



but had been requested to appear because of his experience in dealing with such matters. He stated he had discussed the bill with other attorneys and with judges. He indicated he felt that the bill would cause problems, and would result in further delays. He stated he objects to the bill as it is written. Committee discussion followed.

Senate Bill No. 497 - Civil procedure, admission of facts and genuineness of documents.

The chairman asked Mr. Scott to comment on this bill. Mr. Scott indicated that he could see no difficulty with the bill, and thought it would be helpful. Mr. Purcell reported that he had checked Judge Michael Barbara, of the District Judges Association, and Judge Barbara reported he saw no problem with the bill. Mr. Purcell also reported that he had discussed the matter with Judge Cline, of the Special Court Judges Association, and Judge Cline, indicated that he was not prepared to comment on the bill. Mr. Purcell also reported that the Kansas Trial Lawyers Association had no problem at all with the bill.

Senator Berman discussed with the committee the consideration of a committee bill relative to separation agreements. Following discussion, Senator Berman moved that such a bill be introduced as a committee bill; Senator Parrish seconded the motion, and the motion carried.

The chairman discussed with the committee the possibility of introducing a committee bill making amendments to the product liability reporting bill passed by the legislature last year. Following committee discussion, Senator Everett moved that such a bill be introduced by the committee; Senator Simpson seconded the motion, and the motion carried.

Senator Parrish moved that the minutes of January 16 be approved; Senator Simpson seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved by the committee on 2-7-78.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Walter McScott

Topeka, Kans

Request - Son Paraguay  
Dept of Health & Environment

Lyle E. Ecklund

Topeka

KMS

Jimmy SAULTER

Topeka

KMS

ARB PATTER

Topeka

Ks.

Ivory Miles

Lynsbor

David M. Plinsky

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John W. Stahl

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Kan

A.B. Pagawo

Salina

Marymount College

Jennifer VEUTMAN

Salina

Marymount College

Paul Leone

Salina

Marianne Bartolac

K.C. Mo.

St Mary College, Mo.

James W. Wilkinson

Topeka

Dept Health & Environment

Ronald P. Williams

Topeka

private citizen

Janet Randolph

Topeka

Betty Frost

Topeka

TESTIMONY ON SENATE BILL 585

PRESENTED JANUARY 19, 1978

to

SENATE JUDICIARY COMMITTEE

Prepared by:  
Kansas Department of Health  
and Environment

This is the official position taken by the Kansas Department of Health and Environment on Senate Bill No. 585.

NEED FOR:

The change proposed for this bill has the effect of bringing all persons under the protection of the Good Samaritan Act, rather than only health care providers.

STRENGTHS:

This change would perhaps help allay the fears of the general public in responding to emergency medical incidents.

WEAKNESSES:

There has been another problem identified with the Good Samaritan Act including the matter which this bill addresses.

DEPARTMENTS POSITION:

We support this bill but suggest the additional change as listed in the following summary.

SUMMARY:

The department suggests that the following concern be addressed with this proposed legislation.

Paragraph (a) This should state that any person can also render emergency care during transportation from the scene of an emergency as long as an emergency exists.

1-19-78

AN ACT GRANTING IMMUNITY TO PHYSICIANS,  
NURSES AND PERSONNEL PERFORMING  
SERVICES IN THE STATE PROGRAM FOR  
REGIONALIZATION OF PERINATAL CARE

BE IT ENACTED by the Legislature of the State of Kansas:

New Section 1. Any physician, registered nurse, licensed practical nurse or other person providing care under the auspices of the State Program for Regionalization of Perinatal Care may in good faith render emergency care or assistance during an emergency which occurs within the hospital or elsewhere, with or without compensation, and until such time as the patient's attending physician assumes responsibility for such patient's professional care. Such physician, nurse or other practitioner shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

New Section 2. A physician performing such services pursuant to the State Program for Regionalization of Perinatal Care, if requested by a physician attending the patient or by the hospital administrator, may perform such services within a licensed hospital without seeking or obtaining hospital staff privileges.

New Section 3. This act shall become effective upon publication in the state paper.

SUGGESTED CHANGES IN THE  
KANSAS GOOD SAMARITAN ACT  
K.S.A. 65-2891

These suggested changes to K.S.A. 65-2891 are offered by Ronald P. Williams, 504 Capitol Federal Bldg., Topeka, Kansas, appearing as a private citizen. These suggestions arise from questions asked of me in my contact with persons in the health care professions, particularly during my lectures to the Emergency Medical Technician's courses in Shawnee County, Kansas. It is my ascertainment that there are sufficient ambiguities and latent contradictions in the wording of K.S.A. 65-2891, that the enactment of an entirely new Good Samaritan Act is warranted. Failing this, I would urge the Senators on this committee and the Legislature as a whole to consider the particular changes which I suggest in this paper. I have attached to this paper, for the convenience of the Senators, a copy of a draft Good Samaritan Act and marked "Exhibit A." I also have attached, marked "Exhibit B" a copy of the existing Good Samaritan Act, K.S.A. 65-2891.

1. There is currently proposed a senate bill, Number 585, suggesting that the word "health care provider" in paragraph A of K.S.A. 65-2891 be amended to read "person." Extending immunity to any person who renders emergency aid should encourage a greater number of people to "get involved" when they come upon the scene of an accident. Such furthers the aims of Good Samaritan legislation. Such an extension also decreases the likelihood of

the statutes being held unconstitutional as violative of the special privileges and immunity provisions of the constitution of the State of Kansas. (Sections 2 and 19 of the Bill of Rights) The omnibus wording suggested is currently employed by at least nine states, although a few states, such as Oklahoma, only grant immunity to laymen for the performance of basic first aid treatment such as artificial respiration, CPR, etc.

2. The current Good Samaritan statute uses the term "good faith" without definition. My research reveals that only one state currently defines "good faith" in the statute and that is Pennsylvania (PA.Stat.Ann. Title 12, Section 1642). An adequate definition of "good faith" would embody more than professional integrity and honesty of purpose; it should also prevent carte blanche to recklessness or unnecessary disregard for life, limb or property. I have, in the attached draft Good Samaritan Act, suggested a definition of "good faith" which would, on its face, accomplish these purposes.

3. Although Kansas does not raise the matter of gratuitous service in the heart of the act, that is, Paragraph A of K.S.A. 65-2891, the issue of compensation arises in Paragraph B and C. Paragraph B of K.S.A. 65-2891 requires, under the noted circumstance, that emergency care or assistance be rendered without compensation. It is startling to believe that the legislature intended that these health care providers rendered



"coverage" for competitive sporting events, while making their liability shield dependent on their doing so for free.

4. K.S.A. 65-2891 bandies about the phrase "at the scene of an emergency or accident" in Paragraph A and the term "emergency" in Paragraph C. This is done without any definition of those terms. Where a statute is silent as to the definition of "emergency" there arises the issue of (1) locus of the emergency; (2) its duration; and (3) what acts will be within the bounds of permissible treatment. While the Kansas Good Samaritan statute deals, to some extent with the locus, it leaves open the question of transportation of the patient; a matter of some concern to our ambulance and mobile intensive care personnel. It may be argued that the "emergency" continues during transportation, but this matter could be easily resolved by legislature. As you might imagine, I have also included, as part of my draft legislation, a suggested definition of "scene of an emergency or accident."

5. Finally, I am perplexed by an apparent attempt by the Legislature to grant some tort immunity for battery to those health care providers not otherwise covered by the Good Samaritan Act. My confusion comes not so much from the laudible intent of the Legislature as from the manner in which the attempt was made. You will note that in Paragraph C of K.S.A. 65-2891 a health care provider may render emergency assistance within a hospital until the patient's own physician arrives and the language of the second sentence of Paragraph C appears to

preclude recovery for battery. There is, however, an ambiguity created by the insertion of the words "or elsewhere" following the word "hospital." Such appears to grant immunity from battery for failure to obtain consent, not only in the hospital, but "elsewhere" which can mean anywhere. If it is the desire of the Legislature to protect the health care providers from liability for failure to obtain consent to treat, then it would be in the interest of the Legislature and the public to simply say so. I have, to the extent I believe necessary, dealt with the issue in my draft Good Samaritan Act.

In conclusion, I want to thank the Senators for their consideration of this matter and your attention to those areas which I have mentioned. The draft Good Samaritan Act which I have attached, is not drawn from the text of the Good Samaritan Act of any particular state, but is, instead, the result of the examination of the Good Samaritan Acts of several states and a number of treatises on the subject, combined with my limited experience with health care providers.

Thank you.

Respectfully submitted,

Ronald P. Williams

PROPOSED GOOD SAMARITAN ACT

EXHIBIT "A"

A. Any person who in good faith renders emergency care or assistance at the scene of an emergency or accident, including treatment of a minor without first obtaining the consent of the parent or guardian of such minor, shall not be liable for any civil damages resulting from any acts or omissions in the rendering of such care, including failure to obtain consent for treatment, other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

B. "Good faith" means a state of mind denoting honesty of purpose, professional integrity and a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed until the patient is hospitalized.

C. "Emergency care" means care, first aid, treatment or assistance rendered to the injured person reasonably thought to be in need of immediate medical attention and includes providing or arranging for further medical treatment or care for the injured person, and care while providing transportation to a point for such further medical treatment. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by paragraph (A.) above does not apply to the negligent operation of any motor vehicle. "Emergency care" includes the treatment of a person requiring such care as a result of having engaged in competitive sports.

EXHIBIT "A"

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D. "Scene of an emergency" means the scene of an accident or other sudden or unexpected event, or combination of circumstances which calls for immediate action, other than a hospital, doctor's office or other place having necessary and proper medical equipment.

E. Any provision herein contained, notwithstanding, any health care provider may, in good faith, render emergency care or assistance during an emergency which occurs within an emergency room or hospital, until such time as the physician employed by the patient or by his or her family, or by his or her guardian, assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages occasioned by failure to obtain consent of the patient.

F. As used in this section the term "health care provider" shall mean any person licensed to practice any branch of the healing arts, licensed dentists, licensed optometrists, licensed professional nurses, licensed practical nurses, registered podiatrists, registered pharmacists, and registered physical therapists, and any physician's assistant who has successfully completed an American Medical Association approved training program and has successfully completed the National Board Examination for Physicians' Assistants of the American Board of Medical Examiners, any person who has successfully completed and approved emergency program as defined by K.S.A. 1977 Supp. 65-2891a, any mobile intensive care technician who

has successfully completed an approved training program required by K.S.A. 1977 Supp. 65-4308, any person who holds a valid certificate for the successful completion of a course in first aid offered by the American Red Cross, by the American Heart Association, or by the Mining Enforcement and Safety Administration of the Bureau of Mines of the Department of Interior and any person engaged in a post-graduate training program approved by the State Board of Healing Arts.

65-2891. Emergency care or assistance at scene of an emergency or accident by certain person; liability; standards of care applicable. (a) Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

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

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by his or her family or by his or her guardian assumes

responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

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

(e) As used in this section the term "health care provider" shall mean any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, registered podiatrist, registered pharmacist and registered physical therapist, and any physician's assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, any person who has successfully completed an approved emergency service program as defined by K.S.A. 1977 Supp. 65-2891a, any mobile intensive care technician who has successfully completed an approved training program required by K.S.A. 1977 Supp. 65-4308, any person who holds a valid certificate for the successful completion of a course in first aid offered by the American red cross, by the American heart association or by the mining enforcement and safety administration of the bureau of mines of the department of interior and any person engaged in a postgraduate training program approved by the state board of healing arts.

History: K.S.A. 65-2891; L. 1973, ch. 252, § 1; L. 1975, ch. 326, § 1; L. 1976, ch. 277, § 1; L. 1977, ch. 220, § 1; July 1.