

Approved April 24, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

The meeting was called to order by Representative Lee Hamm at  
Chairperson

9:06 a.m./~~p.m.~~ on Friday, March 29, 1991 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research  
Lynne Holt, Legislative Research  
Jill Wolters, Revisor of Statutes Office  
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Paul Bicknell, Chief of Contributions, Kansas  
Department of Human Resources, Topeka  
Tim Langley, Senator Karr's Office  
Dr. Russell Frey, President, Kansas Veterinary  
Medical Association, Inc.  
Dr. G. D. Gurss, Kansas Veterinary Medical  
Association  
Ron Smith, Kansas Bar Association  
Nancy Kantola, Legislative Agent, Committee of  
Kansas Farm Organizations, Topeka

Chairman Hamm opened hearings on SB 203 - relating to humane slaughter.

Paul Bicknell, Kansas Department of Human Resources, appeared before the committee in an advisory capacity. Mr. Bicknell presented the committee with a copy of a memorandum from the U.S. Department of Labor reviewing this legislation. (Attachment 1).

Tim Langley, representing Senator Jerry Karr, testified in support of SB 203. His testimony stated this legislation will place Aquaculture in the mainstream of agricultural development in our state. (Attachment 2).

A question and answer period followed the testimony.

Hearings were closed on SB 203.

Hearings were opened on SB 279 - veterinarians; prohibiting disclosure of certain information.

Dr. Russell Frey, Kansas Veterinary Medical Association, Inc., testified in support of SB 279 stating this legislation provides for confidentiality of veterinary medical records except as otherwise provided by law, by waiver and/or written authorization by clients, lawful court orders and/or subpoenae. (Attachment 3).

Dr. G. D. Gurss, Kansas Veterinary Medical Association, testified in favor of SB 279 stating the KVMA supports this legislation for the following reasons: (1) provides a client-veterinary confidentiality privilege by statute instead of by professional ethics tradition; (2) it is a proposed statute that is reasonable and professionally sound to both the client and the veterinarian; (3) provides a penalty for violation by the Veterinary Board of Examiners; (4) promotes the purpose and provides a needed addition to the Kansas Veterinary Practice Act. (Attachment 4).

Representative Minor presented the committee with the subcommittee's recommendation to study this legislation and possibly work on it over

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE,  
room 423-S Statehouse, at 9:06 a.m. ~~p.m.~~ on Friday, March 29, 1991

the summer and come back with a definite proposal for next year. He further stated it is a complicated situation and there will be several statutes affected.

Chairman Hamm stated the committee would accept the subcommittee's recommendation.

Ron Smith, Kansas Bar Association, appeared before the committee stating he had concerns regarding this legislation.

Nancy Kantola, Committee of Kansas Farm Organizations, testified in support of SB 279. (Attachment 5).

After a lengthy discussion period, hearings were closed on SB 279.

Representative Reinhardt made a motion to approve the minutes of March 21, 1991. Representative Minor seconded the motion. Motion carried.

The meeting adjourned at 9:55 a.m. The next meeting of the House Agriculture Committee will be at 9:00 a.m., Monday, April 1, 1991, in room 423-S, State Capitol.



Spitzengel

MEMORANDUM FOR: GRACE A. KILBANE  
 Regional Administrator  
 Kansas City

FROM: DONALD J. KULICK  
 Administrator  
 for Regional Management

SUBJECT: Kansas SB 203 - Includes An Aquaculture  
 Operation in the Definition of "Agricultural  
 Labor"

RECEIVED MAIL ROOM  
 MAR 28 PM 3:12  
 DEPT OF LABOR  
 KANSAS  
 DRAFT

You have asked us to review Kansas Senate Bill (SB) 203 which would amend Section 44-703(w)(1) of the Kansas law to exclude from employment those services for wages in an aquaculture operation.

Under Kansas law, Section 44-703(w)(1) provides that "agricultural labor" means any remunerated service on a farm. This definition of "agricultural labor" would now be expanded to include any remunerated service in an aquaculture operation, in the employ of any person, in connection with raising or harvesting any aquacultural commodity, including the raising, feeding, caring for, and management of aquatic organisms. Under the proposal, the term "farm" would now include aquatic organisms (sic) farms, ranches or other similar structures used primarily for the raising of aquacultural commodities. This amendment would affect the definition of "employer" for persons who pay wages for agricultural labor under Section 44-703(h)(1) of the Kansas law which currently accords with Section 3306(a)(2) of the Federal Unemployment Tax Act (FUTA). Basically, these provisions allow persons for whom agricultural labor is performed to have more employees or pay more wages before being considered employers and being subject to State contributions or the Federal unemployment tax.

For purposes of 3306(a)(2), FUTA, "agricultural labor" is defined in Section 3306(k), FUTA, as having the meaning assigned by Section 3121(g) of the Internal Revenue Code (IRC), with one exception which does not pertain to aquaculture. Under Section 3121(g)(1), IRC, the term "agricultural labor" includes all service performed "on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife . . ." The term "farm" includes "stock . . . and truck farms, plantations, ranches, nurseries . . . used primarily for the raising of agricultural . . . commodities . . ."

RECEIVED  
 COMMUNICATIONS  
 CENTER

Hs. Ag.  
 3-29-91  
 ATTACHMENT 1

03/28/91

16:05

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2

**DRAFT**

" The IRC definition of "agricultural labor" does not include any reference to aquaculture. Because of this, aquacultural services exempted under the proposal would be subject to the full 6.2 percent Federal unemployment tax.

Section 3304(a)(6)(A), FUTA, requires that a State law, as a condition of approval for Federal unemployment tax credit, provide that benefits be payable based on services performed for State and local governmental entities and certain nonprofit organizations. The only services that a State may exclude from this coverage requirement are those listed in Section 3309(b) and (c), or those listed in paragraphs (1) through (6) and (9) through (20) of Section 3306(c). We believe it is possible for aquacultural labor to be performed for a governmental entity or a nonprofit organization. If these services were exempted as a result of the enactment of SB 203, an issue would be presented with Section 3304(a)(6)(A), FUTA.

We do note that Section 3306(c)(17), FUTA, does exempt from employment "services performed by an individual in . . . the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity) . . . ." Under this section, which does not appear to be in current Kansas law, many of the services which would be exempted under SB 203 may be exempted without any loss of Federal tax credit and without creating any issues under Section 3304(a)(6)(A), FUTA.

We hope this has answered your inquiry regarding Kansas SB 203. Please relay our comments to the State and keep us informed of the progress of this bill.

~~SUBJECT: LOSS OF CONFORMITY~~

The U.S. Department of Labor in accordance with 26 USCA, sections 3301 through 3302 levies a tax of 6.2 per cent upon employer payrolls. This tax is referred to as the FUTA. A 5.4 per cent offset credit is extended to employers whose state Employment Security Law is in conformity with federal legislation. The remaining 0.8 per cent tax is paid to the U.S. Treasury.

The fiscal impact upon Kansas employers if the state is determined to be out of conformity by the U.S. Department of Labor is as follows:

1. Payment of the entire 6.2 per cent FUTA tax with no offset credit.
2. Payment of the state rate; for unemployment insurance payments.
3. Estimated administrative tax of 0.5 per cent; to offset loss of federal funds for administration.

Measuring the fiscal impact of nonconformity upon employers for CY 1991 in the State of Kansas, based on FY 1990 wage data and the federal wage base of \$7,000 is conducted as follows:

1. FUTA TAX 6.2% X \$5,600,000,000.....	\$347,200,000
2. STATE RATE YIELDS.....	\$151,600,000
3. ADMINISTRATIVE TAX 0.5% X \$5,600,000,000.....	\$28,000,000
4. TOTAL COST.....	\$526,800,000

Loss of conformity with federal statutes would therefore result in an additional estimated \$375,200,000 in revenue to be raised from Kansas employers during calendar year 1991.

~~SUBJECT: LOSS OF CERTIFICATION~~

If various parts of a state's unemployment insurance law differ with federal statutes, the state will lose certification. This loss of certification would cause any employer with a contribution rate of less than 5.4 per cent to pay at the standard rate of 5.4 per cent. During calendar year 1991, rates of all industry rated employers and positive eligible employers would have been increased. The following tables show the old and new rates with the estimated additional income for calendar year 1991.

Table One  
Industry Rated Employers

Industry Division	Contribution Rate (Actual)	Standard Rate	Difference	FY 1990 Taxable Wages (000,000's)	Additional Income (000,000's)
Mining.....	4.43%	5.40%	0.97%	\$ 3.4	\$ .03
Contract Const...	5.17	5.40	0.23	30.2	.07
Manufacturing....	3.67	5.40	1.73	36.0	.62
All Other.....	3.45	5.40	1.95	268.0	5.23
					Total \$5.95

Table Two  
Positive Eligible Employers

Group	Contribution Rate (Actual)	Standard Rate	Difference	FY 1990 Taxable Wages (000,000's)	Additional Income (000,000's)
1	0.05%	5.40%	5.35%	\$111.0	\$ 5.94
2	0.08	5.40	5.32	111.2	5.92
3	0.17	5.40	5.23	110.8	5.79
4	0.25	5.40	5.15	112.5	5.79
5	0.34	5.40	5.06	109.4	5.54
6	0.42	5.40	4.98	111.0	5.53
7	0.51	5.40	4.89	111.5	5.45
8	0.59	5.40	4.81	110.7	5.32
9	0.68	5.40	4.72	113.4	5.35
10	0.76	5.40	4.64	117.0	5.43
11	0.85	5.40	4.55	123.1	5.60
12	0.93	5.40	4.47	95.5	4.27
13	1.02	5.40	4.38	112.1	4.91
14	1.10	5.40	4.30	148.9	6.40
15	1.19	5.40	4.21	67.0	2.82
16	1.27	5.40	4.13	111.6	4.61
17	1.36	5.40	4.04	116.6	4.71
18	1.44	5.40	3.96	136.6	5.41
19	1.52	5.40	3.88	79.2	3.07
20	1.61	5.40	3.79	111.0	4.21
21	1.69	5.40	3.71	118.2	4.39
22	1.78	5.40	3.62	106.7	3.86
23	1.86	5.40	3.54	207.3	7.34
24	1.95	5.40	3.45	13.2	0.46
25	2.03	5.40	3.37	109.2	3.68
26	2.12	5.40	3.28	113.9	3.74
27	2.20	5.40	3.20	110.7	3.54
28	2.29	5.40	3.11	108.8	3.38
29	2.37	5.40	3.03	110.4	3.35
30	2.46	5.40	2.94	112.0	3.29
31	2.54	5.40	2.86	111.6	3.19



32	2.63	5.40	2.77	109.1	3.02
33	2.71	5.40	2.69	110.8	2.98
34	2.80	5.40	2.60	118.5	3.08
35	2.88	5.40	2.52	105.5	2.66
36	2.97	5.40	2.43	110.0	2.67
37	3.05	5.40	2.35	110.4	2.59
38	3.13	5.40	2.27	114.6	2.60
39	3.22	5.40	2.18	106.8	2.33
40	3.30	5.40	2.10	111.2	2.34
41	3.39	5.40	2.01	110.7	2.23
42	3.47	5.40	1.93	111.8	2.16
43	3.56	5.40	1.84	110.3	2.03
44	3.64	5.40	1.76	110.9	1.95
45	3.73	5.40	1.67	111.3	1.86
46	3.81	5.40	1.59	110.7	1.76
47	3.90	5.40	1.50	112.4	1.69
48	3.98	5.40	1.42	109.7	1.56
49	4.07	5.40	1.33	112.7	1.50
50	4.15	5.40	1.25	109.0	1.36
51	4.24	5.40	1.16	113.2	1.31
				Total	\$185.96

The loss of certification would thus raise the rates for industry rated employers in the range of 0.23 per cent for new contract construction employers to 1.95 per cent for new "all other" employers, and for positive eligible employers in a range of 1.16 per cent for employers in rate group 51 to 5.35 per cent for those in rate group one. The increased rates would produce a total estimated additional income of \$191.91 million.

NOTE: Negative balance employers would continue to pay at their original rates since these rates are higher than 5.4 per cent.



# PROPOSED AMENDMENT TO K.S.A. 44-703(w)

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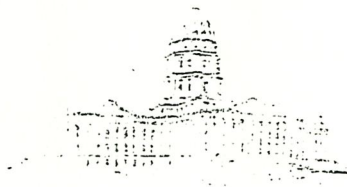
(4) As used in this subsection (w), remunerated service is an aquaculture operation shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code.

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# State of Kansas

## Senate Chamber

GERALD "JERRY" KARR  
SENATOR, SEVENTEENTH DISTRICT  
CHASE, LYON, MARION, MORRIS,  
OSAGE COUNTIES  
R.R. 2 BOX 101  
EMPORIA, KANSAS 66801



COMMITTEE ASSIGNMENTS  
MEMBER: ASSESSMENT & TAXATION  
INTERSTATE COOPERATION  
LEGIS. & CONG. APPORTIONMENT  
LEGIS. BUDGET COMM.  
EDUCATION  
STATE BUILDING CONSTRUCTION  
LEGIS. COORDINATING COUNCIL  
STATE FINANCE COUNCIL

### Office of Democratic Leader

STATE CAPITOL  
TOPEKA, KANSAS 66612-1565  
913-296-3245

### SB 203 (Aquaculture) Testimony

Ladies and Gentleman of the committee, I'd like to thank you for the chance to testify today on behalf of Senate Bill 203, relating to the Aquaculture industry. Aquaculture is defined as the controlled cultivation and harvest of aquatic plants and animals. Kansas has a small but growing commercial Aquaculture industry made up mostly of small and/or part-time operations. However, Aquaculture may hold promising options for rural development, as well as relief for farmers who are seeking alternatives to agricultural production.

Since early 1990 the Kansas State Board of Agriculture has had an organized task force on the subject of Aquaculture. You will hear, or may have already heard, representatives of the Board describe their discussion. I will say that this bill is an important first step in the direction of fulfilling their suggestions. Their final report will be available sometime near May, and ready for the Legislative Agenda next year.

Many other states have initiated Aquaculture programs to help this infant industry. Kansas should consider the benefits of such a program for itself. Rising demands for seafood products at the retail level in Kansas have created a large local market that is virtually untapped by Kansas Commercial Fish Growers because of their small numbers. Senate Bill 203 is good start at trying to initiate progress in the direction of creating a larger local market.

Mr. Chairman, I have had the opportunity to work with commercial fish growers over the past few years in their efforts to try to understand the legislative process and to gain broader recognition of this industry in Kansas, as it has in other states. This legislation will place Aquaculture in the mainstream of agricultural development in our state. Thank you for your consideration of Senate Bill 203 and I would be pleased at this time to address any questions you might have.

Hs. Ag.  
3-29-91  
ATTACHMENT 2



# KANSAS VETERINARY MEDICAL ASSOCIATION, INC.

712 South Kansas Avenue, Topeka, Kansas 66603, (913) 233-4141

FAX: (913) 235-2534

Dr. Russell Frey  
President  
2113 Blue Hills Road  
Manhattan, Kansas 66502

Dr. Steve Mosier  
President-Elect  
3301 Elm  
Hays, Kansas 67601

Dr. Mike Whitehair  
Vice President  
902 N. Olive Drive  
Abilene, Kansas 67410

Dr. Terry Turner  
Trustee-At-Large  
909 Stone Street  
Great Bend, Kansas 67530

Dr. Frank Fishburn  
Treasurer  
Rt. 7, Box 242F  
Manhattan, Kansas 66502

Catharine A. Deever  
Executive Director  
712 South Kansas Avenue  
Topeka, Kansas 66603

March 28, 1991

Representative Lee Hamm, Chairman and  
Members of the House Committee on Agriculture and  
Small Business  
1st Floor, State Capitol  
Topeka, Ks. 66612-1594

Dear Representative Hamm and  
Members of the House Committee on Agriculture  
and Small Business:

The Executive Board of the Kansas Veterinary Medical Association respectfully requests your consideration of the proposed legislation attached for introduction to and passage by the Legislature during the 1991 session.

This legislation provides for confidentiality of veterinary medical records except as otherwise provided by law, by waiver and/or written authorization by clients, lawful court orders and / or subpoenae.

We request this amendment to K.S.A. 47-830 in order to:

- 1) Secure legal support to the oath of ethics required of veterinarians by the American Veterinary Medical Association, which reads as follows:

The ethical ideals of the veterinary profession imply that a doctor of veterinary medicine and the veterinarian's staff will protect the personal privacy of clients, unless it becomes necessary in order to protect the health and welfare of the individual, the animals, and / or others whose health and welfare may be endangered;

- 2) Provide a privilege to citizens which is consistent with privileges already established by law, e.g.

- \* attorney-client K.S.A. 60-426
- \* physician / osteopathic surgeon / chiropractor-patient K.S.A. 60-427
- \* priest/ clergyman-confessor K.S.A. 60-429
- \* psychologist-patient K.S.A. K.S.A. 65-5601  
et.seq.

Hs. Ag.  
3-29-91  
ATTACHMENT 3

Representative Hamm and  
Members of the House Committee on Agriculture and Small Business  
Re: Client Privilege  
March 28, 1991  
page 2

Existing Privileges (cont.)

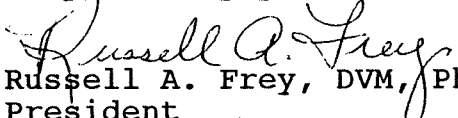
- \* certified public accountant-client  
K.S.A. 1-401
- \* mental health facility-patient K.S.A. 59-2931
- \* pharmacist-client K.S.A. 1989 Supp. 65-1654
- \* alcohol treatment facility-patient K.S.A. 65-4050
- \* drug abuse treatment facility-patient
- \* registered professional counselor-patient  
K.S.A. 1989 Supp. 65-5810
- \* treatment facility-patient K.S.A. 1989 Supp.  
65-5601 et seq.
- \* social worker-client K.S.A. 1989 Supp. 65-6315

This ethical concern is shared beyond the borders of Kansas. As you can see from attached correspondence from Greg Dennis, our attorney, and H.W. Hannah, the attorney who represents the Illinois State Veterinary Medical Association. That association is using the intent and language of Senate Bill 279 as a model for introduction to the Illinois Legislature.

Also attached is an article printed in the January, 1991 issue of the Journal of the American Veterinary Medical Association, which discusses confidentiality issues in greater depth.

Please let me know if you need additional information. I am happy to supply it.

Respectfully yours,

  
Russell A. Frey, DVM, PhD  
President



**47-624. Unlawful acts; penalties.** Any person who has in such person's possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be so affected, who permits such animal to run at large; or who keeps such animal where other domestic animals, not affected with or previously exposed to such disease, may be exposed to such contagious or infectious disease; or who sells, ships, drives, trades or gives away such diseased and infected animal or animals which have been exposed to such infection or con-

tagion, except by sale, trade or gift to a regularly licensed disposal plant; or who moves or drives any domestic animal in violation of the rules and regulations, directions or orders establishing and regulating quarantine, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$100 nor more than \$500 for each such diseased or exposed animal which such person has permitted to run at large, keep, sell, ship, drive, trade or give away in violation of the provisions of this act. Any owner of any domestic animal which has been affected with or exposed to any contagious or infectious disease may dispose of the same after such owner obtains from the livestock commissioner a bill of health for such animal.

**History:** L. 1911, ch. 312, § 15; R.S. 1923, 47-624; L. 1943, ch. 199, § 3; L. 1989, ch. 156, § 24; July 1.

#### CASE ANNOTATIONS

3. Actual knowledge of quarantine order in lieu of receipt of official notice sufficient for conviction of violating order. *State v. North Central Kansas Prod. Cred. Ass'n*, 241 K. 818, 824, 740 P.2d 87 (1987).

**47-622. Report of diseases to livestock commissioner.** It shall be the duty of the owner or person in charge of any domestic animal or animals who discovers, or has reason to believe that any domestic animal owned by such person or in such person's charge or keeping is affected with any contagious or infectious disease, to immediately report such fact or belief to the livestock commissioner. It shall be the duty of any person who discovers the existence of any such contagious or infectious disease among the domestic animals of any person to report this information at once to the livestock commissioner.

**History:** L. 1911, ch. 312, § 13; R.S. 1923, 47-622; L. 1989, ch. 156, § 23; July 1.

# Legal Brief

## Veterinary medical records—some legal considerations

Questions are often raised and much has been written about the confidentiality of veterinary medical records, but confidentiality is not the only aspect of the veterinarian's records having legal overtones. Further questions involve their admissibility in a legal action; the status of electronic records; the relative rights of the client and the veterinarian in the records; the rights of public and private agencies in the records, especially those kept by research institutions; and the period for which different kinds of records should be retained by the veterinarian or by an institution.

This legal brief cannot touch in depth on all of these subjects. Since much has been written in the JAVMA and other publications, the purpose of this brief will be to include pertinent statements from some of these writings together with their citations, and to add such additional comments as seem appropriate.

In "Legal aspects of the veterinary medical records," (JAVMA July 15, 1978), the writer states, "The medical record is a compilation of the pertinent facts of a patient's illness including history, clinical and laboratory findings, and treatment. It is a collection of all the data derived from various and sundry sources relating to an animal or group of animals which has been assembled and integrated into a single document. It serves the needs of the animal patient or patients, the owner, attending veterinarians, the institution in which the patient is being treated, veterinary medical science, society

Prepared by Harold W. Hannah, JD, Texico, IL 62889, formerly Professor of Agricultural and Veterinary Medical Law, University of Illinois, Urbana.

as a whole and, of course, in a teaching institution, the needs of the students and faculty of that institution. It is developed and maintained only incidentally for legal purposes, although there is an ever-increasing legal component involved."

Three years later, in another article entitled "Medical records and the law" (JAVMA, Feb 1, 1981), the writers summarized their article by saying:

"Practitioners involved in the diagnosis and treatment of health-related conditions are vulnerable in litigation. Courts of law frequently award large settlements to plaintiffs who can convince a jury that the quality of service was less than could be reasonably expected. Court judgments are based on evidence supported by hard facts. Practitioners should maintain an accurate accounting of each case, not only as good business practice but also as evidence in case of litigation. The medical record is an excellent source of such evidence."

More recently, the July 1, 1990 issue of the JAVMA included a special report on "Confidentiality of veterinary medical records." Several earlier Legal Briefs have dealt with the subject of records; these will not be listed as they can be found in the book, *Legal Briefs from the Journal of the American Veterinary Medical Association* (American Veterinary Medical Association, Schaumburg, Illinois, 1986).

**Confidentiality**—The "Principles of veterinary medical ethics," adopted by the AVMA, has this to say about the veterinarian-client relationship: "The ethical ideals of the veterinary profession imply that a doctor of veterinary medicine and the veterinarian's staff will protect the personal privacy of clients, un-

less the veterinarian is required by law to reveal the confidences or unless it becomes necessary in order to protect the health and welfare of the individual, the animals, and/or others whose health and welfare may be endangered."

Though the ethical position of the veterinarian seems clear, the legal position is not. The legal position varies by jurisdictions, depending on what view the courts have taken. In only one state has the writer found a statutory provision. The Georgia Code provides that:

"No veterinarian . . . shall be required to disclose any information concerning the veterinarian's care of an animal except on written authorization or other waiver by the veterinarian's client or on appropriate court order or subpoena." (Ga Code 24-9-29)

To the writer's knowledge, the most thorough research into the case law on the veterinarian-client privilege was done by Mr. Gregory Dennis, a lawyer in the firm of Perry & Hamill, Overland Park, Kansas. This work was done in connection with a case being handled by Mr. Dennis. I quote from a letter of June 14, 1990 to me:

"My review of American case law has led to the same conclusion as yours, that there has apparently been only one published American decision which has specifically discussed the concept of a veterinarian-client privilege and it held there was no such privilege . . . *Hendershott v Western Union Telegraph Co* 106 Ia 529, 76 NW 828 (1898) . . . The only other case I have located is *Velichick v Velichick* 37 Ohio App 2d 95, 307 NE 2d 270 (1973) wherein the Ohio Court of Appeals, in rejecting an argument

\* Medical Record

by a dentist that he should be regarded as a "physician" for purposes of Ohio's physician-patient privilege, also declared that osteopaths, orthopedists, druggists and veterinarians should not be regarded as "physicians" for the purpose of coming under Ohio's physician-patient privilege."

Mr. Dennis then states, "A review of legal treatises on this subject achieves no better conclusion."

Research by Mr. Dennis into the laws of Great Britain, Australia, and Canada discloses that, in all of those jurisdictions, there is recognition of a veterinarian-client privilege.

It is my view that the relationship should be a privileged one. The reasons are obvious. I strongly suggest, therefore, that the next time this issue arises, attorneys wishing to establish that there is a veterinarian-client relationship of confidentiality, cite the Georgia statute, the law of other common law jurisdictions, and the statement in the AVMA *Principles of Ethics*. State veterinary medical associations might consider lobbying for a law like the aforementioned Georgia statute.

*Admissibility of veterinary medical records*—With respect to admissibility in court, there is no difference between veterinary medical records and other medical records. Much has been written about the latter. Without going into detail, it may be said that veterinary medical records are admissible when a proper foundation is laid. Questions can always be raised about the accuracy and truthfulness of the records. It has been pointed out that, with increasing malpractice actions in the health professions, there is a temptation to either alter records or omit information that would be detrimental to the professional person. Thus, testimony about the records can be adduced. A good discussion of this issue, "Medical-legal documents: admissibility and validity," appears in 7 *Western State University Law Review* 25.

*Computerized veterinary medical records*—The computerization of medical records has raised many questions about admissibility. These records have raised further questions about privacy, alteration, and "invasion" of the computerized material. Despite early concerns, statutory law and court decisions now recognize that such records are admissible, provided that certain standards are met. For a definitive discussion of computerization and how it might affect veterinarians, readers are referred to a special commentary in the *JAVMA*, Dec 1, 1988, entitled "Admissibility of computerized medical records as evidence in a court of law." Also, one of the Legal Briefs (*JAVMA*, Sept 1, 1983) discusses this subject.

*Ownership of veterinary records—the client's rights*—It is well established that a veterinarian owns the medical records made on a client's animal—but the matter does not end there. The client has a right to review the records and to make copies. Also, the veterinarian is not entitled to transmit records or any portion of them to another entity without the consent of the client, unless the records have been subpoenaed or may be required for some other legal reason. (A federal law requiring the disclosure of the records on laboratory animals in a research facility, for example.) It is recommended that, if a veterinarian is to release the records of a client, it be on written authorization from the client. A client may object if more information is exposed than a situation requires. Though there may be no state law regarding the confidentiality of veterinary medical records, a so-called "right of privacy" law might have application.

*The right of government agencies and private groups to inspect veterinary medical records*—In furtherance of programs such as the Federal Laboratory Animal

Welfare Act or of state animal welfare laws, there is no question that the public, through legislation and the adoption of regulations, may have the right to inspect records that bear on implementation of the law. Here again, however, such agencies would have a right only to such records as are pertinent to the purpose of the law. A recent issue has arisen when animal rights groups have insisted on research institutions making their records available. Inasmuch as these groups are private organizations, the right does not differ from that of a private citizen—therefore, they would have no right to such records unless litigation were involved and a subpoena could be issued.

*Retention of veterinary medical records*—Though the AVMA has for many years been interested in policies regarding the retention of records by veterinary medical associations, and has developed some guidelines, I have found very little that bears on the retention of a veterinarian's records. Nevertheless, many of the guidelines developed for veterinary medical associations include elements that would be applicable to a veterinarian's practice—especially those having to do with potential legal action or the business side of the practice. Statutes of limitation should be studied in the veterinarian's particular state, and records should be kept past the time when legal action could be commenced. A timing code should be developed, and the code number or letter indicated on each item that is filed.

The purpose of this discussion of veterinary medical records is to alert veterinarians to the desirability of maintaining promptly made, adequate records and to some of the legal implications of these records. Though the usual situations in which such records could take on legal overtones have been mentioned, others of a less frequent nature may arise from the facts in particular situations.



Some readers have expressed interest in having an annual index of titles for Legal Briefs. Accordingly, here is the list of all Legal Briefs published since Dec 1986, when all Legal Briefs up to that date were published in compiled format.

Liability of directors, officers, and committee members of veterinary medical associations (Jan 1, 1987, pp 10-11)

Insurance for veterinary medical association personnel (Feb 1, 1987, pp 246-247)

Abusive language—the tort of outrage (Mar 1, 1987, pp 521-522)

Legalese in malpractice cases (Apr 1, 1987, pp 850-852)

Telephone directory mistakes (May 1, 1987, pp 1104-1105)

Statutory protection from liability for veterinary medical association board members, officers, and other personnel (June 1, 1987, pp 1398-1399)

Malpractice insurance—some legal considerations (July 1, 1987, pp 32-33)

Animal insurance and the veterinarian (Aug 1, 1987, pp 279-280)

Employed veterinarians as independent contractors—some legal considerations (Sept 1, 1987, pp 502-503)

Statutory bars to noncompetition agreements (Oct 1, 1987, pp 766-767)

The veterinarian's civil liability in the use of drugs (Nov 1, 1987, pp 1062-1063)

The liability potential in helping impaired veterinarians (Dec 1, 1987, pp 1384-1385)

The duty to give expert testimony (Jan 1, 1988, pp 26-27)

Fee splitting (Feb 1, 1988, pp 310-311)

Veterinarians treat clients too (Mar 1, 1988, pp 582-583)

Overlap in the animal health professions—some legal considerations (Apr 1, 1988, pp 852-853)

The legal road to revocation (May 1, 1988, pp 1168-1169)

Sale of a veterinary practice (June 1, 1988, pp 1496-1497)

Sales and occupational taxes and the veterinarian (July 1, 1988, pp 34-35)

Legal status of veterinary dentistry (Aug 1, 1988, pp 310-311)

Malpractice actions—what recovery? (Sept 1, 1988, pp 538-539)

Veterinarians and the joint venture (Oct 1, 1988, pp 802-803)

Malpractice suits and malicious prosecution—veterinarian countersuits (Nov 1, 1988, pp 1040-1041)

Limitations on the right to practice veterinary medicine (Dec 1, 1988, pp 1392-1393)

Veterinarians and state reciprocity requirements (Jan 1, 1989, pp 50-51)

Specialty practice—some legal considerations (Feb 1, 1989, pp 354-355)

Corporate practice of veterinary medicine (Mar 1, 1989, pp 650-651)

Biotechnology and the veterinarian—some legal considerations (Apr 1, 1989, pp 890-891)

Cat cases (May 1, 1989, pp 1182-1183)

The veterinarian as a friend of the court—amicus curiae (June 1, 1989, pp 1560-1561)

Dissolution of a veterinarian's marriage (July 1, 1989, pp 46-47)

Veterinary medical associations, state government, and the courts (Aug 1, 1989, pp 322-323)

Animal patents (Sept 1, 1989, pp 577-578)

Dog-bite statutes (Oct 1, 1989, pp 908-909)

Recent malpractice decisions of importance to veterinarians (Nov 1, 1989, pp 1220-1221)

Some pointers on fee collection (Dec 1, 1989, pp 1488-1489)

The mediation of malpractice claims (Jan 1, 1990, pp 54-55)

Advertising and ethics—is there still a relation? (Feb 1, 1990, pp 418-419)

Animals rights and the veterinarian (Mar 1, 1990, pp 718-719)

Evidence from and about animals (Apr 1, 1990, pp 1038-1039)

Restrictions on the establishment of a veterinary clinic (May 1, 1990, pp 1384-1385)

Animal control and the veterinarian (June 1, 1990, pp 1774-1775)

Defining the practice of veterinary medicine—who does what? (July 1, 1990, pp 50-51)

Human injury by animals other than dogs and cats—the veterinarian's involvement (Aug 1, 1990, pp 337-338)

Veterinarians and credit cards—when the client reneges (Sept 1, 1990, pp 574-575)

Punitive damages (Oct 1, 1990, pp 834-835)

The liability potential for laboratory animal and public veterinarians (Nov 1, 1990, pp 1140-1141)

Liability protection for laboratory animal and public veterinarians (Dec 1, 1990, pp 1456-1458)

**PERRY & HAMILL**  
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**FACSIMILE TRANSMISSION  
COVER SHEET**

**TO:** Catharine A. Deever,  
Kansas Veterinary Medical Association, Inc.,

**PHONE NO.:** 233 - 4141

**TELEX NO.:** 233 - 2534

**FROM:** Gregory M. Dennis

**FILE NOS:** P&H: 90-4281.010-GMD YOURS \_\_\_\_\_

**NOTES:** Dear Catharine: Please find attached a copy of a letter received today from Mr. Harold W. Hannah, author of the "Legal Brief" in the A.V.M.A. Journal regarding the proposed Kansas veterinarian-client privilege before the Legislature. I thought Mr. Hannah's comments that he felt the Kansas Bill was "properly worded" and that he was going to be passing it on to the Illinois State Veterinary Medical Association's Legislative Committee for inclusion in its possible revisions to the Illinois Practice Act might be of some interest to you and maybe of some assistance in seeking to have the Kansas Bill become law. There can be no doubt that Mr. Hannah's credentials in the area of veterinary law are very impressive and his comments on the proposed Kansas law should be of some value.

=====  
**DATE:** March 5, 1991

We are submitting two pages (including this transmission cover sheet).

If you have trouble receiving or sending during business hours, please call (913) 491-5500 and ask for Communications Center. Our facsimile number is (913) 491-3341 and is available to receive any responses or other trans- from you twenty-four (24) hours a day, seven days a week.

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H. W. HANNAH  
LAWYER  
TEXICO, ILLINOIS 62889  
TELEPHONE 618 288-7291

March 1, 1991

Gregory M. Dennis  
Perry & Hamill  
P O Box 7933  
Overland Park, KA 66207

Dear Gregory:

It was thoughtful of you to send to me the proposed Kansas legislation providing for a Veterinarian-Client Privilege.

I have read the proposed addition carefully and feel that it is properly worded. If you have any questions about its wording, I would like to have them, because I'm going to pass this on to our Illinois State Veterinary Medical Association legislative committee which will be considered <sup>as</sup> revisions to our practice act. As you may know, Illinois has a sunset law which terminates all professional licensing acts every ten years. Our veterinary medical practice act expires on Dec, 31, 1993, so the folks in our Association will be busy studying the current law to see if any changes or additions should be made before it is submitted to the legislature for reenactment.

Sincerely,

*Hannah*  
H. W. Hannah

HWH/vch  
cc: Eve Larocca, ISVMA

TO: Members of Agricultural Committee of the  
House of Representatives.

FROM: Dr. G. D. Gurss, Kansas Veterinary Medical Association

SUBJECT: Senate Bill 279.

Senate Bill 279 was initiated by action taken by the American Veterinary Association. The AVMA recommended to the State Associations that some kind of client confidentiality rights were needed by the veterinary profession. The KVMA Legislative Committee discussed this issue and, with the assistance of Mr. Gregory Dennis, KVMA attorney, recommended to the KVMA Board of Directors that such legislation be considered by the Association. After approval by the KVMA directors, S.B. 279 was drafted for consideration by the 1991 legislature.

S.B. 279 amends KSA 47-830 which is a part of the Kansas Veterinary Practice Act. KSA 47-814 defines the purpose of the Veterinary Practice Act. The Act promotes public health, safety and welfare for the people of Kansas and establishes the right to practice veterinary medicine be granted to persons possessing the professional qualifications specified in the Act.

S.B.279 creates a new Section 2, which states that "no veterinarian licensed under the Kansas Veterinary Practice Act shall be required to disclose any information concerning the veterinarian's care of an animal, except on written authorization or other waiver by the veterinarian's client, or on appropriate court order or subpoena". This section does exempt the reporting of quarantinable diseases to the proper authorities, as provided under KSA 47-622-624.

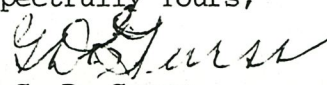
Section 1 of KSA 47-830 authorizes the Veterinary Boards of Examiners to discipline any licensed veterinarian for a number of reasons. S.B. 279 amends this section by adding on page 2, line 7 (N), which states that any "disclosure of any information concerning the veterinarian's care of an animal is in violation of Section 2 and amendments thereto", and may be subject to review by the Board of Veterinary Examiners upon written complaint.

Mr. Gregory Dennis has recently advised the Association that the Legal Adviser of the Illinois Veterinary Association has accepted this proposed legislation and plans on presenting it to the 1991 Illinois Legislature.

The KVMA supports S.B. 279 for the following reasons: (1) provides a client-veterinary confidentiality privilege by statute instead of by professional ethics tradition; (2) it is a proposed statute that is reasonable and professionally sound to both the client and the veterinarian; (3) provides a penalty for violation by the Veterinary Board of Examiners; (4) promotes the purpose and provides a needed addition to the Kansas Veterinary Practice Act.

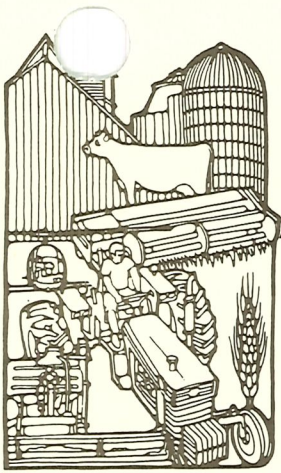
The Kansas Veterinary Medical Association asks that S.B.279 be passed favorably.

Respectfully Yours,

  
Dr. G. D. Gurss

HS. AG.  
3-29-91  
ATTACHMENT 4





# Committee of Kansas Farm Organizations

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Nancy E. Kantola  
Legislative Agent  
3604 Skyline Parkway  
Topeka, KS 66614  
(913) 273-5340

## STATEMENT OF POSITION OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: S.B. 279

House Agriculture Committee

March 30, 1991

Committee of Kansas  
Farm Organization Members

Associated Milk Producers, Inc.

Kansas Agri-Women Association

Kansas Association of Soil  
Conservation Districts

Kansas Association of  
Wheat Growers

Kansas Cooperative Council

Kansas Corn Growers Association

Kansas Electric Cooperatives

Kansas Ethanol Association

Kansas Farm Bureau

Kansas Fertilizer and  
Chemical Association

Kansas Grain and Feed  
Dealers Association

Kansas Livestock Association

Kansas Meat Processors  
Association

Kansas Pork Producers Council

Kansas Rural Water  
Districts Association

Kansas Seed Industry Association

Kansas Soybean Association

Kansas State Grange

Kansas Veterinary Medical  
Association

Kansas Water Well Association

Mid America Dairymen, Inc.

Mister Chairman, Members of the Committee: I am Nancy Kantola, Legislative Agent for the Committee of Kansas Farm Organizations. Our group is comprised of twenty-one member organizations. We require a unanimous vote to take a position on an issue.

We support the Kansas Veterinarian Association in their quest to provide privacy for their clients as addressed in Senate Bill 279. Thank you for your consideration and we urge your favorable passage of this bill.

Nancy E. Kantola

HS. AG.  
3-29-91  
ATTACHMENT 5