

Approved

2-7-90

Date

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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at
Chairperson

1:30 a.m. on February 6, 1990 in room 423-S of the Capitol.

All members were present except:

Representative Jessie Branson, excused

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norman Furse, Revisor
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Loren Phillips, Ph.D., State Registrar, Department of Health/Environment
Dr. Phil Ernzen, President of Ks. State Board of Examiners in Optometry
Gary Robbins, Executive Director of Kansas Optometric Association
Pete McGill, McGill and Associates
Franklin D. Rozak, V. President of Government Relations for
Cole Vision Corporation

Chairman called meeting to order, drawing attention to a bill request before this committee. He invited Staff member, Revisor, Mr. Furse to give a briefing on this draft, (see Attachment No. 1)

Mr. Furse noted Local Health Departments find they will not be getting funds as they did in 1989, so this legislation will grant each Health Department which applies for state financial assistance under this act will receive, during the next fiscal year following such application an amount of money equal to what was received during 1989, for the 1990 fiscal year only. He detailed language insertions, and changes, noting the fiscal year as defined by County law. He noted this legislation was brought out by Representatives Hamm and Littlejohn.

Rep. Buehler moved this bill draft be introduced as a committee bill, seconded by Rep. Amos, motion carried.

HEARINGS BEGAN ON HB 2756.

Loren Phillips, State Registrar, and Director of Information Systems, Department of Health and Environment offered hand-out, (see Attachment No. 2). He noted HB 2756 is being introduced to eliminate reference to local registrars; to clarify language in K.S.A. 65-2409 with regard to determination of parentage and to eliminate reference to burial permits in K.S.A. 65-2414, since the in-state burial permits were abolished in 1982. In 1988, HB 2715 was proposed to abolish the local registrar position by this committee, and decision was made to allow that bill to die in committee, since it was felt the State Registrar had the authority to pursue direct reporting without legislative action. A court case resulted, but since has been dismissed, and the Kansas City Clerk has agreed to support the proposed legislation. He detailed the procedures they will follow with the new optical disk system being installed that will automate the processing of vital records and the issuance of certified copies. He noted further, since the purpose of the local registrar no longer exists and records are now being transmitted directly to the Office of Vital Statistics from the funeral homes and hospitals, and recommended changes to Statutes clarify current language, and eliminate obsolete language, he would recommend favorable consideration of HB 2756.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 1:30 a.m./p.m. on February 6, 1990

HEARINGS CONTINUED ON HB 2756.

Mr. Phillips answered numerous questions, i.e., outlining the entire process of receipt of birth/death information and that after all systems are in place it will take only seconds to process, not days; he noted the issue of fraudulent use of this information will be stopped; data provided to schools would be for statistical purposes only, no confidential information can be given out; information for immigrants would not be available since they were not Kansas born; only aggregate data is released for statistical purposes; yes, there could be some money saved at the County level.

Jim Snyder, Kansas Funeral Directors Association gave their support to HB 2756. No questions.

HEARINGS CLOSED ON HB 2756.

HEARINGS BEGAN ON HB 2630.

Phil Ernzen, President of the Kansas State Board of Examiners in Optometry, (Attachment No.3) spoke in support of HB 2630. He noted they have worked with Joint Committee over the past three years seeking to update rules and regulations. HB 2630 will allow additional flexibility by the State Board in regard to revocation/suspension/disciplinary matters; will also be given ability to put limitations on licensure and to publicly or privately censure a licensee for wrongful acts; will address problems related to administering license renewals, (such as changing renewal date from May 1 to June 1); will allow for penalty fees for delinquent renewals; increase license fees to a level consistent with other regulatory boards. He asked for favorable consideration. No questions.

Gary Robbins, Executive Director of Kansas Optometric Association gave hand-out, (Attachment No.4). He spoke to the technical changes, i.e., deletion of "this act", inserting in lieu thereof, "the optometry law" throughout the bill; major change in the law in new Section 12, Page 11, which defines professional incompetence/unprofessional conduct; updated language for grounds for discipline in Section 13. He offered two amendments, i.e., deletion of sub-section "o" on Page 14, and on Page 16 under new Section 18, (d) add language, "exclusive of practice in governmental institutions". He noted section 18 changes are modeled after the dental law as recommended by the Joint Committee on Rules and Regulations. He asked for support of HB 2630. No questions.

Chair introduced the former Speaker, Pete McGill.

Pete McGill, McGill & Associates, appearing on behalf of Cole Vision Corporation, Pearle Vision Centers, and Precision Lens Crafters, (see Attachment No. 5), spoke to HB 2630. He expressed concerns about certain provision that may affect the business practices of these companies in Kansas. He noted they have no basic problem with the thrust of HB 2630, with certain exceptions, where improper interpretation or unintended result could perhaps adversely affect the business operation of these companies. He then introduce Mr. Rozak who would speak to HB 2630 as well.

Frank Rozak, Vice President of Government Relations for Cole Vision Corporation (Attachment No.6.) noted they favor this bill with exceptions, i.e., false advertisement and advertisement language in the bill appears to include optical advertising by non-optometrists. He recommended "by a licensee" be inserted on line 26 before the word "which", and on line 33 after "advertisement". He noted concerns with the word "maintains" in line 13, and recommends the use of "conducts" or "operates" be used instead. It appears inconsistent that optometric reciprocity exists in subpart (e) and then to require the applicant to pass two

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,

room 423-S Statehouse, at 1:30 a.m./p.m. on February 6, 1920.

separate examinations in order to practice in Kansas. He recommended deletion of subpart (e) (3) to remedy this situation. He noted concerns in regard to negligence on Page 11, lines 14-17. The phrase, "as determined by the board", is a problem and they submit both forms of negligence i.e., gross/ordinary should not be placed within the jurisdiction of the Optometry Board. He urged for the deletion of New Section 12 (b) (18) dealing with unprofessional conduct and New Section 18 (e) be deleted. He answered numerous questions, i.e., concerns with false advertising, how do you define false advertising; he noted he is not interested in changes that would hurt one group and help another, that is not their purpose; there was a long discussion on reciprocity; on examinations required for licensure.

Questions were asked also at this time of both Mr. Rozak and Mr. Ernzen, i.e., in Kansas both the clinical and law exams are given to those seeing licensure in Optometry as a way to check the clinical skills of the applicant; there currently is no prohibition of franchising in Kansas law; it was noted you cannot franchise a practice because it is the individual who is licensed, not the practice; it was suggested committee may want to look at the Dental Practice Act for the parallels as suggested; the proposed bill does not regulate anyone but the Optometrist.

HEARINGS CLOSED ON HB 2630.

Meeting adjourned 3:00 p.m.

VISITOR REGISTER

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-6-90

| NAME | ORGANIZATION | ADDRESS |
|-------------------|--|---------|
| PHIL ERNZEN | ST BOARD OF OPTOMETRY | |
| MIKE MILBONE | KOA | |
| MARK NORDYKE | Optician Ass. of Kansas | |
| Loren Shaw | " " " | |
| CARY Robbins | Ks Opt. Assn | |
| Jim Vonalky | " " " | |
| Charyne Satzler | Dept. of Health + Env. | |
| John H. [unclear] | KDHQ | |
| JERRY [unclear] | KMS | |
| Bob Williams | Ks. Pharmacists Assn. | |
| JIM Snyder | KFDA | |
| ALAN COBB | Ks Resp. Care Soc. | |
| Linton Bartlett | City of Kansas City, Ks | RCK |
| John [unclear] | Optician Assn. of Ks | |
| KEITH R LANDIS | CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS | TOPEKA |
| Rebecca Rice | Amoco | Topeka |
| James W. Bloomer | Optician Assn. of Kansas | Topeka |
| Jim Sullinger | KC STAR | KC |
| Chip Wheelan | Ks Medical Soc. | Topeka |
| John Miller | Colo. Union | Topeka |
| STEVE KEANEY | " " | TOPEKA |
| | | |
| | | |

HOUSE BILL NO. _____

By

AN ACT concerning state financial assistance to local health departments; relating to the computation thereof; amending K.S.A. 65-242, 65-243, 65-244 and 65-245 and repealing the existing sections.

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

Section 1. K.S.A. 65-242 is hereby amended to read as follows: 65-242. (a) For the purpose of insuring that adequate public health services are available to all inhabitants of the state of Kansas, the state shall participate ~~from and after January 17, 1987~~ in the financing of the operation of local health departments. Subject to appropriations therefor, each local health department which applies for state financial assistance under this act shall receive during the next fiscal year following such application an amount of money equal to the amount of money which the local health department ~~receives~~ will receive during the next fiscal year following such application from local tax revenues ~~and from federal revenue sharing funds~~ except that for fiscal year 1990 only, each local health department which receives less money from local tax revenues during fiscal year 1990 than such local health department received during fiscal year 1989 shall be deemed to have received for the purpose of state financial assistance the same amount of local tax revenues during fiscal year 1990 that such local health department received during fiscal year 1989, ~~except~~ that state financial assistance to any one local health department shall not exceed (1) an amount equal to \$.75 multiplied by the number equal to the population of the county, if the local health department is a county or city-county department of health, or counties, if the local health department is a multicounty department of health, in which the local health department is located or (2) an

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Attn #1

amount equal to \$7,000, if the local health department is a county or city-county department of health, or \$7,000 multiplied by a number equal to the number of counties in which the local health department is located, if the local health department is a multicounty department of health, whichever amount computed under (a)(1) or (a)(2) is the larger amount.

(b) Notwithstanding any limitation placed by subsection (a) on the amount of state financial assistance which any one local health department may receive, if any money remains after the first computation of state financial assistance under subsection (a) or if any money appropriated for state financial assistance remains unencumbered at the end of the fiscal year, such money shall be distributed to each local health department which ~~will~~ receive received state financial assistance under subsection (a) during that fiscal year in proportion that the number equal to the population of the county, if the local health department is a county or city-county department of health, or counties, if the local health department is a multicounty department of health, in which the local health department is located bears to the total population of all counties in which local health departments which will receive state financial assistance under subsection (a) are located.

(c) If the amount of money appropriated for state financial assistance under subsection (a) of this section is not adequate to provide each local health department which applies for state financial assistance with the maximum amount of state financial assistance the local health department is eligible to receive under subsection (a) during the fiscal year, the secretary shall prorate the money appropriated for such purpose among all local health departments applying for such financial assistance in proportion that the amount of state financial assistance each such local health department would have received if the amount of money appropriated for state financial assistance under subsection (a) had been adequate to provide each such local health department with the maximum amount of state financial assistance the local health department was eligible to receive

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under subsection (a) during the fiscal year bears to the total amount of money which would need to be appropriated under subsection (a) to provide all such local health departments with the maximum amount of state financial assistance the local health departments were eligible to receive under subsection (a) during the fiscal year.

Sec. 2. K.S.A. 65-243 is hereby amended to read as follows:
65-243. (a) The governing board of any local health department may apply for the financial assistance provided under K.S.A. 65-242, by submitting annually to the secretary the budget of the local health department for the fiscal year immediately following the date the budget is submitted showing the amount of money the local health department will receive from local tax revenues and from the federal revenue sharing fund and such other information as the secretary may require.

(b) The secretary shall use official state population figures based upon population figures available from the United States bureau of the census to determine the population of counties for computing state financial assistance under K.S.A. 65-242 and amendments thereto.

(c) The secretary may adopt rules and regulations necessary for the administration of this act.

Sec. 3. K.S.A. 65-244 is hereby amended to read as follows:
65-244. (a) State financial assistance shall be computed and paid on a fiscal year basis as the term "fiscal year" is defined under K.S.A. 65-241 and amendments thereto. Prior to the beginning of each fiscal year and after review of the annual budget submitted under K.S.A. 65-243 and amendments thereto, the secretary shall determine the amount of state financial assistance due during such fiscal year to each local health department which has applied for such financial assistance.

(b) The state financial assistance due to each local health department applying therefor shall be paid in four quarterly installments. The moneys received in any quarter may be used at any time during the year. Installments shall be paid as follows:
January 1 for the quarter beginning January 1 and ending March

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31; April 1 for the quarter beginning April 1 and ending June 30; July 1 for the quarter beginning July 1 and ending September 30; and October 1 for the quarter beginning October 1 and ending December 31.

(c) The secretary shall certify to the director of accounts and reports the total amount of state financial assistance due each quarter to each local health department which has applied for such financial assistance. The director of accounts and reports shall draw warrants on the state treasurer payable to the governing board of each such local health department upon vouchers executed as provided by law and approved by the secretary.

Sec. 4. K.S.A. 65-245 is hereby amended to read as follows: 65-245. In the event any local health department is paid more than it is entitled to receive during any one fiscal year under any distribution made under this act, the secretary shall notify the governing board of the local health department of the amount of such overpayment, and such governing board shall remit the same to the secretary. The secretary shall remit any moneys so received to the state treasurer, and the state treasurer shall deposit the same in the state treasury. If any such governing board fails to remit, the secretary shall deduct the excess amount paid from future payments becoming due to such local health department. In the event any local health department is paid less than the amount to which it is entitled under any distribution made under this act during any one fiscal year, the secretary shall pay the additional amount due at any time within the fiscal year in which the underpayment was made or within 60 days after the end of such fiscal year.

Sec. 5. K.S.A. 65-242, 65-243, 65-244 and 65-245 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

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Attn. #1.
pg. 4.



State of Kansas

Mike Hayden, Governor

Department of Health and Environment Division of Information Systems

Landon State Office Bldg., Topeka, KS 66612-1290

(913) 296-1415

FAX (913) 296-6231

Stanley C. Grant, Ph.D., Secretary

Testimony presented to the
House Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

House Bill 2756

H.B. 2756 is being introduced to (1) eliminate reference to local registrars; (2) clarify language in K.S.A. 65-2409 with regard to determination of parentage and (3) eliminate reference to burial permits in K.S.A. 65-2414 since the in-state burial permits were abolished in 1982.

With regard to eliminating reference to local registrars, it should be noted that the role and function of the local registrar originally was to assist the State Registrar in the collection of birth, death and stillbirth records. When the vital statistics system was established in 1911, there were over 600 local registrars. Over time, the number of local registrars was decreased as the ability to collect and transmit records improved. In 1986 there were 143 local registrars.

During the 1986 Legislative Session, the House Governmental Organization Committee made a number of recommendations designed to improve the efficiency of the Office of Vital Statistics. The Committee recommended that the number of local registrars be reduced to no more than one per county and that serious consideration be given to a direct reporting system to allow vital records to be transmitted directly to the Office of Vital Statistics from the originating institution rather than through a local registrar.

The Office of Vital Statistics complied with this directive by decreasing the number of local registrars and by initiating a direct reporting pilot project. The pilot project accomplished the anticipated goals with no negative ramifications.

During the 1988 Legislative Session H.B. 2715 was proposed to abolish the local registrar position by the House Public Health and Welfare Committee. A hearing was held by the House Public Health and Welfare Committee after which a decision was made to allow the bill to die since it was felt the State Registrar had the authority to pursue direct reporting without legislative action.

In October, 1989 all 105 counties became direct reporting counties to facilitate the implementation of an electronic birth certificate system across the state; however, the Department's authority to eliminate the local registrar position

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Testimony--House Bill No. 2756--February 6, 1990

without legislation was challenged in court by the City Clerk (former local registrar) in Kansas City, Kansas. The court case has been dismissed and the Kansas City, Kansas City Clerk has agreed to support the proposed legislation.

The Office of Vital Statistics is currently implementing an electronic birth certificate (EBC) system in hospitals across the state. EBC allows the hospital to transmit the birth certificate data electronically via either floppy disk, modem, or the Kansas Data Network. Currently there are 20 hospitals reporting births electronically representing approximately 64% of all births occurring in the State of Kansas. It is anticipated that 80% of all births will be reported electronically by the time all installations are completed.

An optical disk system is also being installed and implemented that will completely automate the processing of the vital records and the issuance of certified copies.

The automation of vital statistics and direct reporting will provide Kansas with the most efficient, expeditious system/service possible. In addition, the system will eliminate redundancy and speed up the process. The internal edits in the EBC system alone have reduced the number of errors found on incoming records from 30% to approximately 4%. With an automated system it would be inefficient and redundant to have vital records routed through a local registrar.

Statewide direct reporting will also impact on and decrease the extent of fraud activities associated with the illegal issuance of birth and death information.

It should also be noted that local registrars initially assisted with the registration of home births and the preparation of burial permits. Today home births represent a very small percentage of total births (less than .3 of 1%) and in-state burial permits were eliminated in 1982. Today the only time a burial permit is required is if the body is being transported out-of-state and those permits are now issued by the funeral director.

In the case of home births, local health departments assist in the preparation of birth certificates. This arrangement promises a better, more accurate birth certificate since health professionals are better able to determine what types of information should be recorded. In addition, this system promotes access to health services due to the contact with the local health department that results in better health care for both the infant and the mother.

Contingent upon funding, the final phase of the Vital Statistics automation effort includes plans to implement the local issuance of vital records on a regional basis across the State of Kansas. We propose to implement issuance services in the KDHE district offices located in Salina, Hays, Wichita, Chanute and Dodge City and in the City Clerk's office in Kansas City, Kansas. We anticipate implementation of the final phase at the time all birth records back to 1911 are converted to the optical disk system and funding is available.

Language in K.S.A. 65-2409 with regard to legal definition of father of child currently reads "at the time of conception or birth" which is interpreted to be "at the time of conception or birth or anytime in between" as the mother could conceivably be unmarried at the time of conception and at the time of birth

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Attn # 2.
pg 2.

Testimony--House Bill 2756--February 6, 1990

and have been married "sometime in between". The recommended change will simply clarify the language and make it consistent with the interpretation.

Since the in-state burial permit was eliminated in 1982, the proposed change to K.S.A. 65-2414 would simply remove language referencing the permit.

In summary, since the purpose and function of the local registrar no longer exists and records are now being transmitted directly to the Office of Vital Statistics from the funeral homes and hospitals and the recommended changes to K.S.A. 65-2409 and 65-2414 simply clarify current language or eliminate obsolete language, we recommend passage of H.B. 2756. Passage of H.B. 2756 will allow the Vital Statistics system to operate at the most efficient, effective level possible which in turn will allow the most expeditious service possible to the citizens of Kansas.

Testimony presented by: Dr. Lorne A. Phillips
State Registrar
Office of Vital Statistics
Division of Information Systems
February 6, 1990

Phillips
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Attn. # 2.
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PUBLIC HEALTH AND WELFARE COMMITTEE

TESTIMONY ON H.B. 2630

FEBRUARY 6, 1990

My name is Phil Ernzen. I am an optometrist in private practice in Wichita, Kansas. I serve as President of the Kansas State Board of Examiners in Optometry. Our Board administers the Kansas State optometry law. We issue licenses to optometrists after they have successfully passed an examination administered by the Board. There are currently over 400 persons licensed to practice optometry in Kansas.

It is also the responsibility of the Board to enforce the optometry law as set out by state statutes. Our jurisdiction is over the licensed optometrists in the state of Kansas and not unlicensed individuals.

Optometrists are health care providers whose primary concern is the patient's ocular health and well being. After college, optometrists attend a four-year doctoral program with intensive clinical training in the detection and treatment of eye disease.

I am here to testify today in support of House Bill 2630. Since last fall, we have been working with the members of the Joint Committee on Rules and Regulations and Legislative staff in a cooperative effort to develop House Bill 2630. Our Board has been working with the Joint Committee over the past three years seeking to update our rules and regulations.

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attm. # 3*

We strongly support House Bill 2630 as a means to revise the Kansas Optometry Law. We recognize the need to conform to currently accepted terminology and to a format consistent with other licensing acts. We see this bill primarily as a means for making technical changes, a method to replace outdated language in our current law, and improved administration of our law.

We welcome the changes presented in this bill which allows for additional flexibility by the State Board in that we will no longer be limited to revocation or suspension in disciplinary matters. House Bill 2630 will give us the ability to put limitations on licensure and to publicly or privately censure a licensee for wrongful acts.

This bill will help us address certain problems that the Board currently faces in administering license renewals such as a change in the renewal date from May 1 to June 1, and will allow for penalty fees for delinquent renewals similar to other state licensing boards. It also better organizes our unlawful acts section and further defines grounds for disciplinary action consistent with other practice acts.

This bill will also allow our Board the ability to increase our licensing fees to a level consistent with other regulatory boards to cover increasing costs. We have been at or near our \$75 maximum fee for several years.

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We thank this committee for its efforts on behalf of the Kansas Optometry Law and look forward to working with the Legislature and staff on these revisions.

Thank you.

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KANSAS OPTOMETRIC ASSOCIATION
TESTIMONY ON HOUSE BILL 2630
BEFORE THE
HOUSE PUBLIC HEALTH & WELFARE COMMITTEE
February 6, 1990

It is a pleasure to appear before the House Public Health and Welfare Committee on House Bill 2630. I am Gary Robbins, Executive Director of the Kansas Optometric Association. I am appearing in support of House Bill 2630. This legislation is a result of the hard work of the Joint Committee on Rules and Regulations during the interim session. At three interim meetings, the committee devoted time to the review of the optometry law. I want to thank Chairman Buehler and the other members of the Joint Committee for their cooperation and input.

Many of the changes in House Bill 2630 are of a technical nature. An example would be the deletion of the phrase "this act" and the insertion of "the optometry law" in numerous sections. There were also areas in the law that contained language which required reorganization and others which were simply outdated. In 1987 and again in 1989, the Joint Committee on Rules and Regulations noted that our law allowed for a code of ethics rather than a section on unprofessional conduct. The major change in this law is a new Section 12, on Page 11 which defines professional incompetence and unprofessional conduct.

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Attn # 4*

The majority of this section was modeled after the healing arts statute. We also updated the grounds for discipline in Section 13 which is modeled after the healing arts act as well. The references to intemperance and moral turpitude have been deleted and replaced by newer language.

We wish to offer two minor amendments to House Bill 2630. The first is the deletion of sub-section "o" on Page 14, Lines 13-15. In December, the Joint Committee noted that there were two other sections regarding controlled substances already in new Section 13 which makes sub-section "o" unnecessary. There are already references to controlled substances in sub-section "e" and sub-section "p." The second amendment which we wish to offer is located on Page 16 under new Section 18, sub-section "d." In preparing this language at the request of a member of the Joint Committee on Rules and Regulations, we omitted the phrase "exclusive of practice in governmental institutions." Our members also suggested that we clarify this section as well. We are, therefore, proposing a new sub-section "d" starting on Line 21 that would read as follows:

"A licensee shall not have, maintain or derive any economic benefit pursuant to sub-sections a, b, and c in more than three practice locations exclusive of practice in governmental institutions."

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2-6-90
Attn. #4.
Pg 2.
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We modeled Section 18 after the dental law as recommended by the Joint Committee on Rules and Regulations. Our intent is to allow an extra branch office. We believe that this may encourage a few additional branches in rural areas. We strongly believe that it is difficult to adequately deliver care in more than three locations. This section also allows use of a trade name approved by the Board. This language is similar to the dental law.

Some question has been raised about prohibiting lay corporations and optical chains from employing optometrists. This practice is already prohibited in current law (KSA 65-1504 and 1504A, now repealed) and is simply restated in Section 20 of this bill.

In conclusion, House Bill 2630 represents the hard work of the Joint Committee on Rules and Regulations, the legislative staff, the State Board of Examiners in Optometry, and our association. We believe we've made some substantial compromises, but that the final product is a significant improvement over our current law. I would respectfully ask your support for House Bill 2630 with the two amendments we have suggested.

P. H. W.
2-6-90
Attn. # 43.
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TESTIMONY
OF
PETE MCGILL
OF
PETE MCGILL & ASSOCIATES
AND
FRANKLIN D. ROZAK
OF
COLE VISION CORPORATION
PRESENTED TO THE
HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE
ON
FEBRUARY 6, 1990

*P. McGill
2-6-90
attm # 5*

Mr. Chairman and Members of the Committee:

I am Pete McGill of Pete McGill & Associates and am appearing on behalf of Cole Vision Corporation, Pearle Vision Centers, and Precision Lens Crafters in testifying on HB 2630.

We appreciate the opportunity to testify on this bill and to express our concerns about certain provisions as they might affect the business practices of these companies in Kansas.

Cole, Pearle, and Lens Crafters are all national optical companies engaged in the sales of prescription optical goods and related merchandise. Where permitted under Kansas law, they sublease office space to licensed optometrists who practice as private and independent practitioners.

As such, these optometrists must meet and comply with all legal and licensing requirements of this state.

We therefore have no basic problem with the thrust of HB 2630 with certain exceptions, where we believe an improper interpretation or an unintended result could adversely affect the business operations of these companies in Kansas.

I would like to introduce Mr. Franklin D. Rozak, Vice-President of Government Relations for Cole Vision Corporation, who will address specific sections of HB 2630 and point out the concerns which these companies have.

Mr. Rozak will also suggest proposed modifications to each of these areas which we believe will in no way impair the intent of this legislation but will make certain it does not impede a current business practice in an unintended or unnecessary manner.

After Mr. Rozak has addressed these matters we will be happy to try and answer any questions which the committee may have.

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Attn. #5,
39.2.*

TESTIMONY
OF
FRANK ROZAK
VICE PRESIDENT FOR GOVERNMENT RELATIONS
COLE VISION CORPORATION
PRESENTED TO THE
HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE
ON
FEBRUARY 6, 1990
IN RE: KANSAS HB 2630

PHW
2-6-90
attn. # 6

Mr. Chairman, Ladies and Gentlemen:

Good afternoon! My name is Frank Rozak and I am employed by Cole Vision Corporation of Cleveland, Ohio. My firm operates eight "Sears Optical" and "Montgomery Ward Optical" departments in Kansas. Today I am also representing the collective views of Precision LensCrafters and Pearle Vision Centers. On a combined basis, we operate 14 optical business establishments which employ 139 Kansas residents. We consider ourselves good corporate citizens and enjoy the privilege of engaging in business in the State of Kansas.

A few days ago, we became aware of the introduction of HB 2630. We commend the staff and participating interests responsible for this work product.

In general, we support this bill. However, we are concerned about several areas which could result in adverse interpretations and actions not covered by current laws, rules or regulations. Your willingness to permit me to discuss these areas is most appreciated.

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2-6-90
Attn #6
p92*

I. "FALSE ADVERTISEMENT" and "ADVERTISEMENT"

On page two in new subpart (l) and (m) on lines 26-36, the terms "false advertisement" and "advertisement" are defined in the Optometry Law. These definitions afford substantial subjective discretion to the Board and appear to include optical advertising by non-optometrists. We respectfully recommend that the phrase "by a licensee" be inserted on line 26 before the word "which" and also on line 33 after "advertisement". This action would clearly allow the Board to only regulate the advertising of its licensees.

II. "MAINTAINS"

We respectfully register concern about the word "maintains" on line 13 of page three. Certain optical firms, as permitted by Kansas law, do lease optometric offices to qualified, licensed optometrists. We are concerned that this traditional business practice may be interpreted to include the actual practice of optometry and therefore, prohibited as a violation of 65-1502 (a). The word "maintains" is not defined and we would offer the substitution of the words "conducts" or "operates".

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pg 3,

III. "RECIPROCITY"

Current law as provided in Section 65-1505 (e) on lines 38-41 allows true reciprocal licensing for optometrists. However, it is abundantly clear that newly proposed subpart (3) on page 5, on lines 11-13 represents a major change in public policy. It appears inconsistent to say that optometric reciprocity exists in subpart (e) and then to require the applicant to pass two (2) separate examinations in order to practice in Kansas. We suggest the deletion of subpart (e) (3) as a remedy to this inconsistency. An increased supply of optometrists can only benefit the consumers in Kansas.

IV. "NEGLIGENCE AS DETERMINED BY THE BOARD"

Our attorneys are most concerned with the ability of the Board to alter the standards of gross and ordinary negligence on page 11 at lines 14 and 17. The major problem is the phrase "as determined by the board". We submit that the current standards for both forms of negligence as established by Kansas courts should not be placed within the jurisdiction of the Optometry Board.

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V. "FRANCHISING"

New Section 18 (e) prohibits an optometrist from purchasing an optical franchise. Numerous optical firms currently offer such franchising opportunities to optometrists, opticians and other entities. This well-accepted business format would apparently be denied to Kansas optometrists. At present, it is estimated that over 400 optometrists, on a national basis, own franchises.

Concerns relating to the potential of some unlicensed optical company being able to control the professional judgement of an optometrist are not well-founded. Further, Section 12 (b) (18) dealing with "unprofessional conduct" clearly prohibits an optometrist from "allowing improper interference with the licensee's professional judgement in providing patient care". Since no evidence exists to demonstrate that this business format is injurious to the public on the optometrist, we urge the Committee to delete this provision in its entirety.

Thank you for your attention and time and if there are any questions, I will try to answer them.

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