

Approved February 27, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE ROBERT D. "BOB" MILLER at  
Chairperson

1:38 a.m./p.m. on FEBRUARY 23, 1989 in room 521-S of the Capitol.

All members were present except:

Representative Holmes, excused

Representative Williams, excused

Representative Patrick, absent; Representative Sawyer, absent

Committee staff present:

Mike Heim, Legislative Research Dept.

Theresa Kiernan, Revisor of Statutes' Office

Connie Smith, Committee Secretary

Conferees appearing before the committee:

Bob Orth, Chair of Board of Kansas EMS

Lieutenant William Jacobs, Kansas Highway Patrol

Bob Frey, with Kansas Trial Lawyers Association

Chairman Miller called for hearings on the following House Bills:

HB 2076 - Act concerning the emergency medical services board;  
relating to the membership thereof.

Bob Orth presented the Committee with a copy of a balloon for HB 2076.  
(Attach. I)

Discussion followed.

Chairman Miller stated that there are several amendments to be offered to the bill as points of clarification. He asked Staff to prepare a balloon version of the bill showing the amendment.

Hearing closed on HB 2076.

HB 2429 - Act concerning emergency care and assistance at the scene of an emergency or accident.

Mr. Orth stated that the EMS Board has no problem with HB 2429 as far as it goes. He stated that he was not sure that the bill answered what the EMS Board asked for in HB 2079. In HB 2079 they ask for some definite allocations to liability for attendants performing duties in response to direct orders by those providing instructions.

No Committee discussion.

Lieutenant Jacobs testified in support of HB 2429 and stated that the Patrol discourages any legislation which would prevent any first responder from providing the necessary care to any injured person due to concerns of frivolous civil actions against them. (Attach. II)

No Committee discussion.

Bob Frey testified as an opponent to HB 2429. He stated that his Associations opposition to the bill centers around the addition of the words "with or without compensation". (Attach. III)

Discussion followed.

Mr. Frey said this statute does not address the untrained lay person who happens on the scene of an accident.

Hearing closed on HB 2429.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S, Statehouse, at 1:38 a.m./p.m. on FEBRUARY 23, 1989.

Chairman Miller turned the Committee's attention to the balloon version of HB 2372 passed out by Staff. (Attach. IV)

Chairman Miller asked for Committee discussion.

A motion was made by Representative Krehbiel and seconded by Representative Johnson to amend HB 2372 as the balloon shows. Motion carried.

A motion was made by Representative Krehbiel and seconded by Representative Reinhardt to favorably pass HB 2372 as amended. The motion carried.

The meeting adjourned at 2:22 p.m.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE Feb. 23, 1989

NAME	ADDRESS	REPRESENTING
Mary Smith	1426 Stevens Parsons Ks	LCC - Parsons Ks. - nsc
Kathi Lake	RR1 Box 176 Edna, Ks. <sup>67342</sup>	LCC - Parsons, Ks. - nsc
Marlene Seiler	R#1, Box 5 Dennis, Ks	LCC - Parsons, Ks. - nsc
Kim Blake	2415 Crawford Parsons Ks.	LCC - Parsons Ks. nsc
Mustelle McKinzie	P.O. Box 141, St. Paul, Ks	LCC - Parsons, Ks. nsc
Patricia Donahue	216 W. 2nd St Chompyale Ks	L.C.C. Parsons Ks. - nsc
Mary Brumbach	R#2 Box 2350 Columbus Ks.	LCC Parsons Ks. - nsc
Michelle Moyer	R#1 Box 110 Hollowell Ks.	LCC. Parsons Ks. - nsc
Cindy Sextal	1425 Deetral, <sup>Wichita</sup> Ks	SMPC WCT KS - BSN
Linda Ginter	8406 E. Harry # 921 Wichita, KS 67207	SMPC WCT KS - BSN
Sharon Tyson	7523 W. Hale Wichita, KS 67212	SMPC Wichita - BSN
Mike D. Reed	1675 2nd Ave. W. Horton, Ks. 66439	SMPC Topeka - ADN
Irene Blum	Seawood, Ks. 66209 12011 Fairway Rd.	KUMC KC, Ks. - BSN
Barbara Windom	6924 72nd Terr OP KS 66204	KUMC KI, Ks BSN
Theresa Lee	RR4 Box 154 Lawrence Ks 66044	KUMC KC KS
Nancy Karpark	5138 Birch Rockland Park Ks. 66205	KUMC KC KS BSN
Marilyn Parrell	900 W. 84th Rd. K.C. MO. 64114	KUMC KC, KS BSN
Robin D. Bishop	4830 Eastern Kc MO 64129	KUMC KCKS BSN
Kyle Merrill	1801 So. Old Main Newton, Ks. 67114	Bethel College - N. Newton
LA BILL JACOBS	TOPEKA	KHP
Priscilla Ngwilh	2509 Indian Trail Topeka	St Mary's of the Plains Nursing Student
Angie Jaramillo	924 Watson Topeka Ks 66604	SMPC Topeka
Crystal Alexander	909 N.E. Michigan Topeka, Ks. 66616	Saint Mary's of the Plains College Student R.N. - Topeka, Ks.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE Feb. 23, 1989

NAME	ADDRESS	REPRESENTING
James Remmer	Kansas City, Ks	KU Medical Center
Marci (Grygle)	10226 Knox Cir. O.P., Ks 66212	KU/ML
Rebecca Blackman	4338 State Line Rd. KC, KS 66103	KUMC
Bobbi J. Erwin	Student Union #278 Rainbow E Olathe, Ks, Ks	KUMC
Dennis Brown	Winterton, IA	KUMC
Shari Hoover	7530 Garnett #8 Shawnee Ks 66214	KUMC
Nichelle McComb	4607 W. 53 <sup>rd</sup> Denver Rolland Park KS 66205	KU School of Nursing
Middleton Ferguson	3838 Rainbow, KC, KS 66103 1851 Cheate Dr. #42 64110	KUMC
Ugonma Egorugwe	Kansas City MO. District #24 10913 W. 51 <sup>st</sup> Pl. #2-B	KUMC (Nursing)
Anne S. Wehage	Mission, Ks. 66202	KU (Nursing) MC
Lori Renee Terrey	1017 CN Marie Dr. Lawrence, KS 66046	EMT #10 MICT student - student nurse
Peggy Chandler	16408 Rebecca Belton, Mo. 64012	KU Nursing School
Mary Johnson	1450 So. Webb #213 Wichita, Ks. 67207	WJSL School Student
Sanctra Dickie	PO Box 67 Raymond, Kansas	Marymount College
Lynne Unsicker	807490 Antoinette #111 Salina KS 67401	Marymount
Don Wrogman	PO Box 5050 Salina, KS 67401	Marymount College
Gaine Martin	214 S. Whitmore Salina, Kansas 67401	Faculty Marymount, Salina, Kansas
Christina A Reed	2895 Brit. Ave. Salina KS 67401	Nursing Student Marymount College
Carol White	921 Demlock Salina KS 67401	Marymount College
Cornie Gallagher	614 Campbell Clyde, Mo 66938	Clyde City EMS

HOUSE BILL No. 2076

By Committee on Local Government

1-23

15 AN ACT concerning the emergency medical services board; relating  
16 to the membership thereof; amending K.S.A. 1988 Supp. 65-6102  
17 and repealing the existing section.  
18

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

20 Section 1. K.S.A. 1988 Supp. 65-6102 is hereby amended to read  
21 as follows: 65-6102. (a) There is hereby established the emergency  
22 medical services board. The office of the emergency medical services  
23 board shall be located in the city of Topeka, Kansas.

24 (b) The emergency medical services board shall be composed of  
25 13 members appointed by the governor. Of such members:

26 (1) One shall be a member of the Kansas medical society who  
27 is actively involved in emergency medical services;

28 (2) two shall be county commissioners of counties making a levy  
29 for ambulance service, at least one of whom shall be from a county  
30 having a population of less than 15,000;

31 (3) four shall be legislators to be selected from recommendations  
32 submitted by the president of the senate, minority leader of the  
33 senate, the speaker of the house of representatives and the minority  
34 leader of the house of representatives;

35 (4) one shall be an instructor-coordinator;

36 (5) one shall be a hospital administrator actively involved in emer-  
37 gency medical services;

38 (6) one shall be a member of a firefighting unit which provides  
39 emergency medical service; and

40 (7) three shall be attendants who are actively involved in emer-  
41 gency medical service. Not more than one of such members shall  
42 represent the same classification of attendants. At least one of such  
43 members shall be from a volunteer emergency medical service.

2-23-89  
Attach. I

1-2

44 All members of the board shall be residents of the state of Kansas.  
 45 Appointments to the board shall be made with due consideration  
 46 that representation of the various geographical areas of the state is  
 47 ensured. The governor may remove any member of the board upon  
 48 recommendation of the board. *Any person appointed to a position*  
 49 *on the board shall resign such position upon vacating the office or*  
 50 *position which qualified such person to be appointed as a member*  
 51 *of the board.*

be considered as having resigned

Said automatic resignation shall not apply to those attendants that change classifications during their term on the board.

52 (c) Of the members first appointed to the board, four shall be  
 53 appointed for terms of one year, three for terms of two years, three  
 54 for terms of three years and three for terms of four years. Thereafter,  
 55 members shall be appointed for terms of four years and until their  
 56 successors are appointed and qualified. In the case of a vacancy in  
 57 the membership of the board, the vacancy shall be filled for the  
 58 unexpired term.

59 (d) The board shall meet at least six times annually and at least  
 60 once each quarter and at the call of the chairperson or at the request  
 61 of the administrator of the emergency medical services board or of  
 62 any six members of the board. At the first meeting of the board  
 63 after January 1 each year, the members shall elect a chairperson  
 64 and a vice-chairperson who shall serve for a term of one year. The  
 65 vice-chairperson shall exercise all of the powers of the chairperson  
 66 in the absence of the chairperson. Members of the board attending  
 67 meetings of the board or attending a subcommittee meeting thereof  
 68 authorized by the board shall be paid compensation, subsistence  
 69 allowances, mileage and other expenses as provided in K.S.A. 75-  
 70 3223, and amendments thereto.

71 (e) Members of the emergency medical services council ap-  
 72 pointed pursuant to K.S.A. 65-4316, and amendments thereto, shall  
 73 continue to serve until the members of the emergency medical serv-  
 74 ices board are appointed and qualified pursuant to this section.

75 (f) Except as otherwise provided by law, all vouchers for ex-  
 76 penditures and all payrolls of the emergency medical services board  
 77 shall be approved by the emergency medical services board or a  
 78 person designated by the board.

79 (g) The first person appointed by the governor to the board shall  
 80 call the first meeting of the board and shall serve as temporary

1-3

31 chairperson of the board until a chairperson and vice-chairperson are  
82 elected by the board at such meeting.

83 Sec. 2. K.S.A. 1988 Supp. 65-6102 is hereby repealed.

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

Kansas register.

SUMMARY OF TESTIMONY

Before the House Committee on Local Government

February 23, 1989

Presented by the Kansas Highway Patrol

(Lieutenant William Jacobs)

Appeared in Support of House Bill 2429

The Kansas Highway Patrol supports House Bill 2429. House Bill 2429 contains a simple amendment which corrects a serious fallacy in KSA 65-2891.

The United States District Court has ruled that law enforcement officers, ambulance attendants, and other first responders who have been trained and certified as a health care provider (crash injury management technician, emergency medical technician, etc. as defined in Chapter 65, Article 61), are not covered, when on duty, by provisions of KSA 65-2891.

The court said that the intent of the law was to exempt only those medically trained personnel who happened to cross an emergency outside their normal course of work and who otherwise have no duty to assist.

We don't feel that the Kansas Legislature had the above intent when the statute was last amended and passed. The proposed additional language in House Bill 2429 would correct the statute to include trained law enforcement officers, ambulance attendants, and other first responders who are on duty within their respective occupations and render emergency aid to injured persons during their course of duty.

The citizens of this State expect, and rightfully deserve, the best possible care available. The Patrol discourages any legislation which would discourage any first responder to provide the necessary care to any injured person due to concerns of frivolous civil actions against them.

For the reasons stated above, the Kansas Highway Patrol respectfully asks for your favorable consideration of House Bill 2429.

2-23-89  
Attack II



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# KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603  
(913) 232-7756

## KANSAS TRIAL LAWYERS ASSOCIATION

testimony in opposition to  
H. B. 2429

Mr. Chairman and members of the House Committee on Local Government. I am Bob Frey and I am appearing on behalf of the Kansas Trial Lawyers Association in opposition to H. B. 2429.

Our opposition to the bill centers around the addition of the words "with or without compensation" to 1988 Supp. 65-2891 of the Healing Arts Act. By adding those words we feel that it does two things;

1. Subsection (a) is placed in conflict with Subsections (b) and (c), and,
2. It appears that the additional words would grant immunity from liability to persons who are not immune and who are paid professional health care providers who should be held to a higher standard of responsibility than a mere volunteer at the scene of an accident or emergency.

### SUBSECTION (a) CONFLICTS WITH SUBSECTIONS (b) AND (c).

It appears that subsection (a) of 1988 Supp. 65-2891 grants immunity only to a health care provider who is volunteering his or her services at the scene of an emergency or accident and who is not being paid to provide those services. The use of the words "in good faith" imply that the provision of the services are based upon a perception by the health care provider that there is a need for emergency treatment, that there is no one else available to deliver the treatment, and that a failure to do so would result in possible liability for failure to act. Thus, acting in good faith, the health care provider can proceed as a volunteer with confidence that he or she will not be sued later on for having negligently injured the patient further by having treated the patient improperly.

In subsection (b) the language clearly states that the immunity granted from liability is only given to a health care provider who is providing the emergency treatment without compensation. If the new language were adopted in subsection (a), there would be a serious conflict with the limitations on immunity set out in subsection (b).

In subsection (c) the person who renders aid is held to a standard of care which attaches liability to the health care provider for damages that are caused by them as a result of their negligence. Not by their gross negligence, not by their willful or wanton negligence or by their willful or wanton omissions, but by their simple negligence. The new language in subsection (a) would place that subsection directly in conflict with subsection (c).

2-23-88  
attach  
TH

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PAID HEALTH CARE PROVIDERS SHOULD BE HELD TO A HIGHER STANDARD OF RESPONSIBILITY THAN A MERE VOLUNTEER.

Delivery of services for hire has traditionally been held at common law to a standard of liability for damages based upon the negligent delivery of the service resulting in damage to the person who was receiving the service. The standard instruction given to juries concerning the duty of a physician is as follows:

In performing professional services for a patient, a physician has a duty to use that degree of learning and skill ordinarily possessed and used by members of his profession and of his school of medicine in the community in which he practices, or in similar communities, and under like circumstances. In the application of this skill and learning the physician should also use ordinary care and diligence.

A failure to do so is a form of negligence that is called malpractice.

If H.B. 2429 were adopted as the law in Kansas, the standard of care for health care providers who are paid to deliver emergency care would be lowered substantially. They still would have to carry their malpractice insurance. They still would have to pay all of the costs involved in obtaining that insurance and they would in all other respects be held to the much higher standard for the care they delivered in other situations not involving an emergency. The emergency patient who is treated negligently and who suffers damages as a result, however, would experience a devastating change of circumstances since that person would have to stand the full loss themselves without any contribution on the part of the person who injured them.

Because of the definition of "health care provider" in 1988 Supp. 65-2891 (e), the adoption of H.B. 2429 would grant immunity to all emergency medical technicians of all kinds from "first responders" to the most highly trained "mobile intensive care technician". Currently, there is no immunity for these person except under limited circumstances in cases where instructions are being transmitted by a doctor or nurse (KSA 65-6124), or when an automatic defibrilator is being used by trained, certified EMT's on a "pulseless, non breathing patient". [KSA 65-6149(d)].

It does appear also that "first responders" as defined by 1988 Supp. 65-6112(k) are granted blanket immunity for delivery of emergency services however but it is uncertain if those persons are considered paid professionals or are volunteers who have received limited training in emergency care.

RECOMMENDATION

It is our recommendation that H.B. 2429 be amended in the following manner:

a. That the words "with or" on line 22 be deleted. By doing so it would then be completely clear that the immunity granted to persons who give care or treatment in an emergency situation are granted immunity only when they are doing so as a volunteer in circumstances where such action is needed and appropriate. In all other circumstances the person who is trained and compensated for providing emergency services will be held to the same standard of negligence which exists for all other health care delivery services.

# HOUSE BILL No. 2372

By Committee on Local Government

2-10

2-23-89  
Attch IV

15 AN ACT concerning certain drainage districts; relating to the election  
16 of supervisors thereof; amending K.S.A. 24-605 and repealing the  
17 existing section.

18 also repealing K.S.A. 24-606

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

20 Section 1. K.S.A. 24-605 is hereby amended to read as follows:

21 24-605. (a) Within 30 days after the district court has declared that  
22 the drainage district is organized, the clerk of the court shall call a  
23 meeting of the owners of the real estate located within the district  
24 for the purpose of electing a board of five supervisors to be composed  
25 of owners of real estate located within the district. A majority of the  
26 supervisors shall be residents of the county, or counties, in which  
27 the drainage district is located. Notice of such meeting shall be  
28 published at least 15 days prior to the meeting and shall specify the  
29 time, place and purpose of the meeting. The landowners, when  
30 assembled, shall organize by the election of a chairperson and a  
31 secretary of the meeting, who shall conduct the election. At such  
32 election and all succeeding elections, including elections to approve  
33 the issuance of bonds, each and every acre of land in the district  
34 shall represent one share and each owner shall be entitled to one  
35 vote for each acre owned in such district. A vote at any election  
36 may be cast by the landowner or by a legally appointed proxy.

37 At the first election one person shall be elected supervisor for a  
38 term of one year, two persons for terms of two years, and two persons  
39 for terms of three years, *thereafter all supervisors shall be elected  
for terms of three years and until their successors are elected and  
qualified.* Elections to choose supervisors, ~~except the first, shall~~

40 be held on the first Tuesday in April and every four years

4-2-

44 ~~board.~~ Supervisors elected in any district prior to the effective date  
45 of this act shall hold their office until their successors are elected  
46 and qualified at the election in April, 1985.

of the owners of the real estate located within  
the district

47 (b) For the purpose of determining the total number of acre votes  
48 which each landowner is entitled to cast at the meeting for the first  
49 election of supervisors, the clerk of the district court shall deliver  
50 to the secretary elected at the first landowners' meeting, at the time  
51 of the secretary's election, a written certificate, prepared from the  
52 proceedings in the district court for the formation of such drainage  
53 district, which sets forth the names of all landowners in the district  
54 and the legal description and acreage of all land located within the  
55 district. In all elections, except the first, the county clerk shall  
56 determine the names of all landowners within the drainage district  
57 and the number of acres owned by each landowner as of 20 days  
58 prior to the date of any election.

59 Any landowner within the district whose name or total acreage  
60 does not appear or appears incorrectly on such certificate may request  
61 the county clerk to add the landowner's name to the certificate or  
62 to correct the acreage on the certificate. The county clerk may  
63 administer oaths and affirm witnesses, take testimony and examine  
64 documents and records necessary to determine the qualification of  
65 any landowner to vote and the total acreage of the landowner. After  
66 the completion of the investigation, the county clerk shall issue a  
67 certificate stating that the landowner to whom the same is issued is  
68 entitled to vote and certifying the total acreage owned by the land-  
69 owner to whom the certificate is issued. Such certificate shall be  
70 accepted by the judges and clerks of the election and the landowner  
71 shall be allowed to vote the number of acre votes stated in the  
72 certificate.

New Sec. 2. Each year after the election of  
the first board of supervisors the landowners  
within the drainage district shall meet and elect  
a board of supervisors. Unless waived in writing,  
notice of the time, date and place of such meeting  
shall be mailed at least 15 days prior to the  
meeting to the last known address of each owner of  
land in the district. Such notice shall be pub-  
lished once each week for two consecutive weeks  
in a newspaper of general circulation in the  
district. Such notice shall be mailed and  
published by the secretary of the board. All such  
elections shall be conducted in the same manner  
provided by K.S.A. 24-605, and amendments thereto.

and 24-606 are

73 ~~3~~ Sec. 2. K.S.A. 24-605 is hereby repealed.

74 ~~4~~ Sec. 3. This act shall take effect and be in force from and after  
75 its publication in the statute book.