

Approved: 3-4-93
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 22, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

William Wolff, Legislative Research Department
Emalene Correll, Legislative Research Department
Jo Ann Buntin, Committee Secretary

Conferees appearing before the committee:

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association
Andrew Pelletier, M.D., Acting State Epidemiologist, Bureau of Disease Control, Kansas Department of Health and Development
Mack Smith, Executive Secretary, Kansas Mortuary Arts Board
Tom Bell, Kansas Hospital Association
Jan Pitler, Stormont-Vail Regional Medical Center - Topeka
David W. Newcomer, Kansas Cemetery Association

Others attending: See attached list

The Chair opened the hearing on **SB 310** - Notice that deceased person had infectious or contagious disease.

Pam Scott, KFDA, appeared before the Committee and submitted written testimony in support of **SB 310**. The bill amends KSA 65-2438 to require the hospital or nursing home at which a person dies to provide notice to a funeral director or embalmer that the deceased person had been diagnosed as having an infectious or contagious disease. Currently notice about the deceased is given by the attending physician or a family member making arrangements and is known as "toe tagging". (Attachment 1) In answer to a question, Ms. Scott noted a funeral director could not remove a body without having some contact with an individual in charge of the hospital or nursing home; and in answer to another question, if the attending physician were absent, the hospital may not provide the necessary information to the funeral director.

Andrew Pelletier, KDHE, expressed his support for **SB 310** but suggested that the bill specify what person in the hospital or nursing home would be responsible for reporting that the deceased person died of an infectious disease. (Attachment 2) It was noted that no instance of a funeral home refusing to take a deceased body because of an infectious disease was known.

Mack Smith, KMAB, appeared in support of **SB 310** giving an example if a funeral home removed the deceased body from a hospital or nursing home at night, the nurse on call would not be required to give notification about the deceased person dying from an infectious disease, and this bill would require that type of information. In answer to a question regarding if the Board inspects funeral homes for universal precautions, Mr. Smith noted that is not part of the inspection, only the facilities where the embalming takes place - OSHA has the capabilities to do those inspections but may not in Kansas because of the funding; funeral homes are provided with printed protocols for universal precautions.

Tom Bell, Kansas Hospital Association, appeared before the Committee and submitted written testimony stating his concern is not so much with the amendments made by **SB 310**, but with the policy established by the underlying law. The problem is that hospitals cannot always say for certain whether a person is or was infected with HIV, and laws such as these can tend to create a false sense of security in some instances and consequently put the exposed person in more danger. The OSHA rules do not call for notification when a particular person or patient is HIV positive, but the standard assumes that all such persons will be treated as if their body fluids are potentially infectious. (Attachment 3) In answer to a member's question regarding KHA's position in testing personnel or others for HIV, Mr. Bell stated they have always been opposed to that.

Jan Pitler, Epidemiologist, Stormont-Vail MC - Topeka, stated opposition to **SB 310** because hospitals she

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S
Statehouse, at 10:00 a.m. on February 22, 1993.

consults with have policies in existence that if there is termination of life in isolation, an appropriate isolation card would be attached to the deceased before being sent to the funeral home. Ms. Pitler stated her feeling is that all deceased persons should be treated with caution, and universal precautions should be a standard of practice in hospitals as well as funeral homes. In answer to a member's question, a person may die with HIV or an infectious disease, and that disease not be detected in time for notification.

Hearing on **SB 313** - Compensation for seller authorized from trust fund for prearranged funeral agreements.

Pam Scott, KFDA, appeared in support of **SB 313** and briefed the Committee on the bill which would allow the corporate trustee administering a prearranged funeral trust to pay the seller of the trust, or any one affiliated or connected with the seller, compensation for services performed for the corporate trustee up to an amount not to exceed 1% of the fair market value of the trust. The bill would require the annual fee to be computed and distributed on either an annual, quarterly, or monthly basis. Currently, a funeral director selling prearranged funeral trusts has no way of receiving reimbursement for expenses in administering a trust established pursuant to KSA 16-301. (Attachment 4) Committee discussion related to the process involved with a prearranged funeral dealing with a trust agreement, and the possibility of an increase in the cost of the funeral after the agreement had been made. It was pointed out that funeral homes are not required to have a trust account and some do not.

David W. Newcomer, Kansas Cemetery Association, appeared in support of **SB 313** addressing issues regarding prearranged funeral plans and gave an analysis of cost associated with administering those plans. (Attachment 5) In answer to a question, the bill would apply to existing trusts as well as those sold in the future.

The meeting was adjourned at 11:00 A.M.

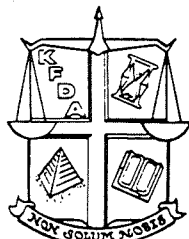
The next meeting is scheduled for February 23, 1993.

GUEST LIST

COMMITTEE: SENATE PUBLIC HEALTH AND WELFARE

DATE: 2-22-93

[illegible]



AFFILIATED WITH N.F.D.A.

THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

PHONE 913-232-7789

FAX 913-232-7791

OFFICERS

President
LARRY ENFIELD
Norton

President Elect
REN NEWCOMER
Topeka

First Vice President
SHIRLEY BROWN
Gardner

Second Vice President
KENNETH FISCHER
Belleville

Corporate Secretary
JERRY LARRISON
Pratt

Executive Director
PAMELA SCOTT
Topeka

BOARD OF DIRECTORS

LARRY ENFIELD
Norton

REN NEWCOMER
Topeka

SHIRLEY BROWN
Gardner

KENNETH FISCHER
Belleville

JERRY LARRISON
Pratt

PHIL PHILLIPS
Ulysses

PAUL ROHDE
Wathena

BILL YOUNG
Kansas City

GLENN KUNKEL
Moran

TOM ELLIOTT
Hutchinson

MARC RYAN
Salina

DALE LAMBERT
Smith Center

BARRY BOGGS
Kinsley

Testimony Presented to

Senate Public Health and Welfare Committee

by the

Kansas Funeral Directors and Embalmers Association

on

Senate Bill No. 310

Madam Chairman and members of the committee, my name is Pam Scott and I am the Executive Director of the Kansas Funeral Directors and Embalmers Association. I am here to speak in support of Senate Bill No. 310.

I had planned on having two licensed embalmers here today to speak in support of this bill but because of the nature of the funeral business they were unable, at the last minute, to be here. Both had deaths in their communities which they had to take care of. I do, however, have a local licensed embalmer with us to respond to any questions you might have.

Senate Bill No. 310 amends K.S.A. 65-2438 to require the hospital or nursing home at which a person dies to provide notice to a funeral director or embalmer that the deceased person had been diagnosed as having an infectious or contagious disease. Currently the law requires the attending physician or if there is no attending physician, a family member making arrangements to provide the notice. This is done through a process generally referred to as "toe tagging". A notification tag is placed on the toe of the deceased person.

The KFEDA has requested that this bill be introduced because funeral directors and embalmers across the state are finding that notification is not being given in cases where there is a known contagious or infectious disease. Often times an attending physician is not present at death. In such cases, hospital or nursing home personnel arrange for the deceased to be picked up by a funeral establishment without the attending physician being present. The

*Senate PH&W
Attachment #1
2-22-93*

hospital and nursing home personnel do not provide notice of the deceased having a contagious or infectious disease. Several hospitals have advised our members that they have no obligation to provide notice under current Kansas law. Their attorneys have advised them not to give notice because of potential liability for breach of confidentiality. We believe that if the notice requirements of K.S.A. 65-2438 are made applicable to hospitals, the confidentiality and immunity provisions in the statute address the hospitals concerns. The amendments in the bill would extend these protections to hospitals and to nursing homes providing the notice.

The comments you may receive from any opponents of this bill will most likely deal with confidentiality and with the use of universal precautions.

On the matter of confidentiality, K.S.A. 65-2438(d) requires that any information provided concerning an infectious or contagious disease shall be held confidential. This provision is in place to protect the privacy rights of the families which we provide our services to. A funeral professional comes into contact daily with information he has the explicit and implied responsibility to keep confidential such as the cause of death, circumstances of death and family relationships to name a few. The funeral director has the responsibility of filling out, signing and filing the death certificate form with the Office of Vital Statistics. The death certificate contains the "cause of death." Regardless of this statutory requirement of confidentiality, a funeral director's disclosure of confidential information entrusted to him would be an abandonment of his professional responsibility. Disclosure of such information could also destroy his business reputation. Although we believe confidentiality is important, it is not as important as someone's health and safety.

As regards to the use of universal precautions, it might be argued that universal precautions should be used in all cases and, therefore, notice is unnecessary. This argument was not accepted by the legislature when they enacted K.S.A. 65-2438. This is an idealist attitude. It does not recognize the task performed by a funeral director and embalmer in the embalming process. A funeral professional does use universal precautions. They are required by

federal OSHA laws to do so. There are, however, different degrees of risk and a variety of protective measures that can be taken depending on such things as the nature of the transmission (blood v. airborne) and the strength and persistency of different viruses. We are dealing with a matter of safety and human life. Funeral professionals have a right to know of known infectious and contagious diseases which could affect their health and safety.

It is a commonly known fact for those of us who operate motor vehicles that bridges are slippery when wet, that we should slow down when we approach curves in the roads, or that we should not pass when going up a hill or around a curve, but that doesn't mean the state of Kansas should remove all traffic warning signs put in place to protect us. The same principle should apply to the notice requirements placed in this bill. No notice is too much notice when you are dealing with human lives.

I ask for your support of Senate Bill No. 310.

State of Kansas
Joan Finney, Governor



Department of Health and Environment

Azzie Young, Ph.D., Secretary

Robert C. Harder, Secretary

Reply to:

Testimony presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 310

The major change proposed in Senate Bill 310 is to expand the responsibility of reporting infectious diseases in a deceased person to hospitals and nursing homes. Currently, only physicians and family members are responsible to report if a deceased person was known to be infected with a contagious disease.

The Department of Health and Environment supports the use of universal precautions when handling any body fluid that might contain bloodborne pathogens such as hepatitis B or the human immunodeficiency virus. Universal precautions is the practice of treating every individual as if he or she were infected with a bloodborne disease. If all persons, or in this case if all dead bodies, are handled with universal precautions, the risk of disease transmission is minimized.

Given our support for the use of universal precautions, the benefits of notifying morticians about infectious diseases are questionable. Having said that, the Department does not oppose the proposed bill. We would suggest, however, that the bill would be clearer if a specific person in the hospital or nursing, such as the director of nursing, was named as the person responsible for reporting. As the bill is currently written, it is difficult to determine who bears the responsibility for reporting.

Thank you for your attention. I will be happy to answer any questions that you might have.

Testimony presented by:

Andrew Pelletier, M.D.
Acting State Epidemiologist
Bureau of Disease Control
February 22, 1993

Senate PH&W
Attachment #2
2-22-93



Memorandum

Donald A. Wilson
President

TO: Senate Public Health & Welfare Committee

FROM: Kansas Hospital Association

RE: SB 310

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of SB 310. This bill would amend current law to make hospitals and nursing homes, as well as the attending physician, responsible for alerting others that a deceased person had an infectious or contagious disease.

Our concern here is not so much with the amendments made by SB 310, but with the policy established by the underlying law. Certainly the AIDS epidemic and the continued struggle against the human immunodeficiency virus make every person fearful. In addition, it is normal for anyone who, during the course of their work, is exposed to the body fluids of another person, to be concerned about whether that person had any infectious or contagious disease. The problem is that we cannot always say for certain whether a person is or was infected with HIV. Therefore, laws such as these can tend to create a false sense of security in some instances and consequently put the exposed person in more danger.

On March 6, 1992, the Occupational Safety and Health Administration rules regarding Occupational Exposure to Bloodborne Pathogens became final. This standard is applicable to all health care facilities including: physician offices, dental offices, hospitals, medical and dental laboratories, nursing homes, residential care facilities, dialysis centers, drug treatment centers, home health care, hospices, government outpatient facilities, blood collection and processing, health clinics in industrial facilities, personnel services, funeral homes and crematories, research laboratories, linen services, medical and dental equipment repair, law enforcement, fire and rescue, correctional institutions, schools, lifesaving, and regulated waste removal.

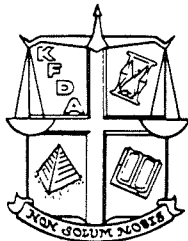
Senate P H & W
Attachment #3
2-22-93

Under the OSHA standard, employers are required to:

- develop an exposure control plan that identifies employees with occupational exposure;
- train all employees on occupational risks and methods to reduce risk;
- maintain records of employee training and medical evaluations;
- use warning labels and signs to identify hazards;
- implement methods to comply with provisions for worker protection, including
 - universal precautions;
 - safe handling of sharps, specimens, contaminated laundry, and regulated waste;
- provide voluntary hepatitis B vaccine at no cost to employees;
- provide medical evaluation after exposure incidents; and
- provide personal protective clothing and equipment.

The OSHA rules do not call for notification when a particular person or patient is HIV positive. Indeed, the standard assumes that all such persons will be treated as if their body fluids are potentially infectious. In short, SB 310 and current law are inconsistent with the OSHA rules and the guidelines of other organizations, such as the Centers for Disease Control, that have studied these issues.

Thank you for your consideration of our comments.



AFFILIATED WITH N.F.D.A.

THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

PHONE 913-232-7789

FAX 913-232-7791

OFFICERS

President
LARRY ENFIELD
Norton

President Elect
REN NEWCOMER
Topeka

First Vice President
SHIRLEY BROWN
Gardner

Second Vice President
KENNETH FISCHER
Belleville

Corporate Secretary
JERRY LARRISON
Pratt

Executive Director
PAMELA SCOTT
Topeka

Testimony Presented to

Senate Public Health and Welfare Committee

by the

Kansas Funeral Directors and Embalmers Association

on

Senate Bill No. 313

BOARD OF DIRECTORS

LARRY ENFIELD
Norton

REN NEWCOMER
Topeka

SHIRLEY BROWN
Gardner

KENNETH FISCHER
Belleville

JERRY LARRISON
Pratt

PHIL PHILLIPS
Ulysses

PAUL ROHDE
Wathena

BILL YOUNG
Kansas City

GLENN KUNKEL
Moran

TOM ELLIOTT
Hutchinson

MARC RYAN
Salina

DALE LAMBERT
Smith Center

BARRY BOGGS
Kinsley

Madam Chairman and members of the committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA) and I am here to testify in support of Senate Bill No. 313.

Senate Bill No. 313 was introduced by this committee at the KFDDA's request. The bill would allow the corporate trustee administering a pre-arranged funeral trust to pay the seller of the trust, or any one affiliated or connected with the seller, compensation for services performed for the corporate trustee up to an amount not to exceed 1% of the fair market value of the trust. The bill would require the annual fee to be computed and distributed on either an annual, quarterly, or monthly basis. Currently, a funeral director selling pre-arranged funeral trusts has no way of receiving reimbursement for its expenses in administering a trust established pursuant to K.S.A. 16-301, et seq.

The seller incurs many expenses in administering a pre-arranged funeral trust. Currently, he has no way to recover these expenses. Pre-arranged funeral trust's sold in Kansas are required to be 100% trusted. That means 100% of all funds collected by the seller must be placed in a trust at a financial institution. This is unlike many other states which require only a percentage of the payment made to the seller to be placed in trust. States surrounding Kansas require the following percentage of funds collected to be placed in trust: Colorado-85%, Missouri-80%, Nebraska-85%, Oklahoma-90%, and Iowa-80%. In those states, the money not placed in trust can be used to cover the costs of establishing and administering the trust. Pre-arranged funeral trust sold pursuant to K.S.A. 16-301 are also

Senate P.H.W.
Attachment #
4
2-22-93

unlike pre-arranged funeral plans funded by insurance policies. In those cases the seller receives a commission which will cover his expenses.

Expenses typically incurred by a seller in administering a pre-arranged funeral trust include the cost of preparing and printing the trust agreement; legal expenses in establishing a trust; cost of collecting funds; promotional costs such as travel expenses and advertising expenses; the cost of communicating current information of the trust to participants; mailing costs; salaries of staff administering the trust; telephone expenses responding to questions raised by participants concerning the trust; preparation of tax notices; and general overhead costs. This list is by no means exhaustive and will vary among sellers based upon what functions it performs versus what services are performed by the corporate trustee.

From the KFDA's experience in providing services to the Kansas Funeral Directors Association Master Trust and from information received from our members who administer trusts, we believe that one percent of the fair market value of the trust is a reasonable cap to be placed on the annual fee that can be paid to the seller of the trust to compensate it for services it renders.

In conclusion, the KFDA by asking you to support Senate Bill 313, is only asking you to support the ability of the seller of a pre-arranged funeral plan established pursuant to K.S.A. 16-301, et seq. to recover its costs of administering a pre-arranged funeral trust.

We would also request that the bill's effective date be upon publication in the Kansas Register. ✓

Thank you for giving us the opportunity to appear before you.

4-2

KANSAS CEMETERY ASSOCIATION

David W. Newcomer IV, Legislative Chairman

Testimony In Support of SB 313
before Senate Public Health and Safety Committee
February 22, 1993

The Kansas Cemetery Association ("KCA") **supports** the adoption of Senate Bill 313.

This bill permits the bank trustee of a prearranged funeral trust to reimburse the seller of those plans a limited amount for expenses incurred by the seller on behalf of the trustee. Present law prohibits any such reimbursement.

KCA members are governed by the preneed funeral law if they accept funds for prepaid interment fees, cremation charges, and for those members who have funeral homes on their grounds, for funerals and caskets.

Most sellers of prepaid contracts bill and collect the funds, handle customer service work (changes of address, welfare requests, comments and questions, etc.) prepare claim forms, and in the case of our own firm, do the computer work to calculate the earnings applied to each contract, and prepare and mail the tax notices. All are required to prepare an annual report which is filed with the Secretary of State.

*Senate PH&S
Attachment #5
2-22-93*

Speaking for my own firm, the 1% of asset value cap permitted by this bill for this expense reimbursement does not actually cover our costs, but it is certainly much better than zero reimbursement we are faced with now.

It is important for the state to encourage firms to offer prearrangement, especially in light of the legislative attempts to reduce welfare payments for cemetery and funeral expenses.

There are cemeterians who have not chosen to offer this service because the current law forces them to incur real current expenses with no current means to reimburse them for those expenses.

KCA hopes the committee will send this bill to the Senate with a "Do Pass" recommendation.

ANALYSIS OF COST TO ADMINISTER KANSAS PRENEED TRUSTS

Funeral Security Plans 1992

Expenses:

Customer Service\$ 23,452.92
(Payroll, phone, office supplies,
Computer Processing)

Processing\$ 2,005.10
(Checking and registering new
contracts, postage & supplies)

Accounting & Administration\$ 43,890.67
(Preparing reports, tax notices,
and auditing accounts)

Office\$ 32,251.65
(Rent, heat, light, phones, etc.)

Data Processing\$ 21,960.90

Total Expenses\$123,561.24

=====

Reimbursement:

Trust Assets: \$8,087,743

1% Administration Fee.....\$80,877.43

Shortfall(\$42,683.81)

=====