the medical judgement as to what should happen to a patient was negligence. The determination if the patient is truly in need of in-patient care is made on a case by case basis. Why should the physician who makes the decision of appropriate services not be subjected to the same scrutiny as the medical judgement by the treating physician that hospital treatment is necessary, O'Neal asked.

John Badger, Chief Counsel, SRS, stated that they should be treated the same as other prior approval insurance companies. It's between the physician and patient as to whether the service will be done.

Hearings on HB 2409 were closed.

Hearings on HB 2412 were opened dealing with emergency assistance at the scene of an accident.

Kyle Smith, Attorney General's Office, KBI, appeared before the committee as a proponent of the bill. He requested three amendments. The first would change a typographical error on page 2, line 11. The word "or" was left out and needs to be added then deleted. The second would include the National Safety Council to the list of organizations who can approve first aid programs. The last would make the bill effective upon publication in the Kansas Register rather than waiting for the July 1st date. (Attachment #11)

Tuck Duncan, Medevac Medical Services, appeared before the committee as a proponent of the bill. He offered an amendment to include a new section that would the employer limited liability. (Attachment #12)

Hearings on HB 2412 were closed.

The Committee adjourned at 5:15 p.m. The next Committee meeting is February 16, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE FEBRUARY 15

[illegible]



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 15, 1993

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TO: House Judiciary Committee
FROM: Nancy Lindberg, Assistant to the Attorney General
RE: Bill Request From Attorney General Bob Stephan and
Sedgwick County District Attorney Nola Foulston

Victim/Witness Protection Fund

Establishes a statewide victim/witness protection fund within the office of the attorney general. Subject to appropriations, this fund may provide money for the security and protection for a victim of a crime or a government witness in an official proceeding or investigation where the attorney general determines that an offense such as intimidating a witness, tampering with a witness, retaliating against a witness is likely to be committed or which involves great public interest.

Any county, district, or state prosecuting attorney or law enforcement agency may request funds from the attorney general to assist a crime victim or witness who needs protection.

Creates within the department of attorney general a victim/witness protection review board appointed by the attorney general and chaired by the attorney general or designee. Those serving on the board shall be a county or district attorney, sheriff, and chief of police. The board shall review each request for security and protection.

Services provided will include but not be limited to temporary relocation, transportation to and from court, moving assistance, temporary lodging and support services necessary for the prevention of intimidation and protection of eligible victim, witness or immediate family of the victim or witness.

HOUSE JUDICIARY
Attachment #1
02-15-93



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Bill Request on Behalf of
Attorney General Robert T. Stephan
Presented by
Phyllis Fast, Architect
(assigned to the Attorney General's Office
for ADA enforcement)

House Judiciary Committee
Re: Kansas Architectural
Accessibility Standards Act
Cleanup Amendments
February 15, 1992

Mr. Chairman and members of the House Judiciary Committee, thank you for this opportunity to request this bill.

The Kansas Architectural Accessibility Standards Act, which was enacted last year, was generally patterned after Title II and Title III of the federal Americans with Disabilities Act. The amendments we offer are not intended to change this policy, but only to clarify terms and dates.

The major area of the amendments is the inclusion of the actual definitions and terms that the entities are under instead of merely adopting the applicable federal regulations by reference. The Attorney General believes that if someone is expected to comply with Kansas law, that person should be able to pick up Kansas statutes and know what standards are applicable instead of having to go to a federal cite to determine whether or not they are in compliance. Therefore, although this bill is quite voluminous, it is only slightly different from the law which we have been under for the past seven months.

The changes our office proposes are as follows:

HOUSE JUDICIARY
Attachment #2
02-15-93

1. The date, January 26, 1992 - found in KSA 58-1301 and 31-150.

As written, the act appears to have retroactive effect. We do not believe that was the intent.

2. Parking requirements - found in KSA 58-1311 and 8-1,128.

This is necessary because current law is less stringent than parking requirements which were in effect prior to 1992. Kansas law allows governmental facilities which were built before 1979 to not be in conformance with new construction standards for parking, and owners of a private parking lot, who have not relocated or established any parking space(s) since January 26, 1992, to not designate any new parking space(s) for individuals with a disability. This amendment would make Kansas parking requirements equal to federal ADA new construction standards which we believe was the intent of the 1992 legislature.

3. Inclusion of "mental impairment" - found in KSA 58-1301a.

This is necessary because current law only protects someone with a physical impairment. This change would put Kansas law in line with the federal Americans with Disabilities Act.

4. Appeal process - found in KSA 58-1307.

This is necessary because the state's previous waiver/modification procedure allowed a governmental entity or owner of a public facility to be granted a waiver or modification based on the determination that the construction or alteration was unreasonable or impracticable. This standard is much lower than federal law which virtually precludes any waiver or modification for new construction. However, federal law does allow a governmental entity to be granted a waiver or modification if an alteration is found to be one that would 1) destroy the historic significance of the facility, 2) fundamentally alter a program or service, or 3) create an undue financial or administrative burden. Federal law also allows an owner of a public facility to be granted a waiver or modification when an alteration is determined to be 1) technically infeasible, 2) structurally impracticable, or 3) disproportionate to the alteration cost.

The Attorney General's office is seeking clarification of this act in an effort to further the goal of last year - to pattern Kansas law after the federal law.

AN ACT concerning wildlife and parks conservation service and conservation officers; amending K.S.A. 32-808 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 32-808 is hereby amended to read as follows: 32-808. (a) The secretary shall organize a wildlife and parks conservation service and employ conservation officers. The secretary may appoint permanent officers and employees of the department as deputy conservation officers, and may appoint law enforcement officers temporarily assigned to the department pursuant to K.S.A. 74-5610 and amendments thereto, to assist the wildlife and parks conservation service in a manner determined by the secretary. All deputy conservation officer appointments shall be on a voluntary basis and shall expire on December 31 following the date of such appointment.

~~(b) The department shall provide a minimum of 40 hours' internal law enforcement training prior to certification of deputy conservation officers.~~

~~(c) (b)~~ Conservation officers, deputy conservation officers and any other law enforcement officers authorized to enforce the laws of the state of Kansas shall have the power and authority to:

(1) Enforce all the wildlife and parks laws and *other laws of the state, including chapter 8 of the Kansas Statutes Annotated and amendments thereto*, and the rules and regulations of the secretary. *Such officers shall also have the powers of arrest set forth in K.S.A. 1991 Supp. 22-2404 and amendments thereto and are empowered to make arrests required by any policy adopted by the secretary pursuant to K.S.A. 1991 Supp. 22-2307 and amendments thereto.* In addition, any conservation officer who has completed the required course of instruction for law enforcement officers approved by the law enforcement training center, upon display of proper credentials, may assist an officer of a law enforcement agency in the making of an arrest at the request of the agency. ~~Such a conservation officer may arrest a person when (A) the conservation officer has a warrant commanding that the person be arrested, (B) the conservation officer has probable cause to believe the person is committing or has committed a felony, (C) the conservation officer has probable cause to believe that the person is committing or has committed a misdemeanor under the circumstances specified in K.S.A. 22-2401 and amendments thereto, or (D) a felony or misdemeanor is being committed by the person in the conservation officer's view. If the conservation officer makes an arrest without the presence of an officer of a law enforcement agency, the conservation officer shall cause the person arrested to be delivered to the sheriff, chief of police or the sheriff's or chief's designee in the jurisdiction where the arrest is made, along with the documents and reports pertaining to the arrest and shall be available as a witness. A conservation officer acting under authority of this subsection shall be considered an employee of the department and shall be subject to its direction, benefits and legal protection.~~

(2) Serve warrants and subpoenas issued for examination, investigation or trial of all offenses against the wildlife and parks laws and rules and regulations of the secretary ~~and of violations, on department controlled lands and waters, of any law, and of any rule and regulation, of the state of Kansas.~~

(3) Carry firearms or weapons, concealed or otherwise, in the performance of their duties but only if the officer has completed the required course of instruction for law enforcement officers at the law enforcement training center, unless otherwise qualified pursuant to K.S.A. 74-5608a and amendments thereto.

Section 2. K.S.A. 1992 Supp. 32-808 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the *Ks. Register*

HOUSE JUDICIARY

Attachment #3

02-15-93



Sunflower Alcohol Safety Action Project, Inc.

Suite F, 112 S.E. 7th / Topeka, Kansas 66603 / Phone (913) 232-1415

February 4, 1993

Representative Michael O'Neil
Chairman of the House Judiciary Committee
State House
Topeka, KS 66612

RE: Legislation on Municipal Court Appeal Cases
K.S.A. 22-3609a

Dear Representative O'Neil,

I have been asked by Judge William R. Carpenter, Administrative Judge of the 3rd Judicial District, Shawnee County, to have your committee introduce legislation concerning Municipal Court Appeal Cases in the State of Kansas. During the 1992 Legislature there were certain changes made in K.S.A. 22-3609 and K.S.A. 22-3404. Judge Carpenter would wish to make further refinements in that Bill for smoother adjudication of all Municipal Court Appeals. He has suggested under K.S.A. 22-3609 to insert a new section (5) five with the following language: "The trial of Municipal Court Appeal Cases shall be to the Court in the cases in which judgment of the Municipal Court not impose sentence or confinement in jail. Old section (5) five would become new section (6) six.

Judge Carpenter feels this would be consistent with the existing language in K.S.A. 22-3404 and also protect the defendant because a penalty may not be enhanced on appeal under Kansas appellate decision.

If you need further information concerning this matter, feel free to contact me in my office or Judge Carpenter, personally, at his office. His telephone number is 291-4365.

Respectfully,

Gene Johnson
Project Coordinator

GJ/as

(1) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas. The appeal shall be assigned by the administrative judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than 10 days after the date of the judgment appealed from.

(3) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

(4) The trial of the municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members.

(5) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 and amendments thereto shall be conducted only on the record of the stipulation of facts relating to the complaint.

(6) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to subsection (b) of K.S.A. 12-4416 and amendments thereto shall be conducted only on the record of the stipulation of facts relating to the complaint.

(5) The trial of municipal court appeal cases shall be to the court in the cases in which judgment of the municipal court did not impose sentence or confinement in jail.



Request for Bill Introduction
Regarding the Hospital Lien Law

February 15, 1993

Chairman O'Neal, members of the committee, I am Alan Cobb, appearing on behalf of the four Wichita hospitals, requesting introduction of a bill eliminating the \$5,000 cap on liens for hospital services. Attached is a proposed draft of this bill. This cap has presented recurring problems for the hospitals in Wichita and throughout the state. There have been many instances which a patient has received payment from a civil suit or insurance settlement, but the hospital that provided the patient's care was not paid, or was paid only \$5,000, the lien cap.

Passage of this bill would ensure the adequate compensation of hospitals for medical care received by a patient. This bill would increase the lien on insurance proceeds or proceeds resulting from a successful law suit brought by the patient.

Thank you for considering this bill request.

HOUSE BILL No. _____

AN ACT concerning hospitals; relating to liens upon personal injury damages recovered by patients; amending K.S.A. 65-406 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-406 is hereby amended to read as follows:

65-406. Every hospital in the state of Kansas, which ~~shall furnish~~ *furnishes* emergency, medical or other service to any patient injured by reason of an accident not covered by the ~~workmen's~~ *workers* compensation act, ~~shall~~, if such injured party ~~shall assert or maintain~~ *asserts or maintains* a claim against another for damages on account of such injuries, ~~shall~~ have a lien ~~not to exceed five thousand dollars (\$5,000)~~ upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by ~~his~~ *such patient's* heirs, personal representatives or next of kin in the case of ~~his~~ *such patient's* death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital ~~up to the date of payment of such damages;~~ *Provided, however, that this.* Such lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or ~~his~~ *such patient's* heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, ~~his~~ *such patient's* heirs or personal representatives; ~~Provided, further, That the.~~ *Such* lien ~~herein set forth~~ shall not be applied or considered valid against anyone coming under the ~~workmen's~~ *workers* compensation act in this state.

Sec. 2. K.S.A. 65-406 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Firs' ant District Attorney
Jo leinecke
Assis District Attorneys
Athena E. Andaya
James A. Brown
David B. Debenham
Gwynne E. Harris
Michelle V. Hostetler
E. Bernard Hurd
Michael F. McElhinney
Tony W. Rues
Lori Reyes Seifert
Jodie Van Meter

Joan M. Hamilton
District Attorney
Kansas Third Judicial District

Suite 214 • Shawnee County Courthouse • Topeka, Kansas 66603-3922
Telephone: (913) 291-4330 • Fax: (913) 291-4162

Victim/Witness C
Suzanne H.

stor

Investigators
Donald M. Murphy
David A. Russell

February 9, 1993

TO: Michael O'Neal, Judiciary Chairman
Jim Garner, Judiciary Vice-Chairman

FROM: Joan Hamilton, District Attorney
Shawnee County

RE: Requested "committee" bills

Since I have missed the deadline for personal bills, would you please introduce the following bills in "committee". Most of them are very minor bills, but do affect law enforcement and prosecution.

1. K.S.A. 22-3101 =

This statute does NOT even include District Attorney -- it reads county attorney. We have a tremendous amount of requests for inquisition subpoenas, so I am requesting that you add the District Attorney AND one specified Assistant to the statute.

2. K.S.A. 21-3512 =

This statute needs help with the definition of "bodily contact" in (1)(c). We are having an increase in "lap dancing" in topless and other establishments and since the statute does not address the issue of a piece of clothing being between the acts described in the statute there is some difficulty with the enforcement. I am available, as well as Officers, to explain the difficulty.

3. K.S.A. 21-4619 =

Because of a case in the Court of Appeals, State v. Anderson, 12 Kan. App. 342, we may have to make some revisions to the expungement statutes. We should also add Sexual battery and Aggravated Sexual Battery (when dealing with children) to that statute if that is the legislative intent.

February 9, 1993

4. K.S.A. 65-4135 =

Forfeiture statutes with a voluntary forfeiture - see form enclosed.

(a) Need statutory language that allows for bypassing legal news for notification if there is a voluntary forfeiture.

(b) If amount of forfeiture is under \$300.00, if there is some way that we can assess court costs and legal publication costs to the defendant in his criminal case to be a part of the sentence.

5. K.S.A. 21-34 et. seq.

My pet peeve is that 14 and 15 year olds should not be required to prove consent. Please reconsider actions of last years legislative action on senate bill 358.

6. K.S.A. 21-3711 Making a False Writing

Need statutory language making it unlawful to make, draw, or cause to be drawn, a written instrument, or something purporting to be a written instrument...with knowledge that such writing falsely states or represents some material matter or is not what it purports to be, and with intent to defraud.

The statute, without the underlined language, may allow one to photocopy a check or other financial instrument, with some questions as to whether or not it meets the definition of "written instrument" in K.S.A. 21-3110(9).

7. SENTENCING GUIDELINES

We need to talk about these before they go into effect on July 1, 1993. Please provide us the vehicle.

THIS FORFEITURE RELEASES TO THE TOPEKA POLICE DEPARTMENT
ALL RIGHT, TITLE AND INTEREST IN THE LISTED PROPERTY
READ IT CAREFULLY BEFORE SIGNING! UNDERSTAND WHAT YOU HAVE READ.
ASK QUESTIONS IF YOU DO NOT UNDERSTAND ANY PART OF IT

VOLUNTARY FORFEITURE
AND
RELINQUISHMENT OF INTEREST

NOW, ON THIS ____ DAY OF _____, 199__, THE UNDERSIGNED,
_____, WHOSE ADDRESS IS _____,
HAVING BEEN FULLY ADVISED OF HIS/HER RIGHTS REGARDING CERTAIN PROPERTY
DESCRIBED BELOW, DOES HEREBY FREELY, VOLUNTARILY, AND WITHOUT COERCION
OR DURESS, PERMANENTLY SURRENDER ALL RIGHT, TITLE AND INTEREST FOR
HIM/HER SELF, AND HIS/HER HEIRS, SUCCESSORS AND ASSIGNS, IN THE LISTED
PROPERTY TO THE CITY OF TOPEKA POLICE DEPARTMENT. A COPY OF THIS
DOCUMENT IS HEREBY ACKNOWLEDGED. THE CONSIDERATION FOR THIS TRANSFER
IS DEEMED BY THE UNDERSIGNED TO BE SUFFICIENT.

THIS RELINQUISHMENT/FORFEITURE IS NOT AN ADMISSION OF GUILT, AND
CANNOT BE USED IN ANY CIVIL OR CRIMINAL PROCEEDING AGAINST THE SIGNING
PARTY. IT IS INTENDED SOLELY TO DIVEST FROM THE UNDERSIGNED ANY AND ALL
PROPERTY RIGHTS OR INTERESTS IN THE LISTED PROPERTY, FOREVER. THE
PROPERTY WILL BECOME THE PROPERTY OF THE CITY OF TOPEKA, AND MAY BE
DISPOSED OF AS THEY MAY CHOOSE. NO OTHER CONCLUSIONS OF ANY NATURE,
WHETHER IN LAW OR IN EQUITY, MAY BE DRAWN FROM THIS DOCUMENT. THE
UNDERSIGNED MAKES NO STATEMENT ADVERSE TO HIS/HER LEGAL INTERESTS IN
ANY PENDING OR POSSIBLE CRIMINAL CASE, IF ANY, BY SIGNING THIS DOCUMENT.

THE PROPERTY LISTED BELOW IS HEREBY FORFEITED AND SURRENDERED TO
THE CITY OF TOPEKA, KANSAS, POLICE DEPARTMENT:

SIGNED BY _____ WITNESS _____
BE IT KNOWN THAT ON THE DATE FIRST ABOVE NOTED, THE PERSON IDENTIFIED
TO ME AS _____ PERSONALLY APPEARED AND DID SIGN THE ABOVE
INSTRUMENT OF WRITING, BEING FIRST DULY SWORN, AND ACKNOWLEDGED TO ME
THAT HE/SHE SIGNS THE SAME AS HIS/HER OWN FREE ACT AND DEED.

MY APPOINTMENT EXPIRES: _____

NOTARY PUBLIC

House Judiciary Committee
February 15, 1993

Testimony of
Robert Fox, Deputy General Counsel
Kansas Corporation Commission

HOUSE BILL 2413

Mr. Chairman and members of the committee, the Kansas Corporation Commission appreciates the opportunity to testify before the House Judiciary committee in support of HB 2413.

K.S.A. 66-125 sets out when a public utility or common carrier must obtain a certificate from the commission for the issuance of stocks, certificates, bonds, notes or other evidences of indebtedness. As the statute presently reads, the Commission has no authority to revisit its own actions or those of utilities. Any issuance of an evidence of indebtedness that does not comply with the very strict terms of K.S.A. 66-125 is void.

The Commission believes amending the term "void" with the term "voidable by the commission" would allow the Commission to revisit issuances that failed to satisfy terms in the statute. The Commission has a strong interest in seeing that indebtedness transactions are reasonable, but technical compliance with the statute as it presently reads is almost impossible given present market conditions.

There is no fiscal impact on the KCC or any other state agency with the passage HB 2413.

The Corporation Commission respectfully asks for your favorable consideration and support for House Bill 2413.

TESTIMONY
TO
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 2413
FEBRUARY 15, 1993
BY JOHN ROSENBERG, WESTERN RESOURCES, INC.

Mr. Chairman, Members of the Committee:

House Bill 2413 has been introduced to amend a portion of K.S.A. 66-125 with which Western Resources does not take issue. However, while this statute is under review, we believe it appropriate to consider another amendment aimed at allowing Western Resources and other utilities incorporated in Kansas to elect KCC review of public financings.

Paragraph (a) of K.S.A. 66-125 requires utilities to obtain a certificate from the KCC for certain securities issues. However, KCC certificates are not provided for securities issues which require registration statements to be filed with the securities and exchange commission. This exemption simplifies the approval process for utilities incorporated in other states, but creates uncertainty for Western Resources, which is incorporated in Kansas.

The uncertainty arises because we may, if exempt from Kansas securities regulation, be required to obtain approval from the Federal Energy Regulatory Commission. Under federal law, electric

utilities regulated by the FERC must obtain its authority to issue long term securities unless the state of incorporation takes jurisdiction. While Kansas does take jurisdiction, the absence of prior approval raises a question whether we need FERC approval to issue registered securities. To avoid this technical ambiguity, and because of the possibility that we may issue some securities privately without the need for a registration statement, we often seek a KCC certificate for our securities issuances even when we also file a registration statement. Nevertheless, the uncertainty remains when we issue securities to the general public.

We propose deleting the language in K.S.A. 66-125(a) (lines 20-22) "except an issuance which requires a registration statement to be filed with the securities and exchange commission."

We also propose amending the last sentence of subsection (a) to read: "In lieu of securing a certificate from the Commission if the issuance requires a registration statement to be filed with the securities and exchange commission, the public utility or common carrier ~~shall~~ may file with the state corporation commission a copy of the information filed with the securities and exchange commission."

This language would permit utilities to elect not to seek KCC certification of securities, as opposed to the current language which precludes them from seeking a certificate if they are required to file a registration statement. Thus, there would be no adverse impact on the public by comparison to current circumstances, but the uncertainty Western Resources, and perhaps

others, have faced since enactment of the exemption would be removed.

I have discussed this proposed amendment with Brian Moline of the KCC staff, and he indicated he is not opposed to it.

HOUSE BILL No. 2413

By Committee on Judiciary

2-9

8 AN ACT concerning public utilities; relating to voidable issuances;
9 amending K.S.A. 66-125 and repealing the existing section.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 66-125 is hereby amended to read as follows:

13 66-125. (a) A public utility or common carrier may issue stocks,
14 certificates, bonds, notes or other evidences of indebtedness, payable
15 at periods of more than 12 months after the date thereof, when
16 necessary for the acquisition of property, for the purpose of carrying
17 out its corporate powers, the construction, completion, extension or
18 improvements of its facilities, or for the improvements or maintenance
19 of its service, or for the discharge or lawful refunding of its
20 obligations, or for such other purposes as may be authorized by law.

21 Prior to any such issuance, ~~except an issuance which requires a~~
22 ~~registration statement to be filed with the securities and exchange~~
23 ~~commission~~, there shall be secured from the commission a certificate
24 stating the amount, character, purposes and terms on which such
25 stocks, certificates, bonds, notes or other evidences of indebtedness
26 are proposed to be issued, as set out in the application for such
27 certificate. If the issuance requires a registration statement to be
28 filed with the securities and exchange commission, the public utility
29 or common carrier shall file with the state corporation commission
30 a copy of the information filed with the securities and exchange
31 commission.

32 (b) The proceedings for obtaining such certificate from the com-
33 mission and the conditions of its being issued shall be as follows:

34 (1) In case the stocks, certificates, bonds, notes or other evi-
35 dences of indebtedness are to be issued for money only, the public
36 utility or common carrier shall file with the commission a statement,
37 signed and verified by the president or other chief officer of the
38 company having knowledge of the facts, showing:

39 (A) The amount and character of the proposed stocks, certificates,
40 bonds, notes or other evidences of indebtedness;

41 (B) the general purposes for which they are to be issued;

42 (C) the terms on which they are to be issued;

43 (D) the total assets and liabilities of the public utility or common

DELETE

In lieu of securing a certificate from the
commission

may



KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 15, 1993

TO: House Judiciary Committee

FROM: Chip Wheelen
KMS Director of Public Affairs

SUBJECT: House Bill 2409 as Introduced

Thank you for this opportunity to express our support for HB 2409. You may recall that this bill was introduced at our request.

As a matter of introduction it is important to explain that there are three principal reasons that physicians cite when asked why they choose not to participate in the State Medical Assistance Program (Medicaid). Those reasons are (1) low rates of reimbursement, (2) "hassle factors," and (3) liability exposure. When physicians describe the so-called hassle factors, they are not complaining so much about the amount of paperwork associated with Medicaid, but moreso about the requirements for pre-certification, prior authorization, and other review procedures imposed by the Department of SRS or its intermediary. What this means is that in order for a physician to provide medical care to a Medicaid patient, he or she must invest an extraordinary amount of time for an incredibly low rate of compensation. Thus, it is understandable why some physicians choose not to become participating providers. This situation is aggravated by the perception that Medicaid patients are less compliant with the medical regimen prescribed by the physician, and therefore create a greater potential for liability exposure.

The perhaps worst conceivable situation is one in which a physician recommends hospitalization or other medical care for a patient and is then told by representatives of the Department of SRS that payment for such recommended care is denied. This means that if the physician or the hospital does not render what is considered by the physician to be medically appropriate, then the physician or hospital may be liable for any injuries attributable to failure to render professional services. In other words, they can be sued for medical malpractice. This creates a legitimate reason for physicians to refuse to participate in the Medicaid Program. We are attempting to remove one obstacle that interferes with access for the Medicaid population by recommending passage of HB 2409.

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Some of you may recall that a similar bill was introduced during the 1992 Legislative Session. At that time a hearing was conducted and the Kansas Trial Lawyers Association objected to the bill because they claimed it could create wholesale immunity from liability attributable to a feature of the Tort Claims Act which declares discretionary functions of the state to be immune from liability. We have attempted to address that concern by adding language in HB 2409 which makes it clear that when payment for recommended services are denied and the Secretary assumes liability for that decision, then such decision shall not be considered a discretionary function under the Tort Claims Act. That language is found on page 4 at lines 38-41.

We believe HB 2409 deserves passage for a simple reason; fairness. It says that if a physician who has been accepted for participation in the Medicaid Program recommends provision of a covered service for a Medicaid eligible patient, and the Department of SRS denies payment for that service, then the State of Kansas shall be accountable for that decision. If the patient were to suffer an injury as a result of failure to render the recommended medical care, then the patient could recover his or her damages pursuant to the Tort Claims Act. We urge your favorable consideration and recommendation for passage. Thank you for considering our concerns.

CW:cb

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

House Judiciary Committee
Testimony on House Bill 2409

February 15, 1993

The SRS Mission statement:

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

Mr. Chairman, Members of the Committee, thank you for this opportunity to address you on House Bill 2409. The Department of Social and Rehabilitation Services strongly opposes this bill which mandates the Secretary of SRS be held solely liable for injury to recipients resulting from cases where SRS does not grant prior approval for payment of a procedure or service.

Prior approval and utilization review activity, such as the recently implemented Psychiatric Pre-Admission Assessment program, is a common, well established and effective method of cost containment that is used throughout the health care industry. Virtually all insurance companies employ similar methods for controlling costs.

The Kansas Medicaid program is among the fastest growing categories of state expenditure. During the five-year span between FY 1987 and FY 1992 Medicaid expenditures increased from \$248.6 million to \$542.8 million which represents an increase of 118 percent. In contrast, State General Fund revenues grew from \$1,778.5 million to \$2,465.8 million reflecting an increase of 38 percent. Given the growing disparity between program costs and the means of financing Medical services for poor Kansans it should be quite clear that all reasonable and effective methods of cost containment should be utilized. Prior approval is one such method.

Prior approval is required for a number of Medicaid services in an effort to control expenditures. Prior approval assures that SRS is paying for only those services which are medically necessary thereby improving quality of care for the recipients and lowering Medicaid costs. The criteria used to determine medical necessity is created after thorough review and approval from professional consultants. These consultants include the Drug Utilization Review Committee with the Kansas Pharmacy Foundation, physicians comprising the Medical Necessity Issues Committee and a variety of other professional consultants with the Kansas Foundation for Medical Care.

The implications of this bill will affect far more than the Psychiatric Pre-Admission Assessment to determine the medical necessity of general hospital psychiatric admissions. There are a variety of Medicaid covered procedures which require prior approval including joint replacement, hysterectomies, organ

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#10

transplants, cataract surgery, dentures and tonsillectomies. In every instance the prior approval relates only to the allowability of Medicaid payment. At no time does SRS tell a medical professional he or she cannot admit a patient or perform a procedure. An SRS denial simply means that the admission or procedure is not reimbursable under Medicaid. The medical professional is still free to utilize his or her medical judgement regarding appropriate treatment for the patient.

The SRS Psychiatric Pre-Admission Assessment process which prompted a similar bill (1992 House Bill 2795) last year attempts to divert persons to community services prior to hospitalization thus admitting only those who truly are in need of inpatient treatment. Many times recipients were admitted for psychiatric services simply because the alternative community based services were unknown. The Psychiatric Pre-Admission Assessment is working well. The assessment process began January 15, 1992 and as of December 31, 1992, there were 3595 assessments completed of which 635 recipients were diverted to community care rather than hospitalized. This means 18 percent of these recipients were diverted from non-medically necessary institutional care to more appropriate, less costly community services. As the gaps in community alternatives are identified, and filled through this process, even more diversions to more appropriate, less expensive care will occur.

There is never a time in which SRS prohibits a physician from admitting a patient to the hospital. The prior approval results only in a determination as to whether the service meets medical necessity criteria for reimbursement. If the physician wanting to admit a patient disagrees with the alternative community treatment plan developed by the mental health assessment personnel, a psychiatrist is available through the Mental Health Consortium to discuss the case with the admitting physician.

K.S.A. 75-6104 is the list of exceptions in the Tort Claims Act. This statute lists the types of activities for which state employees are not liable. Four notable exceptions are for (1) legislative functions, (2) judicial functions, (3) enforcement of (or failure to enforce) laws, and (4) discretionary functions. The last exception is the one most important to most executive branch employees and officers. State employees who have been given the power to regulate industries, to license and to tax individuals and business and to enforce state laws often exercise discretion in the performance of their duties. State employees should be free to act within the authority granted by law.

The purpose of stating in House Bill 2409 that denial of payment for a medical service is not a discretionary function is to make the Secretary of SRS absolutely liable for any harm caused by an exercise of discretion.

The bill ignores the extensive and thorough review process, which includes review by physicians, before a determination results in a hospital stay being denied. As to other denials of prior authorization, the bill ignores the fair hearing appeal rights providers have under K.S.A. 75-3306. Providers use this process, which is subject to the Kansas Administrative Procedures Act, K.S.A. 77-501, et seq., when a claim is denied for lack of prior authorization. These

appeals take place after the service has been rendered, and if the initial decision of SRS is found to be in error, providers are paid for the service provided.

It is clear that the determination of payment by SRS, through fiscal or other agents is an essential discretionary function, and actions taken by SRS in determining whether claims should be paid should be undertaken under the protection of the discretionary function exception to the Tort Claims Act.

Again, we strongly request the Committee to oppose House Bill 2409. To do otherwise would ultimately increase the cost of medical care and jeopardize the quality of medical services to Kansas Medicaid patients.

Robert L. Epps
Commissioner
Income Support/Medical Services
(913) 296-6750



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 2412
FEBRUARY 15, 1993

Mr. Chairman and Members of the Committee:

I am here today to testify as a proponent for passage of House Bill 2412. The Kansas Bureau of Investigation (KBI) requested this bill on behalf of law enforcement in Kansas to clarify what is commonly the Good Samaritan Statute and its application to people trained in first aid.

As it currently reads, a person rendering emergency first aid must hold a valid certificate by the American Red Cross, American Heart Association or the Bureau of Mines of the Department of the Interior before the limited immunity granted by the statute comes into play.

It came to our attention that the Kansas Law Enforcement Training Center (KLETC) as well as the KBI were not using first aid programs by any of these three organizations so this bill was requested. Currently, the KLETC is having its first aid instruction provided by an instructor/coordinator at the Hutchinson Community College. The KBI's training is through the National Safety Council. This bill was requested to broaden the application of this bill to include training currently being utilized.

Attached to this testimony is a balloon version of the bill with amendments we would request:

1. A typographical error on page 2, line 11, in that the word "or" was left out of the draft of the statute and needs to be included so it can be deleted.
2. Include the National Safety Council to those organizations who may improve first aid programs.
3. That this bill take affect upon publication in the Kansas Register rather than waiting for July 1st to maximize coverage of law enforcement officers.

I would ask the committee to adopt these amendments and recommend House Bill 2412 for passage as encouraging people to render first aid according to their training and not having to worry as to whether they are covered by this statute.

I would be happy to answer any questions.

HOUSE BILL No. 2412

By Committee on Judiciary

2-9

8 AN ACT concerning public health; relating to assistance at the scene
9 of an accident; amending K.S.A. 65-2891 and repealing the ex-
10 isting section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 65-2891 is hereby amended to read as follows:
14 65-2891. (a) Any health care provider who in good faith renders
15 emergency care or assistance at the scene of an emergency or ac-
16 cident including treatment of a minor without first obtaining the
17 consent of the parent or guardian of such minor shall not be liable
18 for any civil damages for acts or omissions other than damages oc-
19 casioned by gross negligence or by willful or wanton acts or omissions
20 by such person in rendering such emergency care.

21 (b) Any health care provider may render in good faith emergency
22 care or assistance, without compensation, to any minor requiring
23 such care or assistance as a result of having engaged in competitive
24 sports, without first obtaining the consent of the parent or guardian
25 of such minor. Such health care provider shall not be liable for any
26 civil damages other than damages occasioned by gross negligence or
27 by willful or wanton acts or omissions by such person in rendering
28 such emergency care.

29 (c) Any health care provider may in good faith render emergency
30 care or assistance during an emergency which occurs within a hospital
31 or elsewhere, with or without compensation, until such time as the
32 physician employed by the patient or by the patient's family or by
33 guardian assumes responsibility for such patient's professional care.
34 The health care provider rendering such emergency care shall not
35 be held liable for any civil damages other than damages occasioned
36 by negligence.

37 (d) Any provision herein contained notwithstanding, the ordinary
38 standards of care and rules of negligence shall apply in those cases
39 wherein emergency care and assistance is rendered in any physician's
40 or dentist's office, clinic, emergency room or hospital with or without
41 compensation.

42 (e) As used in this section the term "health care provider" means
43 any person licensed to practice any branch of the healing arts, li-

1 censed dentist, licensed optometrist, licensed professional nurse, li-
2 censed practical nurse, licensed podiatrist, licensed pharmacist and
3 registered physical therapist, and any physician's assistant who has
4 successfully completed an American medical association approved
5 training program and has successfully completed the national board
6 examination for physicians' assistants of the American board of med-
7 ical examiners, any person who holds a valid attendant's certificate
8 under K.S.A. 65-6129, and amendments thereto, any person who
9 holds a valid certificate for the successful completion of a course in
10 first aid offered *or approved* by the American red cross, by the
11 American heart association, ~~by the mining enforcement and safety~~ *of*
12 administration of the bureau of mines of the department of interior *← by the national safety council*
13 *or by any instructor-coordinator, as defined in K.S.A. 65-6112, and*
14 *amendments thereto,* and any person engaged in a postgraduate train-
15 ing program approved by the state board of healing arts.
16 Sec. 2. K.S.A. 65-2891 is hereby repealed.
17 Sec. 3. This act shall take effect and be in force from and after
18 its publication in the ~~statute book~~ *← Kansas register*.

NEW SECTION:

An employer of an attendant who renders emergency care under the provisions of this act shall not be liable for civil damages as a result of the attendant's rendering such emergency care, except for such damages which may result from gross negligence, or from willful or wanton acts or omissions on the part of the attendant rendering such emergency care.