

Approved February 26, 1990  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at  
Chairperson

10:00 a.m./~~p.m.~~ on February 14, 1990 in room 514-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

James Clark, Kansas County and District Attorneys Association  
Bill Pitzenberger, Blue Cross and Blue Shield  
Nancy Hughes, Lawrence

The Chairman called the meeting to order and recognized James Clark, Kansas County and District Attorneys Association.

Mr. Clark presented the committee with four bill requests. The requests were:

- 1) to allow the courts to consider any prior felonies when sentencing;
- 2) to add the growing of marijuana to the controlled substance act;
- 3) and 4) to make two changes in the forfeiture chapter to be consistent with federal law. (ATTACHMENTS I, II, III and IV)

The Chairman suggested that the second request made by Mr. Clark could be incorporated into a bill that was currently being drafted by the Revisor and therefore would not require a separate bill introduction.

Senator Morris made a motion to introduce the three bills as requested by Mr. Clark with the latitude to include the controlled substance act addition to the bill currently being drafted. Senator Gaines seconded the motion. The motion carried.

The Chairman presented the committee with a request from the Uniform Law Commission to introduce legislation on the Uniform Fraudulent Transfer Act and the Uniform Federal Lien Registration Act. He added that the House chairman has introduced two other requests. However, this request is with the understanding by the Commission that there is no chance to bring these bills up for consideration this session and that the bills would be requested for interim study. (ATTACHMENT V)

Senator Gaines moved to introduce the two bills as requested by the Uniform Law Commission. Senator Bond seconded the motion. The motion carried.

The Chairman opened the hearing for SB 473.

SB 473 - relating to corporations organized under the nonprofit medical and hospital service corporation act; statutes applicable thereto.

Gordon Self, Committee staff person from Office of the Revisor of Statutes, presented SB 473 stating that it is another conflict resolution bill, no policy changes are included.

Bill Pitzenberger, Blue Cross and Blue Shield, testified in support of the bill with one suggestion for amendment. He stated that they are asking for the technical amendment so they could be included in the investment codes, the amendment would allow Blue Cross and Blue Shield to invest as the rest of the insurance companies. (ATTACHMENT VI)

This concluded the hearing for SB 473.

Senator Morris moved to amend SB 473 as suggested by Mr. Pitzenberger. Senator Gaines seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 14, 1990

Senator Gaines moved to recommend SB 473 favorable as amended, Senator Bond seconded the motion. The motion carried.

The Chairman informed the committee that the hearing scheduled for SB 592 was postponed at the request of the Kansas Board of Regents, whose original request introduced the bill. The bill will be rescheduled at a later date.

The Real Estate and Commercial Law Subcommittee presented their report to the full committee. (ATTACHMENT VII)

SB 510 - concerning oil and gas; providing for a security interest and lien on severed oil and gas and certain oil and gas leasehold estates to secure payment to owners of interest entitled to payment by reasons of the sale of severed oil or gas.

Senator Moran made a motion that a letter from the chairman be addressed to the royalty owners group and KIOGA urging them to cooperate and resolve this matter, and that SB 510 be held in committee. Senator Gaines seconded the motion. The motion carried.

SB 527 - pertaining to unenforced foreclosure judgments, cancellation, judgment dormancy and renewal affidavits.

Senator Moran moved to amend SB 527 by deleting one word on lines 31 - 32. Senator Gaines seconded the motion. The motion carried.

Senator Moran moved to recommend SB 527 favorable for passage as amended, Senator Gaines seconded the motion. The motion carried.

HB 2432 - concerning taxation; relating to the transfer of property.

Senator Moran moved to recommend HB 2432 adversely, Senator Gaines seconded the motion. The motion carried.

HB 2478 - concerning liens; relating to certain liens on residential real property and certain liens on personal property.

Senator Moran moved to amend HB 2478 by deleting the amendment made on the Floor of the House by striking the language from line 36 through line 82, Senator Gaines seconded the motion. The motion carried.

Senator Moran moved to recommend HB 2478 favorable for passage as amended, Senator Gaines seconded the motion.

The Probate and Civil Procedure Subcommittee was not ready to make a report on this date.

Chairman Winter announced the appointment of a Child Abuse Reporting Subcommittee to study SB 306 and SB 522. Senator Nancy Parrish will Chair the Subcommittee, members will be Senators Bond, Rock, D. Kerr, Moran, Gaines and Winter. He stated a memo will follow and requested that the subcommittee work with the school board people and SRS.

The Chairman also announced that Senator Richard Rock will replace Senator Eric Yost as Chairman of the Probate and Civil Procedure Subcommittee. Senator Yost will remain a member of the Subcommittee.

The Chairman recognized Nancy Hughes to present her testimony in opposition of SB 190.

SB 190 - concerning surrogate mothers; rendering void and unenforceable agreements for services of a surrogate mother for consideration; rendering voidable agreements for services of surrogate mother without consideration; providing for penalty for promoting such agreements.

Ms. Hughes stated her credentials as being involved since 1984 as a Clinical Social Worker handling surrogacy matters. She commented on her belief that SB 190 does not

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 14,, 1990

put in place any protection and support. She referred the Committee to her testimony to the Interim Special Committee on Judiciary for further details. She concluded by stating that she is in favor of regulation as a good idea and that we are putting people at greater risk without it.

Mike Heim, Committee staff from Legislative Research Department, presented the committee with an overview of the Interim Committee Report and explained that it was the suggestion of that Committee that instead of introducing a new bill, SB 190 be amended to incorporate their recommendations.

Senator Morris moved to introduce a committee bill using the Interim Committee Report of the Special Committee on Judiciary. Senator Parrish seconded the motion. The motion carried.

The meeting was adjourned.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Brenda Beecher	307 W. 3 <sup>rd</sup> Ellis	Page
Nancy Hughes	RT. 1, Box 157 Lawrence, KS 66049	Hughes Associates
Angie Werner	609 W 10 <sup>th</sup> Ellis	Page
JASON COLE	1311 WESTERN PLAINS HAYS KS 67601	Page
Quin Clark	Topeka	KC DAA
Chip Wheelen	Topeka	Ks Medical Soc.
Bill Pitsenberger	Topeka	Blw Cross-Blue Shield
JACK ROBERTS	"	" "
Bob Corkins	Topeka	KCCI
HAROLD RIEHM	TOPEKA	KAMM
ELLEN SAULHART	TOPEKA	KMS
Jodie Conner	Topeka	now

February 14, 1990

thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than three times the greatest maximum sentence provided by K.S.A. 21-4501 and amendments thereto, for the crime.

(c) If a defendant is convicted of a felony other than a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated ~~a third or subsequent time~~, the trial judge shall sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than two times the greatest minimum sentence authorized by K.S.A. 21-4501 and amendments thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than two times the greatest maximum sentence provided by K.S.A. 21-4501 and amendments thereto, for the crime.

(d) If any portion of a sentence imposed under K.S.A. 21-107a, and amendments thereto, or under this section, is determined to be invalid by any court because a prior felony conviction is itself invalid, upon resentencing the court may consider evidence of any other prior felony conviction that could have been utilized under K.S.A. 21-107a, and amendments thereto, or under this section, at the time the original sentence was imposed, whether or not it was introduced at that time, except that if the defendant was originally sentenced as a second offender, the defendant shall not be resentenced as a third offender.

(e) The provisions of this section shall not be applicable to:

(1) Any person convicted of a felony of which a prior conviction of a felony is a necessary element; or

(2) any person convicted of a felony for which a prior conviction of such felony is considered in establishing the class of felony for which the person may be sentenced.

(f) A judgment may be rendered pursuant to this section only after the court finds from competent evidence the fact of former convictions for felony committed by the prisoner, in or out of the state.

History: L. 1969, ch. 180, § 21-4504; L. 1970, ch. 124, § 10; L. 1973, ch. 141, § 1; L. 1978, ch. 120, § 4; L. 1982, ch. 137, § 2; L. 1989, ch. 92, § 23; July 1.

and has two or more prior felony convictions

**21-4504.** Conviction of second and subsequent felonies; exceptions. (a) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated ~~a second time~~, the punishment for which is confinement in the custody of the secretary of corrections, the trial judge may sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court may fix a minimum sentence of not less than the least nor more than twice the greatest minimum sentence authorized by K.S.A. 21-4501 and amendments thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than twice the greatest maximum sentence provided by K.S.A. 21-4501 and amendments thereto, for the crime.

(b) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated ~~a third or subsequent time~~, the trial judge shall sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than three times the greatest minimum sentence authorized by K.S.A. 21-4501 and amendments

and has one prior felony conviction

and has two or more prior felony convictions

**65-4127b.** Unlawful acts regarding depressants, stimulants or hallucinogenic drugs or other substances; penalties; sentencing presumption. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(5) any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, manufacture, prescribe, administer, deliver, distribute, dispense or compound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class C felony.

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful

for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

(d) Upon conviction of any person pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in K.S.A. 1988 Supp. 65-4127e and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

History: L. 1973, ch. 259, § 2; L. 1974, ch. 258, § 9; L. 1980, ch. 100, § 3; L. 1982, ch. 269, § 8; L. 1986, ch. 241, § 4; L. 1986, ch. 243, § 1; L. 1987, ch. 244, § 4; L. 1987, ch. 245, § 1; L. 1988, ch. 257, § 2; L. 1989, ch. 200, § 5; May 18.

plant, propagate, cultivate,  
grow, harvest,

65-4171. Forfeitures of property under K.S.A. 65-4135 or 65-4156; petition for order to show cause for issuance of order; notice of proceeding; order of proof; final order; protective orders; proceedings separate and distinct from criminal charges. (a) The county or district attorney within whose jurisdiction there is property which is sought to be forfeited pursuant to K.S.A. 65-4135 or 65-4156, and amendments thereto, or such attorney as employed by the law enforcement agency and approved by the county or district attorney seeking forfeiture of such property, shall promptly proceed against the property by filing in the district court having jurisdiction of such property a petition for an order to show cause why the court should not order forfeiture of such property. The petition shall be verified and shall set forth: (1) A statement that the action is brought pursuant to K.S.A. 1988 Supp. 65-4171; (2) the law enforcement agency bringing the action; (3) a description of the property sought to be forfeited; (4) a statement that (A) on or about a date certain the property was used or intended to be used in violation of this act or a violation of this act took place in, upon or by means of the property or (B) the property is a controlled substance as defined in K.S.A. 65-4101 and amendments thereto, a simulated controlled substance as defined in K.S.A. 65-4150 and amendments thereto or drug paraphernalia as defined in K.S.A. 65-4150 and amendments thereto and determined pursuant to K.S.A. 65-4151 and amendments thereto; (5) a statement detailing the facts in support of subsection (a)(5); and (6) a list of all persons known to the law enforcement agency, after diligent search and inquiry, that may claim an ownership interest in the property by title, registration or deed or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) Upon receipt of a petition complying with the requirements of subsection (a), the judge of the district court shall issue an order to show cause setting forth: (1) A statement that the controlling statutes are K.S.A. 65-4135, 65-4156 and K.S.A. 1988 Supp. 65-4171, and amendments thereto; and (2) a general description of the property and the date on or about which it was allegedly used in violation of the uniform controlled substances act or the provisions of K.S.A. 65-4150 through 65-4157, and amendments thereto. In addition, the order shall set a date at least 41 days from the date of first publication of the order pursuant to subsection (c) for all persons claiming an interest in the property to file such pleadings as they desire as to why the court should not order the forfeiture of such property to use, sale or other disposition by the law enforcement agency seeking forfeiture of the property. The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waive any claim to the subject property.

(c) The county or district attorney, or such attorney as employed by the law enforcement agency approved by the county or district attorney seeking forfeiture, shall give notice of the forfeiture proceedings by:

(1) causing a copy of the petition and order to show cause once each week for three consecutive weeks in a newspaper having general circulation in the county where the property is located and meeting the requirements of K.S.A. 64-101 and amendments thereto; and

(2) sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if (A) the property is of a type for which title, registration or deed is required by law; (B) the owner of the property is known in fact to the law enforcement agency at the time of seizure; or (C) the property is subject to a security interest perfected in accordance with the uniform commercial code. The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, such agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall have the burden to establish by clear and convincing evidence that the property is subject to forfeiture as provided in K.S.A. 65-4135 and 65-4156 and amendments thereto. In addition to the presumptions found in K.S.A. 65-4135, 65-4136 and 65-4156, and amendments thereto, it shall be presumed in the manner provided in K.S.A. 60-414 and amendments thereto that any vessel, motor vehicle, aircraft or other personal or real property, in or upon which controlled substances are located at the time of the seizure, was being used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, concealment, purchase, exchange or giving away of a controlled substance. The burden of proof shall be on the claimants of the property to rebut this presumption.

(e) ~~The final order of forfeiture by the court shall perfect in the law enforcement agency right, title and interest in and to such property and shall relate back to the date of the seizure.~~

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable. Upon filing the petition, the county or district attorney or the attorney for the law enforcement agency approved by the county or district attorney seeking forfeiture may also seek such protective orders as necessary to prevent the transfer, encumbrance or other disposal of any property named in the petition. If the property alleged to be forfeitable is real property, the county or district attorney or the attorney for the law enforcement agency seeking forfeiture shall cause to be recorded a *lis pendens* on the property in the county in which the property is located.

(g) Unless otherwise stated, proceedings brought pursuant to this section are separate and distinct from and in no way supplemental to or dependent upon the outcome of any criminal charges, indictment, complaint or information.

History: L. 1988, ch. 258, § 4; July 1.

All right, title, and interest in property shall vest in the law enforcement agency upon commission of the act giving rise to forfeiture under this act.

**65-4173.** Same; disposition of proceeds of sale of property and of moneys forfeited; law enforcement trust fund. The proceeds of any sale pursuant to K.S.A. 1988 Supp. 65-4172 and any moneys forfeited pursuant to K.S.A. 1988 Supp. 65-4171 shall be applied: first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security and forfeiture of the property; third, to payment of the costs incurred by the county or district attorney or attorney for the law enforcement agency approved by the county and district attorney to which the property is forfeited; and fourth, to payment of costs incurred by the court. The remaining proceeds or moneys shall be disposed of as follows: (a) If the law enforcement agency to which the property is forfeited is a state agency, the entire amount shall be deposited in the state treasury and credited to the state general fund; (b) if such agency is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement trust fund in the county treasury; and (c) if such law enforcement agency is a city agency, the entire amount shall be deposited in the city treasury and credited to a special law enforcement trust fund in the city treasury. Moneys in the special law enforcement trust fund in the county or city treasury shall be expended only upon appropriation to the sheriff's office or police department, by the respective board of county commissioners or governing body of the city, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law enforcement purposes as the respective board of county commissioners or governing body of the city deems appropriate and shall not be considered a source of revenue to meet normal operating expenses.

including reasonable attorney fees, but not to exceed 10% of the total proceeds;

History: L. 1988, ch. 258, § 6; July 1.



MICHAEL R. (MIKE) O'NEAL  
REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON  
RENO COUNTY  
P.O. BOX 2977  
HUTCHINSON, KANSAS 67504  
(316) 662-0537  
STATE CAPITOL, ROOM 425-S  
TOPEKA, KANSAS 66612  
(913) 296-7679



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN: JUDICIARY  
MEMBER: LABOR AND INDUSTRY  
RULES AND JOURNAL  
NATIONAL CONFERENCE OF  
STATE LEGISLATURES  
COMMITTEE ON LAW AND  
JUSTICE  
NATIONAL CONFERENCE OF  
COMMISSIONERS OF UNIFORM  
STATE LAWS  
KANSAS JUDICIAL COUNCIL  
CRIMINAL JUSTICE  
COORDINATING COUNCIL

MEMORANDUM

TO: Senator Wint Winter, Jr.  
Judiciary Committee Chairman

FROM: Michael R. O'Neal *[Signature]*

DATE: February 13, 1990

RE: Uniform Fraudulent Transfer Act and Uniform Federal Lien  
Registration Act

Wint, I am attaching the approved drafts of the above two ULC Acts. I think we should go ahead and have them introduced with the understanding that we will probably have to refer them to interim committee due to the volume of legislation we already have under consideration. By having the legislation introduced Kansas will at least get credit for the introduction with the ULC. I've introduced UCC article 4a and will be introducing shortly UCC article 2a.

SENATE BILL No. 473

By Committee on Financial Institutions and Insurance

1-17

AN ACT relating to corporations organized under the nonprofit medical and hospital service corporation act; statutes applicable thereto; amending K.S.A. 1989 Supp. 40-19c09 and repealing the existing section; also repealing K.S.A. 1989 Supp. 40-19c09a.

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

Section 1. K.S.A. 1989 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit corporations, to the provisions of sections 3 and 4 of this act, to the provisions of K.S.A. 40-2,116 and 40-2,117 and to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2a01 to 40-2a19, inclusive, 40-2111 to 40-2116, inclusive, 40-2216 to 40-2220, inclusive, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, and amendments thereto, and to the provisions of K.S.A. 1989 Supp. 40-2221a, 40-2221b, 40-2229 and 40-2230, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

et seq.

Sec. 2. K.S.A. 1989 Supp. 40-19c09 and 40-19c09a are hereby repealed.

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37

notice shall have been given, may withdraw approval of any such policy, rate or rating formula in the event such filing no longer meets the requirements of this act.

(d) Any rating formula filed pursuant to this section shall be made in accordance with the following provisions:

(1) Due consideration shall be given to (A) past and prospective loss experience; (B) past and prospective expenses; (C) adequate contingency reserves; (D) the provisions of contracts between such corporation and participating optometrists; and (E) all other relevant factors within and without the state;

(2) risks may be grouped by classification or the establishment of rates for individual policies or for group policies; and

(3) rates shall be reasonable, not excessive and not unfairly discriminatory.

(e) Nothing in this act is intended to prohibit or discourage reasonable competition or to discourage or prohibit uniformity of rates except to the extent necessary to accomplish the aforementioned purposes. The commissioner is hereby authorized to issue such rules and regulations as are necessary and not inconsistent with this act.

(f) Premiums shall be payable in cash and a subscription agreement issued by such corporation shall provide for any assessment or contingent premiums.

(g) Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

**History:** L. 1975, ch. 243, § 7; L. 1986, ch. 318, § 34; L. 1988, ch. 356, § 101; July 1989.

## Article 19c.—NONPROFIT MEDICAL AND HOSPITAL SERVICE CORPORATIONS

### 40-19c01.

#### CASE ANNOTATIONS

1. Cited; allegations of antitrust violations against provider's threatened termination of contracting provider agreement with hospital examined. *Reazin v. Blue Cross Blue Shield of Kansas, Inc.*, 635 F.Supp. 1287, 1333 (86).

**40-19c06. Subscription agreements; contracts; continuation of subscription agreements; converted subscription agreements.** (a) No subscription agreement, except as provided in subsection (d), between a corporation organized under the nonprofit medical and hospital service corporation act and a subscriber, shall entitle more than one person to benefits, ex-

cept that a "family subscription agreement" may be issued, at an established subscription charge, to a husband and wife, or husband, wife, and their dependent child or children and any other person dependent upon the subscriber. Only the subscriber must be named in the subscription agreement.

(b) Every subscription agreement entered into by any such corporation with any subscriber shall be in writing and a certificate stating the terms and conditions shall be furnished to the subscriber to be kept by the subscriber. No such certificate form shall be made, issued or delivered in this state unless it contains the following provisions: (1) A statement of the nature of the benefits to be furnished and the period during which they will be furnished, and if there are any benefits to be excepted, a detailed statement of such exceptions printed as hereinafter specified; (2) a statement of the terms and conditions, if any, upon which the subscription agreement may be canceled or otherwise terminated at the option of either party; (3) a statement that the subscription agreement includes the endorsements and attached papers, if any, and contains the entire contract; (4) a statement that no statement by the subscriber in the application for a subscription agreement shall avoid the subscription agreement or be used in any legal proceeding, unless such application or an exact copy is included in or attached to such subscription agreement, and that no agent or representative of such corporation, other than an officer or officers designated therein, is authorized to change the subscription agreement or waive any of its provisions; (5) a statement that if the subscriber defaults in making any payments under the subscription agreement, the subsequent acceptance of a payment by the corporation or by one of its duly authorized agents shall reinstate the subscription agreement but with respect to sickness and injury, only to cover such sickness as may be first manifested more than 10 days after the date of such acceptance; (6) a statement of the period of grace which will be allowed the subscriber for making any payment due under the subscription agreement. Such period shall not be less than 10 days; and (7) if applicable, a statement of the kind of hospital in which the subscriber may receive benefits and the types of benefits to which the subscriber may be entitled to in such kinds of hospitals. The subscriber shall be entitled to benefits in any non-participating hospital in Kansas which is

licensed by the secretary of health and environment and in which the average length of stay of patient is similar to the average length of stay in participating hospitals.

(c) In every such subscription agreement made, issued or delivered in this state: (1) All printed portions shall be plainly printed; (2) the exceptions of the subscription agreement shall appear with the same prominence as the benefits to which they apply; (3) if the subscription agreement contains any provisions purporting to make any portion of the articles of incorporation or bylaws of the corporation a part of the subscription agreement, such portion shall be set forth in full; and (4) there shall be a brief description of the subscription agreement on the first page and on its filing back.

(d) Any such corporations may issue a group or blanket subscription agreement, provided the group of persons insured conforms to the requirements of law applicable to other companies writing group or blanket sickness and accident insurance policies and provided such subscription agreement and the individual certificates issued to members of the group shall comply in substance with this section. Any such subscription agreement may provide for the adjustment of the premiums based upon the experience at the end of the first year or of any subsequent year of insurance, and such readjustment may be made retroactive in the form of a rate credit or a cash refund.

(e) (1) Any group subscription agreement issued pursuant to subsection (d) shall provide that an employee or member or such employee's or member's covered dependents whose insurance under the group subscription agreement has been terminated for any reason, including discontinuance of the group in its entirety or with respect to an insured class, and who has been continuously insured under the group subscription agreement or under any group policy or subscription agreement providing similar benefits which it replaces for at least three months immediately prior to termination, shall be entitled to have such coverage nonetheless continued under the group policy for a period of six months and at the end of such six-month period of continuation, such employee or member or such employee's or member's covered dependents shall be entitled to obtain, at the employee's, member's or dependent's option either:

(A) A converted subscription agreement providing coverage equal to 80% of that afforded under the group subscription agreement

for basic hospital, surgical and medical benefits. Persons selecting this option: entitled to obtain major medical coverage which will provide hospital, surgical expense benefits to an aggregate amount of not less than \$50,000. The medical expense coverage may be a copayment by the covered person of not more than 20% of covered charges and stated on a per person, per family, per benefit period, or per year basis in combination of such bases of not more than per person subject to a maximum deductible of \$750 per family; or

(B) a subscription agreement provides a deductible of not less than \$2,000 for the subscriber and not less than \$2,000 for the covered person, and subjects the covered person to a maximum deductible of not more than 20% of covered charges with a \$1,000 maximum copayment for the subscriber and \$2,000 maximum copayment for the family per contract year and provides a maximum benefit of not more than \$1,000,000.

(2) The requirement imposed by subsection (d) shall not apply to a group subscription agreement which provides for specific diseases or for accidental death or any group subscription agreement issued by an employer subject to the conversion obligations set forth in subsection (b), title B, part 6 of the employee benefit security act of 1974 or a group subscription agreement under the public health service act, as amended, in effect on January 1, 1987, or to any employee or member or member's covered dependents whose insurance under the subscription agreement occurred on or after January 1, 1987.

(A) Such person failed to make a contribution after receiving notice of such required contribution in accordance with rules adopted by the commissioner.

(B) any discontinued group subscription agreement shall be replaced by similar group subscription agreement within 60 days; or

(C) the employee or member or member's covered dependents shall be covered by any other group subscription arrangement which provides for hospital, surgical or medical benefits for individuals in a group subscription agreement if the person was not covered under the subscription agreement terminated and not replaced by another group subscription agreement, at the option

REAL ESTATE AND COMMERCIAL LAW SUBCOMMITTEE  
Senator Jerry Moran, Chairman  
February 13, 1990

**SB 510 - Oil and gas owners' lien act.** (by Senator Hayden)

PROPONENTS

Senator Leroy Hayden  
Representative Eugene Shore  
Pete McGill  
Greg Stucky, SW Ks. Royalty Owners  
Tim Hagemann, Co. Appraisers

OPPONENTS

Don Schnake, KIOGA  
Spencer DePew, KIOGA

Subcommittee recommended the chairman write letter to encourage the groups to work out their differences.

**SB 527 - Unenforced foreclosure judgments; cancellation and renewal affidavits.** (requested by Randy Hearrel, Judicial Council)

PROPONENTS

Matt Lynch, Judicial Council  
Cal Karlin, Lawrence attorney

OPPONENTS

Subcommittee recommended a cleanup amendment to delete one word and to report favorably.

**HB 2432 - Transfer of property prior to payment of personal property tax; bankruptcy proceedings.** (by House Local Government)

Subcommittee recommended the bill be reported adversely. (The sponsor said the bill was not needed any more)

**HB 2478 - Abandoned personal property liens may be removed from records by register of deeds.** (by Judiciary)

PROPONENTS

Linda Fincham, Register of Deeds  
Assoc. Marshall Co. Reg. of  
Deeds

OPPONENTS

Janet Stubbs, Home Builders  
Association

Subcommittee recommends deleting the House floor amendment starting in line 36 and to report the bill favorably as amended.