

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on February 26, 1986 in room 526S of the Capitol.

All members were present except:

Committee staff present:

Lynda Hutfles, Secretary
Russ Mills, Research
Mary Torrance, Revisor's Office

Conferees appearing before the committee:

Stan Teasley, Attorney General's Office
Dr. Lorne A. Phillips, Department of Health & Environment

The meeting was called to order by Chairman Miller.

HB3009 - Veterans records

Stan Teaslye, Attorney General's Office, gave testimony in support of the bill. He distributed a copy of an attorney general's opinion (See attachment A) in which the attorney general's office did not approve proposed administrative rules and regulations dealing with exemptions of fees as he felt it was unconstitutional.

Dr. Lorne A. Phillips, Department of Health & Environment, gave testimony in support of the bill which would exempt fees to persons requesting a certified copy of a vital record or search for a vital record if the record is needed to apply for benefits from the U.S. Veterans Administration. See Attachment B. Dr. Phillips pointed out that there is a fiscal not of \$25,000.

Hearings were concluded on HB3009.

Representative Charlton pointed out an error in the minutes of the February 25 meeting. In the last paragraph of the discussion on HB2846, "a vote was taken on Representative Ramirez's original motion", not Representative Vancrum.

Representative Long made a motion, seconded by Representative Sallee, to approve the minutes of the February 25 meeting as corrected. The motion carried.

The Chairman announced there would be no meeting on Thursday.

HB2886 - animals, operation

The chairman pointed out there is a fiscal not of \$62,136.

There was discussion concerning the definition of "pounds".

Representative Sprague asked that the committee passover this bill until he could talk to the person who had requested the bill concerning the fiscal note and how it could be trimmed down.

HB2900 - regulation of dangerous animals

Representative Roenbaugh gave the sub-committee report. See attachment C. Representative Sprague made a motion, seconded by Representative Roenbaugh, to amend in line 0022 by deleting "or any breed of animal." The motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

room 526S, Statehouse, at 1:30 a.m./p.m. on February 26, 1986

Representative Vancrum made a conceptual motion, seconded by Representative Sughrue, to add a new Sec. 2, saying that nothing in Sec. 1 would effect how cities and counties would draft their resolutions concerning regulation of dangerous animals. The motion carried.

Representative Charlton made a motion, seconded by Representative Barr, to amend the bill by inserting in line 20, before "Cities" "(a)"; and after line 27, by inserting: "(b) For the purpose of this section, the breed of any unregistered animal may be determined by a veterinarian licensed in this state."

Representative Ramirez made a substitute motion, seconded by Representative Vancrum, to table the bill. The motion carried.

HB2820 - cruelty to animals

Representative Barr made a motion, seconded by Representative Peterson, to correct the reference to the statute in line 0051, (should reference KSA21-4310), and report the bill favorable for passage as amended.

There was extensive discussion of the word "immediate" and its meaning.

Representative Peterson made a substitute motion, seconded by Representative Walker, to delete on line 0052 "immediately" and on line 0053 to insert "forthwith" in lieu of "immediately". The motion carried.

Representative Roy made a motion, seconded by Representative Barr, to report HB2820 favorably as amended. The motion carried.

HB2822 - DUI changes

Representative Vancrum made a motion, seconded by Representative Peterson, to amend line 0055 to include violations of ordinances of municipalities. The motion carried.

Representative Sprague made a motion, seconded by Representative Grotewiel, to report HB2822 favorably as amended. The motion carried.

HB2953 - Open container

Mary Torrance explained a substitute bill drawn up with the suggested amendments of the Department of Revenue which combines two current statutes dealing with cereal malt beverages and alcoholic beverages. See attachment D.

Representative Sprague made a motion, seconded by Representative Sallee to adopt the substitute bill. The motion carried.

Representative Sughrue made a motion, seconded by Representative Roe, to adopt an amendment which provided for the district, county, or city attorney to report diversions or convictions to the Division of Vehicles rather than the court. The motion carried.

Representative Sprague made a motion, seconded by Representative Roe, to report the substitute bill favorable as amended. A division was called. The motion carried. 10-9

Representative Brady expressed his feeling that the law is working now and this bill would cause undue hardship on certain people. The people are being educated and open container violations are being prosecuted.

HB2844 - pawnbrokers

Representative Walker made a motion, seconded by Representative Eckert, to report HB2844 unfavorably. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS
room 526S, Statehouse, at 1:30 a.m./p.m. on February 26, 1986

HB2052 - Reports concerning termination of pregnancy

Representative Walker made a motion, seconded by Representative Roy, to report HB2052 unfavorably. The motion carried with Representatives Peterson, Sallee, Brady and Long recorded as voting "no".

HB2956 - animal abuse

Representative Barr made a motion, seconded by Representative Aylward to adopt the attached amendment and to include the definition of "pound" in the definition of animal shelter. The motion carried. See attachment E.

Representative Barr made a motion, seconded by Representative Goosen, to report HB2956 favorable as amended. The motion carried.

The meeting was adjourned.



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will mail
1983 amendments

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 26, 1983

MAIN PHONE (913) 296-2315
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5199

~~Barbara J. Sabol, Secretary
Department of Health and Environment
Building 740, Forbes Field
Topeka, Kansas 66620~~

Re: Proposed rules and regulations
numbered 28-17-6 and 28-17-6a

Dear Secretary Sabol:

I am in receipt of the above-referenced proposed rules and regulations and have reviewed the same in compliance with K.S.A. 1982 Supp. 77-420, as amended by L. 1983, ch. 307, §3. Please be advised that I cannot approve proposed administrative rule and regulation number 28-17-6a, because I am of the opinion that the statute which purports to authorize the promulgation of this rule and regulation is unconstitutional. An unconstitutional statute confers no authority to adopt an administrative rule and regulation. See, e.g., State, ex rel., v. Mermis, 187 Kan. 611, 618 (1961).

In particular, I am of the opinion that the last sentence of K.S.A. 1982 Supp. 65-2418(a), as amended by L. 1983, ch. 286, §11(a), constitutes an unlawful delegation of legislative power. Pursuant to that sentence, the secretary is granted unlimited authority to provide exemptions from the fees otherwise payable. The legislature cannot confer such unbridled authority on any agency or officer. See, e.g., Wesley Medical Center v. McCain, 226 Kan. 263, 268-271 (1979); State, ex rel., v. Mermis, supra; and State, ex rel., v. Heinz, 163 Kan. 300 (1974).

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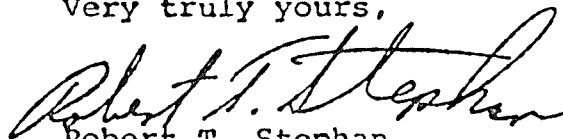
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ATTACHMENT A
H. FLSA
2/26/86

Barbara J. Sabol
Page Two
July 26, 1983

Since I cannot approve proposed administrative rule and regulation number 28-17-6a, there is no need to approve proposed rule and regulation number 28-17-6.

Very truly yours,



Robert T. Stephan
Attorney General

RTS:RJB:jm

cc: ✓ Irv Frantzen, Director, Bureau of Registration and Health
Statistics
Pat Casey, Staff Attorney, Kansas Department of Health and
Environment

Testimony:

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON H.B. 3009

PRESENTED TO House Federal and State Affairs Committee -- February 26, 1986

This is the official position taken by the Kansas Department of Health and Environment on H.B. 3009.

BACKGROUND INFORMATION:

H.B. 3009 would exempt fees to persons requesting a certified copy of a vital record or search for a vital record if the record were needed to apply for benefits from the United States Veterans Administration and such person needed the requested information to obtain such benefits.

Kansas had a very similar provision as part of K.S.A. 65-2418; however, the provision was struck by Senate Bill 414 of the 1983 Legislative Session.

In 1983 the Department of Health and Environment attempted to provide the United States Veterans Administration or the Kansas Veterans Commission with a free copy by regulation; however, in the Attorney General's opinion, the "statute which purports to authorize the promulgation of this rule and regulation is unconstitutional." Therefore, if this benefit is to be reinstated it must be through legislation.

STRENGTHS:

As the Department had proposed, the language in H.B. 3009 was modeled after the repealed 1980 K.S.A. 65-2418 which provided that only one free copy may be issued upon presentation of correspondence from the United States Veterans Administration or the Kansas Veterans Commission indicating that such person is applying for benefits from the United States Veterans Administration and that such person needs the requested information to obtain such benefits. For a second or subsequent certified copy of a certificate, the usual fee would be charged.

Since the Department had at one time provided a free certified copy to the United States Veterans Administration or the Kansas Veterans Commission we could simply return to our previous procedure in providing such free copies.

WEAKNESSES:

No major weaknesses; however, passage of H.B. 3009 would result in a reduction of State General Fund of \$25,000.

DEPARTMENT'S POSITION

Department will implement necessary procedures if law is passed by the Legislature.

Presented by: Lorne A. Phillips, Director
Bureau of Community Health
Kansas Department of Health
and Environment

ATTACHMENT B
H. FJSA
2/26/86

STATE OF KANSAS

SUSAN ROENBAUGH
REPRESENTATIVE, ONE HUNDRED FOURTEENTH DISTRICT
R.R. 1
LEWIS, KANSAS 67552-9803



TOPEKA

HOUSE OF
REPRESENTATIVES

February 26, 1986

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
COMMERCIAL AND FINANCIAL
INSTITUTIONS
FEDERAL AND STATE AFFAIRS

To: R. H. Miller

From: Sub-committee studying HB 29000

Mr. Chairman:

The sub-committee appointed to study HB 2900 met several times this week and makes the following recommendations.

We strongly support the intent of HB 2900 and feel that there definitely should be stronger laws in Kansas regarding dangerous animals.

A representative of the League of Municipalities met with us and feels that cities and counties already have the authority granted in HB 2900.

We also urge the City of Eudora or any other city to look into Home Rule as to how they can deal with vicious animals.

Sub-committee members

• Susan Roenbaugh
• Ginger Barr
• Bill Roy
• Don Sallee
• B. J. Charlton

SR/ba

ATTACHMENT C

H. FLSA
2/26/86

Substitute for HOUSE BILL NO. 2953

By Committee on Federal and State Affairs,

AN ACT concerning alcoholic beverages; relating to transportation in open containers and consumption while operating a motor vehicle; repealing K.S.A. 41-804, 41-2719 and 41-2720.

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

Section 1. (a) No person shall operate a motor vehicle upon a highway or street while there is in such vehicle any alcoholic beverage unless such beverage is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;

(2) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(3) in the exclusive possession of a passenger in a recreational vehicle or bus who is not in the driving compartment of such vehicle or bus or who is in a portion of such vehicle or bus from which the driver is not directly accessible.

(b) Violation of this section is a misdemeanor punishable:

(1) Upon conviction of the first violation, by a sentence of probation conditioned on enrollment in and successful completion of an alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and payment of an assessment not exceeding \$100, to be disposed of in the manner prescribed for assessments pursuant to K.S.A. 8-1008 and amendments thereto. If the conditions of probation are not met, the court shall revoke probation and sentence the violator pursuant to subsection (b)(2).

(2) Upon conviction of a second or subsequent violation, or on revocation of probation for conviction of the first violation, by a fine of not less than \$100 nor more than \$500 or by imprisonment for not more than six months, or by both.

(c) Except as provided in subsection (d), upon conviction of a violation of this section, the judge, in addition to any other penalty or disposition ordered pursuant to law, shall suspend the person's driver's license or privilege to operate a motor vehicle on the streets and highways of this state. Upon conviction of the first violation by such person, the suspension shall be for three months. Upon conviction of a second or subsequent violation, the suspension shall be for not less than one year.

Upon suspension of a license pursuant to this section, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless the person's driver's license or privilege to operate a motor vehicle has been revoked, suspended or canceled for another cause and the revocation, suspension or cancellation has not expired.

(d) In lieu of suspending the driver's license or privilege to operate a motor vehicle, as provided in subsection (c), the judge, upon conviction of a person for the first violation of this section, may place restrictions on the person's driver's license pursuant to K.S.A. 1985 Supp. 8-292 and amendments thereto.

(e) The district or municipal court shall report every conviction of a violation of this section or of an ordinance which prohibits the acts prohibited by this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section or of an ordinance which prohibits the acts prohibited by this section to the division. Prior to sentencing under the provisions of this section, the district or municipal court shall

request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(f) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty and license suspension and restriction in any such ordinance shall not be less than nor exceed the minimum penalty and license suspension and restriction prescribed by this act for the same violation, nor shall the maximum penalty and license suspension and restriction in any such ordinance exceed the maximum penalty and license suspension and restriction prescribed for the same violation.

(g) If a person is convicted under this section or under a city ordinance declaring acts prohibited or made unlawful by this act as unlawful or prohibited in the city and already has a restricted, suspended or revoked driver's license, any period of license suspension or restriction under this section shall not begin until the prior period of restriction, suspension or revocation has elapsed.

(h) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(i) As used in this section:

(1) "Alcoholic beverage" means any alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701 and amendments thereto.

(2) "Bus" has the meaning provided by K.S.A. 8-1406 and amendments thereto.

(3) For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or of K.S.A. 41-804, 41-2719 or 41-2720 as they existed before their repeal by this act or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section or of K.S.A. 41-804, 41-2719 or 41-2720 as they existed before their repeal by this act;

(B) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(C) only convictions of violations committed in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(4) "Highway" and "street" have the meanings provided by K.S.A. 8-1424 and 8-1473, and amendments thereto.

(5) "Recreational vehicle" has the meaning provided by K.S.A. 75-1212 and amendments thereto.

(j) This section shall be part of and supplemental to the uniform act regulating traffic on highways.

Sec. 2. K.S.A. 41-804, 41-2719 and 41-2720 are hereby repealed.

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

PROPOSED REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Federal and State Affairs

Recommends that House Bill No. 2956

"AN ACT concerning animals; relating to qualifications for licensure of certain persons and facilities dealing with animals; amending K.S.A. 47-1705 and 47-1706 and K.S.A. 1985 Supp. 12-4516, 21-4619 and 47-830 and repealing the existing sections."

Be amended:

On page 10, after line 354, by inserting:

"Sec. 4. K.S.A. 47-1701 is hereby amended to read as follows: 47-1701. As used in this act, ~~unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed as follows:~~

(a) "Commissioner" means the livestock commissioner, appointed by the Kansas animal health department.

(b) "Animal dealer" means any person ~~not licensed under public law 91-579~~ who sells, exchanges, offers to sell or offers to exchange, any animal, to either a dealer holding a federal license under public law 91-579 or a federally registered research facility, but shall not mean or include any person who: (1) Exclusively sells or donates any animal which has been born on his or her such person's residence premises, and which has been raised on such premises, or who; or (2) sells or donates any animal which he or she such person has owned and retained on his or her such person's residence premises, for a period of ninety ~~(90)~~ 90 days or longer.

(c) "Research facility" means any place, laboratory or institution, except an elementary school, secondary school or a college or university, at which any scientific test, experiment, or investigation involving the use of any living animal is carried out, conducted, or attempted.

(d) "Animal" means any live dog, cat, rabbit, rodent,

nonhuman primate, bird or other warm-blooded vertebrate, but shall ~~exclude~~ not include horses, cattle, sheep, goats, swine and domestic fowl.

(e) "Exotic pet animal" means any fish, snake or other cold-blooded animal.

(f) "Pound" means a facility: (1) Operated by a the state, or any political subdivision thereof, for the purpose of impounding or harboring any seized stray, homeless or abandoned animal; or a ~~facility~~ (2) operated for such a purpose under contract with any municipality or incorporated society for the prevention of cruelty to animals, or by ~~other~~ another person or entity under contract with such municipality.

(g) "Animal shelter" means a facility which is used or designed for use to house or contain any animal, ~~and which~~ and is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit corporate organization devoted to the welfare, protection and humane treatment of animals.

(h) "Primary enclosure" means any structure used or designed for use to restrict any animal to a limited amount of space, such as a room, pen, cage, compartment or hutch.

(i) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(j) "Sanitize" means ~~to~~ make physically clean and ~~to~~ remove and destroy, to a practical minimum, agents injurious to health.

(k) "Euthanasia" means the humane destruction of an animal, which may be accomplished by any of those methods provided for in K.S.A. 47-1718 and amendments thereto.

(l) "Ambient temperature" means the temperature surrounding the animal.

(m) "Adequate feeding" means supplying at suitable intervals (not to exceed 24 hours) of a quantity of wholesome foodstuff, suitable for the animal species and age, and sufficient to maintain a reasonable level of nutrition in each

animal~~;~~.

(n) "Adequate watering" means a constant supply of clean, fresh, potable water, supplied in a sanitary manner and continuously accessible to each animal~~;~~~~-or-such-water~~ or supplied at suitable intervals for the animal species, and not to exceed ~~twenty-four-(24)-hour-intervals;~~ intervals of 24 hours.

(o) "Dog warden" means any person employed by, contracted with or appointed by the state, or any political subdivision thereof, for the purpose of aiding in the enforcement of this law, or of any other law or ordinance~~;~~ relating to the licensing of animals, control of animals~~;~~ or seizure and impoundment of animals~~;~~, and includes any state, county or municipal peace law enforcement officer, animal control officer, ~~sheriff;~~ constable or other employee, whose duties in whole or in part~~;~~ include assignments which involve the seizure of or taking into custody of any animal~~;~~.

(p) "Respondent" means any applicant for issuance or renewal of an animal dealer license or a pet shop license, and any holder of an animal dealer license or a pet shop license, any ~~of-whom~~ who is named to appear in a hearing for refusal to issue~~;~~ or for suspension or ~~for~~ revocation~~;~~ of such license~~;~~.

(q) "Pet shop" means any premises where animals or exotic pet animals are sold, exchanged, offered for sale or offered for exchange but shall not ~~mean-or~~ include any premises where only fish are offered for sale or exchange~~;~~ or any residence premises where the animals offered for sale or exchange are exclusively those which have been born and raised on such premises or ~~are~~ animals-~~which~~ have been owned and retained on such residence premises for a period of ~~ninety-(90)~~ 90 days or longer~~;~~.

(r) "Pet shop operator" means any person who sells, exchanges, offers to sell or offers to exchange animals or exotic pet animals~~;~~ but shall not include any person who sells only fish ~~or,~~ who sells only animals born and raised on ~~his--or--her~~ such person's residence premises ~~nor-shall-the-term-include-any-person~~ or who sells only animals which he-~~or-she~~ such person has owned

and retained on ~~his-or-her~~ such person's residence premises for a period of ~~ninety-(90)~~ 90 days or longer.

Sec. 5. K.S.A. 47-1702 is hereby amended to read as follows: 47-1702. (a) It shall be unlawful for any person ~~either than--one--licensed--under--public--law-91-579--to-act-as-or-be-an animal-dealer-after-January-1,-1973,~~ to act as or be an animal dealer in this state unless a license to be an animal dealer is granted to such person by the commissioner. Application for such license shall be made in writing on a form provided by the commissioner. The license period shall be for the current fiscal year ending on June 30, following issuance date. The license fee shall be ~~one-hundred-dollars-(\$100)~~ \$100 for each license period, or part thereof. The license fee shall accompany the application for the original license or the renewal license and shall not be refundable in the event that a license is not granted.

(b) The commissioner shall remit all moneys received by or for the commissioner under this section or K.S.A. 47-1703 and amendments thereto to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and such amount shall be credited to the animal health department fee fund.";

By renumbering sections 4 through 7 as sections 6 through 9;

On page 11, in line 414, after the first "K.S.A.", by inserting "47-1701, 47-1702,";

In the title, in line 20, by striking "qualifications for"; in line 22, after the first "K.S.A.", by inserting "47-1701, 47-1702,";

And the bill be passed as amended.

Chairperson