

Approved: Jan. 26, 94
Date

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on January 24, 1994 in Room 423-S of the Capitol.

All members were present except: Rep. Wagle, excused

Committee staff present: Emalene Correll, Legislative Research Department
William Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Dr. Robert C. Harder, Secretary, Department of Health/Environment
Mack Smith, Executive Secretary, Kansas Board of Mortuary Arts
Pam Scott, Executive Director, Kansas Funeral Directors Association

Others attending: See attached list

Chairperson Flower called the meeting to order then welcomed a new Committee member, Representative Nelson VanFleet who was appointed to this Committee to replace Rep. Bishop who resigned.

Chair then called on Dr. Robert Harder, Secretary of SRS to present his request for legislation.

Dr. Harder offered hand-out, (Attachment No.1). He gave a detailed explanation of each bill request, noting the first page in the packet would be by-passed since Mr. Furse had informed the Secretary the same bill was introduced today in the Senate requested by the Joint Committee on Health Care Decisions for the 1990's.

The other requests were explained, i.e., (1) Coordinating Council on Early Childhood Development would authorize the Insurance Commissioner to have a designated seat on the Council, and would amend to change the terminology "handicapping" to "disabling" through the statute; (2) Local Health Department Performance Measures would establish authority for the Secretary to adopt regulations setting performance measures for local health departments receiving health grants; (3) Local Laboratory Testing relates to duplicative areas of testing covered by federal regulations; (4) Establishment of Vital Statistics Improvement Fund, and would establish an increase in fees by \$1.00 for both the first and additional copies ordered at the same time. Dr. Harder then answered questions.

Ms. Correll recognized by the Chair noted, given that the most recent fee increases have not gone to Health and Environment, but go to other funds, it might be helpful if the Department could present at the time of hearing how those funds are allocated.

Chair asked members if there were any objections to considering these bill requests from Health/Environment as a packet. There were no objections.

Rep. Wells moved the bills requested by Dr. Harder be introduced in this Committee, seconded by Rep. Mayans. No discussion. Motion carried.

Mack Smith, Executive Secretary, Kansas Board of Mortuary Arts offered hand-out, (Attachment No.2). He explained the requests, noting the first request contains numerous items ranging from the definition of an embalmer to fines levied to one who does embalming without a license; would establish licensing for a branch facility; would update the penalties for noncompliance of requirements. The second bill request for legislation concerns penalties for violations relating to funeral and cemetery merchandise agreements, contracts and plans. Mr. Smith answered questions. There was a discussion regarding the change in penalties for violations of regulations.

January 24, 1994

CONTINUATION SHEET

MINUTES OF HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S

Mr. Furse explained to members the differences in misdemeanor and felony crimes. The penalties for a severity level 7 were also explained and discussed.

Rep. Neufeld moved to introduce the legislation requested by Mr. Smith, seconded by Rep. Wells. No discussion. Motion carried.

Ms. Pam Scott, Executive Director, Kansas Funeral Directors, provided hand-out to members, see (Attachment No. 3). She detailed rationale of requested legislation, i.e., durable power of attorney for health care decisions may convey to the agent specific authority. She elaborated with a lengthy explanation. Ms. Scott answered numerous questions regarding the power of attorney; problems in the past incurred regarding cremation. She also stated, by family case law, the family has the right to make the final decisions.

Rep. Samuelson moved to introduce the legislation proposed by Ms. Scott, seconded by Rep. Rutledge. No discussion. Motion carried.

DISCUSSION BEGAN ON SB 249.

Mr. Furse indicated, in SB 249, should Committee decide to act on this legislation, the 1992 Supp. site of the bill would need to be stricken. He explained that since this is a carry-over bill, this section is already in the bound K.S.A. volumes.

Rep. Sader moved that **SB 249** be amended to strike the Supp reference indicated by Mr. Furse, and to pass out favorably as amended, seconded by Rep. Neufeld. No discussion. Motion carried.

Chair flower requested Rep. Sader to carry the bill on the floor of the house. Rep. Sader agreed to do so.

DISCUSSION BEGAN ON HB 2440.

Mr. Furse again noted if Committee makes the determination to pass HB 2440 out of Committee, since this is 1993 carry-over legislation, the 1992 Supp reference will need to be deleted.

Rep. Rutledge moved to amend **HB 2440** by deleting the 1992 Supp reference, and to report **HB 2440** favorably as amended. Motion seconded by Rep. Morrison. No discussion. Motion carried.

Chair requested Rep. Mayans to carry HB 2440. on the floor of the House for debate. He agreed to do so.

Rep. Samuelson, Chair of Sub-Committee on SB 397 that a meeting of the Sub-Committee would meet to further discuss the Hospice act, immediately upon adjournment of the Public Health and Welfare Committee.

Chair adjourned the Committee meeting at 2:02 p.m.

The next meeting will be held January 25, 1994.

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE Jan. 24, 94

[illegible]

Kansas Department of Health and Environment



Office of the Secretary

DATE: January 24, 1994

TO: House Public Health and Welfare
Committee

Robert C. Harder requests the introduction of the
following Legislative proposals.

*PHWCC
1-24-94
Action #1,*

*Passed over
its in Senate*

Kansas School Immunizations

This bill would amend KSA 72-5209 to require children to be excluded from school if they are not properly immunized or have medical or religious exemptions on file. School immunizations are currently required for school entry only and not for school attendance. Appropriate immunizations will be required for all school attendance including day care and preschool facilities. This revision will also eliminate the 90-day grace period for children to receive immunizations. Children will be required to be completely immunized prior to school admission. The revision also eliminates the term "personal grounds" as a reason for not receiving required immunizations.

Amending KSA 72-5209, 72-5210, 72-5211, 72-5211a.

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Attn #1-2
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Coordinating Council on Early Childhood Development

This legislation proposes to change the composition of the State Interagency Coordinating Council to meet federal requirements. Amendments include: changing the term "handicapping" to "disabling" throughout the statute; the definition of the parent membership is changed; prohibits the lead agency representative from serving as chair of the council.

Amends KSA 74-7801.

PK/PCW
1-24-04
Attn #1-3
Off 377.

Local Health Department Performance Measures

This legislation would establish specific authority for the Secretary to adopt regulations setting performance measures for all local health departments receiving general health grants under K.S.A. 65-241 et seq. and to withhold or reduce financial assistance to local health departments that do not comply with performance measures.

There would be a two year transition period in which local health departments would be held harmless for any possible funding reduction and a Performance Task Force would be formed which would include local health department representatives in order to recommend particular performance measures which would be incrementally implemented into a multi-year timetable to reach the Healthy People 2000 Objectives.

The amendment would add a new subsection making receipt of the funds contingent on compliance with performance measures established by the Secretary and providing for the reallocation of any funds withheld.

Amends K.S.A. 65-242

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Attn #1-4
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Amends K.S.A. 65-242

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Laboratory Testing

This legislation removes duplicative areas of testing covered by federal regulations. State regulation of prenatal syphilis serology laboratories and HIV screening laboratories is no longer necessary following the implementation of federal regulatory requirements outlined in CLIA '88. State regulation of drug screening laboratories are retained because they are not included in CLIA '88 requirements.

Amends KSA 65-1,107, 65-1,108 and 65-1,108a.

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Attn #1-6
JG 677

Establishment of Vital Statistics Improvement Fund

The proposed bill would establish a Vital Statistics Improvement Fund which will be utilized to maintain the vital statistics operation. Major concerns include system modification and upgrade, equipment maintenance and replacement and staff to handle the increasing demands for expedited service and better monitoring of registration activities.

Fees for the proposed Vital Statistics Improvement Fee Fund would be generated by increasing the certified copy fee for all vital records by \$1.00--with the increase being deposited into the newly created fee fund. The proposed increase in certified copy fees would raise fees to \$11 for the first copy and \$6 for additional copies ordered at the same time.

NEW LEGISLATION

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1-24-94
Attn #1.7
7777

HOUSE BILL NO. _____

AN ACT relating to mortuary arts; concerning unlawful acts and penalties; definitions; amending K.S.A. 65-1703, 65-1705, 65-1713a and 65-1726 and repealing the existing sections.

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

Section 1. K.S.A. 65-1703 is hereby amended to read as follows: 65-1703. It is unlawful for any person who is not licensed as an embalmer to advertise, practice, offer to practice, or hold oneself out as practicing the science of embalming, either by arterial or cavity treatment, or otherwise, in this state, or to embalm any dead human body for shipment or transportation by common or private carrier. It is unlawful for any common carrier to receive for transportation or to transport any dead human body unless the body has been prepared by a licensed embalmer, in accordance with this act and the rules and regulations of the board. No one except a licensed embalmer, an apprentice embalmer or a registered student embalmer under the provisions of this act and the rules and regulations of this board shall be permitted to do any of the actual embalming of a dead human body, and no licensed embalmer shall permit anyone who is not a licensed embalmer, an apprentice embalmer or a registered student embalmer assigned to such embalmer, to perform in such embalmer's place of business, or elsewhere, or under such embalmer's supervision, any of the actual embalming of a dead human body, or perform any act necessary to embalm and preserve a dead human body.

Student embalmers must pre-register or register with the board and be under the personal supervision of a licensed Kansas embalmer at all times during the embalming process. Apprentice embalmers shall be under the personal supervision of a licensed Kansas embalmer.

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Attn #2*

The term "actual embalming" as used in this section shall not be construed to include dressing the hair, bathing, moving or dressing the body, or cosmetic work.

The term "direct personal supervision" means that a licensed Kansas embalmer takes full responsibility for actions of the student embalmer and must be physically present at all times.

The term "personal supervision" means that a licensed Kansas embalmer takes full responsibility for the actions of the apprentice embalmer. It does not, however, require any physical presence.

Sec. 2. K.S.A. 65-1705 is hereby amended to read as follows: 65-1705. Any person who shall advertise, practice or hold himself ~~or--herself~~ oneself out as practicing the science of embalming without having complied with the provisions of this act shall be guilty of a class A non-person misdemeanor, ~~and upon conviction thereof before any court shall be sentenced to pay a fine of not less than fifty dollars nor more than one hundred dollars for each and every offense; or any person, railroad, express company or common carrier who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall pay a fine of not less than one hundred dollars nor more than five hundred dollars for each and every offense. All fines assessed for the violation of any of the provisions of this act shall be paid to the state treasurer as provided in K.S.A. 20-2801, and any amendments thereto.~~

Sec. 3. K.S.A. 65-1713a is hereby amended to read as follows: 65-1713a. (a) A "funeral establishment," as the term is used herein, is a place--of business premise ~~where funeral services, visitations or in-states of dead human bodies are arranged and conducted, used and equipped for funeral services, or for the retail sale or display of funeral merchandise, or for the care and preparation~~ and dead human bodies are embalmed or otherwise prepared for a funeral service, visitation, lying in-state, burial or transportation of dead human bodies, or for any or all of the above purposes. It A funeral establishment

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shall be conducted at a fixed and specific street address or location and. If embalming is to be performed, the funeral establishment shall contain a preparation room equipped with a sanitary floor, walls and ceiling, with adequate sanitary drainage and disposal facilities, good ventilation and light, and the necessary instruments, equipment and supplies for the preparation and embalming of dead human bodies for burial or transportation. The preparation room shall be clearly identified by signs on all preparation room entrance doors, shall be separate from the funeral merchandise display room and chapel or visitation room, and shall not be a part of the living quarters. Each funeral establishment must shall have available or employ a Kansas licensed embalmer for all embalming work, if the funeral director in charge of the establishment is not a Kansas licensed embalmer. Each establishment shall be under the personal supervision of a Kansas licensed funeral director.

(b) The provisions and requirements herein contained shall apply to all branch establishments as well as principal establishments, except that:

(1) Only the funeral director in charge of the funeral establishment who holds the funeral establishment license shall be eligible to apply for a branch establishment license;

(2) a branch establishment is not required to contain a preparation room or to be a place where dead bodies are prepared for burial or transportation;

(3) a branch establishment ownership shall be identical to the ownership of the funeral establishment which owns the branch;

(4) the funeral director responsible for the personal supervision of the funeral establishment also shall be responsible for the supervision of all branches of that funeral establishment; and

(5) a branch establishment is not required to be under the personal supervision and charge of a licensed funeral director.

(c) Embalming establishments shall contain a preparation room equipped with a sanitary floor, walls and ceiling, with

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adequate sanitary drainage and disposal facilities, good ventilation and light, and all necessary instruments, equipment and supplies for the preparation and embalming of dead human bodies for burial, cremation and transportation. They shall embalm for licensed funeral establishments and branch establishments and cannot sell any services or merchandise directly or at retail to the public. Each embalming establishment shall be under the personal supervision of a Kansas licensed embalmer and funeral director.

Sec. 4. K.S.A. 65-1726 is hereby amended to read as follows:
65-1726. Every person who shall violate any provision of ~~this act~~
article 17, chapter 65, shall be deemed guilty of a class A
non-person misdemeanor, ~~and upon conviction--be--fined--not--less~~
~~than--twenty-five-dollars-(\$25), nor more than two-hundred-dollars~~
~~(\$200), --or imprisoned not less than ten-(10)-days, nor more than~~
~~ninety-(90)-days, or both.~~

Sec. 5. K.S.A. 65-1703, 65-1705, 65-1713a and 65-1726 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

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1-24-94
Attn #2-4
JF 175

HOUSE BILL NO. _____

AN ACT concerning penalties for violations relating to funeral and cemetery merchandise agreements, contracts and plans; amending K.S.A. 16-305 and repealing the existing section.

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

Section 1. K.S.A. 16-305 is hereby amended to read as follows: 16-305. Every person who ~~shall--violate~~ violates any provision of this act shall be deemed guilty of a misdemeanor, ~~and, upon conviction, shall be fined not less than one hundred dollars--(\$100)--nor more than five hundred dollars--(\$500), or shall be imprisoned for not less than ten--(10)--days nor more than ninety--(90)--days, or both~~ severity level 7, nonperson felony.

Sec. 2. K.S.A. 16-305 is hereby repealed.

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

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58-629. SAME; AUTHORITY OF AGENT; LIMITATIONS ON AGENT'S POWER;
PERSONS NOT TO BE DESIGNATED AS AGENTS; WITNESSES AND ACKNOWLEDGEMENT;
EFFECT OF DEATH OF PRINCIPAL. (a) A durable power of attorney for health
care decisions may convey to the agent the authority to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment,
service or procedure to maintain, diagnose or treat a physical or mental
condition, and to make decisions about organ donation, autopsy, and
disposition of the body;

(2) make all necessary arrangements for principal at any hospital,
psychiatric hospital or psychiatric treatment facility, hospice, nursing home
or similar institution; to employ or discharge health care personnel to
include physicians, psychiatrist, psychologists, dentists, nurses, therapists
or any other person who is licensed, certified, or otherwise authorized or
permitted by the laws of this state to administer health care as the agent
shall deem necessary for the physical, mental and emotional well being of the
principal; and

(3) request, receive and review any information, verbal or written,
regarding the principal's personal affairs or physical or mental health
including medical and hospital records and to execute any releases of other
documents that may be required in order to obtain such information.

(b) The powers of the agent herein shall be limited to the extent set out
in writing in the durable power of attorney for health care decisions, and
shall not include the power to revoke or invalidate a previously existing
declaration by the principal in accordance with the natural death act. No
agent powers conveyed pursuant to this section shall be effective until the
occurrence of the principal's disability or incapacity, as defined in K.S.A.
59-3002 and amendments thereto, as determined by the principal's attending
physician, as defined in subsection (a) of K.S.A. 65-28,102 and amendments
thereto, unless the durable power of attorney for health care decisions
specifically provides otherwise. Nothing in this act shall be construed as

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prohibiting an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member.

(c) In exercising the authority under the durable power of attorney for health care decisions, the agent has a duty to act consistent with the expressed desires of the principal.

(d) Neither the treating health care provider, as defined by subsection (c) of K.S.A. 65-4921 and amendments thereto, nor an employee, owner, director or officer of a facility described in K.S.A. 1989 Supp. 58-629(a)(2) may be designated as the agent to make health care decisions under a durable power of attorney for health care decisions unless:

- (1) Related to the principal by blood, marriage or adoption; or
- (2) the principal and agent are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

(e) A durable power of attorney for health care decisions shall be;

(1) Dated and signed in the presence of two witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's health care; or

(2) acknowledged before a notary public.

(f) Death of the principal shall not prohibit or invalidate acts of the agent in arranging for organ donation, autopsy or disposition of body.

(g) Any funeral establishment, funeral director, embalmer, crematory, or any other person responsible for the disposition of a body, who in good faith

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disposes of a body pursuant to the instructions of an agent designated under a legally executed durable power of attorney for health care decisions, shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disposition.

History: L. 1989, ch. 181, § 5; July 1.

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