

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 28, 1989 in room 521-S of the Capitol.

All members were present except:

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:

Representative Rezac  
W. A. Richel, Financial Advisor of Pottawotomie County  
James Todd, Kansas State Firefighters, Assn.  
Representative Schauf  
Bob Orth, Chair of Board of Kansas EMS  
Larry Blomenkamp, Emporia Police Dept.  
Bob Frey, Kansas Trial Lawyers  
Lt. William Jacobs, Kansas Highway Patrol  
Kim Grubbs, MICT instructor, Johnson Co. Community College  
Ted McFarland, Director of Douglas Co. Ambulance

Chairman Miller called the meeting to order.

Vice-Chairperson Brown called for hearings on HB 2105 - Act concerning fire districts; relating to the powers of the governing bodies thereof.

Representative Rezac presented the Committee with an informal opinion from the Attorney General in regard to spending tax dollars by fire districts to educate and train their firefighters. (Attach. I)

Representative Rezac introduced Adrian Richel, a financial advisor of Pottawotomie County. Mr. Richel testified in support of HB 2105. (Attach. II)

No questions.

James Todd, Kansas State Firefighters Assn. supports HB 2105.

Discussion followed.

Hearings closed on HB 2105.

Vice-Chairperson Brown called for hearings on HB 2049 - Act concerning emergency medical services; providing for the certification of emergency medical dispatchers; and providing for the administration of the provisions of the act.

Representative Schauf presented the Committee with a balloon of HB 2049 with all her proposed changes and gave background and intent of HB 2049. (Attach. III)

Discussion followed.

Chairman Miller recognized Bob Orth. Mr. Orth stated they prefer certification not be permanent and they approve of continuing education being on a yearly basis. Mr. Orth urges adoption of the substitute bill.

Discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

room 521-S, Statehouse, at 1:38 a/~~m~~/p.m. on FEBRUARY 28, 1989

Larry Blomenkamp testified in opposition of HB 2049. He feels the revisions do not address all of his concerns. (Attach. IV)

Discussion followed.

Bob Frey testified that the Kansas Trial Lawyers concern is with granting immunity from liability to people who are certified.

Discussion followed.

A motion was made by Representative Johnson and seconded by Representative Reinhardt that the bill be amended to include all the amendments except for the very last one which speaks to the liability. The motion carried.

Hearings closed on HB 2049.

Chairman Miller called for hearings on HB 2079 - Act concerning emergency medical services; relating to limitations on certain liability; relating to persons providing emergency care.

A balloon version of HB 2079 was passed out. (Attach. V)

Chairman Miller asked staff to explain the balloon. No questions from Committee.

A motion was made by Representative Johnson and seconded by Representative Lane to amend the bill. The motion carried.

Bob Orth stated his support for the amended bill.

Discussion followed.

Lt. William Jacobs testified in support of HB 2079. He feels the bill corrects a serious fallacy in the "Kansas Good Samaritan Law". (Attach. VI)

Discussion followed.

Kim Grubbs, MICT instructor, testified as a proponent. Mr. Grubbs feels the provisions alluding to training are crucial to continuing education.

Discussion followed.

Ted McFarland testified in support of HB 2079 and stated the bill attempts to provide protection to volunteers providing emergency medical services.

Bob Frey testified as an opponent to HB 2079. Mr. Frey stated the amendment that was adopted in Committee essentially takes the immunity questions and resolves it by granting immunity to everybody. Mr. Frey suggests the way to resolve this matter is to amend HB 2429 to make it clear that the liability exemption provisions apply to people who are acting in their capacity without compensation, therefore being a volunteer. Mr. Frey stated they are opposed to HB 2079 as it rests right now in Committee because it grants complete blanket immunity to everybody whether paid or unpaid. (Attach. VII)

Meeting adjourned at 3:22 p.m.



DON M. REZAC  
REPRESENTATIVE, SIXTY-FIRST DISTRICT  
WABAUNSEE COUNTY AND PARTS  
OF POTTAWATOMIE AND RILEY COUNTIES  
(913) 889-4514



TOPEKA

HOUSE OF  
REPRESENTATIVES

TESTIMONY  
TO THE  
HOUSE LOCAL GOVERNMENT

COMMITTEE ASSIGNMENTS  
MEMBER: AGRICULTURE AND SMALL BUSINESS  
ENERGY AND NATURAL RESOURCES  
LOCAL GOVERNMENT

Thank you Mr. Chairman,

I was told at beginning of session by legal counsel from Pottawatomie County that there may be a problem with spending tax dollars by fire districts to educate and train their firefighters.

I was asked to get an Attorney General's opinion if this is legal or to change the law to clarify the statutes. I did request an Attorney General's opinion and told him that time was of the essence because a law change may be necessary. He sent me back an informal opinion on January 19th. As you see this statute gives the governing body to do all things necessary. And then as you read on in the letter, he said "we do not find mention of training or educating of firefighters under the statute," so on the next to the last paragraph he states that "legislative clarification or authorization may be appropriate."

I realize that this legislation affects all fire districts in the state so if one is spending money illegally it means that everyone is spending money illegally. I do not think it is fair to ask the voluntary firefighters to take their money and pay for these schools and fees when they learn to be firefighters. We have with us this afternoon, Adrian Richel, who is the financial adviser for Pottawatomie County and I'd like for him to make a few comments on the issue.

DON REZAC  
State Representative  
District #61

2-28-89  
attach. I



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JAN 20

DON REZAC

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

January 19, 1989

The Honorable Don Rezac  
State Representative, 61st District  
State Capitol, 273-W  
Topeka, Kansas 66612

Re: Counties and County Officers -- Fire Protection --  
Organization of Fire Districts; Powers; Tax Levies;  
Expenditures for Education of Fire Fighters

Dear Representative Rezac:

You request our opinion concerning the legality of expenditures for education of fire fighters made by fire districts which have apparently been organized under K.S.A. 19-3601 et seq. and K.S.A. 19-3624 et seq. In order to comply with your request for our earliest possible response, I respond by informal letter rather than by formal opinion. Thus, if a formal opinion is required, additional research and consideration may be necessary.

K.S.A. 19-3601 et seq. authorizes and empowers fire districts. With reference to fire districts that have been created in two or more counties pursuant to K.S.A. 19-3624, K.S.A. 19-3625 states that "in addition to the powers provided for in this section, the governing body shall have powers granted to a fire district under K.S.A. 19-3601a." K.S.A. 19-3601a gives the governing body of a fire district the authority to do "all things necessary to effectuate the purposes of this act."

Thus, the issue becomes whether paying educational expenses incurred by fire fighters is necessary to effectuate the purposes of this act. The basic purpose of this act can be stated as the provision of fire protection within fire districts. We do not find mention of training or educating fire fighters under K.S.A. 19-3601 et seq. However, an argument exists that providing fire protection within a district makes it

necessary to obtain trained fire fighters and that, therefore, training said fire fighters is permissible because the training effectuates the purposes of this act. Nevertheless, it is my informal opinion that because these enactments focus on the provision of fire protection rather than provision of training to those that provide such fire protection service, **specific legislative clarification or authorization may be appropriate.**

Thank you for your continued cooperation on matters of mutual concern. If we may be of further assistance on this matter or others over which we have authority, please feel free to contact me.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas

RTS:TMN:bas

Mr. Chairman and members of the committee.

My name is Adrian Richel. I am the Financial Advisor of Pottawatomie County. The Board of County Commissioners, as the governing body of the rural fire districts created under the provisions of Kansas Statutes Annotated, Chapter 19, Section 3601 et seq., has requested my appearance before your committee to testify in support of House Bill No. 2105.

Present Section number 19-3601a grants the governing body the authority to enter into contracts; acquire, operate and maintain fire-fighting equipment and acquire or construct buildings to house fire-fighting equipment; buy, sell and dispose of real property; exercise the power of eminent domain, and do all things necessary to effectuate the purposes of the act.

The Attorney General has advised that, while it may be argued that providing fire protection within a district makes it necessary to obtain trained fire fighters and that, therefore, training said fire fighters is permissible because the training effectuates the purposes of the act, it nevertheless focuses on the provision of fire protection rather than provision of training those that provide such fire protection service, specific legislative clarification or authorization may be appropriate.

The County Commissioneres would rather exercise specific authority than make assumed permissible expenditures for such training. The county fire districts depend largely upon untrained volunteers and the desirability of educating and training of these volunteers is readily apparent, both for the safety of those endangered and for the safety and efficiency of the fire fighters who volunteer their services in protection of persons and property endangered. The Commissioners believe that these volunteer firemen are rendering a very necessary service in endeavoring to minimize injuries and losses in event of fires and other life-threatening situations.

Thank you for your attention and consideration of this matter.

2-28-81  
Altack, II

# HOUSE BILL No. 2049

By Representatives Schauf and Johnson

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AN ACT concerning emergency medical services; providing for the certification of emergency medical dispatchers; and providing for the administration of the provisions of the act.

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

Section 1. As used in this act:

(a) "Emergency medical service" shall have the meaning ascribed to such term by K.S.A. ~~65-4301~~ *et seq.*, and amendments thereto;

(b) "Emergency medical services ~~council~~" or "~~council~~" shall mean the ~~council~~ established by K.S.A. ~~65-4316~~, and amendments thereto.

(c) "Emergency medical dispatcher" means a person ~~servng~~ as a dispatcher for emergency medical services provided pursuant to K.S.A. ~~65-4302~~, and amendments thereto.

Sec. 2. (a) From and after July 1, 1991, no person shall receive an ~~appointment~~ as an emergency medical dispatcher unless such person has been awarded a certificate attesting to satisfactory completion of a course of instruction approved by the emergency medical services ~~council~~.

(b) Any person serving as a dispatcher for emergency medical services provided pursuant to K.S.A. ~~65-4302~~, and amendments thereto, on July 1, 1991, shall be entitled to certification and ~~may~~ ~~receive~~ ~~an~~ ~~appointment~~ as an emergency medical dispatcher upon making application therefor to the emergency medical services ~~council~~ upon forms prescribed and provided by the ~~council~~ without having completed the required course of instruction.

(c) From and after July 1, 1991, any person who does not hold a certificate as required by subsection (a) may be ~~appointed~~ as an emergency medical dispatcher on a provisional basis for a period of not more than one year. Any person ~~appointed~~ as an emergency

65-6101

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who, as their primary function, ~~serves~~

65-6101 et seq.

employment

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65-6101 et seq.

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employment

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employed

*is employed*

*2-28-91  
Clausen III*



add Section 4 for Civil medical society  
approve written protocol for driver  
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44 medical dispatcher on a provisional basis who does not receive the  
45 certificate required under subsection (a) within one year following  
46 their original appointment shall forfeit such position at the end of  
47 such one-year period and shall not be eligible for appointment on  
48 a provisional basis within one year following the date on which such  
49 person last served as an emergency medical dispatcher. The council  
50 may grant an extension in such one-year period upon a showing that  
51 failure to comply with such requirements was due to circumstances  
52 beyond the control of such person or the person's employer.

employment

employment

board

board

53 Sec. 3. The emergency medical services council shall develop an  
54 emergency medical dispatcher training and certification program.

55 (a) To receive initial certification as an emergency medical dis-  
56 patcher an individual shall:

delete

57 (1) Successfully complete a course of instruction of not more than  
58 ~~24 clock hours~~ prescribed by the council for such purpose;

board

59 (2) be currently certified in cardiopulmonary resuscitation,  
60 through a course approved by the council; and

board

61 (3) successfully pass the written examination adopted by the  
62 council for such purpose.

board

63 (b) To remain certified an individual shall be recertified every  
64 ~~three years~~. To recertify as an emergency medical dispatcher an  
65 individual shall:

certificated

recertificated

recertificate

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66 (1) Make application to the emergency medical services council  
67 on a form prescribed and provided by the council;

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provide evidence of

68 (2) be currently certified in cardiopulmonary resuscitation  
69 through a course approved by the council; and

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70 (3) successfully complete ~~the written examination adopted by the~~  
71 ~~council for such purpose~~

delete and add "a course of continuing education as prescribed and approved by the board"

board

board

72 Sec. 4. The emergency medical services council is hereby au-  
73 thorized to adopt rules and regulations necessary for the adminis-  
74 tration of this act. The council shall by rule and regulation prescribe  
75 fees to be charged persons enrolled in courses of instruction, to  
76 persons taking examinations and to persons making application for  
77 certification or recertification pursuant to this act.

board

add (4)

"If a certificate is not renewed within 30 days after its expiration, such certificate shall be void."

78 Sec. 5. The emergency medical services council may suspend,  
79 revoke or deny the certification of an emergency medical dispatcher  
80 who fails to meet the requirements of this act or has met such

board

81 requirements by falsifying documents or failing to disclose infor-  
82 mation required for certification. The procedure for suspension, re-  
83 vocation and denial of certification shall be established by rules and  
84 regulations of the council.

85 Sec. 6. This act shall take effect and be in force from and after  
86 its publication in the statute book.

board

"No individual who holds a valid certificate under Section 3 for the successful completion of training as an emergency medical dispatcher shall be liable for civil damages as a result of functioning as an emergency medical dispatcher, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such individual."

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Local Government Committee  
Kansas House of Representatives  
HB-2049

Testimony of Larry Blomenkamp, Chief of Police  
Emporia Police Department  
P.O. Box 928  
Emporia, Kansas 66801  
(316) 342-1766

I appear before you today to speak in opposition of HB-2049 as it is presently written. I certainly do not question the need for a well-trained and professional dispatch staff. However, I do question the need for this particular piece of legislation.

The definition of Emergency Medical Dispatcher, I believe, would encompass every law enforcement and fire dispatcher in the state of Kansas. Every police or fire dispatcher will have occasion to receive a request for ambulance transportation or medical assistance. The vast majority of dispatchers in the state of Kansas are employed by local units of government and, although some aspects of their jobs are similar, their duties and responsibilities vary from organization to organization. As a result, most organizations train their dispatchers to fit the needs of their organizations.

The City of Emporia provides a dispatch staff which has the responsibility of dispatching calls for service for police, fire, and ambulance. Therefore, there is no question in my mind that this legislation would be applicable to our organization. I would point out to you that during the past five (5) years, ambulance calls comprised only 7.19% of our total dispatched calls for service.

My opposition to this legislation centers on the following.

At this point in time, we do not know what type of training will be required or if it will be germane to the tasks a particular dispatcher is performing.

The proposed legislation grants authority to charge fees of unspecified amounts.

The legislation mandates testing for certification which may require dispatchers to travel to other cities for purposes of obtaining the prescribed twenty-four (24) hours of training and to be tested. Due to the shortage of personnel, most organizations are required to pay overtime for dispatcher training, as training cannot be accomplished while on duty. The additional training prescribed by this legislation may be of minimal value to most agencies and will only add financial burdens on local government and prohibit training which is needed by dispatchers to efficiently and effectively perform their duties.

If this legislation were enacted, local governments would, to a large extent, lose control over their own employees as the power to suspend, revoke, or deny certification of dispatchers would be in the hands of the Emergency Medical Services Board.

*ju*  
2-28-81  
C. L. Ash, IV

I believe you should also consider the fact that this legislation would not only add additional financial burdens to local governments, but most probably would also add employees to the state payroll in the form of instructors, people to administer the tests, and clerical personnel to maintain the central registry of qualified and unqualified dispatchers.

I believe our dispatch staff to be one of the most professional and best trained in the state. They are burdened with an ever increasing workload and faced with the task of learning to operate an increasing number of electronic communication devices which are becoming more sophisticated each year. As written, I believe this legislation will needlessly add to the dispatchers' workload, create expensive bureaucracy, and add potential liability for fire districts, cities, and counties.

Thank you for allowing me this opportunity to address the committee and for your kind consideration of this matter.

# HOUSE BILL No. 2079

By Committee on Local Government

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2-28-89  
Attack V

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AN ACT concerning emergency medical services; relating to limitations on certain liability; relating to persons providing emergency care; amending K.S.A. 1988 Supp. 65-6124 and 65-6135 and repealing the existing sections.

65-2891,

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

Section 1. K.S.A. 1988 Supp. 65-6124 is hereby amended to read as follows: 65-6124. (a) No person licensed to practice medicine and surgery or registered professional nurse, who gives emergency instructions to a mobile intensive care technician, *emergency medical technician-defibrillator* or emergency medical technician-intermediate during an emergency, shall be liable for any civil damages as a result of issuing the instructions, except such damages which may result from gross negligence in giving such instructions.

(b) No mobile intensive care technician or emergency medical technician-intermediate who renders emergency care during an emergency pursuant to instructions given by a person licensed to practice medicine and surgery or a registered professional nurse shall be liable for civil damages as a result of implementing such instructions, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such mobile intensive care technician or emergency medical technician-intermediate rendering such emergency care.

(c) *No attendant who renders emergency care shall be liable for civil damages as a result of rendering such emergency care, except for such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of the attendant rendering such care.*

(e) (d) No person certified as an instructor-coordinator shall be liable for any civil damages which may result from such instructor-

2-28-89  
Attack V

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45 coordinator's course of instruction, except such damages which may  
46 result from gross negligence or by willful or wanton acts or omissions  
47 on the part of the instructor-coordinator.

48 (e) No person licensed to practice medicine and surgery or reg-  
49 istered professional nurse who gives instruction to an attendant while  
50 ~~they are~~ a student during an approved course of instruction shall  
51 be liable for any civil damages as a result of giving such instruction,  
52 except such damages which may result from gross negligence or by  
53 willful or wanton acts or omissions on the part of the person licensed  
54 to practice medicine and surgery or registered professional nurse  
55 who gives instruction.

the attendant is

56 (d) (f) No medical adviser who reviews, approves and monitors  
57 the activities of attendants shall be liable for any civil damages as a  
58 result of such review, approval or monitoring, except such damages  
59 which may result from gross negligence in such review, approval or  
60 monitoring.

61 Sec. 2. K.S.A. 1988 Supp. 65-6135 is hereby amended to read  
62 as follows: 65-6135. (a) All ambulance services providing emergency  
63 care as defined by the rules and regulations adopted by the board  
64 shall offer service 24 hours per day every day of the year.

65 (b) Whenever an operator is required to have a permit, at least  
66 one person on each vehicle providing emergency medical service  
67 shall be an attendant certified as an emergency medical technician,  
68 *emergency medical technician-intermediate, emergency medical tech-*  
69 *nician-defibrillator* or a mobile intensive care technician, a person  
70 licensed to practice medicine and surgery, a registered physician's  
71 assistant or a registered professional nurse.

Sec. 3. K.S.A. 1988 Supp. 65-2891, attached.

72 Sec. ~~2~~ K.S.A. 1988 Supp. ~~65-6124~~ and 65-6135 are hereby  
73 repealed.

65-2891,

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

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Kansas register

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Sec. 3. K.S.A. 1988 Supp. 65-2891 is hereby amended to read as follows: 65-2891. (a) Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein contained notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or

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hospital with or without compensation.

(e) As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist and registered physical therapist, and any physician's assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, ~~any person who holds a valid attendant's certificate under K.S.A. 1988 Supp. 65-6129 and amendments thereto,~~ any person who holds a valid certificate for the successful completion of a course in first aid offered by the American red cross, by the American heart association or by the mining enforcement and safety administration of the bureau of mines of the department of interior and any person engaged in a postgraduate training program approved by the state board of healing arts.



SUMMARY OF TESTIMONY

Before the House Committee on Local Government

February 28, 1989

Presented by the Kansas Highway Patrol

(Lieutenant William Jacobs)

Appeared in Support of House Bill 2079

The Kansas Highway Patrol supports House Bill 2079. House Bill 2079 contains an amendment which corrects a serious fallacy in the "Kansas Good Samaritan Law".

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 by provisions of the "Kansas Good Samaritan Law" when they are on duty.

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 "Good Samaritan Law" was last amended and passed. The proposed language in House Bill 2079 would correct the situation which resulted from the court's decision. The proposed legislation in House Bill 2079 would 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, under the umbrella of the "Good Samaritan Laws" of Kansas.

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 2079.

2-28-89  
Attack IV

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 RICHARD H. MASON, Executive Director



# KANSAS TRIAL LAWYERS ASSOCIATION

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

## TESTIMONY OF THE KANSAS TRIAL LAWYERS ASSOCIATION

HB 2079

before the House Committee on Local Government

February 28, 1989

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 MICHAEL L. HODGES, Overland Park  
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 N. M. IVERSON, Jr., Arkansas City  
 ARVID "VIC" JACOBSON, Junction City  
 SUSAN C. JACOBSON, Junction City  
 DAVID JAMPOURSKY, Overland Park  
 ERIC K. JOHNSON, Topeka  
 CORRAC J. JOHNSTON, Wichita  
 KELLY WILLIAM JOHNSTON, Wichita  
 JOHN F. JONES II, Newton  
 ROBERT S. JONES, Salina  
 GARY L. JORDAN, Olathe  
 JAMES G. KAHLER, Lyons  
 ALBERT L. KAMAS, Wichita  
 ELIZABETH KARLAN, Overland Park  
 ROBERT E. KEESHAN, Topeka  
 TOM KELLEY, Topeka  
 E. LEE KINCH, Wichita  
 RUBEN JORGE KRISZTAL, Overland Park  
 SHANNON KRYSL, Wichita  
 PETER D. KUGLER, Kansas City  
 GERALD D. LASSWELL, Wichita  
 ROBERT R. LEE, Wichita  
 ROBERT R. LEVY, Topeka  
 S. W. LONGAN III, Overland Park  
 MIKE LOVIEY, Topeka  
 GEORGE E. MALLON, Kansas City  
 J. PAUL MAURIN, Kansas City  
 DAVID L. MCCLANE, Kansas City  
 CALVIN McMILLAN, Wichita  
 C. A. MENCHINI, Pittsburg  
 GERALD L. MICHAUD, Wichita  
 PATRICK MICHAUD, Wichita  
 DAVID R. MORRIS, Overland Park  
 ROBERT M. MURPHY, Topeka  
 DIANE A. NYGAARD, Overland Park  
 BARRY R. PALMER, Topeka  
 FREDERICK J. PATTON III, Topeka  
 TIMOTHY PICKELL, Westwood  
 JUDY POPE, Topeka  
 RONALD POPE, Topeka  
 BLAKE A. POST, Topeka  
 BRADLEY R. POST, Wichita  
 BRADLEY J. PROCHASKA, Wichita  
 EUGENE RALSTON, Topeka  
 RANDALL H. RATHBUN, Wichita  
 GORDON M. ROCK, Jr., Olathe  
 JOHN W. RUSSELL, Great Bend  
 MARK J. SACHSE, Kansas City  
 THOMAS H. SACHSE, Olathe  
 RICHARD SANBORN, Wichita  
 GENE E. SCHROEDER, Topeka  
 S. A. SOMECA, Wichita  
 GERALD W. SCOTT, Wichita  
 K. GARY SEBELIUS, Topeka  
 MICHAEL I. SEXTON, Kansas City  
 JOHN ELLIOTT SHAWBERG, Overland Park  
 JAMES W. SHELLEY, Kansas City  
 KAREN L. SHELOR, Overland Park  
 JAMES R. SHELTON, Overland Park  
 TIMOTHY SHORT, Pittsburg  
 CRAIG SHULTZ, Wichita  
 DONALD E. SHULTZ, Dodge City  
 JACK W. SHULTZ, Dodge City  
 MICHAEL J. SILVER, Wichita  
 RALPH E. SKOOG, Topeka  
 DALE J. SMITH, Overland Park  
 BROOK R. SNYDER, Topeka  
 FRED SPICARELLI, Topeka  
 DIANNA K. STARLETON, Kansas City  
 DANIEL J. STRAUSSAUGH, Overland Park  
 W. WILLIAM SYRROS, Wichita  
 CHRISTINE TAMBURINI, Wichita  
 LEE H. TETWILER, Padia  
 JAY THOMAS, Overland Park  
 ROBERT TILTON, Topeka  
 DAVID P. TROUP, Junction City  
 PHILIP W. UNRUH, Hargreaves  
 DONALD W. VASOS, Kansas City  
 ARTIE E. VALGREN, Wichita  
 JOHN V. VACHTEL, Wichita  
 MICHAEL WALLACE, Overland Park  
 WES WEATHERS, Topeka  
 ROBERT V. WELLS, Kansas City  
 SAMUEL WELLS, Kansas City  
 D. W. WHEELER, Manion  
 BRADFORD WILLIAMS, Kingman  
 STEVEN R. WILSON, Wichita  
 T. MICHAEL WILSON, Wichita  
 W. FREDRICK ZIMMERMAN, Kansas City  
 JAMES B. ZONGKER, Wichita

Mr. Chairman and members of the House Committee on Local Government, I am Bob Frey and I am appearing today on behalf of the Kansas Trial Lawyers Association in opposition to HB 2079. Technically, we oppose the bill, but in reality we simply feel that there is a better way to address the question of limitation of liability for persons who are certified as EMT-Defibrillator rather than giving the broad immunity that is represented in HB 2079.

Our primary concern is with subsection (c) of Section 1. of the bill. It reads as follows:

(c) No attendant who renders emergency care shall be liable for civil damages as a result of rendering such emergency care, except for such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of the attendant rendering such care.

We feel that this exemption is much too broad and grants immunity where there is no justified need. It is true that most people probably would like to be immune from liability for damages that they negligently cause others to suffer. That is only human nature. The fact is, however, that most people who are receiving medical services, whether from an EMT, nurse, doctor or chiropractor, expect that they will receive competent treatment which is delivered according to the best medical standards existing at the time and in accordance with medically accepted standards in the community. That is what they are paying for and they expect that the person rendering the service will do the best they can to deliver those services.

If immunity is granted by statute to those professional health care givers, the incentive to maintain the high standards of the profession is substantially diminished. No longer is the EMT under any obligation to be extra careful to do the job in the manner that is called for under the circumstances of the situation. Instead, the standard is lowered to one of "don't do anything deliberately to hurt the person".

We suggest that the committee delete Section 1. of the bill. We also suggest that the committee adopt HB 2429 with the amendments suggested by KTLA on that bill. I have attached 2-28 copies of our suggested amendments for your consideration. Attach 7

HOUSE BILL No. 2079

By Committee on Local Government

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AN ACT concerning emergency medical services; ~~relating to limitations on certain liability,~~ relating to persons providing emergency care; amending K.S.A. 1988 Supp. ~~65-6124 and~~ 65-6135 and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 65-6124 is hereby amended to read as follows: 65-6124. (a) No person licensed to practice medicine and surgery or registered professional nurse, who gives emergency instructions to a mobile intensive care technician, ~~emergency medical technician-defibrillator~~ or emergency medical technician-intermediate during an emergency, shall be liable for any civil damages as a result of issuing the instructions, except such damages which may result from gross negligence in giving such instructions.

(b) No mobile intensive care technician or emergency medical technician-intermediate who renders emergency care during an emergency pursuant to instructions given by a person licensed to practice medicine and surgery or a registered professional nurse shall be liable for civil damages as a result of implementing such instructions, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such mobile intensive care technician or emergency medical technician-intermediate rendering such emergency care.

(c) No attendant who renders emergency care shall be liable for civil damages as a result of rendering such emergency care, except for such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of the attendant rendering such care.

(e) (d) No person certified as an instructor-coordinator shall be liable for any civil damages which may result from such instructor-

45 coordinator's course of instruction, except such damages which may  
46 result from gross negligence or by willful or wanton acts or omissions  
47 on the part of the instructor-coordinator.

48 (e) No person licensed to practice medicine and surgery or reg-  
49 istered professional nurse who gives instruction to an attendant while  
50 they are a student during an approved course of instruction shall  
51 be liable for any civil damages as a result of giving such instruction,  
52 except such damages which may result from gross negligence or by  
53 willful or wanton acts or omissions on the part of the person licensed  
54 to practice medicine and surgery or registered professional nurse  
55 who gives instruction.

56 (d) (f) No medical adviser who reviews, approves and monitors  
57 the activities of attendants shall be liable for any civil damages as a  
58 result of such review, approval or monitoring, except such damages  
59 which may result from gross negligence in such review, approval or  
60 monitoring.

61 Sec. ~~2.~~ K.S.A. 1988 Supp. 65-6135 is hereby amended to read  
62 as follows: 65-6135. (a) All ambulance services providing emergency  
63 care as defined by the rules and regulations adopted by the board  
64 shall offer service 24 hours per day every day of the year.

65 (b) Whenever an operator is required to have a permit, at least  
66 one person on each vehicle providing emergency medical service  
67 shall be an attendant certified as an emergency medical technician,  
68 emergency medical technician-intermediate, emergency medical tech-  
69 nician-defibrillator or a mobile intensive care technician, a person  
70 licensed to practice medicine and surgery, a registered physician's  
71 assistant or a registered professional nurse.

72 Sec. ~~2.~~ K.S.A. 1988 Supp. ~~65-6124 and~~ 65-6135 ~~are~~ hereby  
73 repealed.

74 Sec. ~~4.3.~~ This act shall take effect and be in force from and after  
75 its publication in the statute book.

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# HOUSE BILL No. 2429

By Committee on Local Government

2-15

AN ACT concerning emergency care and assistance at the scene of an emergency or accident; amending K.S.A. 1988 Supp. 65-2891 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 65-2891 is hereby amended to read as follows: 65-2891. (a) Any health care provider who in good faith renders emergency care or assistance, ~~with or without compensation,~~ at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned

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44 by negligence.

45 (d) Any provision herein contained notwithstanding, the ordinary  
46 standards of care and rules of negligence shall apply in those cases  
47 wherein emergency care and assistance is rendered in any physician's  
48 or dentist's office, clinic, emergency room or hospital with or without  
49 compensation.

50 (e) As used in this section the term "health care provider" means  
51 any person licensed to practice any branch of the healing arts, li-  
52 censed dentist, licensed optometrist, licensed professional nurse, li-  
53 censed practical nurse, licensed podiatrist, licensed pharmacist and  
54 registered physical therapist, and any physician's assistant who has  
55 successfully completed an American medical association approved  
56 training program and has successfully completed the national board  
57 examination for physicians' assistants of the American board of med-  
58 ical examiners, any person who holds a valid attendant's certificate  
59 under K.S.A. 1988 Supp. 65-6129 and amendments thereto, any  
60 person who holds a valid certificate for the successful completion of  
61 a course in first aid offered by the American red cross, by the  
62 American heart association or by the mining enforcement and safety  
63 administration of the bureau of mines of the department of interior  
64 and any person engaged in a postgraduate training program approved  
65 by the state board of healing arts.

66 Sec. 2. K.S.A. 1988 Supp. 65-2891 is hereby repealed.

67 Sec. 3. This act shall take effect and be in force from and after  
68 its publication in the Kansas register.