Approved 2-26-90
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:05 a.m./~~p.m.~~ on February 20, 1990 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Emalene Correll, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Kelly Kultala, Sen. Winter's office
Marilyn Harp, Planned Parenthood
Jodie Van Meter, KS NOW
Beth Powers, Kansas Choice Alliance
Peggy Jarman, Women's Health Care
Darlene Stearns, RCAR
Pat Goodson, Right to Life
Erica Fox, Planned Parenthood

Senator Vidricksen presented a request for a bill relating to the Kansas department of wildlife and parks. (Attachment 1)

A motion was made by Senator Strick and seconded by Senator Walker that the bill be introduced. The motion carried.

Senator Ehrlich presented a bill request concerning penalties for violations of the healing arts act. (Attachment 2)

A motion was made by Senator Vidricksen and seconded by Senator Strick that the bill be introduced. The motion carried.

Jerry Slaughter, Kansas Medical Society, made a request for a bill introduction relating to the delivery of quality health care in a cost effective manner. (Attachment 3)

A motion was made by Senator Vidricksen and seconded by Senator Daniels that the bill be introduced. The motion carried.

David Hanson, Midwest Securities Trust Company, made a request for a bill introduction relating to domestic insurers, trust companies; securities. (Attachment 4)

A motion was made by Senator Strick and seconded by Senator Vidricksen that the bill be introduced. The motion carried.

Hearing on: SB 627 - concerning abortion; amending K.S.A. 21-3407

Kelly Kultala, representing Senator Winter, said that now there are no restrictions on abortions. This bill would not allow abortions past period of viability which would be determined by a physician as that point at which the fetus was able to sustain life outside the womb without severe abnormality.

Marilyn Harp, Planned Parenthood of Kansas, gave testimony in support of the bill. (Attachment 5) She also distributed a packet entitled, "Fact Sheet," a copy of which is on file in the Federal and State Affairs office.

Jodie Van Meter, Kansas NOW, presented testimony in support of the bill. (Attachment 6)

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 Senate COMMITTEE ON Federal and State Affairs,

room 254-E, Statehouse, at 11:05 a.m./p.m. on February 20, 1990

Beth Powers, Kansas Choice Alliance, presented testimony in support of the bill. (Attachment 7)

Peggy Jarman, Women's Health Care Services, Wichita, gave testimony in support of the bill. (Attachment 8)

Darlene Stearns, Religious Coalition for Abortion Rights in Kansas, gave testimony in support of the bill. (Attachment 9)

Pat Goodson, Right to Life of Kansas, presented testimony in opposition to the bill. (Attachment 10)

Erica Fox, Planned Parenthood, presented testimony in opposition to the bill. She said she believes physicians and patients already make good judgments, that regulation is not necessary. She said that the provision for abortions past viability is not being abused.

The Chairman said that the bill has been assigned to a subcommittee, which will consider the bill and information being provided by the staff on this subject.

The minutes of the February 19 meeting were approved.

The meeting was adjourned at 11:30 a.m.

SENATE BILL NO. ____

By Senator Vidricksen

AN ACT relating to the Kansas department of wildlife and parks; authorizing the department to assist and cooperate with citizen support organizations.

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

Section 1. (a) The Kansas department of wildlife and parks is authorized to cooperate with and assist citizen-support organizations. For the purposes of this act, the term "citizen-support organization" means an organization which:

(1) Is a bona fide not for profit organization exempt from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and as it may be amended from time to time;

(2) does not engage in, and has no officer, director or member who engages in, any prohibited transaction, as defined by section 503(b) of the internal revenue code of 1986, and as the same may be amended from time to time;

(3) is domiciled in this state;

(4) the secretary determines its activities are conducted in a manner consistent with the goals, objectives and programs of the department and state policies as established by K.S.A. 1989 Supp. 32-702; and

(5) provide equal employment and membership opportunities to all persons regardless of race, color, national origin, religion, sex or age.

(b) The secretary may assist organizers of a citizen-support organization with its creation. The secretary may authorize any citizen-support organization to use under such conditions as the secretary may prescribe, department property, facilities or personnel to pursue the goals, objectives and purposes of the

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department.

(c) A citizen-support organization which uses department property, facilities or personnel shall provide for and disclose to the secretary an annual audit of its financial records and accounts in such manner and at such times as may be required by the secretary.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

__ B. No. _____

AN ACT concerning penalties for violations of the healing arts act; amending K.S.A. 65-2862 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 65-2862 is hereby amended to read as follows: 65-2862. (a) Any person ~~violating~~ who violates any of the provisions of this act, except as specific penalties are herein otherwise imposed, shall be ~~deemed~~ guilty of a class B misdemeanor ~~and upon conviction thereof shall pay a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200)~~ for the first offense, and ~~a person~~ for the second ~~violation of any of the provisions of this act~~ and each subsequent offense, wherein another specific penalty is not expressly imposed, shall be ~~deemed~~ guilty of a class A misdemeanor ~~and upon conviction thereof shall pay a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each separate offense~~.

(b) It is the duty of the attorney general or the respective county and district attorneys to prosecute all violations of this act.

(c) This section shall not apply (1) to any person licensed by the board whose license has inadvertently lapsed, (2) to any person defined in K.S.A. 65-2872 and amendments thereto or (3) to any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891 and amendments thereto.

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Section 2. K.S.A. 65-2862 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

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

New Section 1. The purpose of this Act is to:

(a) Promote the delivery of quality health care in a cost effective manner.

(b) Encourage greater coordination in a cost effective manner between physicians and agencies conducting any form of private review including utilization review, quality assurance review, and case management review.

(c) Protect patients, employers, and physicians by specifying minimum standards with regard to such review and the qualifications of those undertaking such review.

(d) Ensure the confidentiality of patient medical records utilized in such review and of materials developed or examined in connection with such review.

New Sec. 2. For the purpose of this Act the following definitions shall apply:

(a) "Board" shall mean the state Board of Healing Arts.

(b) "Physician" means a person licensed to practice medicine and surgery who has active admitting privileges in a hospital as defined in K.S.A. 65-425 or a psychiatric hospital licensed under K.S.A. 75-3307b. For purposes of this act, an individual who holds an exempt license, temporary permit, special permit, or institutional license shall not be considered to be licensed to practice medicine and surgery by the Board.

(c) "Private Review" means any evaulation of the cost, necessity, quality, or appropriateness of medical care or services being provided, to be provided, or previously provided to a patient or group of patients, including any system requiring prior or concurrent certification of such care as a condition of reimbursement for the cost or charges thereof.

(d) "Private Review Agency" means an individual or entity performing private review.

New Sec. 3.

(a) A certificate issued by the Board pursuant to this Act is a prerequisite to private review conducted by a private review agency on behalf of:

(1) An employer of employees in the state of Kansas.

(2) A health maintenance organization that provides or administers hospital or medical benefits to citizens of Kansas.

(3) A health insurer, non-profit health service plan, health insurance service organization, employee benefit plan, preferred provider organization or other entity or organization offering health insurance policies, contracts, benefits or coverage in any form whatsoever in this state.

(4) Any individual or entity under contract to provide private review in any form for any entity listed in the preceding subsections (1), (2), or (3).

(b) Every insurer, plan, entity or organization which issues, delivers or administers a policy, contract or program that provides for the coverage of hospital, or medical and surgical benefits and the private review of those benefits shall either obtain a certificate issued in acordance with this Act or contract with a private review agency that has a certificate issued hereunder.

(c) No certificate is required for in-house private review conducted by or on behalf of a physician or hospital.

(d) No certificate is required for private review conducted by or on behalf of a party to any litigation relating to an issue in such litigation.

(e) The Board may exempt other entities or practices if it determines that the protections afforded by this Act are unnecessary to fulfill the purposes of this Act.

(f) The provisions of this act shall not apply to entities or individuals who perform patient care review services pursuant to a contract with the federal government under the Social Security Act.

(g) A certificate issued under this Act is not transferrable.

New Sec. 4.

(a) Any private review with regard to medical care or services provided in this state or with regard to medical care or services provided to or on behalf of any resident of this state shall comply with the following:

(1) Review shall be conducted pursuant to a written plan approved by the Board, which shall include a description of review standards, circumstances under which review may be delegated to others, provisions for appeal and reconsideration, type and professional qualifications of review personnel, confidentiality policies, a model memorandum of understanding with physicians, rate of compensation to be paid to physicians for time spent in complying with review agency requirements for copying of records and other data requested by the review agency, a method to provide education to and communication with beneficiaries and physicians as to coverage and the review process conducted by the private review agency, an internal quality review plan that includes mechanisms for periodic evaluation of all review staff, including physicians, and all standards and criteria used in any review, and such other provisions as may be required by the Board.

(2) The private review agency shall provide a written authorization to a physician in a form to be prescribed by the Board before obtaining access to any medical records with regard to any patient.

(3) The private review agency shall adhere to all applicable state and federal laws with regard to the confidentiality of individual medical records and peer review materials.

(4) Private review of a physician's charges shall be based upon charges of similarly situated physicians providing medical care and services within this state or within a radius of 100 miles of the principal place of practice or operations of the physician under review.

(5) Review criteria utilized by the private review agency shall be made available upon request to any physician subject to such review.

(6) Any physician may designate one or more individuals to be contacted by the private review agency for information or data; in the event of any such designation, the private review agency shall not contact other employees or personnel of the physician except with express prior written consent of the physician.

(7) Appropriate representatives of the private review agency shall be reasonably accessible to physicians during regular working hours and the private review agency shall have adequate staff on hand to meet inquiries and other demands of private review, including use of a toll free telephone number or acceptance of collect telephone calls.

(8) Timely notification shall be provided by the private review agency to a patient and to any affected physician of any determinations by the private review agency; such notification may initially be oral but shall in all cases be in writing and include an explanation of the reasons for and effect of any adverse determination along with an explanation of any appeal or reconsideration rights provided in the review plan of the private review agency.

(9) No determination adverse to a patient or to any affected physician shall be made on any question relating to the necessity or justification for any form of medical care or services without prior evaluation and concurrence in the adverse determination by a physician.

(10) A physician shall not engage in any private review on behalf of any private review agency relating to his or her own patients or the patients of any partner, employee or associate of such physician. For purposes of this provision, a partner shall include any shareholder in a corporation providing medical care or services as to which the affected physician is also a shareholder.

(11) A physician or other person who engages in private review on behalf of any private review agency shall be deemed to be engaged in the practice of medicine and surgery, and shall be subject to the provisions of the healing arts act.

(12) Each patient or physician shall have a right to appeal decisions made by the private review agency or request reconsideration; all such appeals or requests for reconsideration shall be handled promptly including completion within two working days of receipt of the appeal request or request for reconsideration if the patient is hospitalized or if the issue involves the necessity or justification for admission to a hospital or other institution. In the event that the patient is hospitalized while an appeal or request for reconsideration is ongoing, coverage shall not be denied by reason or any adverse determination until the process is completed and any decision issued. Appeals relating to medical necessity or appropriateness of medical care shall involve a physician of the appropriate specialty who was not associated with the initial decision and may, if required by the Board, involve a physician board or committee.

(13) The private review agency shall comply with all rules and regulations of the Board.

(b) Any requirement for prospective private review through any pre-hospital admission certification, review or screening procedure of any type shall be inaplicable to any medical emergency as determined by a patient's attending physician.

(c) Information obtained by a private review agency pertaining to one patient shall not be used in any manner, directly or indirectly, in connection with private review pertaining to another patient.

(d) The identity of all individuals involved in conducting any private review on behalf of a private review agency shall be promptly disclosed to the patient or the physician upon request.

New Sec. 5.

(a) An applicant for a certificate under this Act shall submit an application on a form prescribed by the Board accompanied by the prescribed fee and such supporting documentation as the Board may require, including but not limited to the plans and procedures and other documentation required under Section 4 and a list of individuals or entities for which the private review agency is providing private review within this state.

(b) Any certificate issued hereunder shall expire on December 30 of each year. Any such certificate may be renewed annually upon the request of the certificate holder. The request for renewal shall be submitted prior to expiration of the certificate on a form prescribed by the Board and accompanied by the prescribed fee together with the information required by the Board for an original application under subsection (a) of this section.

(c) Notice shall be given by the Board to each holder of a certificate issued under this Act as to the expiration date of the certificate. Such notice shall be given by mailing to the address contained in the Board's records for the certificate holder. The certificate of any private review agency that fails to renew its certificate in accordance with the provisions of this section shall be cancelled, except that the Board, in its sole discretion may reinstate such certificate retroactive to January 1, upon application timely submitted to the Board and accompanied by both the fee and the plans, procedures and other documentation required hereunder and an additional fee prescribed by the Board not to exceed $100.

(d) A fee of not more than $150, as established by the Board, shall be collected for the issuance of any original or renewal certificate under this Act. The Board shall remit all fees to the state treasurer at least monthly and, upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. All such fees received by the Board shall be credited to the healing arts fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the Board or a person or persons designated by the president of the Board.

(e) All materials submitted in support of an initial or renewal application for a certificate issued hereunder shall be considered public records subject to disclosure pursuant to the provisions of K.S.A. 45-218.

New Sec. 6.

(a) The Board may refuse to grant a certificate or may suspend or revoke any certificate issued to any private review agency for any of the following grounds:

(1) Obtaining or attempting to obtain any certificate by fraud or deception.

(2) Failure to comply with any provision of this Act or any regulation adopted by the Board pursuant to this Act.

(3) Failure to comply with the provisions of any plan, policy or protocol adopted pursuant to the provisions of Section 4 except to the extent that such plan, procedure or protocol may be amended with the approval of the Board.

(4) One or more instances involving failure to adhere to an appropriate standard for private review to a degree that constitutes gross negligence, as determined by the Board.

(5) Repeated instances involving failure to adhere to an appropriate standard for private review to a degree that constitutes ordinary negligence, as determined by the Board.

(6) Failure to promptly provide such information, documentation, records, and other data as may be requested by the Board.

(b) In addition to, or in lieu of, any other penalty prescribed under this section, the Board may assess a civil fine against the holder of a certificate for a violation of this Act in an amount not to exceed $5,000 for the first violation, $10,000 for the second violation and $15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted promptly to the state treasurer and upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury credited to the state general fund.

(c) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas Administrative Procedure Act and shall be reviewable in accordance with the Act for judicial review and civil enforcement of agency actions.

New Sec. 7.

(a) No denial or refusal to pay any claim or portion of a claim for medical care or services submitted by or on behalf of any patient who is a Kansas resident or any physician for care or services provided in Kansas shall be valid if based upon private review not performed in accordance with this Act.

(b) Any patient or physician may contest any denial or refusal to pay any claim or portion of a claim by direct action against any insurer, health maintenance organization, non-profit health service plan, health insurance service organization, employee benefit plan, preferred provider organization or other entity providing health insurance policies, contracts, benefits or coverage in any form whatsoever in this state. In any such action, the burden of proof shall be upon the defendant to show that the denial or refusal of the claim was

justified and that the private review was performed pursuant to the requirements of this Act. Expert testimony from a physician possessing such qualifications as may be necessary under the rules of evidence shall be required on any issue of medical necessity or appropriateness of medical care.

(c) Except as otherwise provided by a contract to which a physician is a party or by other applicable state or federal law or regulation, a patient shall be obligated to pay a physician's customary charges without regard to the results of any private review.

(d) Nothing in this Act shall in any way affect or limit any liability that any private review agency may have to any patient or physician.

New Sec. 8.

(a) All reports, statements, memoranda, proceedings, findings and other records of or provided to private review agencies that in any manner, directly or indirectly, identify a particular physician or patient shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. This privilege may be claimed by the private review agency, a patient or a physician.

(b) Subsection (a) shall not apply to proceedings in which a patient or a physician contests the action taken by a private review agency, including any claim for damages arising out of such action.

(c) Nothing in this section shall limit the authority of the Board to require a private review agency to provide such information as the Board may require pursuant to this Act or to prohibit the Board from obtaining access to all records of or provided to the private review agency for the purpose of enforcing the provisions of this Act. Any material so furnished to the Board shall not be subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a proceeding by the Board with regard to a certificate under this Act.

New Sec. 9.

(a) The Board shall promulgate all necessary rules and regulations, not inconsistent herewith, for carrying out the provisions of this Act. Such rules and regulations may include reporting requirements to evaluate the effectiveness of private review agencies and to determine if a private review agency is in compliance with the provisions of this Act and any applicable regulations. The Board may also adopt rules and regulations supplementing or defining any of the provisions herein contained but not inconsistent with this Act. All rules and regulations promulgated and adopted by the Board shall be filed with the secretary of state as required by law.

(b) In connection with any investigation by the Board with regard to a private review agency, the Board shall have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence maintained by or in possession of any private review agency or maintained by or in possession of any clinic, office of a physician, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record, or evidence relates to the conduct, competence or capacity of a private review agency.

(c) For the purpose of all investigations and proceedings conducted by the Board:

(1) The Board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to the conduct, capacity or competence of a private review agency. Within five days after the service of a subpoena on any person requiring the production of any evidence in the person's

possession or under the person's control, such person may petition the Board to revoke, limit or modify the subpoena. The Board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for action by the Board, is not relevant to the charge which is the subject matter of the proceedings or investigation, or does not describe with sufficient particularity the evidence that is required to be produced.

(2) Any member of the Board, or any agent designated by the Board, may administer oaths or affirmations, examine witnesses and receive evidence.

(3) Any person appearing before the Board shall have the right to be represented by counsel.

(4) The district court, upon application by the Board or by the person subpoenaed, shall have jurisdiction to issue an order:

(i) Requiring such person to appear before the Board or the Board's duly authorized agent to produce evidence relating to the matter under investigation; or

(ii) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(5) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this Act by the Board.

New Sec. 10.

(a) The Commissioner of Insurance shall not permit any policy of accident and sickness insurance which contains provisions for private review to be delivered or issued for delivery to any person in this state unless such provisions comply with the requirements of this Act.

(b) If any provision in a policy of accident and sickness insurance delivered or issued for delivery to any person in this state shall be in conflict with any provision to this Act, the rights, duties and obligations of the insurers, the insured, and any physicians providing coverage to the insured shall be governed by the provisions of this Act.

New Sec. 11.

If any provision or clause of this Act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

AN ACT relating to domestic insurers; trust companies; securities; amending K.S.A. 40-2a20 and K.S.A. 40-2b20 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. From and after July 1, 1990, K.S.A. 40-2a20 is hereby amended to read as follows: 40-2a20. Any insurance company other than life heretofore or hereafter organized under any law of this state, with the direction or approval of a majority of its board of directors or authorized committee thereof, may:

(a) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(b) designate a trust company or a state or national bank having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(c) designate a trust company or a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

Under the provisions of subsections (b) and (c), the designated trust company or state or national bank, in accordance with the provisions of K.S.A. 84-8-108, and amendments thereto, may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated trust company or bank and must impose the same degree of responsibility on the trust company or bank as if such securities were held in definitive form by such trust company or bank.

Section 2. From and after July 1, 1990, K.S.A. 40-2b20 is hereby amended to read as follows: 40-2b20. Any life insurance company heretofore or hereafter organized under any law of this state, with the direction or approval of a majority of its board of directors, may:

(a) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(b) designate a trust company or a state or national bank having trust

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powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(c) designate a trust company or a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

Under the provisions of subsections (b) and (c), the designated trust company or state or national bank, in accordance with the provisions of K.S.A. 84-8-108, and amendments thereto, may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated trust company or bank and must impose the same degree of responsibility on the trust company or bank as if such securities were held in definitive form by such trust company or bank.

Section 3. K.S.A. 40-2a20 and K.S.A. 40-2b20 are hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT relating to domestic life insurers; trust deposits; custodial arrangements; amending K.S.A. 1988 Supp. 40-404 and K.S.A. 40-405 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. From and after July 1, 1990, K.S.A. 1988 Supp. 40-404 is hereby amended to read as follows: 40-404. (a) Any life insurance company organized under the laws of this state shall deliver to the commissioner of insurance, to be deposited with the state treasurer in addition to the amount of capital required to be deposited, real estate, certificates of purchase and cash or securities of the kind or character in which the company shall be allowed to invest its funds, in an amount equal to the net reserve of all policies and annuity contracts in force in such company determined by a valuation made in accordance with the provisions of this code. Investments of the company in premium and policy loans, and the investment income due and accrued on investments which are not in default and are on deposit pursuant to this section, shall be considered a part of the legally required reserve deposit necessary to reinsure its outstanding risks and may be retained by the company at its home office as a part of such reserve deposit, and such premium and policy loans shall not be subject to taxation. Within 30 days after June 30 and December 31 in each year, each insurance company shall file with the commissioner under oath of its president or secretary a statement showing the dates and amounts of payments upon principal made during the preceding six months on all mortgages on deposit. On January 1 or within 60 days thereafter in each year, each insurance company shall file a statement in a form thereafter in each year, each insurance company shall file a statement in a form prescribed by the commissioner setting forth the investment income due and accrued as of the previous December 31 which is included in such company's required reserve pursuant to this section. Willful failure to file any such statement as herein provided shall constitute a misdemeanor punishable by fine of not to exceed $1,000, and on conviction of two offenses as herein provided the offending officer shall forfeit office.

(b) Such deposit shall be held in trust by the commissioner and state treasurer, who shall be vested with an interest therein for the benefit of the policyholders and the annuity bondholders of the depositing company. Such deposit may be withdrawn only upon the order of the commissioner. If the policies or annuity bonds, in whole or in part, of the company are assumed, reinsured or instruments substituted therefor by any other insurance company, whether or not organized under the laws of Kansas, by obligations running to the policy holders or annuity bondholders, and whether or not the depositing company shall be inert, insolvent or dissolved, the deposit existing at the time of such transaction shall not be released, reduced or withdrawn on account thereof. The new obligor shall make and maintain a like deposit, on like terms, as the prior depositing company, up to the amount of the net reserve of the policies and annuity bonds covered by the new obligations.

(c) If there should be one or more further assumptions, reinsurances or substitutions, in succession, directly or indirectly, to any such new obligations, and whether or not the prior company shall be inert, insolvent or dissolved, the provisions of this act, applying in case of any assumption, reinsurance or substitution, shall govern with reference to the retention, continuance and further making and maintenance of the deposit, up to the amount of the net reserve of the policies and annuity bonds covered by such further obligations.

(d) Such deposits shall be kept by the state treasurer and commissioner in strong, locked metal boxes within the built-in security type vault located in the state office building. Such security-type vault shall be under the custody, control and supervision of the commissioner except that the state treasurer shall maintain at all times during regular working hours one or more persons appointed and authorized by the state treasurer to be present in the security-type vault and act on behalf of the state treasurer in the acceptance, custody, control and release of all insurance company securities deposited pursuant to the provisions of this code with the state treasurer and commissioner. The commissioner with the advice of the state treasurer shall be authorized and empowered to issue such rules and regulations governing the operation and supervision of such security-type vault to promote the efficient operation and security of all deposits maintained therein. Separate boxes

shall be used for the deposits of each depositor, and if necessary, more than one box for the deposits of one depositor.

The boxes shall be securely fastened to the structure of the vault, or to a strong metal case or cases which cannot be removed from the vault except with difficulty. The locks on each box shall be kept fastened at all times except when ingress and egress are necessary to carry out the duties of the state treasurer and commissioner as joint custodians of such deposits, and such boxes shall be fastened, or unfastened, only by the use of two keys. One key shall be in the custody of the state treasurer and the other in the custody of the commissioner. When access to any box shall be required, each state officer, or such officer's deputy, assistant or designated employee, shall use the key in custody to unfasten and fasten the lock. No other person shall have any key which can be used for such purpose. No persons other than the state treasurer, commissioner or persons appointed or authorized to act for them shall be permitted access to such security-type vault except with their express consent and in their company. The post auditor shall have access for the purpose of carrying out duties provided by law.

It shall be the duty of the commissioner to obtain and maintain the fixtures of such vault necessary to carry out the purposes of the provisions of this code relating to deposits of securities and investments of insurance companies doing business in this state. In addition the commissioner shall appoint, within the provision of the civil service law, and available appropriations, such additional employees as may be necessary to properly carry out the custody, control and supervisory duties of such vault facilities. With the joint consent of the state treasurer and commissioner, and if there is space available in boxes not occupied by nor needed for insurance company deposits, deposits may be made by other state departments or agencies on a plan whereby the access to such boxes is by the use of two keys, one available only to the depositor and the other available to the commissioner of insurance.

(e)(1) Life insurance companies organized under the laws of this state are authorized to satisfy the deposit requirements of this section by depositing assets with a custodian bank having its principal place of business in Kansas, or with a custodian trust company that is registered as a clearing agency

pursuant to section 17A of the Securities Exchange Act of 1934, has its principal place of business in a state that has adopted the Uniform Reciprocal Liquidation Act, and is approved for the purpose by the commissioner of insurance, pursuant to a written agreement with such custodian bank or trust company. Such deposit shall have the same force and effect as the deposit of such assets directly with the commissioner under subsection (a) and K.S.A. 40-230, and amendments thereto, but the requirements of K.S.A. 40-230, and amendments thereto, that the treasurer and the commissioner give receipts for such assets and that such assets be delivered only on the joint order of the treasurer and commissioner shall not apply to assets deposited pursuant to this subsection, and the requirement of subsection (b) that deposits be withdrawn only on the order of the commissioner shall not apply to assets deposited pursuant to this subsection.

(2) Assets deposited pursuant to this subsection shall be held by the custodian bank or trust company on behalf of the commissioner as in trust for the use and benefit of the company. Such assets shall remain the specific property of the company and shall not be subject to the claim of any third party against the custodian.

(3) The custodian bank or trust company is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102, and amendments thereto, and as permitted by K.S.A. 40-2b20, and amendments thereto. The custodian bank or trust company is authorized to hold such assets though the federal reserve bank book-entry system.

(4) The commissioner shall by rule and regulation establish such requirements relating to deposits under this subsection as may be appropriate to assure the security and safety of such deposits, including, but not limited to the following:

(A) Capital and surplus of the custodian bank or trust company;

(B) title in which deposited assets are held;

(C) records to be kept by the custodian and the commissioner's access thereto;

(D) periodic reports by the custodian to the commissioner;

(E) responsibility of the custodian to indemnify the company for loss of deposited assets;

(F) withdrawal or exchange of deposited assets; and

(G) authority of the commissioner to terminate the deposit if the condition of the custodian bank or trust company should threaten the security of the deposited assets.

Section 2. From and after July 1, 1990, K.S.A. 40-405 is hereby amended to read as follows: 40-405. When the liability on any policy shall cease, the security deposited therefor, as hereinbefore provided, may be returned, by direction of the commissioner of insurance, to the company depositing the same, and whenever the aggregate of such securities shall exceed the liability of the company on such secured policies, the surplus of securities may be returned to the company. The state of Kansas shall be fully responsible to every life insurance company for the safe return of any securities, cash and all other property, actually delivered, in accordance with the provisions of the insurance code, to the commissioner of insurance or state treasurer.

Should the state of Kansas, for any reason, fail to return such securities, cash or property, then an action may be brought hereunder to recover any liability of the state of Kansas in any court of competent jurisdiction in the state of Kansas. Any such insurance company may deposit with the commissioner as all or part of the deposit required by the preceding section (a) the written receipt of a bank within the state of Kansas or a trust company that is registered as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 and is within a state that has adopted the Uniform Reciprocal Liquidation Act, provided that such bank or trust company ~~having~~ has a combined capital and surplus of at least $500,000 and is approved for the purposes of this section by the commissioner of insurance, or (b) the joint custody receipt of any such bank or trust company and ~~the~~ a federal reserve bank ~~of Kansas City, Missouri~~, stating that said bank or trust company holds, as a special deposit on behalf of and for the account of such commissioner, bonds, debentures or certificates of stock which could be deposited as provided in the preceding section. All such bonds, debentures or certificates of stock shall be held by such bank or trust company on behalf of said commissioner as in trust for the use and benefit of such company. The deposit with the commissioner of such receipts shall have the same force and effect as the deposit of such securities with the commissioner as required by

K.S.A. 40-404. When the liability on any policy shall cease or such insurance company shall be entitled to the release of any securities as provided in K.S.A. 40-406, the surplus shall be returned to such insurance company by said bank or trust company upon the written order of the commissioner or his duly authorized assistant commissioner. Deposit of such receipts as hereinbefore provided shall for all purposes including the certification of policies as provided in K.S.A. 40-407 be deemed the equivalent of the deposit of such securities with the commissioner and state treasurer under and a in compliance with sections 40-404 and 40-407 of the Kansas Statutes Annotated.

The commissioner may, upon written order, direct said bank or trust company to permit the exchange of securities upon deposit of specified substituted securities, as provided by K.S.A. 40-406. All forms for deposit, withdrawal or exchange shall be prescribed, prepared and furnished by the commissioner of insurance, and no facsimile signatures shall be used or recognized. The commissioner of insurance or his duly authorized assistant commissioner or representatives may at any time inspect the securities on deposit in any such bank or trust company: Provided, however, That nothing in this act shall be construed to hold the state of Kansas, the commissioner of insurance or his authorized assistant commissioner liable either personally or officially for any default of such depository bank or trust company.

Section 3. K.S.A. 1988 Supp. 40-404 and K.S.A. 40-405 are hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the statute book.

Testimony of Marilyn Harp,
President, Board of Directors
Planned Parenthood of Kansas
February 20, 1990

Testimony on Senate Bill 627

On behalf of Planned Parenthood of Kansas, I wish to support Senate Bill 627, as introduced by Senator Wint Winter.

Our support is due to the many positive things that are accomplished by the bill.

First, it uses viability as the ending point for legal abortions in Kansas. Rather than a fixed point, based on weeks of gestation, this bill will allow flexibility if technology should change our present concept of viability in the future.

Second, it leaves the decision about viability in the hands of the attending physician and the woman involved. Section 3 allows the decision about viability to be made by the attending physician. This important step underscores that this type of legislation is possible, without a large degree of government interference into the physician's medical practice or the woman's control over her body.

Third, this legislation is enforceable only by the Attorney General of the state. This preclusion of independent parties seeking court orders to stop abortions will prevent the type of abuse which took place last year, when strangers sought court orders to keep the family from allowing an abortion procedure of a comatose woman. The Attorney General is charged with the duty to act in the best interest of the State, to enforce this law. However, he or his designees should be the only persons enforcing this law.

Finally, Senate Bill 627 removes from the Kansas statutes law which for many years has been Unconstitutional under Roe v. Wade. It is startling to be researching this area of law and find all that is unenforceable still on the books. It is just a step toward cleaning up the book. Repeal of existing sections of K.S.A. 21-3407 does not change the law in any way.

For these reasons, Planned Parenthood of Kansas supports this legislation and urges its immediate and unmodified passage by this committee.

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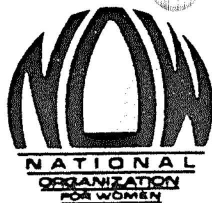
KANSAS 

February 20, 1990

I represent the National Organization for Women, men and women of Kansas who support the fundamental rights of a woman to liberty and privacy, including the right to choose whether to continue a pregnancy. SB 627 would codify those fundamental constitutional rights as Kansas law.

Roe v. Wade established a framework by which the fundamental privacy rights of a woman are balanced with state interests in regulating medical services necessary to ensure the health of female citizens and in the potential life of fetuses who would become citizens if born. Medical practice within the state of Kansas has been subject to this balancing of interests. SB 627 provides a statutory framework which will enable physicians to continue to provide medical services within the framework of those balanced interests.

The author of SB 627 has acknowledged the interests of the state prevail when a fetus is viable, capable of sustained life outside the uterus, unless the health of the pregnant woman is endangered by the continued pregnancy or the fetus is afflicted with a severe abnormality which has been identified through reliable diagnostic procedures. SB 627 enables physicians to do

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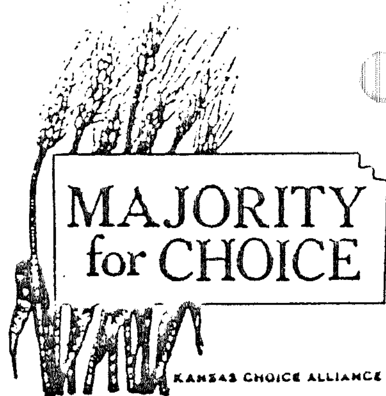
the work for which they have been trained without subjecting them to artificial and arbitrary limitations imposed by individuals untrained in the practice of medicine. The usual gestation period is forty weeks. It is difficult, even for skilled obstetricians, to determine with specifity the weeks of gestation.

SB 627 establishes the mechanism for its enforcement by empowering the Attorney General to file an action for injunctive relief, civil penalties, or both to prevent an unlawful abortion or to punish the individual who causes the unlawful abortion to occur. SB 627 provides for reasonable and rational enforcement of its provision by empowering only the Attorney General of the state to enforce the law. There is no private cause of action which would allow an individual whose sole goal is to be disruptive to file an action to prevent the lawful termination of a pregnancy.

SB 627 provides continued protection for women to make informed choices, in consultation with their physicians, as to whether pregnancies should be continued. Therefore, NOW supports the passage of SB 627.

Jodie Van Meter
KNOW Lobbyist
117 S.W. 10th
Topeka, Kansas
913-354-8254



Testimony submitted to the
Senate Federal and State
Affairs Committee

RE: SB627

FROM: The Kansas Choice Alliance
Beth Powers, Lobbyist

DATE: February 20, 1990

AAUW

ACLU OF KANSAS AND WESTERN MISSOURI

B'NAI B'RITH WOMEN

CHOICE COALITION OF GREATER KC

COMPREHENSIVE HEALTH FOR WOMEN

JEWISH COMMUNITY RELATIONS BUREAU

NCJW, GREATER KC SECTION

NOW (KANSAS)

NOW (KC URBAN)

NOW (SE KANSAS)

NOW (WICHITA)

NOW (CAPITOL CITY)

PLANNED PARENTHOOD OF GREATER KC

PLANNED PARENTHOOD OF KANSAS

PROCHOICE ACTION LEAGUE

RCAR OF KANSAS

WICHITA FAMILY PLANNING

WICHITA WOMENS CENTER

WOMEN'S HEALTH CARE CENTER

YWCA OF TOPEKA

YWCA OF WICHITA

I am Beth Powers and I am the lobbyist for the Kansas Choice Alliance. The Alliance is a coalition of groups with pro-choice platforms from across the state of Kansas. Our membership totals over 85,000 Kansas voters.

I am here today to speak as a proponent of SB627. Physicians everywhere have found it extremely difficult to determine the exact point of viability. SB627 leaves this issue to the person most attuned to the condition of the individual pregnant woman, her attending physician.

The decision to terminate a pregnancy, particularly one that has progressed beyond the first trimester, is an agonizing one. Letting the attending physician determine, by testing, whether or not the fetus is viable, saves the pregnant woman from having to go through a veritable circus of consultations and examinations with other physicians.

SB627 furthermore upholds the position taken by the courts in Roe v. Wade which gives the state the right to regulate abortions before viability and does so in a manner which protects the mental and physical well-being of the pregnant woman.

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George R. Tiller M.D. DABFP Medical Director
Cathy Reavis R.N., N.P. Director of Nursing
Elana Fritchman Administrative Director
Peggy Jarman Public Relations

Women's Health
Care Services P.A

5107 East Kellogg • Wichita, Kansas 67218 • (316) 684-5108

To: Members of the Senate Federal and State Affairs Committee
From: Peggy J. Jarman
Regarding: Senate Bill 627

It is very appropriate to amend K.S.A. 21-3407 and 65-444. The Kansas Supreme Court has already struck down as unconstitutional the section requiring three physicians to approve an abortion procedure and the section requiring procedures be done in a hospital.

S. B. 627 recognizes a woman's right to choose abortion and the state's right to regulate abortion after viability. It further recognizes the intense pain of severe abnormalities for families and allows each family to consider the full range of options in this difficult situation. It is very rare that third trimester abortions are performed. They are not performed except in cases of fetal abormalities. Almost all situations arising this late in a pregnancy are the result of failure within the medical community such as lost or misinterpreted lab results. It is essential that family integrity be respected in order to allow individual evaluation during these tragic times.

S.B. 627 illustrates that the state values women and trusts them to make this difficult and extremely personal decision. Women having abortions always choose to have abortions at the earliest possible time. No one ever says, "No I would rather wait until I am 16 weeks instead of 6 weeks to have this procedure." There are many extenuating circumstances, each very personal, that can postpone procedures. Quite simply, before viability, it is not state business as to whether a woman must become a mother. Forcing parenthood upon the unwilling individual is an awesome degradation of the self. The consequences of enduring an unwanted pregnancy because the state orders that it must be brought to term are chilling.

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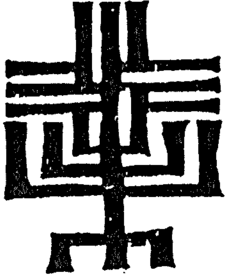
W.H.C.S.
Team Care

Despite the fact that Roe vs Wade implicitly allowed states to restrict abortions in the third trimester, 36 states and the District of Columbia have enacted no laws specifically restricting post-viability abortions. The most probable reason for this is the fact that viability is an intrinsically vague and indeterminate concept There is no standard definition of when it will occur or what elements constitute its diagnosis. Additionally, estimates of likely survivalhood vary depending on the medical centers involved and the medical history of the woman or history of this particular pregnancy. Nor is there consensus about the degree of likelihood of survival that constitutes viability. Is it 5%, 50% chance of survival, 95% and what degree of quality of life should be considered? The definition of viability in S.B. 627 is, therefore, as good a definition as is medically possible.

If this state wishes to accept the invitation of the U.S. Supreme Court to regulate third trimester abortions, S.B. 627 does that in a way that is medically acceptable and still regonizes the intensely personal nature of this very private issue.



Religious Coalition for Abortion Rights in Kansas

1248 Buchanan Topeka, KS 66604 (913) 354-4823

Senate Federal & State Affairs Committee
Re: Senate Bill 627

I am Darlene Stearns, State Co-ordinator for the Religious Coalition For Abortion Rights in Kansas.

The RCAR views SB 627 as a reasonable approach towards support of the Supreme Court decision on Roe v. Wade. We support SB 627 based on the statements of our member denominations supporting freedom of choice in reproductive decisions.

Darlene Greer Stearns

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Religious Coalition for Abortion Rights in K...sas

1248 Buchanan Topeka, KS 66604 (913) 354-4823

RELIGIOUS COALITION FOR ABORTION RIGHTS IN KANSAS POLICY COUNCIL
1990

Betty Nelson — Convenor 4100 Munson Topeka, Ks. 66604	Board of Church & Society, Kansas East Conference United Methodist Church 913/272/2573 h. 913/266/6555 w.
Rabbi Lawrence Karol 4200 Munson Topeka, Ks. 66604	Secretary — Union of American Hebrew Congregations Mid-West Council 913/272/6040 w. 913/235/1723 h.
The Rev. Lesslie Anbari 6131 S.W. 21st, Terr. Topeka, Ks. 66604	Treasurer — Presbytery of Northern Kansas Presbyterian Church USA 913/273/4886 h.
The Rev. Rebecca Erb 1701 Collins Topeka, Ks. 66604	United Church of Christ Kansas-Oklahoma District 913/266/4328 h. 233/1786 w.
Paul Kindling M.D. 3110 Briarwood Ct. Topeka, Ks. 66611	Committee On Women's Concerns Synod of Mid-America Presbyterian Church USA 913/266/6828 h. 266/3385 h.
Lee Ketzel 315 Park Hill Terr. Lawrence, Ks. 66046	Unitarian Universalist Prarie Star District 013/843/4834
Carolyn Litwin 323 Woodbury Lane Topeka, Ks 66606	National Federation of Temple Sisterhoods 913/272/6252
Beth Sheffel 323 S.W. Greenwood Topeka, Ks. 66606	Young Women's Christian Association of Topeka 913/354/1818
The Rev. Edith Funk 2545 S.E. Bennett Topeka, Ks. 66605	Kansas East Conference United Methodist Church 913/235/9018 h. 266/7541 w.
Donna Skryzpzk 1255 Jewell Topeka, Ks. 66604	Unitarian Universalist Service Committee 913/232/6574
Richard Benson 2937 N.E. Oakwood Topeka, Ks. 66617	At-Large Member 913/289/3190
Kansas City Metro RCAR Liz Coleman 2300 Redbridge Terr. Kansas City, Mo. 64131	816/942/8343 h. 753/3884 w.
Kansas West RCAR Tess Pringle Route #1 Box 22 Tribune, Ks. 67879	316/376/4408
Manhattan RCAR Janis Clare Galitzer 1504 Humboldt Manhattan, Ks. 66502	913/539/9292

Senate Federal and State Affairs Committee:

Concerns regarding Senate Bill 627

Repeal of 21-3407 - restricting abortion to hospitals - we believe this provision is enforceable for late term pregnancies - the severability has been upheld and it has always been our position that this statute should be retained on the books. The AG does not agree but he is not infallible and there should be an at least a good faith effort to enforce it before we scrap it.

We presume it is the sponsors intent to restrict abortion - but this bill will not do it. because it says that any abortion that is necessary for the health of the mother is permitted. Under the strictures of Roe and Doe there is no abortion which would not qualify as a health of the mother abortion.

We also have a problem with the concept that you protect or attempt to protect unborn life after viability you are setting viability as a criteria for the protection of life and we worry that if such a criteria becomes established in law it can be used in other contexts - for instance - by the advocates of euthanasia.

Right To Life of Kansas 2/20/90

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