

Approved 4-6-90
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 April 3, 1990 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mary Torrence, Revisor of Statutes Office
Mary Galligan, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Lori Callahan, American Insurance Association
David Hanson, National Association of Independent Insurers
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association

Action on: SB 588 - Prohibiting cities and counties from owning or operating certain correctional facilities

The Chairman read a Legislative Research memo, "Private Prisons and Kansas Law." (Attachment 1)

The memo stated there is nothing in Kansas law now that would prevent a private prison from being built.

A conceptual motion was made by Senator Morris and seconded by Senator Bond to make the language apply to private prisons. The motion carried.

A motion was made by Senator Bond and seconded by Senator Strick to request an interim study on the establishment of a regional prison system as embodied in HB 2835. The motion carried.

Concern was expressed that the study also deal with added stress on social services and the line of liability.

Staff was requested to provide a letter to the Governor to request that a task force be appointed to study the matter of privatization of prisons.

Lori Callahan, American Insurance Association, requested introduction of a bill as a technical cleanup to SB 576, which has been sent to the Governor. (Attachment 2)

David Hanson, National Association of Independent Insurers, said the insurance commissioner supports the bill. The original sponsor, Pat Hurley, has no objection.

A motion was made by Senator Bond and seconded by Senator Morris to introduce the bill. The motion carried.

A motion was made by Senator Bond and seconded by Senator Morris to report the bill favorably. The motion carried.

Action on: SB 765 - Sale and distribution of low-alcohol beer

A proposed substitute to the bill was presented by Tuck Duncan, Kansas Wine and Spirits Wholesalers Association, which creates a new category of non-alcoholic malt beverage. (Attachment 3) He said it brings this product under all the provisions of the liquor control act, that the term "non-alcoholic" is consistent with national labeling.

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 April 3, 1990

A motion was made by Senator Anderson and seconded by Senator Morris to introduce the substitute bill. The motion carried.

A motion was made by Senator Morris and seconded by Senator Strick to report the substitute bill favorably. The motion carried.

Action on: HB 2299 - Sale, manufacture or distribution of imitation firearms; civil penalties

An amendment suggested by the Coleman Company was distributed. (Attachment 4)

A motion was made by Senator Morris and seconded by Senator Bond to adopt the amendment. The motion carried.

A motion was made by Senator Morris and seconded by Senator Vidricksen to report the bill favorably as amended. The motion carried.

The meeting was recessed at 12:00 noon.

The meeting reconvened at 2:45 p.m. with all senators in attendance.

Action on: SB 104 - Amendments concerning licensure of technical professions

Senator Bond said that the subcommittee and many from the various professions involved had spent many hours on this, yet there were still concerns, and he thinks time is too short to resolve them this session.

A motion was made by Senator Bond and seconded by Senator Strick to ask the LCC to request an interim study on SB 104. The motion carried.

Action on: SB 588 - Prohibiting cities and counties from owning or operating certain correctional facilities

A proposed substitute bill was presented. (Attachment 5)

A motion was made by Senator Strick and seconded by Senator Bond to add following "offenders" in (1), "other than a facility constructed for and leased by the federal government." The motion carried.

A motion was made by Senator Bond and seconded by Senator Strick to report the substitute bill favorably as amended. The motion carried.

Discussion on: SB 769 - Reporting by racing commission to the commission's executive director

A letter was distributed from Dan Hamer, Executive Director, Racing Commission, stating, "The commission does not feel there is a need for this legislation because it duplicates the already existing practices of the KRC." (Attachment 6)

Action on: HCR 5047 - Ratifying U.S. Constitutional Amendment relating to compensation for U.S. Senators and Representatives and when variances therein take effect

A motion was made by Senator Yost and seconded by Senator Bond to recommend the resolution favorably. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs,
room 254-E, Statehouse, at 11:05 a.m./~~p.m.~~ on April 3, 1990

A staff memo was discussed comparing Minnesota and Ohio statutes to the Governor's proposal on parental notification. (Attachment 7)

Discussion on: SB 627 - Relating to criminal abortion

Senator Vidricksen presented the subcommittee report on SB 627. (Attachment 8) Also distributed was the balloon of the bill with the committee recommendations. (Attachment 9)

Senator Vidricksen said there were concerns among the subcommittee members about the report, that Senator Winter--the bill's sponsor--was concerned that "health" of the mother was being used and was concerned about the application to self-induced abortions.

Concern was expressed that it would be worthless to pass a bill that did nothing. Also, the opinion was stated that the government should not be involved in restricting abortions. No consensus was reached on the subcommittee report.

The meeting was adjourned at 3:35 p.m.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N -- Statehouse

Phone 296-3181

April 2, 1990

TO: Senator Edward Reilly

Office No. 255-E

RE: Private Prisons and Kansas Law

The Attorney General, in Opinion No. 89-139, stated that a county may not utilize a public building commission to build a private prison, since this activity does not fit within the local affairs and government language of the Home Rule Amendment for Kansas cities (see Article 12, Section 5 of the Kansas Constitution). Some may argue the opinion is incorrect, but for purposes of this response it will be presumed the opinion is correct.

The impact of the opinion arguably is that there is no legal authority for either a city or county to aid or assist in the construction of a private prison. The rationale for including counties is obvious, since county home rule power is generally perceived to be more narrow than that of cities.

There is nothing in Kansas law, however, that I am aware of, that would prevent a private prison from being built. There is just no legal authority for a city or county to aid directly in this process. A city or county might argue that it could aid such a construction project in some fashion, under a theory of enhancing economic development, short of actually issuing bonds for such a project. In light of the Attorney General's opinion, even this type of aid may be questioned.

H.B. 2835 is now in the House Judiciary Committee, after several earlier committee referrals and hearings. The bill would authorize cities and counties to establish regional prison authorities as separate public bodies. These authorities would have the authority to issue bonds subject to a protest petition and election procedures if the amount of the issue exceeds \$1 million; to exercise the right of eminent domain subject to certain restrictions; and to exercise various other powers.


A House Local Government Committee held a hearing on the bill earlier in the Session, and then appointed a subcommittee to study the bill. The subcommittee recommended H.B. 2835 be assigned as an interim study topic. The House Judiciary Committee, which is currently assigned the bill, scheduled a hearing on the subject on March 27. On that date, the Committee adopted a Judiciary Subcommittee recommendation also to request an interim study on this topic.

Senate F&SA
4-3-90
Att. 1

Senator Reilly

- 2 -

Enclosed is a copy of Attorney General Opinion No. 89-139. I hope this is useful.


Michael Heim
Principal Analyst

90-399/MH/jl

Enclosure



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 20, 1989

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

ATTORNEY GENERAL OPINION NO. 89- 139

Mr. Michael K. Schmitt
Horton City Attorney
P.O. Box 240
117 South Sixth Street
Hiawatha, Kansas 66434-0240

Re: Cities and Municipalities--Buildings, Structures
and Grounds; Public Building Commission--Authorized
Constitution of the State of Kansas--Corporations--
Cities' Powers of Home Rule

Synopsis: K.S.A. 1988 Supp. 12-1758, as amended by L. 1989,
ch. 62, § 2, K.S.A. 12-1759 (as amended) and K.S.A.
12-1763 (as amended) are part of an enactment (L.
1989, ch. 62) which is not uniformly applicable to
all cities. Accordingly, a city may by charter
ordinance exempt itself from the provisions of
those statutes and adopt substitute and additional
provisions on the same subject, in accordance with
article 12, section 5 of the Kansas Constitution.
However, substitute and additional provisions in
charter ordinance no. 10 of the city of Horton,
which would authorize a public building commission
to lease and operate a correctional facility for
one thousand inmates, have a substantial impact on
residents outside the territorial limits of the
city of Horton. Recognizing that impact, it is
our opinion that the substitute and additional
provisions prescribed by charter ordinance no. 10
of the city of Horton do not fit within the
"local affairs and government" language of article
12, section 5 of the Kansas Constitution and are
outside the authority granted by that

constitutional provision. Cited herein: K.S.A. 12-1757; K.S.A. 1988 Supp. 12-1758; K.S.A. 12-1759; 12-1763; L. 1989, ch. 62, § 2; L. 1989, ch. 62, § 4; Kan. Const., Art. 12, § 5.

* * *

Dear Mr. Schmitt:

You request our opinion as to whether the Horton Correctional Facility Commission is authorized, under K.S.A. 12-1757 et seq., as modified by charter ordinances of the city of Horton, to lease and operate a correctional facility for approximately one thousand inmates. You indicate that a substantial amount of the inmates will come from governmental agencies located outside the state of Kansas, but that it is anticipated that the state of Kansas and its political subdivisions will eventually be significant suppliers of inmates for the correctional facility.

K.S.A. 12-1757 et seq. authorize any city to create a public building commission for certain purposes prescribed therein. The city of Horton has exempted itself, by charter ordinance nos. 9 and 10, from the provisions of K.S.A. 1988 Supp. 12-1758, as amended by L. 1989, ch. 62, § 2, K.S.A. 12-1759 (as amended) and K.S.A. 12-1763 (as amended), and has adopted substitute and additional provisions relating to its public building commission. The substitute provisions authorize the Horton Correctional Facility Commission to lease and operate a prison within the city of Horton, or no more than five miles outside the territorial limits of the city of Horton. The commission is also authorized to charge service fees or inmate per diem rates to any federal, state or county governmental agency, or any municipal corporation, wherever located, within or without Brown County or the state of Kansas.

All the statutes, enumerated above, from which the city of Horton has exempted itself by charter ordinance are part of an enactment (L. 1989, ch. 62) which is not uniformly applicable to all cities by virtue of section 4 thereof. That section places use restrictions on buildings located in cities having a population of more than 50,000 which are not applicable to buildings in other cities. Accordingly, it is our opinion that a city may by charter ordinance exempt itself from the provisions of the above-referenced statutes and adopt substitute and additional provisions on the same subject, in

accordance with article 12, section 5 of the Kansas Constitution. However, it is necessary to consider whether the substitute and additional provisions set forth in charter ordinance no. 10 of the city of Horton are in harmony with the home rule powers granted by article 12, section 5.

The home rule amendment grants cities the power to determine "their local affairs and government." While the Kansas Supreme Court has adopted the position that the constitutional language was never intended to restrict city home rule power to matters of strictly local concern; City of Junction City v. Griffin, 227 Kan. 332, 337 (1980), it is clear that there are some cases where the extraterritorial impact of a home rule ordinance will result in a finding that it is outside the authority granted by article 12, section 5 of the Kansas Constitution. This conclusion was reached by Professor Barkley Clark of the University of Kansas in State Control of Local Government in Kansas: Special Legislation and Home Rule, 20 U. Kan. L. Rev. 631, 676-677 (1972). In that article, which was quoted with approval in the Griffin case, supra, Professor Clark offers the following guidance to the Kansas Supreme Court in interpreting the home rule amendment:

"[T]he court should . . . be wary of ordinances which may not 'conflict' with statutory law but which have a substantial impact on interests outside the boundaries of the municipality. After all, these interests may not be represented in city legislative deliberations, and municipal parochialism should not, in the name of home rule, be allowed to trample over adversaries unable to protect themselves." Id. at 677.

Additionally, in the above-quoted article, Professor Clark suggests that "ordinances involving . . . substantial extraterritorial impact do not fit within the 'local affairs and government' language of article 12, section 5." Id.

It seems clear that the portion of charter ordinance no. 10 which authorizes the operation of a one thousand inmate prison has a substantial extraterritorial impact on county and township residents living outside the city of Horton. Specifically, there may be a perceived compromise of their personal security from the threat of inmates escaping from the prison. Further, inmates will be transported in and out of

the city of Horton on county and local roads, and "friends" and "business associates" of convicted felons will converge on the area for visitation at the prison. Under the charter ordinance, the prison may even be established outside the city limits and in the midst of the county and township residents. For these reasons, it is our opinion that the substitute and additional provisions prescribed by charter ordinance no. 10 of the city of Horton do not fit within the "local affairs and government" language of article 12, section 5 of the Kansas Constitution, and are outside the authority granted by that constitutional provision.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm

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MEMORANDUM OF BILL REQUEST

TO: Senate Federal and State Affairs Committee

FROM: Lori M. Callahan
Kansas Legislative Counsel
American Insurance Association

DATE: April 3, 1990

On April 2, 1990, the Senate moved to concur in House amendments to S.B. 576. A review of that bill now reveals that it was amended by House Committee in a manner unintended by the House Committee. The House Committee clarified that in hearings held by the Department of Insurance with regard to the Holding Company Act, that the costs of the hearing could be assessed against the parties. S.B. 576, however, did not achieve this single result. Rather, it provided that the cost of "any hearing authorized by law shall be assessed against the parties." This means any hearing, including rule and regulation hearings. This was never intended and would be quite unique in all 50 states in that it prohibits due process and public input.

The requested bill would clarify and reinstate the ability of the Department to assess costs against parties to hearings conducted under the Holding Company Act.

I respectfully request your consideration of this legislation and introduction of this bill.

Senate F&SA
4-3-90
Att. 2

2-2

1 (1) Any offers, requests, invitations, agreements or acquisitions
2 by the person referred to in subsection (a) of this section of any
3 voting security referred to in subsection (a) of this section which,
4 immediately prior to the consummation of such offer, request, in-
5 vitation, agreement or acquisition, was not issued and outstanding;

6 (2) any offer, request, invitation, agreement or acquisition which
7 the commissioner of insurance by order shall exempt therefrom as:
8 (A) Not having been made or entered into for the purpose and not
9 having the effect of changing or influencing the control of a domestic
10 insurer; or (B) as otherwise not comprehended within the purposes
11 of this section.

12 (g) The following shall be violations of this section:

13 (1) The failure to file any statement, amendment or other material
14 required to be filed pursuant to subsection (a) or (b) of this section;
15 or

16 (2) the effectuation or any attempt to effectuate an acquisition of
17 control of, or merger with, a domestic insurer unless the commis-
18 sioner of insurance has given the commissioner's approval thereto.

19 (h) The courts of this state are hereby vested with jurisdiction
20 over every securityholder of a domestic insurer and every person
21 not resident, domiciled or authorized to do business in this state
22 who files a statement with the commissioner of insurance under this
23 section and over all actions involving such person arising out of
24 violations of this section. Each such person shall be deemed to have
25 performed acts equivalent to and constituting an appointment by
26 such a person of the commissioner of insurance to be such person's
27 true and lawful attorney upon whom may be served all lawful process
28 in any action, suit or proceeding arising out of violations of this
29 section. Copies of all such lawful process shall be served on the
30 commissioner of insurance and transmitted by registered or certified
31 mail by the commissioner of insurance to such person at such person's
32 last known address.

33 New Sec. 3. The cost of making a record and publishing
34 notices of any administrative hearing authorized or required by
35 article 33 of chapter 40 of the Kansas Statutes Annotated shall
36 be borne by the insurer or person whose actions or decisions
37 gave rise to the hearing.

38 New Sec. 3. (a) The costs incurred by the department of in-
39 surance in conducting any hearing authorized by ~~law~~ shall be as-
40 sessed against the parties to the hearing in such proportion as the
41 commissioner of insurance may determine upon consideration of all
42 relevant circumstances including: (1) The nature of the hearing; (2)
43 whether the hearing was instigated by, or for the benefit of a

administrative
article 33 of chapter 40 of the Kansas Statutes Annotated

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NON-ALCOHOLIC MALT BEVERAGES

SEC. 1: Definitions. As used in the non-alcoholic malt beverages act:

(a) non-alcoholic malt beverage: a beverage containing less than one-half of one percent (.5%) alcohol by volume obtained by alcohol fermentation of an infusion or coction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

SEC. 2: Sale of non-alcoholic malt beverages. Non-alcoholic malt beverages may be sold at retail by retailers licensed pursuant to the Liquor Control Act, by clubs and drinking establishments licensed pursuant to the Club and Drinking Establishment Act, and by retailers licensed pursuant to the Cereal Malt Beverages Act, as an additional privilege of the license issued in accordance therewith.

SEC. 3. Distribution of non-alcoholic malt beverages. Non-alcoholic malt beverages shall be distributed by distributors as defined by K.S.A. 41-102(h) pursuant to all terms and conditions of the Liquor Control Act.

SEC. 4: The provisions of the Liquor Control Act, and amendments thereto, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of non-alcoholic malt beverages by retailers licensed thereunder.

SEC. 5. The provisions of the Club and Drinking Establishment Act, and amendments thereto, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of non-alcoholic malt beverages by clubs and drinking establishments licensed thereunder.

SEC. 6. The provisions of the Cereal Malt Beverages Act, and amendments thereto, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of non-alcoholic malt beverages by retailers licensed thereunder.

SEC. 7. Taxation of non-alcoholic malt beverages. In addition to the foregoing provisions the provisions of K.S.A. 79-3117, K.S.A. 79-3118 and K.S.A. 79-3119 shall apply to the sale or distribution of non-alcoholic malt beverages pursuant to section 3. The provisions of K.S.A. 79-4101 et. seq. shall apply to the sale of non-alcoholic malt beverages at retail pursuant to section 4. The provisions of K.S.A. 79-41a01 shall apply to the sale of non-alcoholic malt beverages by a club or drinking establishment pursuant to section 5.

SEC. 8. Title of act. The provisions of sections 1 through 7, inclusive, shall be known as the non-alcoholic malt beverages act.

SEC 9. This act shall take effect and be in force from and after its publication in the Kansas Register.

As Amended by House Committee

Session of 1989

HOUSE BILL No. 2299

By Representative Sprague

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AN ACT relating to imitation firearms; providing for a civil penalty for sale, manufacture or distribution thereof for purposes other than specifically permitted.

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

Section 1. (a) Any person who sells, manufactures or distributes an imitation firearm in violation of this section shall be liable for a civil penalty in an action brought by the city attorney of the city or the county or district attorney of the county of not more than \$10,000 for each violation. Penalties recovered pursuant to this section shall be deposited in the general fund of the city or county.

(b) The sale, manufacture or distribution of imitation firearms shall be permissible if the imitation firearm is sold, manufactured or distributed:

- (1) Solely for export in interstate or foreign commerce;
- (2) solely for lawful use in theatrical productions, including motion picture, television and stage productions;
- (3) for use in a certified or regulated athletic event or competition;
- (4) for use in military or civil defense activities; or
- (5) for public displays authorized by public or private schools.

(c) As used in this section, the term "imitation firearm" means a replica of a firearm which is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm. The term "imitation firearm" does not include: (1) A nonfiring collector's replica of an antique firearm which was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case; (2) a nonfiring collector's replica of a firearm which was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization and is offered for sale in conjunction with a wall plaque or presentation case.

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

Senate F&SA
4-3-90
Att. 4

OR (3) A PNEUMATIC, SPRING, SPRING-AIR, OR COMPRESSED-GAS POWERED NONPOWDER GUN THAT IS COMMONLY CALLED AN AIRGUN AND IS DESIGNED TO DISCHARGE BBS, PELLETS, OR POINT BALLS

PROPOSED Substitute for SENATE BILL NO. 588

By xx

AN ACT prohibiting establishment, construction or operation of certain correctional facilities.

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

Section 1. (a) As used in this section:

(1) "Correctional facility" means any facility for placement, detention or confinement of offenders.

(2) "Offender" means any person convicted of a crime or adjudicated to be a juvenile offender.

(b) Until such time as the legislature has reviewed and provided a public policy regarding the establishment, construction and operation of correctional facilities by cities, counties or private entities, no city, county or private entity shall establish, construct or operate any correctional facility in this state unless authorized by Kansas statute.

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

STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800

March 20, 1990

The Honorable Ed Reilly, Jr.
Chairman, Federal and State
Affairs Committee
State Capitol, Room 255 E
Topeka, KS 66612

Dear Senator Reilly:

On March 12 you requested that I report to you the Kansas racing commission's position regarding SB 769.

At its regular meeting March 16, 1990 the commission reviewed the bill and stated, "The commission does not feel there is a need for this legislation because it duplicates the already existing practices of the KRC."

Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan P. Hamer".

Dan P. Hamer
Acting Executive Director

DPH#8-cd

Senate F&SA
4-3-90
Att. 6

NORMAN J. FURSE, ATTORNEY
REVISOR OF STATUTES

ARDEN K. ENSLEY, ATTORNEY
FIRST ASSISTANT REVISOR

JAMES A. WILSON III, ATTORNEY
SENIOR ASSISTANT REVISOR

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LEGAL CONSULTATION—LEGISLATIVE
COMMITTEES AND LEGISLATORS
LEGISLATIVE BILL DRAFTING
SECRETARY—LEGISLATIVE
COORDINATING COUNCIL
SECRETARY—KANSAS COMMISSION
ON INTERSTATE COOPERATION
KANSAS STATUTES ANNOTATED
EDITING AND PUBLICATION
LEGISLATIVE INFORMATION SYSTEM

TO: Senate Committee on Federal and State Affairs
FROM: Mary Torrence, Assistant Revisor of Statutes *MAT*
DATE: April 2, 1990
RE: Comparison of Minnesota and Ohio Statutes to Governor's
Proposal on Parental Notification

	<u>Governor's Proposal</u>	<u>Minnesota</u>	<u>Ohio</u>
Requirement	Notice	Notice	Notice
Age	16	18	18
"Notice"	In person or by telephone	Written; by personal delivery or mail 48 hours before abortion; if mailed, delivery is deemed at noon on the next mail delivery day after mailing	Undefined
"Parent"	One parent, guardian person in loco parentis or court, if minor is ward of court	Both parents, unless one is dead or can't be found; guardian; or conservator	Parent, guardian or custodian
Judicial Bypass	Yes	Only if required by court order	Yes Senate F&SA 4-3-90 Att. 7

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SUBCOMMITTEE REPORT
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
SUBCOMMITTEE ON ABORTION MATTERS

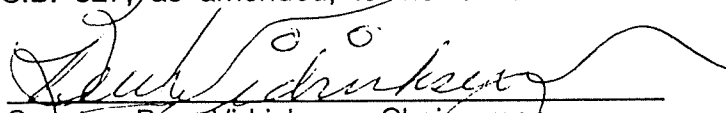
March 27, 1990

The Subcommittee composed of Senators Reilly, Erlich, Anderson, and Daniels and chaired by Senator Vidricksen met to consider S.B. 627 and S.B. 778 which are among those bills assigned to the Subcommittee. During the course of discussion with Senator Winter, the sponsor of S.B. 627, and representatives of the Governor's office, the Subcommittee was presented with proposed amendments both authors could support.

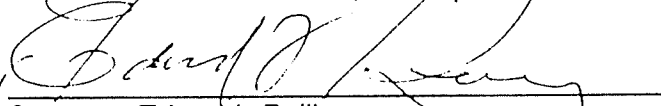
Those amendments would prohibit post-viability abortions except when the fetus is compromised by genetic defect, infectious disease, or severe developmental anomaly or when the pregnancy resulted from rape or incest. A third exception, developed by the Subcommittee and not included in either bill, would allow post-viability abortions when continuation of the pregnancy would pose a serious risk to the woman's life. The Subcommittee opted for that language in lieu of provisions in both original bills that would allow late-term abortions to protect the woman's health. The amendments also would include the severability clause originally included in the Governor's bill.

Any post-viability abortion not provided for by the exceptions would be a class D felony. The Subcommittee discussed at length the fact that the bill would make self-induced abortions criminal acts, but was unable to agree on language that would satisfactorily address that issue.

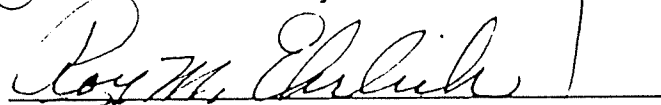
The Subcommittee recommends S.B. 627, as amended, to the full Committee.



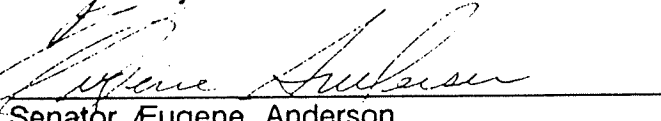
Senator Ben Vidricksen, Chairperson



Senator Edward Reilly



Senator Roy Ehrlich



Senator Eugene Anderson



Senator Norma Daniels

SENATE BILL No. 627

By Senator Winter

2-7

Senate F&SA
4-3-90
Att. 9

9 AN ACT concerning abortion; amending K.S.A. 21-3407 and 65-444
10 and repealing the existing sections.
11

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

13 Section 1. K.S.A. 21-3407 is hereby amended to read as follows:
14 21-3407. (1) Criminal abortion is the purposeful and unjustifiable
15 termination of the pregnancy of any female other than by a live
16 birth, except as provided by section 4

termination of human pregnancy after viability,
except as provided in section 4, with an intention
other than to produce a live birth or to remove a
dead embryo or fetus

17 (2) A person licensed to practice medicine and surgery is
18 justified in terminating a pregnancy if he believes there is
19 substantial risk that a continuance of the pregnancy would im-
20 pair the physical or mental health of the mother or that the
21 child would be born with physical or mental defect, or that
22 the pregnancy resulted from rape, incest, or other felonious
23 intercourse; and either:

24 (a) Three persons licensed to practice medicine and surgery,
25 one of whom may be the person performing the abortion, have
26 certified in writing their belief in the justifying circumstances,
27 and have filed such certificate prior to the abortion in the
28 hospital licensed by the state board of health and accredited
29 by the joint commission on accreditation of hospitals where it
30 is to be performed, or in such other place as may be designated
31 by law; or

32 (b) An emergency exists which requires that such abortion
33 be performed immediately in order to preserve the life of the
34 mother.

35 (3) For the purpose of this section pregnancy means that
36 condition of a female from the date of conception to the birth
37 of her child.

38 (4) For the purpose of subsection (2) of this section all illicit
39 intercourse with a female under the age of sixteen (16) years
40 shall be deemed felonious.

41 (5) Criminal abortion is a class D felony.

2 Sec. 2. K.S.A. 65-444 is hereby amended to read as follows: 65-
43 444. No hospital, hospital administrator or governing board shall be

9-2

1 required to permit the termination of human pregnancies within its
 2 institution and the refusal to permit such procedures shall not be
 3 grounds for civil liability to any person. A hospital may establish
 4 criteria and procedures under which pregnancies may be terminated
 5 within its institution, in addition to those which may be prescribed
 6 by licensing, regulating or accrediting agencies: *Provided, No preg-*
 7 *nancy shall be purposely terminated until the opinions of three*
 8 *(3) duly licensed physicians attesting to the necessity of such*
 9 *termination have been recorded in writing in the permanent*
 10 *records of the hospital, except in an emergency as defined in*
 11 *section 21-3407 (2) (b) of the Kansas criminal code.*

12 New Sec. 3. For the purposes of this act:

13 (a) "Physician" means an individual licensed in this state to prac-
 14 tice medicine and surgery; and

15 (b) "viability" means the stage of gestation when, in the medical
 16 judgment of the attending physician, the fetus is capable of sustained
 17 survival outside the uterus.

18 New Sec. 4. Abortion is an unlawful act in this state unless
 19 performed by a physician before viability or, if performed after vi-
 20 ability (1) is necessary to preserve the woman's health; or (2) the
 21 fetus is afflicted with a severe abnormality as identified through
 22 reliable diagnostic procedures.

23 New Sec. 5. This act is enforceable by the attorney general of
 24 this state in an action for injunctive relief or civil penalties, or both.
 25 No court shall assess civil penalties under this act unless the attorney
 26 general proves by clear and convincing evidence that the defendant
 27 acted knowingly and intentionally with regard to every element of
 28 the violation charged. Moreover, it shall be a defense under this act
 29 that the defendant exercised a good faith judgment that the de-
 30 fendant's actions were in compliance with this act. Civil penalties
 31 shall not exceed \$500 for each violation of this act.

32 ~~7. Sec. 6. K.S.A. 21-3407 and 65-444 are hereby repealed.~~

33 ~~8. Sec. 7. This act shall take effect and be in force from and after~~
 34 ~~its publication in the statute book.~~

Criminal abortion does not include an abortion if:
 (1) It is performed by a physician before
 viability; (2) it is necessary because
 continuation of the pregnancy would pose a serious
 risk to the life of the woman; (3) there is
 significant evidence that the fetus is compromised
 by genetic defect, infectious disease or severe
 developmental anomaly; or (4) the pregnancy
 resulted from rape or incest

New Sec. 6. If any provisions of this act or
 the application thereof to any person or
 circumstances is held invalid, the invalidity does
 not affect other provisions or applications of
 this act which can be given effect without the
 invalid provisions or application. To this end the
 provisions of this act are severable.