

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Jan Meyers at
Chairperson

10 a.m./~~p.m.~~ on February 10, 1983 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Emalene Correll, Norman Furse, and Bill Wolff

Conferees appearing before the committee:

Carl Schmitthenner, Kansas Dental Association
Senator August Bogina
Charles Smith, Director of Security Services, Johnson County
Jim Flory, Chief of Criminal Division, Attorney General's office

Others present: see attached list

Carl Schmitthenner, Kansas Dental Association, at the request of the Dental Board, presented to the committee a brief summary of their proposed amendments to the Dental Practice Act. (Attachment #1).

Senator Ehrlich moved that these amendments be introduced. Senator Johnston seconded the motion and it carried.

SB 51 - concerning the uniform controlled substances act; relating to forfeitures

Senator Bogina briefly reviewed SB 51, and said this bill was suggested by Charles Smith, Director of Security Services, District 512, Johnson County. He said SB 51 is in conjunction with a bill Congress passed in 1978, and this will create a parallel to that bill in the state of Kansas. Twelve states have bills similar to this. Senator Bogina stated that SB 113 is somewhat of a parallel to this bill, in that SB 51 would allow the state the opportunity to seize intangible property, and SB 113 allows the same benefits dealing with tangible property. He suggested that the two bills might be combined.

Federal law does make the presumption that money taken in a drug arrest is associated with this illegal activity, and, therefore, is forfeited, and the burden of proof is then on the accused to prove otherwise. This bill would incorporate this rebuttable presumption in Kansas law.

REC-2
Charles Smith, Director of Security Services, District 512, Johnson County, testified in support of SB 51. He said if there is anything the state can do to remove the tremendous profits available in this business, we would all be ahead, and strongly urged the committee to support this bill. Mr. Smith said some juveniles have bank accounts of five figures, with no visible means of support. This bill would be a major step for the state in helping to combat the drug problem.

Jim Flory, Chief of the Criminal Division for the Attorney General's office, testified in support of SB 51, and said that right now the state has no means to seize those illegal profits. He asked the committee to consider the possibility of amending the bill to provide for distribution

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 525-S, Statehouse, at 10 a.m. ~~pm~~ on February 10, 19 83

of these profits, once they are forfeited, and added that many times the forfeiture results from the expenditure of funds. He would like to see the money sent back to the KBI to recoup their losses and asked that the funds be directed into drug enforcement activities. He also feels the rebuttable presumption should remain in the act. There was discussion concerning the possibility of channeling forfeited funds into drug enforcement activities.

Senator Meyers concluded the hearing on SB 51, and asked for questions and discussion on the amendment to SB 13, proposed by the Kansas Medical Society. She said the nurses like the bill as it is, and the physicians would like to have the amendment.

Senator Meyers asked if using the phrase "according to written protocols" would mean that the ARNP had to have everything she did written down in the protocols before she could do it.

Norman Furse said the protocols would not have to be that precise. It is usually a general agreement as to what the ARNP can and can not do.

Jerry Slaughter said that KMS does not view protocols as being restrictive and they can be general.

Dr. Lois Scibetta suggested that this amendment not be passed, and said the provisions in the amendment could be incorporated in the regulations.

There was further discussion concerning the difference between nursing practice and medical practice, and the definition of a medical function.

Senator Meyers announced that there would be discussion and action on SB 13 tomorrow.

Emalene Correll suggested that paragraph 1, line 3, in the minutes of February 7, 1983, be changed to read "13 physicians in the state who practice in locations in which there are no pharmacies".

Senator Francisco moved that the minutes of February 7, as amended, and February 8, 1983, be approved. Senator Hayden seconded the motion and it carried.

The meeting was adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 10 FEB 83

2-10-83

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

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Guillermo BARRETO-Vega	HSANEK, Topeka
CYNTHIA BARRETT	Ks. DENTAL BOARD
Dr. Loui P. Scibetta	KSSBN
Michele HINDS	Legislative Intern
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Ann Solomons	Intern
Nickie Stein	Ks St. Nurses' Assn.
Lynelle King	W 11 11 11
Audrey Kennedy	HSANEK, Topeka -
Rosemary Spocklee	KWA
Carl Schmitthauer	Ks Dental Assn
Ken Schattemeyer	Ks Pharmacists Assoc.
HAROLD E. RYAN	Ks ASSN DISTED. ASSN
James F. Flory	Attorney General
Ginger Hagner CNM	Holistic Birth & Growth Center
David E. Hynes	
JOE SHAUGHTER	Ks MEDICAL SOCIETY
CHARLES R. SMITH - 6931 SANTA FE D.P.Ks	SHANNON Mission Public Schools
Pat Young	MHAJC
Kathi Champlin	United Community Services
Sue Beckman	Mental Health Assoc of Jo Co
Loretta Anderson	
Larry Anderson	Family Care Center, Wellington
Sheri, Kanae, Traci Anderson	"

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-10-83

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Leonora Rowe

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STATE OF KANSAS



BOARD OF DENTAL EXAMINERS

February 10, 1983

Mrs. Jan Meyers, Chairman
Senate Public Health & Welfare Committee

The Kansas Dental Board requests the Committee's consideration of the following proposed amendments:

- KSA 65-1426 Allows the Board the option of considering for licensure a foreign trained dentist who has taken additional or refresher training in a school approved by the Board.
- KSA 65-1428 Rewrites the language of the existing statute to reflect the procedure for examination and licensure.
- KSA 65-1429 Adds the requirement for remedial training after a second failure of the clinical examination.
- KSA 65-1431 Establishes criteria for retired and disabled status of licensure.
- KSA 65-1434 Establishes a procedure for licensure by qualifications.
- KSA 65-1436 Expands the authority of the Board relating to disciplinary actions.
- KSA 65-1437 Removes restrictions concerning advertising to be consistent with Court rulings.

Thank you for your attention.

Sincerely,

Cynthia G. Barrett
Cynthia G. Barrett, R.D.H.
Secretary-Treasurer

CGB/ms

2-10-83

#1

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Atch. 1

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EXECUTIVE DIRECTOR • JAMES W. CLARK

February 9, 1983

TO: Members of the Senate Public Health and Welfare Committee

FROM: Jim Clark, Executive Director
Kansas County and District Attorneys Association

SUBJECT: SB 51

I regret that I am unable to be at the hearing on SB 51 in person, but I am testifying on two bills in the Senate Judiciary Committee which meets at the same time as your committee.

The Kansas County and District Attorneys Association supports SB 51. Control of illicit drug trafficking is a great concern of KCDAA, and all citizens of Kansas.

It has been speculated that with the stepped up Federal enforcement in Florida, other areas of the country will become terminals for illicit drug traffic from Latin America. There have already been some incidents of high-level traffic in the Midwest, including a plane-load of Colombian marijuana seized at the Dodge City airport. Seizure statutes, as well as the criminal sanctions, are needed to deal with this growing problem.

SB 51 attempts to strengthen Kansas drug laws by adding proceeds of illicit transactions to the list of items to be seized. Most successful drug raids net not only illegal substances, but in many instances a large amount of unexplained cash is also discovered. The addition of section 6 (SB 51, Line 0052) will be a welcome addition to the arsenal of weapons against illegal drug traffic in Kansas.

In addition, the addition of section 6 to the statute also makes Kansas law similar to Federal law, a copy of which is attached. At the present time, a dealer whose cash is discovered by state officers is allowed to keep it, but if it were discovered by Federal authorities, it would be seized and forfeited.

Another concern of the Kansas County and District Attorneys Association is to gain statutory authority for seizure of real estate

Atch. 2

used in drug transactions. Senate Bill 113, now before the Senate Judiciary Committee considers this related problem, but does not consider proceeds, as does SB 51.

Our biggest concern is that a single, serious problem is being treated in two separate bills, that are being considered by two separate committees. We can only hope the solution doesn't fall between the cracks.

10. Suppression of evidence

Where inspection of defendant's premises was conducted following issuance of inspection warrant under this section, inspection was limited to administrative inspection and was conducted in accordance with this section, any matters revealed by such inspection were not subject to suppression in criminal proceeding. *U. S. v. Prendergast*, D.C.Pa.1977, 430 F.Supp. 931, affirmed 585 F.2d 69.

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of illegal search of defendant's pharmacy, defendant was entitled to suppression of such statements. *U. S. v. Emmerio*, D.C.N.Y.1975, 401 F.Supp. 460.

§ 881. Forfeitures

Property subject

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any

person in exchange for this subchapter, all proceeds of all moneys, negotiable instruments, or securities intended to be used to facilitate such violation, except that no property shall be forfeited to the extent of the interest of the person whose act or omission established the violation, or omitted without the knowledge of such person.

Seizure pursuant to Admiralty

(b) Any property subject to seizure under this subchapter may be seized and detained pursuant to the Supplemental Rules for Admiralty and Maritime Claims by any court having jurisdiction over the property. The process may be made when—

(1) the seizure is in pursuance of a search warrant or an inspection warrant;

(2) the property is subject to seizure prior judgment in favor of the Government or forfeiture process;

(3) the Attorney General certifies that the property is directly related to the safety; or

(4) the Attorney General certifies that the property has been used in violation of this subchapter.

In the event of seizure pursuant to this subsection, proceedings shall be instituted promptly.

Customs

(c) Property taken or detained under this subchapter shall be deposable, but shall be deposited in the custody of the Attorney General, subject only to the provisions of this section, by an official having jurisdiction over the property under the provisions of this subchapter.

(1) place the property in the custody of the Attorney General;

(2) remove the property from the custody of the Attorney General;

(3) require that the property be held in the custody of the Attorney General for disposition in accordance with the provisions of this section.

Other laws

(d) The provisions of this section shall not apply to judicial forfeiture, and to

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of legal search of defendant's pharmacy, defendant was entitled to suppression of such statements. U. S. v. Enserro, D.C. N.Y. 1975, 491 F.Supp. 480.

Subject

Property subject to forfeiture to the United States in them:

Property which have been manufactured, imported, or intended for use, as a common carrier, or intended for use, as a common carrier, in violation of this subchapter.

Property, including equipment of any kind used, in manufacturing, importing, or exporting any controlled substance, or equipment of any kind used, in manufacturing, importing, or exporting any controlled substance, in violation of this subchapter.

Property, including aircraft, vehicles, or vessels, for use, to transport, or in any way, in violation of this subchapter.

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person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

(b) Any property subject to forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Custody of Attorney General

(c) Property taken or detained under this section shall not be releasable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of

the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e) Whenever property is forfeited under this subchapter the Attorney General may—

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or
- (4) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.

Forfeiture of schedule I substances

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cul-

...ators are unknown, or which summarily forfeited to the United States.

(2) The failure, upon demand by an authorized agent, of the person named in the summons upon which such seizure is based, to produce an appropriate holder thereof, shall constitute a forfeiture.

(3) The Attorney General, upon application, shall have authority to enter upon any premises pursuant to a search warrant, to cultivate plants.

Pub.L. 91-513, Title II, § 511, 84 Stat. 1242, and Pub.L. 95-633, Title III, § 301(a), Nov. 13, 1978, § 14, Nov. 30, 1979, 93 Stat. 5047.

Historical

References in Text. "This subchapter" referred to in text, was in the original Code, "this title" which is Title II of Part A of Title III, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title set out under section 801 of Title II and Tables volume.

"Subchapter II of this chapter" referred to in subsec. (a)(4)(A), was in the original Code, "title III", meaning Title I of Part A of Title III, Oct. 27, 1970, 84 Stat. 1242. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1106 of Title III, see Tables volume.

The criminal laws of the United States referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for the Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, Judiciary and Judicial Procedure.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs"

Contraband articles, including those transported, see section 781. Narcotic drug defined, see section 802.

such property or the proceeds or mitigation of such forfeitures shall apply to seizures and have been incurred, under the as applicable and not in- except that such duties as are any other person with respect erty under the customs laws zures and forfeitures of prop- icers, agents, or other persons that purpose by the Attorney ch duties arise from seizures officer.

Property

under this subchapter the At-

al use;

which is not required to be de- mful to the public;

Services Administration take e it for disposition in accord-

Enforcement Administration for e medical or scientific use to r regulations of the Attorney

Paragraph (2) and any moneys e used to pay all proper ex- e and sale including expenses e advertising, and court costs. e the Treasurer of the United e of the United States Treasury eeds remaining after payment

Substances

Schedule I that are possessed, violation of the provisions of band and seized and summa- Similarly, all substances in to the possession of the Unit- known, shall be deemed con- United States.

Such controlled substances in h have been planted or cult- of which the owners or cul-

tivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

Pub.L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub.L. 95-633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub.L. 96-132, § 14, Nov. 30, 1979, 93 Stat. 1048.

Historical Note

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a)(4)(A), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, Judiciary and Judicial Procedure.

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Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs"

in subsec. (e)(4) to conform to congressional intent manifest in amendment of section 802(4) of this title by Pub.L. 96-132, § 16(a), Nov. 30, 1979, 93 Stat. 1049, now defining term "Drug Enforcement Administration" as used in this subchapter.

1970 Amendment. Subsec. (d). Pub.L. 96-132 substituted "The provisions" for "All provisions", and struck out "and the award of compensation to informers in respect of such forfeitures" following "compromise of claims".

1978 Amendment. Subsec. (a)(6). Pub.L. 95-633, § 301(1), added par. (6).

Subsec. (e). Pub.L. 95-633, § 301(a)(2), (3), struck out of cl. (2) provisions relating to use of proceeds of sale and added provision relating to the forwarding by the Attorney General of money and proceeds remaining after payment of expenses.

Effective Date. Section effective Oct. 27, 1970, see section 704(b) of Pub.L. 91-513, set out as an Effective Date note under section 801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-513, see 1970 U.S. Code Cong. and Adm. News, p. 4566. See, also, Pub.L. 95-633, 1978 U.S. Code Cong. and Adm. News, p. 9400; Pub.L. 96-132, 1979 U.S. Code Cong. and Adm. News, p. 2063.

Cross References

Contraband articles, including narcotic drugs, seizure and forfeiture of carriers transporting, see section 791 et seq. of Title 49, Transportation.
Narcotic drug defined, see section 787 of Title 49.