

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

The meeting was called to order by Rep. Neal D. Whitaker at  
Chairperson

1:30 ~~am~~/p.m. on March 28, 1983 in room 526-S of the Capitol.

All members were present except:

Reps. Fuller, Roe, Ediger, and Peterson, who were excused.

Committee staff present:

Russ Mills, Legislative Research  
Mary Ann Torrence, Revisor of Statute's Office  
Nora Crouch, Committee Secretary

Conferees appearing before the committee:

Steve Montgomery, Counsel, Department of Revenue  
Larry W. Magill, Executive Manager, Independent Insurance Agents of Kansas  
Rob Hodges, K.A.C.I.  
Betty Siple, Secretary to the Director of the Board of Cosmetology

Chairman Whitaker called the meeting to order stating there were two bills held over from last week because of numerous problems.

On SB 89, last week Mary Torrence was doing a search of statutes that referred to notary publics and how this uniform act might conflict with them. After reviewing 1,400 statutes she came up with one and that would be on Page 6, following Line 262 by inserting a new section (See Copy of Committee Report, Attachment A) Mary Torrence stated that this new section is used as a cross reference to the old Uniform Recognition and Acknowledgment Act. Rep. Vancrum moved, Rep. Ott seconding, that the amendment be adopted. The motion carried. Rep. Ott moved, Rep. Vancrum seconding, that SB 89 be reported favorably for passage as amended. The motion carried.

Rep. Vancrum stated that he had talked to the State Treasurer's Office regarding concerns over some language in SB 215. What the Treasurer's Office really wants is to be able to give the old historical documents to the Historical Society or they will have to be destroyed. They had no intention of selling anything except at a public sale.

Rep. Vancrum moved conceptually, Rep. Rameriz seconding, that on Line 47 that the Treasurer make all reasonable efforts to locate the owners including attempting to reach the owner by registered mail; by striking the word "commercial" on Line 117; and that the Treasurer notify the Secretary of Administration and the Historical Society of possible destruction of property; on Line 118 by striking everything after the word "destroy" and inserting a period; in Line 120 after the word "holder" by inserting "of property"; strike all of Line 121; and in Line 122 strike the words "the property" and inserting "the destruction or transfer of any property in accordance with this subsection." The motion carried. Rep. Ott moved. Rep. Vancrum seconding, that SB 215 be reported favorably for passage as amended. The motion carried.

Steve Montgomery, Counsel for the Department of Revenue, appeared on SB 310 stating the bill was drafted and introduced in Senate Transportation at the request of the Department. It is an important piece of legislation to the Division of Vehicles and it is essential that it be passed in some form. The Division of Vehicles has a separate statute that controls disclosure and supercedes any open records statute on the books. All records except medical records are open for public inspection. He further stated there are conflicts in the current statute. The Legislature sets policy but the Division needs the bill to clear up these discrepancies. They feel very strongly about keeping the medical records confidential.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,  
 room 526-S, Statehouse, at 1:30 ~~XX~~ p.m. on March 28, 1983.

Larry W. Magill, Executive Manager, Independent Insurance Agents of Kansas, appeared on SB 310 stating they had proposed an amendment to the bill on Lines 70 to 85 which the Senate passed. He requested the Committee take some action on the accessibility of Motor Vehicle Records. (See Attachment B)

The Chairman advised the Committee that HB 2523 had already had public hearings in House Judiciary and that everyone knows what the bill does.

Rob Hodges, K.A.C.I., appeared in support of HB 2523 stating they have an amendment that might further clarify the intent of the bill on Lines 119 and 120 by deleting the word "established pursuant to" and inserting the words "permitted by." Rep. Ott moved, Rep. Vancrum seconding, that HB 2523 be amended on Lines 119 and 120 by deleting the words "established pursuant to" and inserting the words "permitted by." The motion carried. Rep. Brady moved, Rep. Sughrue seconding, that HB 2523 be reported favorably for passage as amended. The motion carried.

Rep. Ott moved, Rep. Brady seconding, that SB 310 be reported favorably for passage. Rep. Vancrum made a substitute motion, Rep. Eckert seconding, that SB 310 be amended on Line 25 to include driving records, accidents; and on Line 27 by striking the word "driving;" in Line 28 by striking all before the word "the;" in Lines 33 and 34 by striking the words "such public records;" in Line 35 by striking all words after the period; by striking all of Lines 36 through 40 and striking all of Line 45; and on Page 2 by striking all of Lines 46 through 65; in Line 71 by striking all after the word "of:" by striking all of Line 72; and in Line 73 by striking all before the word "and" and inserting the words "information contained in records designated as public by this section." The motion carried. Rep. Vancrum moved, Rep. Eckert seconding, that SB 310 be reported favorably for passage as amended. The motion carried.

Rep. Runnels advised the Committee she had met with representatives of the Board of Cosmetology to discuss HB 2548. The bill makes revisions in the licensing act and brings the act up to date. The bill now includes sculptured nails and facials, as well as continuing education. There is also a provision on Line 288, Page 8, grandfathering out people who have been practicing since 1969.

Betty Siple, Secretary to the Director of the Board of Cosmetology answered questions from the Committee.

Rep. Runnels moved, Rep. Sughrue seconding, that HB 2548 be reported favorably for passage. Rep. Vancrum made a conceptual substitute motion, Rep. Hensley seconding, that the continuing education concept be removed. The motion carried. Rep. Runnels moved, Rep. Sughrue seconding, that HB 2548 be reported favorably for passage as amended. The motion carried.

The Chairman advised the Committee that it might be necessary to meet during break times of the House during the next few days.

The meeting adjourned.



## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Federal and State Affairs

Recommends that Senate Bill No. 89

"AN ACT concerning notarial acts; enacting the uniform law on notarial acts; amending K.S.A. 58-2209 and 58-2211 and K.S.A. 1982 Supp. 53-107 and repealing the existing sections; also repealing K.S.A. 53-201, 53-202, 53-301 through 53-309, 58-2212, 58-2213, 58-2216c and 58-2216d and K.S.A. 1982 Supp. 53-203."

Be amended:

On page 6, following line 262, by inserting the following:

"Sec. 12. K.S.A. 17-6003 is hereby amended to read as follows: 17-6003. (a) Whenever any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section or act, such instrument shall be executed as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators, and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the articles of incorporation, shall be signed by the incorporator or incorporators; and

(2) All other instruments shall be signed: (i) By the ~~chairman or vice-chairman~~ chairperson or vice-chairperson of the board of directors, or by the president or a vice-president, and attested by the secretary or an assistant secretary, or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation; ~~or~~ (ii) if it ~~shall--appear~~ appears from the instrument that there are no such officers, ~~then~~ by a majority of the directors or by such directors as may be designated by the board; ~~or~~ (iii) if it ~~shall--appear~~ appears from the instrument

*Atch. A*

that there are no such officers or directors, then by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or (iv) by the holders of record of all outstanding shares of stock.

(b) Whenever any provision of this act requires any instrument to be acknowledged, such requirement means that the instrument was acknowledged in accordance with the uniform ~~recognition-of-acknowledgments-act, as stated in K-S-A--53-301-et seq.~~ law on notarial acts.

(c) Whenever any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section or act, such requirement means that:

(1) The original signed instrument, together with a duplicate copy which may be either a signed or conformed copy, shall be delivered to the office of the secretary of state;

(2) All taxes and fees authorized by law to be collected by the secretary of state in connection with the filing of the instrument shall be tendered to the secretary of state;

(3) Upon delivery of the instrument, and upon tender of the required taxes and fees, the secretary of state shall certify that the instrument has been filed in ~~his~~ the office of secretary of state by endorsing upon the original signed instrument the word "Filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon file and index the endorsed instrument;

(4) The secretary of state shall compare the duplicate copy with the original signed instrument, and if he finds that they are identical, he shall certify the duplicate copy by making upon it the same endorsement which is required to appear upon the original, together with a further endorsement that the duplicate copy is a true copy of the original signed instrument;

(5) The duplicate copy of the instrument so certified by the secretary of state shall be recorded in the office of the

register of deeds of the county in which the corporation's registered office in this state is, or is to be, located; and

(6) Upon receipt of the certified copy of the instrument, ~~said~~ the register of deeds shall record and index it in a book kept for that purpose.

(d) Any instrument filed in accordance with subsection (c) of this section shall be effective upon its filing date except that if the instrument is not recorded in accordance with paragraph (5) of subsection (c) within ~~twenty-(20)~~ 20 days after its filing date, the instrument shall not take effect until it is so recorded and the recording fee to be collected by the register of deeds shall be increased by ~~twenty-five-percent-(25%)~~ 25%. Any instrument may provide that it is not to become effective until a specified date subsequent to its filing date, but such date shall not be later than ~~ninety-(90)~~ 90 days after its filing date.

(e) If another section of this act or any other law of this state specifically prescribes a manner of executing, acknowledging, filing or recording a specified instrument or a time when such instrument shall become effective, which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

(f) Whenever any instrument authorized to be filed with the secretary of state under any provision of this act has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, such instrument may be corrected by filing with the secretary of state a certificate of correction of such instrument which shall be executed, acknowledged, filed and recorded in accordance with this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the corrected instrument shall be effective

from the filing date.

(g) Whenever any corporation shall ~~convey~~ conveys any lands or interests therein by deed or other appropriate instrument of conveyance, such deed or instrument shall be executed on behalf of the corporation by the president, vice-president or presiding member or trustee of said the corporation, ~~and~~. Such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in ~~like~~ the same manner and with the same effect as other deeds. ~~All--deeds--or--other instruments--of--conveyance--purporting--to--convey--real--estate--or--any interest--therein,--executed--by--or--on--behalf--of--a--corporation--after July--1,--1972,--and--prior--to--the--effective--date--of--this--act--in--the manner--provided--herein,--are--hereby--declared--to--be--legal--and--valid acts--of--such--corporation.~~ Corporations likewise shall have power to convey by an agent or attorney so authorized under letter of attorney or other instrument containing a power to convey real estate or any interest therein, which power of attorney shall be executed by the corporation in the same manner as herein provided for the execution of deeds or other instruments of conveyance.";

By renumbering sections 12 through 16 as sections 13 through 17;

On page 7, in line 287, after "K.S.A.", by inserting "17-6003,";

In the title, in line 18, after "K.S.A.", by inserting "17-6003,";

And the bill be passed as amended.

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Chairperson

Testimony on SB 310  
By Larry W. Magill, Jr., Executive Manager  
Independent Insurance Agents of Kansas

Thank you for the opportunity to appear on SB 310. Our association has taken no position on the public policy issue contained in this proposal. That issue, whether motor vehicle reports (MVR's) showing the cumulative driving record of an individual, should be available to any member of the public, needs to be clarified. As we understand current law, all the records in the Motor Vehicle Department must be open to the public but copies cannot be made available except to those specifically authorized by statute. The court's decision in the Harder case appears to throw this interpretation of K.S.A. 74-2012 into question. However, the Legislature if it passed SB 154 requiring the Division of Motor Vehicles to provide lists of drivers license holders for jury selection seems to confirm a closed record interpretation of statute. Thus the Harder case and SB 154 create some question as to legislative intent.

Even without the passage of SB 154 there is a confusing legislative intent expressed in current statute. By listing in K.S.A. 74-2112 four apparent exceptions to a closed record policy, e.g., lien holders, employers, insurance agents and companies and vehicle manufacturers, it implies that the records are otherwise closed.

Since HB 2327 passed by this committee and the House does not specifically address K.S.A. 74-2112, the statute dealt with in SB 310, and since HB 2327 leaves in place any specific statutory language not amended by it, the issue will be left up in the air unless this committee acts.

Whether or not the committee decides to open MVR records to the public, we still need some amendment to present law to allow local law enforcement agencies that choose to provide MVR's to local insurance agents the authority to do so. That is the purpose of our amendment contained in lines 70 to 85.

ALG.B



Up until 1982 many of the larger local police and sheriff's offices were providing MVR's to local agents for use in underwriting auto insurance applications.

The local agent or the insured by obtaining a copy of the MVR, at the time the insurance is applied for, can guarantee complete, accurate information is used to underwrite their auto insurance. This avoids the embarrassing and often aggravating situation where an insured has "forgotten" about a few speeding tickets or mistakenly thought they received them more than three years prior to the effective date of insurance. The consumer is not well served if the insurance company then must come back and request additional premium or cancel and rewrite into a higher rated plan in a different company or refuse to offer coverage at any price.

The situation could also occur where the insured thought a ticket was received in the last three years and it was actually longer ago. They might then end up paying more for their insurance than they should. Most people honestly cannot remember specific dates and tickets received on all drivers in a household.

This issue is becoming increasingly important to our members as more companies shift underwriting responsibilities to the field with their agents to increase efficiency.

Our amendment is intended to permit, but not require, local law enforcement agencies to provide MVR's and charge the fee set by the Division of Motor Vehicles plus an additional amount to cover their local processing costs. The state's fee must be paid monthly to the Secretary of Revenue and they keep the portion to cover local costs.

Because it is possible that a local law enforcement agency could release information they should not such as expunged records, the Department of Revenue asked for a hold harmless clause. The state's computer is set

up with a specific code for requesting an MVR and another code for requesting a police department report which could contain expunged information. It should not be a problem to simply order the correct type of report. If there is an error, it should be covered by the agency's insurance program, assuming they have the proper coverage.

The Department of Revenue aided in the drafting of our amendment and supports the concept. They properly interpreted present law this past year to not allow local law enforcement agencies to provide MVR's to either the individual driver or his agent. Their notice stated that "law enforcement agencies have access to those files for law enforcement purposes only and are not authorized to release that information (referred to in K.S.A. 74-2012) to anyone else for any other purpose."

Do not confuse accident reports providing the details of a specific auto accident with MVR's which provide a cumulative record of all an individual's motor vehicle convictions. Accident reports continue to be available from the law enforcement agency preparing them to the drivers and their agents and insurance companies. They are used to help settle claims and not generally for underwriting purposes.

We urge the committee to take positive action on the public policy issue in question and to include wording which will allow MVR's to be made available locally. We would be happy to answer questions and provide any additional information we can. Thank you for your favorable consideration.