

Approved Feb. 21, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:09 a.m./p.m. on February 14, 1989 in room 423-S of the Capitol.

All members were present ~~except~~:

Committee staff present: Norman Furse, Revisors of Statutes Office
Raney Gilliland, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: Dr. Gerald Gurss, Kansas Veterinary Medical Association

The minutes for the February 2, 7, and 9, 1989, meetings were presented to the Committee. Representative Bryant moved that the minutes be accepted as presented. Representative Ensminger seconded the motion. The motion passed.

Chairman Roenbaugh recognized Dr. Gerald Gurss, Kansas Veterinary Medical Association. Dr. Gurss requested that the Committee consider introduction of proposed legislation in regard to impaired veterinarians. (Attachment 1)

According to Dr. Gurss, the intent of the legislation is to protect the public and to ensure a high quality of veterinary service.

In answer to a question from the Committee, Dr. Gurss defined the "impaired veterinarian" as "a veterinarian who is unable to practice veterinary medicine with reasonable skill and safety due to physical or mental disabilities, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol."

Representative Rezac moved that the Committee accept and introduce the bill concerning impaired veterinarians. Representative Jenkins seconded the motion. The motion carried.

Chairman Roenbaugh directed attention to HB 2131, concerning civil penalties for dairy violations, and called for Committee discussion and action.

Representative Eckert moved to amend the bill to delete "\$1,000" on line 25 and insert "\$300." Representative Hamm seconded the motion. Following discussion the Committee voted to pass the motion.

Representative Heinemann moved to strike the word "shall" on line 26 and enter the word "may." The motion was seconded by Representative Amos. The motion passed.

Representative Hamm moved that wherever "person" appears it be deleted and "dairy manufacturing plant" be inserted. Representative Freeman seconded the motion. The motion passed.

Norman Furse, Revisor of Statutes Office, was acknowledged by the Chair. He informed the Committee that where previous testimony from the Board of Agriculture, in a balloon presented, had suggested deleting "State general fund" on line 50 and inserting "dairy division fund",

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:09 a.m./~~p.m.~~ on February 14, 1989.

it might be deemed inadvisable. Mr. Furse said that in civil penalties there is a policy question which should be considered and that there could be an obvious potential conflict of interest on a levy of a civil penalty for its own fee fund. The Committee did not wish to add this amendment as suggested by the Board of Agriculture.

Representative Freeman moved that HB 2131 be passed as amended.
Representative Ensminger seconded the motion. The motion passed.

Chairman Roenbaugh asked the Committee to next consider HB 2133, a bill concerning the State Board of Agriculture; relating to fees for seed testing and examination.

The Chair reiterated the fact that testimony had indicated that the bill would make the seed laboratory more competitive with other labs. No changes in fees have been made since 1961.

Representative Ensminger was called upon by the Chairman inasmuch as he had previously expressed some concerns about part of this bill. Representative Ensminger said that initially he had some concerns about the fee structure but had been assured that rules and regulations would handle most of this.

Representative Ensminger moved that on line 29 "\$40" be deleted and "\$45" be inserted. Representative Freeman seconded the motion. On vote of the Committee, the motion passed.

Representative Amos moved that HB 2133 be passed as amended. Representative Jenkins seconded the motion. The motion passed.

On conclusion of the business at hand, Chairman Roenbaugh pronounced the meeting adjourned at 9:27 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on February 15, 1989, at 9:00 a.m. in Room 423-S.

HOUSE BILL NO. _____

By _____

AN ACT concerning veterinarians; authorizing certain procedures relating to impaired veterinarians; making certain records, reports and information confidential and privileged; granting immunity from civil liability for certain actions.

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

Section 1. As used in this act:

(a) "Board" means the state board of veterinary examiners.

(b) "Committee" means an executive or review committee of a state professional society or organization or an impaired veterinarian committee;

(c) "Impaired veterinarian" means a veterinarian who is unable to practice veterinary medicine with reasonable skill and safety due to physical or mental disabilities, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol.

(d) "Veterinarian" means an individual licensed to practice veterinary medicine in this state.

Sec. 2. (a) Any person may report to the board or to an appropriate state professional society or organization of veterinarians any information such person may have relating to an alleged impaired veterinarian. If the report is made to the appropriate state professional society or organization, such society or organization shall refer the matter to an impaired veterinarian committee duly constituted pursuant to the society's or organization's bylaws. The committee shall investigate all such reports and take appropriate action.

(b) If information concerning an alleged impaired veterinarian is reported to the board, the board may investigate the report or may refer the report to an impaired veterinarian

Ag. & SB
02-14-89

committee.

(c) The impaired veterinarian committee referred to in subsection (a) shall submit to the board, on a form promulgated by such board, at least once every three months, a report summarizing the reports received pursuant this section. The report shall include the number of reports concerning impaired veterinarians, whether an investigation was conducted and any action taken.

(d) If the board determines that the impaired veterinarian committee referred to in subsection (a) is not fulfilling its duties under this section, the board, upon notice and an opportunity to be heard, may require such state professional society or organization to transfer to the board all reports made pursuant to this section.

Sec. 3. (a) The board may refer reports under section 2 and amendments thereto and other reports or complaints filed with such board which relate to impaired veterinarians to an impaired veterinarian committee of the appropriate state professional society or organization.

(b) The board shall have the authority to enter into an agreement with the impaired veterinarian committee of the appropriate state professional society or organization to undertake those functions and responsibilities specified in the agreement and to provide for payment therefor from moneys appropriated to the agency for that purpose. Such functions and responsibilities may include any or all of the following:

- (1) Contracting with providers of treatment programs;
- (2) receiving and evaluating reports of suspected impairment from any source;
- (3) intervening in cases of verified impairment;
- (4) referring impaired veterinarians to treatment programs;
- (5) monitoring the treatment and rehabilitation of impaired veterinarians;
- (6) providing posttreatment monitoring and support of rehabilitated impaired veterinarians; and

(7) performing such other activities as agreed upon by the board and the impaired veterinarian committee.

(c) The impaired veterinarian committee shall develop procedures in consultation with the board for:

(1) Periodic reporting of statistical information regarding impaired veterinarian program activity;

(2) periodic disclosure and joint review of such information as the board considers appropriate regarding reports received, contacts or investigations made and the disposition of each report;

(3) immediate reporting to the board of the name and results of any contact or investigation regarding any impaired veterinarian who is believed to constitute an imminent danger to the public or to self;

(4) reporting to the board, in a timely fashion, any impaired veterinarian who refuses to cooperate with the committee or refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who in the opinion of the committee exhibits professional incompetence; and

(5) informing each participant of the impaired veterinarian committee of the procedures, the responsibilities of participants and the possible consequences of noncompliance.

(d) If the board has reasonable cause to believe that a veterinarian is impaired, the board may cause an evaluation of such veterinarian to be conducted by the impaired veterinarian committee or its designee for the purpose of determining if there is an impairment. The impaired veterinarian committee or its designee shall report the findings of its evaluation to the board.

(e) An impaired veterinarian may submit a written request to the board for a restriction of such veterinarian's license. The board may grant such request for restriction and shall have authority to attach conditions to the licensure of the veterinarian to practice within specified limitations. Removal of a voluntary restriction on licensure to practice shall be

subject to the statutory procedure for reinstatement of license.

(f) Notwithstanding any other provision of law, a state professional society or organization and the members thereof shall not be liable to any person for any acts, omissions or recommendations made in good faith while acting within the scope of the responsibilities imposed pursuant to this section.

Sec. 4. (a) The reports and records made pursuant to section 2 or 3, and amendments thereto, shall be confidential and privileged, including:

(1) Reports and records of executive or review committees of a professional society or organization;

(2) reports and records of the board or impaired veterinarian committee of a professional society or organization; and

(3) reports made pursuant to this act to or by any committee or any consultant.

Such reports and records shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a disciplinary proceeding by the board.

(b) No person in attendance at any meeting of an executive or review committee of a state professional society or organization while such committee is engaged in the duties imposed by section 2 and amendments thereto shall be compelled to testify in any civil, criminal or administrative action, other than a disciplinary proceeding by the board, as to any committee discussions or proceedings.

(c) No person in attendance at any meeting of an impaired veterinarian committee shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any civil, criminal or administrative action, other than a disciplinary proceeding by the board, as to any committee discussions or proceedings.

(d) Nothing in this section shall limit the authority,

which may otherwise be provided by law, of the board to require an executive or review committee or officer or impaired veterinarian committee to report to the board any action or recommendation of such committee or officer or to transfer to the board records of such committee's or officer's proceedings or actions. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the board.

(e) A committee or officer may report to and discuss its activities, information and findings with other committees or officers without waiver of the privilege provided under this section and the records of all such committees or officers relating to such report shall be privileged as provided under this section.

Sec. 5. No person or entity which, in good faith, reports or provides information or investigates any veterinarian as authorized by section 2 or 3 shall be liable in a civil action for damages or other relief arising from the reporting, providing of information or investigation except upon clear and convincing evidence that the report or information was completely false, or that the investigation was based on false information, and that the falsity was actually known to the person making the report, providing the information or conducting the investigation at the time thereof.

Sec. 6. (a) No person or entity shall be subject to liability in a civil action for failure to report as authorized by section 2 or 3, and amendments thereto.

(b) In no event shall a professional society or organization or impaired veterinarian committee be liable in damages for the alleged failure to properly investigate or act upon any report made pursuant to section 2 and amendments thereto.

Sec. 7. (a) No employer shall discharge or otherwise

discriminate against any employee for making any report pursuant to section 2 or 3, and amendments thereto.

(b) Any employer who violates the provisions of subsection (a) shall be liable to the aggrieved employee for damages for any wages or other benefits lost due to the discharge or discrimination plus a civil penalty in an amount not exceeding the amount of such damages. Such damages and civil penalty shall be recoverable in an individual action brought by the aggrieved employee. If the aggrieved employee substantially prevails on any of the allegations contained in the pleadings in an action allowed by this section, the court, in its discretion, may allow the employee reasonable attorney fees as part of the costs.

Sec. 8. (a) The legislature of the state of Kansas recognizes the importance and necessity of protecting the public from impaired veterinarians to help insure the provision of quality veterinary services. The provisions of this act effectuate this policy.

(b) Veterinarians, review, executive or impaired veterinarian committees performing duties under this act for the purposes expressed in subsection (a) shall be considered to be state officers engaged in a discretionary function and all immunity of the state shall be extended to such persons and committees, including that from the federal and state antitrust laws.

(c) Nothing in this section shall be construed to require veterinarians or review, executive or impaired veterinarian committees to be subject to or comply with any other law relating to or regulating state agencies, officers or employees.

Sec. 9. Sections 1 to 9, inclusive, shall be supplemental to and a part of the Kansas veterinary practice act.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.