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Date 3-19-90
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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

2:00 ~~A.M.~~/p.m. on March 14, 1990 in room 423-S of the Capitol.

All members were present except:

Rep. Foster, excused.

Committee staff present:

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

Conferees appearing before the committee:

Theresa Nuckolls, Assistant Attorney General
Steve Weir, Attorney for First Rule Properties

Chair called meeting to order at 2:00 p.m. He apologized to conferees for the delay due to a long Session in the House of Representatives today. Chair noted he felt an explanation was due on why re-scheduling of HB 2802 had been done. Previously when it was scheduled for hearings there were other bills being heard that same day and committee was under a severe time constraint and conferees were very limited on time allowed for testimony. Chair felt it more fair to re-schedule the hearings so that more background could be given committee since comments by some, they had not been provided enough background in order to make good decisions on the bill thus, hearings will be conducted this date on HB 2802.

Chair noted at this time on March 2, 1990 a vote to report HB 2802 unfavorably failed, a vote to have the bill protected and sent to Judiciary passed. However, it has been the decision of the Speaker to return HB 2802 to this committee.

HEARINGS RE-OPENED ON HB 2802.

Theresa Nuckolls, Assistant Attorney General, offered printed testimony, (Attachment No. 1). She noted Attorney General opinion No.89-96 and Shawnee District Court Judge Jackson also expressed the same opinion, the current provisions of Kansas law do not obligate a landlord to pay the debts of a tenant who operates an adult care home business unless that landlord is in some way connected with the business of the adult care home. She stated 1982 legislature did not intend to hold a "mere landlord" responsible for debts of a tenant, and the Court agreed with this conclusion. 1982 legislature dictated an owner of an adult care home could be individually or jointly liable for costs incurred by the state as a result of receivership of an adult care home. Their office urges action to clarify legislative intent in order to dispel controversy and inability to determine what the legislature intended when a "mere landlord" would become liable for the debts of a tenant. She answered numerous questions, i.e., no, committee is not being asked to validate an AG's opinion, just to clarify the law; yes there have been prior situations where the landlords have been cited, yes, she could provide a copy of Judge Jackson's opinion.

Chair noted at this time he had requested Mr. Furse to give a detailed briefing on HB 2802 and statutes concerning this controversy. If there are more questions from the AG's office could someone be made available for that some wanted to know. Ms. Nuckolls said they would be available for questions.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S Statehouse, at 2:00 a.m./p.m. on March 15, 1990

Chair invited Mr. Furse to begin his comments.

Norman Furse, offered hand-out, (Attachment No. 2), copy of statutes 39-953 through part of 39-959. He stressed part of controversy comes from confusion that this is not legislation from 1982, but from 1984. He drew attention to statutes relating to adult care homes and also to the receivership statutes. He noted two points that should be looked at in considering HB 2802, i.e., definition of an "owner" or "licensee", for purposes of these particular sections in receivership law. The second part is the relation back of this definition to any kind of preceeding action. The bill provides a definition of owner/licensee and applies to any proceeding in receivership which was commenced prior to the effective date of the act and which has not been terminated prior to the effective date of the act. He noted in 1978 the original receivership statute was enacted and was recommended by the Governor's special advisory committee on nursing homes in Kansas. In 1978 statutes were enacted providing civil penalties for violations of adult care home licensure statutes and these civil penalty statutes were made specifically a part of the adult care home licensure act. The receivership statute was not made a part of the adult care home licensure act (See K.S.A. 39-953). In late 1982 legislation was introduced to provide for disclosure on the application and on the license. This legislation did not relate to receiverships. In 1984, the Department of Health/Environment and Department of SRS suggested legislation on receivership statutes. He detailed that legislation. It was noted receivership proceedings had been costly to the state. A key thing to remember is that the 1982 act related to disclosure on the license itself, it did not relate to the receivership law. The 1984 act clearly related to and creates the situation that you are being asked to consider today with regard to who should pay the costs of receivership.

Mr. Furse answered numerous questions, i.e., yes, he found no reference to arms-length lessor to be included having responsibility for receivership; yes, there could be strict liability instances where a lessor (in other business) could be named to be responsible for receiverships. He knows of no statutes where we require any "arms-length" landlord/lessor to be liable in this kind of situation. He noted from a legal view, it would take some skill in writing standards for this kind of "arms-length" liability. The operative actor (s) here are Departments of SRS and Health/Environment.

At this point Chair stated we are again in a problem with too little time to fully conduct meeting so that conferees can give testimony. He called on Steve Weir, explaining there was only 5 minutes left today, but he would request Mr. Weir to return tomorrow if possible. Mr. Weir aged to do so, as well as spokesperson from Department of Health/Environment.

CONTINUATION SHEET

MINUTES OF THE _____ HOUSE COMMITTEE ON _____ PUBLIC HEALTH AND WELFARE _____,
room 423-S Statehouse, at 2:00 a/m/p.m. on March 14, _____, 1990

HEARING CONTINUED ON HB 2802.

Mr. Weir would take a few minutes today however to answer some questions previously raised, i.e., U. S. Congress had the same problems relating to law suits in regard to receiverships with banks and/or landlords were counter suing the Government Agencies and winning because statutes were not clear. The U. S. Congress passed statutes to clearly define this problem. Yes, you can make someone strictly liable for something they may be indirectly involved with, but it must be done in a special way by specifically addressing those who are inter-related to the business. He noted the AG's opinion speaks to the lack of specific intent. He spoke to an earlier case where after receivership was filed, the landlord took over the running of the home from the operator and had to assume the liability of that receivership. He noted there is quite a distinction between a landlord, and "mere landlord".

Chair thanked Mr. Weir. He invited Department of Health/Environment to also make comments if they choose to do so. They noted they would defer comments until tomorrow and thanked Chair.

Chairman stated hearings would continue again tomorrow on HB 2802.

Meeting adjourned 3:15 p.m.



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Before the House Committee on Public Health and Welfare
House Bill No. 2802

Testimony Presented by
Assistant Attorney General Theresa Marcel Nuckolls
On Behalf of Attorney General Robert T. Stephan
March 14, 1990

Mr. Chairman and Members of the Committee:

Once again our office wishes to state support for House Bill No. 2802. As Attorney General Stephan noted in his February 20, 1990 letter to Representative Littlejohn, continuing controversy as to the intent of the law makes it imperative that legislation clarify these provisions. Attorney General Opinion No. 89-96 and Shawnee District Court Judge Jackson expressed the opinion that the current provisions of Kansas law do not obligate a landlord to pay the debts of a tenant who operates an adult care home business unless that landlord is in some way connected with the business of the adult care home. Nevertheless, state agencies appear to remain convinced that the law provides otherwise. Thus, legislation appears required in order to clarify intent.

The district court agreed with Attorney General Opinion No. 89-96 and found that a material fact issue existed. That

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opinion stated this issue as whether the landlord was a "mere landlord" or rather was using another business to operate an adult care home. It was our opinion that K.S.A. 39-923 et seq. sought to avoid situations wherein owners of adult care homes were using "straw men" as fronts. The 1982 legislature dictated that an owner of an adult care home could be individually or jointly liable for the costs incurred by the state as a result of the adult care home going into receivership. It was our opinion that the 1982 legislature did not contemplate or intend to hold a mere landlord responsible for the debts of a tenant. The court agreed with this conclusion.

If the legislature intended a "mere landlord" to become strictly liable for the debts of a tenant, such strict liability may be created by specific directives to that effect. However, legal principles require strict liability to be clearly mandated. In our opinion, the 1982 legislature did not intend to impose such liability and did not clearly mandate strict liability. Legislation clarifying the terms of the statutes in question will greatly assist those given the authority and duty to enforce the law. Without such direction it appears that there will continue to be a controversy and inability to determine whether the legislature intended a "mere landlord" to become strictly liable for the debts of a tenant.

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Therefore, we strongly urge action to clarify legislative intent on this matter. For these reasons Attorney General Stephan supports prompt enactment of House Bill No. 2802.

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39-953. Citation of act. K.S.A. 39-923 to 39-944, inclusive, and acts amendatory thereof or supplemental thereto, and K.S.A. 39-931a and 39-945 to 39-952, inclusive, and acts amendatory thereof or supplemental thereto, shall be known and may be cited as the adult care home licensure act.

History: L. 1978, ch. 161, § 10; July 1.

RECEIVERSHIP

39-954. Application for receiver; order appointing; qualifications of persons designated and method of selection, rules and regulations. (a) The secretary of health and environment, the owner of an adult care home, or the person licensed to operate an adult care home may file an application with the district court for an order appointing the secretary of health and environment or the designee of the secretary as receiver to operate an adult care home whenever: (1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; (2) the adult care home is insolvent; or (3) the secretary of health and environment has issued an order revoking the license of the adult care home.

(b) The secretary of health and environment may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

History: L. 1978, ch. 162, § 1; L. 1985, ch. 151, § 1; July 1.

39-955. Filing application for receivership; contents. The application for receivership shall be filed in the district court in the county where the adult care home is located. The application shall be verified and set forth the specific reasons therefor.

History: L. 1978, ch. 162, § 2; July 1.

39-956. Service of copies of application for receivership; posting in adult care home. The applicant shall serve those persons set forth in K.S.A. 39-954 with copies of the application. Service of process shall be as provided for under the code of civil procedure. The applicant shall also send five (5) copies of the application for receivership to the adult care home. The adult care home shall post the copies of the application in conspicuous places within the adult care home.

History: L. 1978, ch. 162, § 3; July 1.

39-957. Answer to application for receivership. A party shall file an answer to the application within five (5) days after the service of the application upon such person.

History: L. 1978, ch. 162, § 4; July 1.

39-958. Priority of application for receivership in district court; evidence; appointment of receiver; certain statutes inapplicable to license granted receiver; length of license. The application for receivership shall be given priority by the district court and shall be heard no later than the seventh (7th) day following the filing of the application. A continuance of no more than ten (10) days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of health and environment or the designee of the secretary as receiver to operate the home.

Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

History: L. 1978, ch. 162, § 5; July 1.

39-959. Powers and duties of receiver. A receiver appointed in accordance with the provisions of this act shall have the following powers and duties:

- (a) Conduct the day to day business operations of the adult care home;
- (b) reimburse the owner or licensee, as appropriate, a fair monthly rental for the