

Approved 2-14-91  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at  
Chairperson

10:00 a.m./~~pm~~ on February 7, 1991 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Norman Furse, Revisor's Office  
Jo Ann Buntten, Committee Secretary

Conferees appearing before the committee:

Chairman Ehrlich called the meeting to order at 10:00 a.m.

Staff Furse briefed the committee on the current Kansas statutes on AIDS. Copies of the statutes were distributed to the committee. Staff Furse pointed out that AIDS (Acquired Immunodeficiency Syndrome) is the disease, while HIVS (Human Immunodeficiency Virus) is the infection. Attachment 1)

The following statutes are on the books as of July 1, 1988:

- 22-2913 (Definition, inform, counsel and disclosure)
- 65-128 (Rules and Regulations for isolation)
- 65-1,107 (Establish procedures, qualifications, testing)
- 65-1,108 (Unlawful to perform certain tests)
- 65-2438 (Notification for transporting dead body)
- 65-6001 (Definitions)
- 65-6002 (Reporting to Secretary of Health and Environment)
- 65-6003 (Investigation of cases)
- 65-6004 (Physician authorized to disclose information)
- 65-6005 (Unlawful acts; penalties)
- 65-6006 (Educational material distributed)
- 65-6007 (Anonymous testing sites)

Senator Hayden asked if "body fluids" are defined in our statutes and noted that the NCSL booklet entitled "HIV/AIDS FACTS TO CONSIDER", defined body fluids. Staff Furse responded that our statutes do not define body fluids, and suggestion was made to possibly conform with NCSL definitions.

Senator Kanan questioned what kind of form is required under K.S.A. 65-2438 that showed the deceased person had an infectious disease. The chair requested Staff Wolff to obtain a copy of the form for distribution to the committee from the Department of Health and Environment.

Senator Reilly expressed his concern about the current statutes on AIDS and a need to change those dealing with the testing of infants. Senator Reilly stated he will submit questions in letter form to the chairman addressing this issue and suggested the Department of Health and Environment appear before the committee to make recommendations in this area. The chairman assured the committee the Department of Health and Environment would be asked to appear before the committee and address these questions.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE,  
room 526-S, Statehouse, at 10:00 a.m./~~pm~~ on February 7, 1991

The chair asked for committee bill requests. Senator Langworthy requested legislation that would protect public water supplies from contamination as a result of chemical application through lawn sprinkler systems or backflow from chemical tanks. The proposed legislation would prohibit the application of fertilizers, pesticides or other chemicals through any lawn irrigation system that is supplied by a public water supply system. Attachment 2)

The wishes of the committee were asked, and Senator Langworthy moved, seconded by Senator Walker to introduce the bill. Senator Reilly questioned whether installation of converters on existing sprinkler systems would be too costly. After committee discussion, the motion carried.

The chair then recognized Senator Langworthy who introduced her two pages from Johnson County.

The meeting was adjourned at 10:40 a.m.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-7-91

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

ELIZABETH E. TAYLOR TOPEKA

DEPT'S  
ASSO OF LOCAL HEALTH

BEATRICE L SHISLER OTTAWA

EAST CENTRAL KS AAA

ANNA MAE SHAFER

NORTHEAST KANSAS AAA

Jeff Montague

Budget

R. Herder

SRS

George A. Duggan

Aging

James A. Dadd

KS. I. A.

Joe Gilman

KDHE

John Peterson

Ks Assn Prof Psychologists

Chip Wheeler

Ks Medical Soc.

Dana Haworth

KS Dental Ass'n

KEITH R LANDIS TOPEKA

CHRISTIAN SCIENCE COMMITTEE  
ON PUBLICATION FOR KANSAS

HAROLD E. RICHMAN TOPEKA

Ks Assn OBT-MED

7-1  
(1988) Statutes

**22-2913. Magistrate duty to inform of AIDS testing and counseling; definitions; whom to inform; when AIDS test ordered; disclosure of results; costs; withdrawal of blood procedures; results confidential; penalties.** (a) As used in this section:

(1) "AIDS test" means a test approved by the secretary of health and environment to detect antibodies to the probable causative agent for the disease acquired immune deficiency syndrome.

(2) "A positive reaction" means a positive AIDS test with a positive confirmatory test as specified by the secretary of health and environment.

(b) At the time of an appearance before a magistrate under K.S.A. 22-2901 and amendments thereto, the magistrate shall inform every person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved of the availability of AIDS testing and counseling and shall cause the alleged victim of such a crime, if any, to be notified that AIDS testing and counseling is available.

(c) Upon conviction of a person for any crime which the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, the court: (a) May order the convicted person to submit to an AIDS test or (b) shall order the convicted person to submit to an AIDS test if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to make such order. If an AIDS test is ordered under this subsection (c), the victim of the crime, if any, who is not a minor shall designate a health care provider or counselor to receive such information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive such information. If the test results in a negative reaction, the court shall order the convicted person to submit to another AIDS test six months after the first test was administered.

(d) The results of any AIDS test ordered under this section shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (c) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an AIDS test ordered under this section results in a positive

reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections, and such counseling as directed by the secretary of health and environment shall be provided to the victim or victims.

(e) The costs of any counseling provided under subsection (d) by the secretary of health and environment shall be paid from amounts appropriated for such purpose to the department of health and environment. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

(f) When a court orders a convicted person to submit to an AIDS test under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the AIDS test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(g) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the same. Any violation of this section is a Class C misdemeanor.

**History:** L. 1988, ch. 230, § 1; July 1.

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**65-128. Rules and regulations of secretary for isolation and quarantine; publication; definition.** (a) For the protection of the public health and for the control of infectious or contagious diseases, the secretary of health and environment by rules and regulations shall designate such diseases as are infectious or contagious in their nature, and the secretary of health and environment is authorized to adopt rules and regulations for the isolation and quarantine of such diseases and persons afflicted with or exposed to such diseases as may be necessary to prevent the spread and dissemination of diseases dangerous to the public health.

(b) As used in K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126 and 65-129, and amendments thereto, "infectious or contagious disease" means any disease designated by the secretary of health and environment as an infectious or contagious disease in accordance with subsection (a) but the infectious or contagious disease acquired immune deficiency syndrome or any causative agent thereof shall not constitute an infectious or contagious disease for the purposes of K.S.A. 65-118, 65-119, 65-122, 65-123, 65-126 and 65-129, and amendments thereto, because such disease is subject to the provisions of K.S.A. 1988 Supp. 65-6001 through 65-6007 and amendments thereto.

**History:** L. 1917, ch. 205, § 1; R.S. 1923, 65-128; L. 1953, ch. 283, § 6; L. 1965, ch. 506, § 25; L. 1974, ch. 352, § 11; L. 1976, ch. 262, § 7; L. 1988, ch. 232, § 9; July 1.

**65-1,107.** Rules and regulations of secretary of health and environment establishing procedures and qualifications for approving certain laboratories; procedures, qualifications of personnel, standards, equipment and devices in testing of human breath for law enforcement purposes; list of approved preliminary screening devices. The secretary of health and environment is hereby authorized and empowered to promulgate rules and regulations establishing:

(a) The procedures and qualifications for approving laboratories performing prenatal tests for syphilis, tests for human immunodeficiency virus and tests for controlled substances included in schedule I or II of the uniform controlled substances act;

(b) the procedures, qualifications of personnel and standards of performance in the testing of human breath for law enforcement purposes, including procedures for the periodic inspection of apparatus, equipment and devices, other than preliminary screening devices, approved by the secretary of health and environment for the testing of human breath for law enforcement purposes;

(c) the requirements for the training, certification and periodic testing of persons who operate apparatus, equipment or devices, other than preliminary screening devices, for the testing of human breath for law enforcement purposes;

(d) criteria for preliminary screening devices for testing of breath for law enforcement purposes, based on health and performance considerations; and

(e) a list of preliminary screening devices which are approved for testing of breath for law enforcement purposes and which law enforcement agencies may purchase and train officers in the use of as aids in determining probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001 and amendments thereto.

**History:** L. 1947, ch. 330, § 3; L. 1973, ch. 307, § 3; L. 1974, ch. 352, § 169; L. 1986, ch. 40, § 7; L. 1988, ch. 233, § 1; L. 1990, ch. 215, § 1; July 1.

**65-1,108. Unlawful to perform certain tests unless performed in approved laboratory; penalty for violation; exclusions.** (a) It shall be unlawful for any person or laboratory to perform prenatal tests for syphilis, tests for human immunodeficiency virus or tests for controlled substances included in schedule I or II of the uniform controlled substances act unless the laboratory in which such tests are performed has been approved by the secretary of health and environment to perform such tests. Any person violating any of the provisions of this section shall be deemed guilty of a class B misdemeanor.

(b) As used in this section and in K.S.A. 65-1,107 and amendments thereto, "laboratory" shall not include: (1) The office or clinic of a person licensed to practice medicine and surgery in which laboratory tests are performed as part of and incidental to the examination or treatment of a patient of such person; (2) the Kansas bureau of investigation forensic laboratory; (3) urinalysis tests for controlled substances performed only for management purposes on inmates, parolees or probationers by personnel of the department of corrections or office of judicial administration and which shall not be used for revoking or denying parole or probation; (4) urinalysis tests approved by the secretary of corrections for controlled substances performed by the community corrections programs; or (5) urinalysis tests performed for management purposes only by personnel of alcohol and drug treatment programs which are licensed or certified by the secretary of social and rehabilitation services.

**History:** L. 1947, ch. 330, § 4; L. 1974, ch. 352, § 170; L. 1988, ch. 233, § 2; L. 1989, ch. 187, § 1; L. 1989, ch. 92, § 30; L. 1990, ch. 216, § 1; L. 1990, ch. 217, § 1; July 1.



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**65-1,108a.** Information obtained through certain tests conducted by approved laboratories confidential; exceptions; penalties for violations. (a) Information obtained through prenatal tests for syphilis, tests for human immunodeficiency virus or tests for controlled substances included in schedule I or II of the uniform controlled substances act conducted by a laboratory approved under K.S.A. 65-1,107 and 65-1,108 and amendments thereto by the secretary of health and environment to perform such tests shall be confidential and shall not be disclosed or made public by officers or employees of such laboratory, except that such laboratory test results shall be released only to: (1) The person who ordered such tests be made; (2) the secretary of health and environment if required by the secretary as part of the approval of the laboratory under K.S.A. 65-1,107 and 65-1,108 and amendments thereto; and (3) the secretary of health and environment for data collection purposes so long as such information is released in such a manner which will not reveal the identity of the person who is the subject of the information.

(b) A violation of this section shall constitute a class C misdemeanor.

**History:** L. 1988, ch. 233, § 3; L. 1990, ch. 215, § 3; July 1.

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**65-2438.** Notification of person transporting dead body for disposition that deceased had an infectious or contagious disease; form; notification of embalmer, funeral director or other person taking possession of body; confidential information; penalties for violations; "infectious or contagious disease" defined. (a) When a person who has been diagnosed as having an infectious or contagious disease dies, the attending physician or, if there is no attending physician, a family member or person making arrangements for the disposition of the dead body who knows of such diagnosis, shall indicate, on a form promulgated by the secretary, that the deceased person had an infectious or contagious disease. The completed form shall accompany the body when it is transported for disposition.

(b) Any person who transports a dead body for disposition and who has been notified pursuant to the provisions of subsection (a) that the deceased person had been diagnosed as having an infectious or contagious disease shall present notification thereof accompanying the dead body to any embalmer, funeral director or other person taking possession of the dead body.

(c) Any person who completes the form required in subsection (a) in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report.

(d) Any information relating to an infectious or contagious disease which is required to be disclosed or communicated under subsections (a) and (b) shall be confidential and shall not be disclosed or made public beyond the disclosure necessary under subsections (a) and (b).

(e) Any person required to perform duties specified under subsection (a) or (b) who knowingly refuses or omits to perform such duties is guilty of a class C misdemeanor. Any person who violates any provision of subsection (d) shall be guilty of a class C misdemeanor.

(f) As used in this section, "infectious or contagious disease" means the disease acquired immune deficiency syndrome, human immunodeficiency virus and any other causative agent of acquired immune deficiency syndrome and any disease designated as infectious or contagious by the secretary of health and environment by rules and regulations under K.S.A. 65-128 and amendments thereto.

**History:** L. 1988, ch. 232, § 8; July 1.

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**65-6001. Definitions.** As used in K.S.A. 1989 Supp. 65-6001 to 65-6007, inclusive, and amendments thereto, unless the context clearly requires otherwise:

(a) "AIDS" means the disease acquired immune deficiency syndrome.

(b) "HIV" means the human immunodeficiency virus.

(c) "Positive reaction to an AIDS test" means a positive screening test, approved by the secretary, indicating infection by HIV, with a positive specific test as specified by the secretary comprising confirmed analytical results which are evidence of HIV infection.

(d) "Secretary" means the secretary of health and environment.

(e) "Physician" means any person licensed to practice medicine and surgery.

(f) "Laboratory director" means the person responsible for the professional, administrative, organizational and educational duties of a laboratory.

(g) "HIV infection" means the presence of HIV in the body.

(h) "Racial/ethnic group" shall be designated as either white, black, Hispanic, Asian/Pacific islander or American Indian/Alaskan Native.

(i) "Law enforcement officer" means police officer or law enforcement officer as such terms are defined under K.S.A. 74-5602 and amendments thereto.

**History:** L. 1988, ch. 232, § 1; L. 1990, ch. 234, § 1; July 1.

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**65-6002. Reporting to secretary of health and environment information concerning AIDS; information reported, when; persons reporting; immunity from liability; confidentiality of information; disclosure; use of information to discriminate prohibited.** (a) Whenever any physician has information indicating that a person is suffering from or has died from AIDS, such knowledge or information shall be reported immediately to the secretary, together with the name and address of the person who has AIDS, or the name and former address of the deceased individual who had such disease. Any laboratory director shall report all positive reactions to an AIDS test to the secretary. Any physician who is in receipt of a report indicating a positive reaction to a test for HIV infection resulting from the examination of any specimen provided to a laboratory by such physician shall report all such positive reactions to the secretary. Reports by physicians and laboratory directors shall be provided within one week of receipt or interpretation of the positive test results and shall designate the type of test or tests performed, the date of performance of the test or tests, the results of the test or tests, the sex, date of birth, county of residence and racial/ethnic group of the person tested. For the purpose of reporting HIV infection only, the name of the patient shall not be reported. The provisions of this subsection shall not apply to a physician who, while performing services, other than the direct rendition of medical services, for an insurance company, health maintenance organization or nonprofit medical and hospital service corporation, becomes aware that a person has tested positive for HIV or is suffering from or has died from AIDS.

(b) Any physician or laboratory director who reports the information required to be reported under subsection (a) in good faith and without malice to the secretary shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such physician or laboratory director shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(c) Information required to be reported under subsection (a) and information obtained through laboratory tests conducted by the department of health and environment relating to HIV or AIDS and persons suffering therefrom or infected therewith shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the dis-

closure necessary under subsection (a) or under subsection (a) of K.S.A. 1989 Supp. 65-6003 and amendments thereto or the usual reporting of laboratory test results to persons specifically designated by the secretary as authorized to obtain such information, except such information may be disclosed:

(1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, as specified by rules and regulations of the secretary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat AIDS or HIV infection, except that any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving a minor and the information is disclosed in camera.

(d) Information regarding cases of AIDS or HIV infection reported in accordance with this section shall be used only as authorized under this act. Such information shall not be used in any form or manner which would lead to the discrimination against any individual or group with regard to employment, to provision of medical care or acceptance into any facilities or institutions for medical care, housing, education, transportation, or for the provision of any other goods or services.

**History:** L. 1988, ch. 232, § 2; L. 1990, ch. 234, § 2; July 1.

**65-6003.** Investigation of cases of AIDS; rules and regulations; protection of public health; disclosure of information; confidentiality; agreements with local boards of health authorized. (a) The secretary shall investigate cases of persons who have AIDS and maintain a supervision over such cases during their continuance. The secretary may adopt and enforce rules and regulations for the prevention and control of AIDS and for such other matters relating to cases of persons who have AIDS as may be necessary to protect the public health.

(b) Any information relating to persons who have AIDS which is required to be disclosed or communicated under subsection (a) shall be confidential and shall not be disclosed or made public beyond the disclosure necessary under subsection (a) or under subsection (a) of K.S.A. 1988 Supp. 65-6002 and amendments thereto to persons specifically designated by the secretary as authorized to obtain such information, except as otherwise permitted by subsection (c) of K.S.A. 1988 Supp. 65-6002 and amendments thereto.

(c) The secretary may enter into agreements with any county or joint board of health to perform duties required to be performed by the secretary under subsection (a) as specified by such agreement. The confidentiality requirements of subsection (b) shall apply to any duties performed pursuant to such an agreement.

**History:** L. 1988, ch. 232, § 3; July 1.

**65-6004.** Physician authorized to disclose to certain persons information about patient who has AIDS or who has had a positive reaction to an AIDS test; confidentiality of information; immunity in judicial proceedings.

(a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has AIDS or has had a positive reaction to an AIDS test may disclose such information to other health care providers, emergency personnel, correctional officers employed by the department of corrections or law enforcement officers who have been or will be placed in contact with bodily fluids of such patient. The information shall be confidential and shall not be disclosed by such health care providers, emergency personnel, correctional officers employed by the department of corrections or law enforcement officers except as may be necessary in providing treatment for such patient.

(b) Notwithstanding any other law to the contrary, a physician who has reason to believe that the spouse or partner of a person who has had a positive reaction to an AIDS test or who has AIDS may have been exposed to HIV and is unaware of such exposure may inform the spouse or partner of the risk of exposure. The information shall be confidential and shall not be disclosed by such spouse or partner to other persons except to the spouse or partner who has had a positive reaction to an AIDS test or who has AIDS.

(c) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to HIV.

(d) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

**History:** L. 1988, ch. 232, § 4; L. 1990, ch. 234, § 3; July 1.

**65-6005. Unlawful acts; penalties.** Any person violating, refusing or neglecting to obey any provision of K.S.A. 1988 Supp: 65-6001 through 65-6004 or of the rules and regulations adopted by the secretary for the prevention and control of AIDS shall be guilty of a class C misdemeanor.

**History:** L. 1988, ch. 232, § 5; July 1.



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**65-6006.** Educational material explaining AIDS; distribution to district courts; copies provided to parties applying for marriage license. The secretary shall prepare for distribution to the district courts of the state educational material explaining the nature, causes and effects of AIDS and other information relating to AIDS as may be appropriate. The clerks of the district courts or judges thereof, when applied to for a marriage license, shall provide copies of such educational material to the parties to the proposed marriage.

**History:** L. 1988, ch. 232, § 6; July 1.

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**65-6007.** Establishment and maintenance of sites for anonymous testing for HIV. The secretary shall establish and maintain test sites throughout the state where the anonymous testing for HIV may be undertaken.

**History:** L. 1988, ch. 232, § 7; July 1.

Proposed Comments  
Backflow Prevention Legislation  
February 4, 1991

The purpose of this legislation is to protect public water supplies from contamination which can result from a) chemical application through lawn sprinkler systems or b) backflow from chemical tanks.

It amends K.S.A. 1990 Supp. 65-171r concerning the operation of a public water supply system and prohibitive acts relative to contamination.

Concerns have been raised regarding the technology to apply pesticides and fertilizers by pumping chemicals directly into sprinkler systems. This practice subjects the public water supply to back pressure thereby significantly increasing the likelihood of chemicals contaminating the drinking water system.

*Proposal*  
This legislation would prohibit the application of fertilizers, pesticides or other chemicals through any lawn irrigation system that is supplied by a public water supply system unless:

- 1) the public water supply system has adopted a State approved backflow prevention and cross connection control program

AND

- 2) the irrigation system has been currently inspected by the public water supply system and has current approval of the appropriate backflow prevention device or air gap which isolates the irrigation system.

This legislation also addresses the practice of using a public water supply system as a make-up source of water for filling bulk chemical application tanks. This practice would also be prohibited unless the previously stated criteria (1 & 2) were met.

Senate P H&W  
Attachment #2  
2-7-91

(For additional background information, please see attached.)