



KANSAS JUSTICE INSTITUTE

Testimony to the Committee on Public Health and Welfare

SB 112: “Amending the scope of practice for registered nurse anesthetists to allow independent practice within the scope of the licensee’s education and qualifications.”

By: Samuel G. MacRoberts

Litigation Director and General Counsel
Kansas Justice Institute

Chairwoman Gossage and Members of the Committee:

Kansas Justice Institute¹ supports the elimination of unreasonable occupational barriers. To that end, KJI urges this Committee to favorably pass SB 454.

This Bill would allow Certified Registered Nurse Anesthetists to practice their profession to the “full extent of the licensee’s education and qualifications,” SB 454, lines 26-27, and “prescribe, procure, select, order and administer any drug consistent with such licensee’s education and qualifications,” lines 31-32. These changes make sense and are perfectly reasonable. There’s no good reason to arbitrarily limit one’s scope of practice to something less than the full extent of one’s education and qualification.

In our view, arbitrarily limiting the scope of one’s practice to something less than the full extent of their education and qualifications could very well violate Kansas Constitution Bill of Rights Section 1, and other provisions not discussed here.² Section 1 *is* a natural rights clause, but is best understood to protect the right to earn an honest living, free from unreasonable government interference. When “[John] Locke observed that ‘every Man has a Property in his own Person,’ ”³ he was instead referencing the right to earn an honest living. *See* Timothy Sandefur, *The Right to Earn a Living*, 6 Chap. L. Rev. 207, 221 (2003). Perhaps more importantly, Kansas’ natural rights clause was modeled after Thomas Jefferson’s use of the phrase in the Declaration of Independence, and “it is evident that Jefferson’s use of the phrase, ‘life, liberty, and the pursuit of happiness’ was meant to assert this right of livelihood.” *Id.* at 220.

The Kansas founders understood and appreciated the clause’s true meaning at the time it was adopted.

Based upon the historical record, caselaw, and common-sense arguments, the right to earn an honest living is a fundamental right and a court should apply strict scrutiny to unreasonable occupational barriers. This right to earn an honest living existed at English common law as far back as the 1600s. *See, e.g., Allen v. Tooley*, 80 Eng. Rep. 1055 (K.B. 1614). But even if a court did not

¹ KJI is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans. It is part of Kansas Policy Institute.

² This analysis is not exhaustive.

³ *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 640 (2019).

apply strict scrutiny, some requirements could very well fail under a more deferential standard. The Kansas Constitution forbids occupational barriers that are not appropriately tailored.

In short, there are several solid reasons to permit Certified Registered Nurse Anesthetists to practice nursing to the fullest extent of their education and training.

Thank you for your time and consideration.

Sincerely,



Samuel G. MacRoberts

Litigation Director

Kansas Justice Institute

12980 Metcalf Avenue, Suite 130

Overland Park, Kansas 66213

Sam@KansasJusticeInstitute.org

(913) 213-5018