Approved 1-23-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Rep. John M. Solbach at
Chairperson

3:30 ~~a~~m./p.m. on January 21, 19 92 in room 313S of the Capitol.

All members were present except:

Representatives Gregory, Hochhauser & Sebelius who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes Office
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Arthur Solis, Kansas Human Rights Commission
Paul Shelby, Assistant Judicial Administrator
Randy Hearrel, Kansas Judicial Council
Ruth Brown, District Magistrate Judge, District 21
Representative Tim Carmody
Mike Heim, Legislative Research
Ron Smith, Kansas Bar Association
Representative Joan Hamilton

Chairman John Solbach called the meeting to order.

Chairman Solbach congratulated Jim Garner being named as Co-vice chairman of the House Judiciary Committee.

Arthur Solis, Kansas Human Rights Commission, requested a conflict resolution bill be introduced amending the Kansas act against discrimination. See Attachment #1. Representative Smith moved to introduce requested bill and Denise Everhart seconded the motion. Motion carried.

Paul Shelby, Assistant Judicial Administrator, requested a package of legislative proposals be introduced as bills. See Attachment #~~1~~2. Rep. Smith moved to introduce Shelby's requests. Rep. Macy seconded the motion. Motion carried.

Randy Hearrel, Kansas Judicial Council requested a HCR be introduced commending Robert Cobean for his service as a member of the Kansas Judicial Council. Rep. Rock moved to introduce the HCR. Rep. Everhart seconded the motion. Motion carried.

Hearrel requested introduction of legislation from the Judicial Council which would allow clerks to accept facsimile documents. Rep. Hamilton moved to introduce such legislation. Rep. Snowbarger seconded the motion. Motion carried.

Magistrate Judge Ruth Brown conceptually requested introduction of a bill establishing student attendance review board within each school district in the State for early detection of student difficulties. Rep. O'Neal moved to introduce such legislation. Rep. Garner seconded the motion. Motion carried.

Rep. Carmody said that the Johnson County District Attorney is having a problem with check collection. Currently 10-15% are unpaid. Rep. O'Neal moved that a bill be introduced giving the County Clerk the option to accept personal checks. Rep. Hamilton seconded the motion. Motion carried.

Ron Smith, Kansas Bar Association, requested an update of corporation code with the Delaware code. These are mostly technical changes., Rep. Snowbarger moved to introduce such bill. Rep. Everhart seconded the motion. Motion carried.

Rep. Hamilton requested introduction of a bill to further define "telephone call" to include faxsimile equipment under the harassment of telephone misuse statute. Rep. Hamilton moved to introduce such bill. Rep. Macy seconded motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313S, Statehouse, at 3:30 ~~a.m.~~/p.m. on January 21, 1992

Rep. Hamilton moved to introduce a bill which would streamline the language of grand juries since all information does not need to be on every page and to increase the number of signatures needed to call a grand jury. Rep. Lawrence seconded the motion. Motion carried.

Rep. Scott said that open container transportation enforcement is not really being done in rural areas. He moved to amend present law that a beer can would not be considered as an open container if it were smashed to 1" or under. Rep. Macy seconded the motion. Motion carried.

Mike Heim, Research Department, briefed the committee on Proposal No. 15, Judicial Administration. Attachment #3. He stated the current 31 judicial districts are acceptable, however judge allocation is insufficient. He said the main thrust of the proposal is in New Sections 33 & 34 of HB 2673.

Jerry Donaldson, Legislative Research, reviewed Proposal No. 12 on juvenile issues. Attachment #4. She also reviewed Proposal No. 14 on right to die. Attachment #5.

Chairman Solbach introduced Laura Anon who will be his half time legislative clerk this year.

Chairman Solbach asked committee members to let him know within the next week if there are any hold-over bills they want to work.

Meeting adjourned at 4:45 p.m.

GUEST LIST

COMMITTEE: House Judiciary DATE: 1-21-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
Sandy Hearrell	Topeka	Judicial Council
Jeff Deblaffenreed	"	

KANSAS HUMAN RIGHTS COMMISSION

LANDON STATE OFFICE BLDG.—8TH FLOOR
900 S.W. JACKSON ST.—SUITE 851 S.
TOPEKA, KANSAS 66612-1258
(913) 296-3206
TDD# (913) 296-0245

M E M O R A N D U M

TO: John Solbach, Chairperson
House Judiciary Committee

FROM: Arthur W. Solis, Senior Legal Counsel

DATE: January 21, 1992

RE: 1991 HB No. 2541
1991 SB No. 456

House Bill No. 2541, An Act amending the Kansas act against discrimination; concerning certain procedures relating to enforcement thereof; relating to discrimination because of disability or familial status; prohibiting certain acts and providing penalties for violations; concerning accessibility of public buildings; relating to enforcement thereof; amending K.S.A. 44-1001, 44-1002, 44-1004, 44-1006, 44-1009, 44-1015, 44-1016, 44-1017, 44-1018, 44-1020, 44-1021, 44-1022, 44-1026, 44-1027 and 44-1030 and K.S.A. 1990 Supp. 44-1005, 44-1019, 58-1304 and 58-1308 and repealing the existing sections.

Senate Bill No. 456, An Act changing the name of the commission on civil rights to the Kansas human rights commission; amending K.S.A. 44-1002, 44-1003, 44-1015, 44-1030, 44-1044, 77-529 and 77-618 and K.S.A. 1990 Supp. 41-2611, 44-1112, 44-1121, 74-5086 and 74-7250 and repealing the existing sections.

The 1991 Cumulative Supplement to the Kansas Statutes Annotated provides:

Two (2) definitional sections: K.S.A. 1991 Supp. 44-1002 &
K.S.A. 1991 Supp. 44-1002a

Two (2) discrimination in housing definitional sections:
K.S.A. 1991 Supp. 44-1015 &
K.S.A. 1991 Supp. 44-1015a

Two (2) contract compliance sections:
K.S.A. 1991 Supp. 44-1030 &
K.S.A. 1991 Supp. 44-1030a

Enclosures:
Proposed Bill
Photostatic copy of relevant K.S.A. 1991 Supp.

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HOUSE BILL No. _____

AN ACT amending the Kansas act against discrimination; changing the name of the commission on civil rights to the Kansas human rights commission in relevant sections; amending K.S.A. 1991 Supp. 44-1002, K.S.A. 44-1015, and K.S.A. 44-1030 and repealing the existing sections; also repealing K.S.A. 1991 Supp. 44-1002a, K.S.A. 44-1015a, and K.S.A. 44-1030a.

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

Section 1. K.S.A. 1991 Supp. 44-1002 is hereby amended to read as follows: 44-1012. * * * * [NOTE: the entire statute is set out in the bill, excluded here for convenience]

(f) "Commission means the ~~commission on civil rights~~ Kansas human rights commission created by this act.

* * * *

Section 2. K.S.A. 1991 Supp. 44-1015 is hereby amended to read as follows: 44-1015. (a) "Commission" means the Kansas ~~commission on civil rights~~ human rights commission.

* * * [NOTE: the entire statute is set out in the bill, excluded here for convenience]

Section 3. K.S.A. 1991 Supp. 44-1030 is hereby amended to read as follows: 44-1030. * * * [NOTE: the entire statute is set out in the bill, excluded here for convenience]

(b) The Kansas ~~commission on civil rights~~ human rights commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas act against discrimination.

* * * *

Section 4. K.S.A. 1991 Supp. 44-1002, K.S.A. 44-1015, K.S.A. 44-1030, K.S.A. 44-1002a, K.S.A. 44-1015a, and K.S.A. 44-1030a are hereby repealed.

Section 5. This act shall take effect and be in force from and after its publication in the Kansas register.

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properly qualified, to assure equal opportunities to all persons within this state to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, religion, color, sex, disability, familial status, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this act and the opportunity for full and equal housing are civil rights of every citizen.

To protect these rights, it is hereby declared to be the purpose of this act to establish and to provide a state commission having power to eliminate and prevent segregation and discrimination, or separation in employment, in all places of public accommodations covered by this act, in housing because of race, religion, color, sex, disability, national origin or ancestry and in housing because of familial status, either by employers, labor organizations, employment agencies, realtors, financial institutions or other persons as hereinafter provided.

History: L. 1953, ch. 249, § 1; L. 1961, ch. 248, § 1; L. 1963, ch. 279, § 1; L. 1965, ch. 323, § 1; L. 1972, ch. 194, § 1; L. 1974, ch. 209, § 1; L. 1991, ch. 147, § 1; July 1.

Law Review and Bar Journal References:

"Wrongful Discharge: Erosion of the Employment at Will Doctrine," Sheila Janicke, Marilyn Crabtree, Vol. VIII, No. 2, J.K.T.L.A. 6 (1984).

"Private Sector Drug Testing: Employer Rights, Risks and Responsibilities," L. Camille Hebert, 36 K.L.R. 823, 849 (1988).

"Personnel Policy Manuals as Legally Enforceable Contracts: The Implied-in-Fact Contract—A Limitation on the Employer's Right to Terminate at Will," Michael D. Strong, 29 W.L.J. 368, 373 (1990).

Attorney General's Opinions:

Unlawful discriminatory practices; application to Rotary clubs. 87-96.

CASE ANNOTATIONS

27. Cited; failure to seek judicial review of teacher employment termination under 72-5436 et seq. precludes complaint hereunder. Neunzig v. Seaman U.S.D. No. 345, 239 K. 654, 655, 662, 722 P.2d 569 (1986).

28. Cited; exhaustion of administrative remedies following employment termination (75-2949) before pursuing independent civil action (75-2929) examined. Mattox v. Department of Transportation, 12 K.A.2d 403, 747 P.2d 174 (1987).

29. KCCR; lacks jurisdiction to investigate complaints of discrimination in public schools. Kansas Comm'n on Civil Rights v U.S.D. No. 501, 243 K. 137, 755 P.2d 539 (1988).

30. Order issued under act not res judicata for civil action arising out of same incident and same statutory authority. Parker v. Kansas Neurological Institute, 13 K.A.2d 685, 778 P.2d 390 (1989).

31. Act provides an adequate and exclusive state remedy for violations of public policy enunciated therein. Polson v. Davis, 895 F.2d 705, 706, 709 (1990).

32. Review by trial and appellate courts noted; shifting burden of proof in sex (44-1009) and age (44-1113) discrimination complaints examined. Kansas State Univ. v. Kansas Comm'n on Civil Rights, 14 K.A.2d 428, 429, 796 P.2d 1046 (1990).

33. Poor credit record of female applicant for firefighter position as reason for rejection constituted gender discrimination. Scott v. City of Topeka Police & Fire Civil Serv., 739 F.Supp. 1434 (1990).

34. Employee as not assuming risk of rape at place of employment noted, notwithstanding knowledge of risk. Perkins v. Spivey, 911 F.2d 22 (1990).

44-1002. Definitions. [See Revisor's Note] When used in this act:

(a) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) "Employer" includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

(c) "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.

(d) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) "Employment agency" includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

(f) "Commission" means the commission on civil rights created by this act.

(g) "Unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009 and amendments thereto and includes segregate or separate.

(h) "Public accommodations" means any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A 36-

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501 and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

(i) "Unlawful discriminatory practice" means: (1) Any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin or ancestry:

(A) In any place of public accommodations; or

(B) in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; and

(2) any discrimination against persons in regard to membership in a nonprofit recreational or social association or corporation by reason of race, religion, sex, color, disability, national origin or ancestry if such association or corporation has 100 or more members and: (A) Provides regular meal service; and (B) receives payment for dues, fees, use of space, use of facility, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers.

This term shall not apply to a religious or private fraternal and benevolent association or corporation.

(j) "Disability" means, with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of.

Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. 802), in housing discrimination. In employment and public accommodation discrimination, "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. 812), when the covered entity acts on the basis of such use.

(k) "Reasonable accommodation" means:

(1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(2) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(l) "Regarded as having such an impairment" means the absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists.

History: L. 1953, ch. 249, § 2; L. 1961, ch. 248, § 2; L. 1963, ch. 279, § 2; L. 1965, ch. 323, § 2; L. 1970, ch. 192, § 1; L. 1972, ch. 194, § 2; L. 1974, ch. 209, § 2; L. 1975, ch. 264, § 1; L. 1991, ch. 147, § 2; July 1.

Revisor's Note:
Section was amended twice in 1991 session, see also 44-1002a.

Attorney General's Opinions:
Unlawful discriminatory practices; application to Rotary clubs. 87-96.

CASE ANNOTATIONS

8. Cited; lack of jurisdiction by KCCR to investigate complaints of discrimination in public schools examined. Kansas comm'n on Civil Rights v. U.S.D. No. 501, 243 K. 137, 138, 755 P.2d 539 (1988).

9. Plaintiff must satisfy threshold burden of having "physical handicap" before asserting discrimination claim based on physical handicap. Andrews v. Jones Truck Lines, 741 F.Supp. 867, 871 (1990).

44-1002a. Definitions. [See Revisor's Note] When used in this act:

(a) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" includes any person in this state employing four or more persons, and any person acting directly or indirectly for an employer as herein defined, and labor organizations, nonsectarian corporations, and organizations engaged in social service work, and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

(c) The term "employee" does not include any individual employed by such individual's parents, spouse, or child, or in the domestic service of any person.

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l) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in relation to employment.

(e) The term "employment agency" includes any person or governmental agency undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

(f) The term "commission" means the Kansas human rights commission created and amended by this act.

(g) The term "unlawful employment practice" includes only those unlawful practices and acts specified in K.S.A. 44-1009 and amendments thereto, and includes segregate or separate.

(h) The word "hotel," "motel" and "restaurant" shall each have the meanings ascribed to them respectively by K.S.A. 36-101 and 36-301, and amendments thereto, and the term "public accommodations" shall include any person as defined herein, who caters or offers goods, services, facilities, and accommodations to the public, but shall not include a nonprofit fraternal or social association or corporation.

(i) The term "unlawful discriminatory practice" means any discrimination against persons in a hotel, motel, cabin camp, restaurant or trailer court and the segregation against persons in a place of public accommodations covered by this act by reason of their race, religion, color, sex, physical handicap, national origin, or ancestry. The term "unlawful discriminatory practice" also means any discrimination against persons in a bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary, cemetery which is open to the public or on any public transportation facility.

The term "unlawful discriminatory practice" also means any discrimination against persons in the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof.

(j) The term "physical handicap" means the physical condition of a person, whether congenital or acquired by accident, injury or disease which constitutes a substantial disability, but is unrelated to such person's ability to engage in a particular job or occupation.

History: L. 1953, ch. 249, § 2; L. 1961, ch. 248, § 2; L. 1963, ch. 279, § 2; L. 1965, ch. 323, § 2; L. 1970, ch. 192, § 1; L. 1972, ch. 194, § 2; L. 1974, ch. 209, § 2; L. 1975, ch. 264, § 1; L. 1991, ch. 148, § 2; July 1.

Revisor's Note:
Section was amended twice in 1991 session, see also 44-1002.

44-1003. Kansas human rights commission; creation; organization; staff; sunset provision. (a) There is hereby created the Kansas human rights commission. The commission shall consist of seven members, two of whom shall be representative of industry, two of whom shall be representative of labor, one of whom shall be a person authorized to practice law in this state, one of whom shall be a representative of the real estate industry, and one of whom shall be appointed at large, to be known as commissioners. Members of the commission shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. One member shall be designated by the governor as chairperson and shall preside at all meetings of the commission and perform all the duties and functions of chairperson.

(b) The commission may designate one member to act as chairperson during the absence or incapacity of the chairperson, and, when so acting, the member designated shall have and perform all the duties and functions of the chairperson of the commission.

(c) The term of office of each member of the commission shall be four years and until a successor is qualified. Any member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member's predecessor.

(d) A majority of the current members of the commission shall constitute a quorum for the purpose of conducting the business of the commission, except as otherwise provided in this section. Vacancies on the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

(e) Members of the Kansas human rights commission attending meetings of the commission, or attending a subcommittee meeting thereof authorized by the commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

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Review and Bar Journal Refer[illegible]s:
[illegible]ppellate Court Jurisdiction: An Update," Debra S. [illegible], 58 J.K.B.A. No. 1, 21, 23 (1989).

CASE ANNOTATIONS

8. Statute, when read with 44-1011 and 44-1115, vests exclusive jurisdiction of age discrimination claim in district court. Ditch v. Bd. of County Com'rs of County of Shawnee, 650 F.Supp. 1245, 1253 (1986).

9. Failure to seek rehearing of KCCR finding of no probable cause did not preclude federal action. Ditch v. Bd. of County Com'rs of Shawnee Cty., Kans., 669 F.Supp. 1553, 1554 (1987).

10. Motion for rehearing a prerequisite to judicial review; court's inquiry limited to issues fairly raised by the motion. Kansas State Univ. v. Kansas Comm'n on Civil Rights, 14 K.A.2d 428, 435, 796 P.2d 1046 (1990).

44-1011.

Law Review and Bar Journal References:
"Appellate Court Jurisdiction: An Update," Debra S. Byrd, 58 J.K.B.A. No. 1, 21, 23 (1989).

Attorney General's Opinions:
Cities powers of home rule; human relations commission. 86-90.

CASE ANNOTATIONS

19. Cited; failure to seek judicial review of teacher employment termination under 72-5436 et seq. precludes complaint hereunder. Neunzig v. Seaman U.S.D. No. 345, 239 K. 654, 656, 662, 722 P.2d 569 (1986).

20. Statute, when read with 44-1010 and 44-1115, vests exclusive jurisdiction of age discrimination claim in district court. Ditch v. Bd. of County Com'rs of County of Shawnee, 650 F.Supp. 1245, 1253 (1986).

21. Order issued under act not res judicata for civil action arising out of same incident and same statutory authority. Parker v. Kansas Neurological Institute, 13 K.A.2d 685, 688, 778 P.2d 390 (1989).

22. Appellate court's standard of review in controversies arising under professional negotiations act (72-5413 et seq.) examined. U.S.D. No. 352 v. NEA-Goodland, 246 K. 137, 139, 785 P.2d 993 (1990).

44-1015. Discrimination in housing; definitions. [See Revisor's Note] As used in this act, unless the context otherwise requires:

(a) "Commission" means the Kansas commission on civil rights.

(b) "Real property" means and includes:

(1) All vacant or unimproved land; and

(2) any building or structure which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy.

(c) "Family" includes a single individual.

(d) "Person" means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.

(e) "To rent" means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means any act that is unlawful under K.S.A. 44-1016, 44-1017 or 44-1026, and amendments thereto.

(g) "Person aggrieved" means any person who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur.

(h) "Disability" has the meaning provided by K.S.A. 44-1002 and amendments thereto.

(i) "Familial status" means having one or more individuals less than 18 years of age domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

History: L. 1970, ch. 193, § 1; L. 1991, ch. 147, § 7; Jan. 1, 1992.

Revisor's Note:
Section was amended twice in 1991 session, see also 44-1015a.

Attorney General's Opinions:
Unlawful discriminatory practices; application to Rotary clubs. 87-96.

44-1015a. Discrimination in housing; definitions. [See Revisor's Note] As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the context otherwise requires:

(a) "Commission" means the Kansas human rights commission.

(b) "Real property" means and includes (1) all vacant or unimproved land and (2) any building or structure which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy.

(c) "Family" includes a single individual.

(d) "Person" means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.

(e) "To rent" means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

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(f) "Discriminatory housing practice" means any act that is unlawful under K.S.A. 44-1016 and 44-1017, and amendments thereto.

(g) "Person aggrieved" means any person claiming to have been injured by a discriminatory housing practice or who believes that such person will be injured by a discriminatory housing practice that is about to occur.

History: L. 1970, ch. 193, § 1; L. 1991, ch. 148, § 4; July 1.

Revisor's Note:
Section was amended twice in 1991 session, see also 44-1015.

44-1016. Same; unlawful acts in connection with sale or rental of real property. Subject to the provisions of K.S.A. 44-1018 and amendments thereto, it shall be unlawful for any person:

(a) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) To discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(c) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status, national origin or ancestry, or an intention to make any such preference, limitation, specification or discrimination.

(d) To represent to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry that any real property is not available for inspection, sale or rental when such real property is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, familial status, national origin or ancestry.

(f) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against such person in the terms or conditions of such access, membership or participation, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(g) To discriminate against any person in such person's use or occupancy of real property because of the race, religion, color, sex, disability, familial status, national origin or ancestry of the people with whom such person associates.

(h) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, residential real property to any buyer or renter because of a disability of:

(A) That buyer or renter;

(B) a person residing in or intending to reside in such real property after it is sold, rented or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of residential real property or in the provision of services or facilities in connection with such real property because of a disability. of:

(A) That person;

(B) a person residing in or intending to reside in that real property after it is so sold, rented or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection (h), discrimination includes:

(A) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

(B) a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy residential real property; or

(C) in connection with the design and construction of covered multifamily residential real property for first occupancy on and after July

tory: L. 1970, ch. 193, § 8; L. 1991, ch. 147, § 14; Jan. 1, 1992.

44-1026. Same; unlawful acts; enforcement of section. It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by K.S.A. 44-1016 or 44-1017, and amendments thereto.

History: L. 1970, ch. 193, § 12; L. 1991, ch. 147, § 15; Jan. 1, 1992.

44-1027. Same; unlawful act; penalties. (a) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with:

(1) Any person because of such person's race, religion, color, sex, disability, familial status, national origin or ancestry and because such person is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any real property, or applying for or participating in any service, organization or facility relating to the business of selling or renting real property;

(2) any person because such person is or has been, or in order to intimidate such person or any other person or any class of persons from:

(A) Participating, without discrimination on account of race, religion, color, sex, disability, familial status, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (a)(1); or

(B) affording another person or class of persons opportunity or protection so to participate; or

(3) any citizen because such citizen is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, religion, color, sex, disability, familial status, national origin or ancestry, in any of the activities, services, organizations or facilities described in subsection (a)(1), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(b) Violation of this section is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both such fine and imprisonment, except that:

(1) If bodily injury results, such violation shall be punishable by a fine of not more than $10,000 or imprisonment for not more than 10 years, or both such fine and imprisonment; and

(2) if death results, such violation shall be punishable by imprisonment for any term of years or for life.

History: L. 1970, ch. 193, § 13; L. 1972, ch. 194, § 13; L. 1991, ch. 147, § 16; Jan. 1, 1992.

44-1030. State and local government contracts; mandatory provisions. [See Revisor's Note] (a) Except as provided by subsection (c), every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

(1) The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;

(2) in all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

(3) if the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

(4) if the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and

(5) the contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such pro-

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visions will be binding upon such subcontractor or vendor.

(b) The Kansas commission on civil rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas act against discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

(1) Who employs fewer than four employees during the term of such contract; or

(2) whose contracts with the governmental entity letting such contract cumulatively total $5,000 or less during the fiscal year of such governmental entity.

History: L. 1972, ch. 194, § 14; L. 1977, ch. 183, § 1; L. 1991, ch. 147, § 17; Jan. 1, 1992.

Revisor's Note:
Section was amended twice in 1991 session, see also 44-1030a.

44-1030a. State and local government contracts; mandatory provisions. [See Revisor's Note] (a) Except as provided by subsection (c), every contract for or on behalf of the state or any county or municipality or other political subdivision of the state, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

(1) The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin or ancestry;

(2) In all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

(3) If the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

(4) If the contractor ound violation of the Kansas act against tion under a decision or order of t sion which has become final, the shall be deemed to have breached contract and it may be cancelled. or suspended, in whole or in part, tracting agency; and

(5) The contractor shall includ sions of subsections (a)(1) throu every subcontract or purchase or such provisions will be binding up contractor or vendor.

(b) The Kansas human rights shall not be prevented hereby fr reports of contractors found to be pliance with the Kansas act crimination.

(c) The provisions of this sec apply to a contract entered into by

(1) Who employs fewer than ees during the term of such con

(2) whose contracts with the entity letting such contract cumu $5,000 or less during the fiscal governmental entity.

History: L. 1972, ch. 194, § ch. 183, § 1; L. 1991, ch. 148,

Revisor's Note:
Section was amended twice in 1991 se 1030.

44-1040.

History: L. 1975, ch. 264, § L. 1988, ch. 356, § 361; July 1.

44-1044. Probable cause d under 44-1005 or 44-1019; exe dicial review and civil enforcem actions act. Determinations und 1005 or 44-1019, and amendmen the Kansas human rights comm probable cause exists for credit tions of a complaint under th against discrimination or the K crimination in employment act a cifically exempted from the a review and civil enforcement of (K.S.A. 77-601 through 77-62 ments thereto).

History: L. 1985, ch. 308, ch. 148, § 6; July 1.

Article 11.—DISCRIMIN EMPLOYMEN

44-1110.

Attorney General's Opinions:
Unlawful discriminatory practices; a clubs. 87-96.

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Introduction of Bills
House Judiciary Committee
January 21, 1992

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to request a package of legislative proposals. All of the proposals have been approved by the Supreme Court for committee consideration.

1. **SUPREME COURT AND DISTRICT NOMINATING COMMISSION ELECTIONS:**

Supreme Court Nominating Commission: Presently, the Clerk of the Applellate Courts between March 1 and March 15 of any year in which a member of the commission is to be elected by members of the bar, shall send by ordinary first class mail to all members of the bar eligible to vote for the member to be elected (6,438 active, inactive, disabled and retired attorneys) a notice that such election is to be held and advising how nominations for such office may be made. Our amendments in lieu of mailing would require a. that in any uncontested election, the nominee shall be declared elected without preparation of a ballot; b. the Clerk to publish in March a Notice and information once a week for three consecutive weeks in the Kansas Register and in such other newspapers, authorized by law to publish legal notices, as the Supreme Court may direct and c. such notice and information shall be posted in each office of the Clerk of the District Court.

District Nominating Commission: a. our amendments would read that no active judge of the district court or court of appeals or justice of the supreme court shall be eligible to serve, during his or her term of office, on any district nominating commission; b. that in any district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot and c. that in December of the year preceding the year in which such terms of office expire the Clerk of the Appellate Courts will publish notice and carry out the same procedures above in lieu of mailing a notice to all Kansas Attorneys. THE ABOVE AMENDMENTS SHOULD SAVE THE CLERK'S OFFICE TIME, WORK AND EXPENSE.

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2. JUDICIAL BRANCH EDUCATION FUND:

We are recommending that the State Treasurer establish a new fund titled the Judicial Branch Education Fund for the purpose of education and training of judicial branch officers and employees, for administering the training, testing an education of municipal judges and municipal court support staff.

Revenues to the Judicial Branch Tranining Fund will come from 4.85% clerks fees state (docket fees) and assessments from the municipal courts. To offset the loss to the State General Fund, we are recommending an increase on the Traffic, Fish and Game and Watercraft docket fees by $2 from the district courts. It also repeals the Municipal Judge Training Fund and transfers all monies to the Judicial Branch Training Fund upon the effective date of this act.

3. DISTRICT COURT AUDITS OF ACCOUNTING RECORDS:

We are recommending an amendment to K.S.A. 20-349 which would expand the audits of the district courts to include, but not limited to, nonexpendable trust funds, law library funds and court trustee operations. In addition we are recommending that any reports of fiscal or managerial discrepancies or noncompliance with applicable law shall be made to the judidical administrator as well as to the county commissioners.

4. The **Kansas Association of District Court Clerks and Administrators** we are recommending three proposals:

a. MECHANIC LIENS: Eliminate statutory requirement for maintaining a lien book, allow for assignnments filed to be attached to the applicable lien and provide for cancellation of liens in accordance with existing law without further independent action of the clerk. These changes will bring the statutes into compliance with modern filing practices currently being followed in the courts.

b. BOND APPROVAL: The intent of this bill is to remove the requirement that the Clerk of the District Court make a legal determination in approving good and sufficient sureties and in general approving bonds. These amendments would would require approval from a judge to make these independent, legal findings to better protect the public. Clerical staff are not qualified to deterine the value of property in the posting of surety bonds and the duties of the Clerk of the District Court are generally ministerial in nature...not requiring a legal determination by someone who is not law trained.

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c. PROCESS SERVICE AGENTS: The intent of this bill is to eliminate duplicate filings at the state and local level and to provide a centralized depository for such appointments. Presently, both the Clerk of the District Court and the Secretary of State are filing these appointments. This proposal would require all appointments be filed with the Secretary of State and eliminate these filings with the (105) Clerks of the District Court. The Secretary of State has agreed to this change and supports this proposal.

I thank you for this opportunity and urge your consideration for these proposals.

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December 10, 1991

D R A F T Nominating Commission BILL

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

Section 1. K.S.A. 20-126 is hereby amended to read as follows: 20-126. The selection of subsequent members of the commission by the members of the bar shall be in like manner as is prescribed in K.S.A. 20-119 and 20-120 for the selection of the first members, and nominations shall be made and ballots mailed and returned within the times of the years when such elections are held as correspond to the times mentioned in said K.S.A. 20-119 and 20-120. The clerk of the supreme court, ~~between March 1 and~~ March ~~15~~ of any year in which a member of the commission is to be elected by members of the bar, shall ~~send by ordinary first class mail to all members of the bar eligible to vote for the member to be elected a~~ notice that such election is to be held and advising how nominations for such office may be made.

in

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Such notice and information on nominating procedures shall be posted in each office of the clerk of the district court. The clerk of the supreme court shall provide such notice and information on nominating procedures to groups of members of the bar, including but not limited to state and local bar associations. The clerk of the supreme court shall publish such notice and information once a week for three consecutive weeks in the Kansas register and in such other newspapers, authorized by law to publish legal notices, as the supreme court may direct.

except that, in any uncontested election, the nominee shall be declared elected without preparation of a ballot.

Sec. 2. K.S.A. 20-128 is hereby amended to read as follows: 20-128.

Any vacancy occurring from any cause in the office of chairman of the commission or among the lawyer members from the congressional districts shall be filled by appointment by the chief justice of the supreme court of Kansas, such appointee to hold office until the first day of July following the expiration of four (4) months after such appointment is made. During the four (4) months immediately preceding the termination of such appointive term an election shall be held in the manner by this act provided for other elections for the unexpired term, if any, of the member whose vacancy is being filled. Appointments to fill such vacancies shall be certified to the clerk of the supreme court.

of subsequent members of the commission

Sec. 3. K.S.A. 20-2904 is hereby amended to read as follows: 20-2904.

(a) Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the clerk of the supreme court pursuant to rule 201 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district. The number of lawyer members to be elected to the district judicial nominating

No active judge of the district court or court of appeals or justice of the supreme court shall be eligible to serve, during his or her term of office, on any district nominating commission.

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commission of a judicial district shall be as follows:

(1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of non-lawyer members appointed pursuant to subsection (a)(1) of K.S.A. 20-2905 and amendments thereto.

(2) In a judicial district consisting of two counties, four members shall be elected.

(3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.

(b) Between December 1 and December 15 of the year in which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901 and amendments thereto, the clerk of the supreme court shall send to each such lawyer by ordinary first class mail a form for nominating one such lawyer for election to the commission. Any such nomination shall be returned to the clerk of the supreme court on or before January 1 of the following year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for the same number of nominees as the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote and certifying that the ballot was voted by such person.

In any judicial district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot.

In order to insure that the election of lawyer members is by secret ballot, the clerk shall provide a separate envelope for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be placed in another envelope, also to be supplied by the clerk, together with the signed certificate, and returned to the clerk of the supreme court prior to February 15 of such year. The ballots so returned shall be canvassed within five days thereafter. The canvassers shall consist of the clerk of the supreme court and two or more persons who are registered members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice. The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk. Any ballot which does not contain separate votes for nominees equal in number to the number of persons to be elected shall be void and shall not be counted.

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(c) After the ballots are counted and tabulated in descending order from the nominee receiving the highest number of votes the canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes.

In the event of a tie creating more nominees to be elected than there are positions to be filled, the canvassers shall determine the person or persons to be elected by lot. In the event that less than the required number of lawyers is elected, the positions for which lawyers have not been elected shall be declared vacant and the vacancies filled in the manner prescribed by subsection (e) of K.S.A. 20-2906 and amendments thereto.

(d) The procedure provided in this section for election of lawyers to serve as members of the first district judicial nominating commission established in a judicial district shall apply to the election of lawyers to succeed lawyer members of the commission whose terms of office expire, except ~~that the form for submitting a nomination shall be sent between December 1 and December 15 of the year preceding the year in which such terms of office expire, and the~~ dates prescribed for submission of nominations and the mailing, returning and canvassing of ballots shall apply in the year in which such terms of office expire.

as otherwise provided in this subsection. In December of the year preceding the year in which such terms of office expire, the clerk of the supreme court shall publish notice that such election is to be held and advising how nominations for such office may be made. Such notice and information shall be posted in each office of the clerk of the district court in the judicial district. The clerk of the supreme court shall provide such notice and information on nominating procedures to the local bar associations within the judicial district and shall publish such notice and information once a week for three consecutive weeks in one or more newspapers authorized by law to publish legal notices and having general circulation within the judicial district.

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Sec. 4. K.S.A. 20-2906 is hereby amended to read as follows: 20-2906. (a) All members of the district judicial nominating commission who are elected or appointed to full terms of office shall commence their terms of office on the first Monday in March following their election or appointment, and shall serve for terms of four (4) years, except that lawyer members of the first nominating commission established in a judicial district shall serve for terms of office as provided in subsection (b), and nonlawyer members of said first commission shall serve for terms of office as provided in subsection (c).

No member of a district judicial nominating commission, while he or she is such a member, shall hold any office or official position in a political party or be eligible for nomination to the position of judge of the district court.

(b) The terms of office for lawyer members of the first nominating commission established in a judicial district shall be determined by lot at the first meeting of the commission in accordance with the following:

(1) Where there are three (3) lawyer members of a commission, two (2) of such members shall serve for terms of one (1) year and one (1) such member shall serve for a term of three (3) years.

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(2) Where there are four (4) lawyer members on a commission, two (2) such members shall serve for terms of one (1) year and two (2) such members shall serve for terms of three (3) years.

(3) Where there are five (5) lawyer members on a commission, three (3) such members shall serve for terms of one (1) year and two (2) such members shall serve for terms of three (3) years.

(4) Where there are six (6) lawyer members on a commission, three (3) such members shall serve for terms of one (1) year and three (3) such members shall serve for terms of three (3) years.

(5) Where there are seven (7) lawyer members on a commission, four (4) such members shall serve for terms of one (1) year and three (3) such members shall serve for terms of three (3) years.

(c) The terms of office for non-lawyer members of the first nominating commission established in a judicial district shall be determined by lot at the first meeting of the commission in accordance with the following:

(1) Where there are three (3) non-lawyer members of a commission, one (1) such member shall serve for a term of one (1) year and two (2) such members shall serve for terms of three (3) years.

(2) Where there are four (4) non-lawyer members of a commission, two (2) such members shall serve for terms of one (1) year and two (2) such members shall serve for terms of three (3) years.

(3) Where there are five (5) non-lawyer members of a commission, two (2) such members shall serve for terms of one (1) year and three (3) such members shall serve for terms of three (3) years.

(4) Where there are six (6) non-lawyer members of a commission, three (3) such members shall serve for terms of one (1) year and three (3) such members shall serve for terms of three (3) years.

(5) Where there are seven (7) non-lawyer members of a commission, three (3) such members shall serve for terms of one (1) year and four (4) such members shall serve for terms of three (3) years.

(d) In determining terms of office of members of the first nominating commission established in a judicial district pursuant to subsections (b) and (c), the supreme court shall prescribe the method of determining said terms by lot. Any method or procedure so prescribed shall be officiated by the chairman of the commission. Upon the expiration of the terms of office provided in subsections (b) and (c), successors shall be selected for terms of four (4) years in the same manner as the members whose terms of office are expiring were selected.

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(e) Whenever a vacancy for any reason other than the expiration of a term of office shall occur in a lawyer's position on the district judicial nominating commission, leaving an unexpired term of office of more than ninety (90) days, the chief justice of the supreme court shall appoint a successor of like qualifications to serve until the first Monday in March that occurs more than ninety (90) days after the date of the vacancy or until the end of the unexpired term, whichever occurs first. If said first Monday in March occurs prior to the end of the unexpired term, a lawyer of like qualifications shall be elected in the manner prescribed by K.S.A. 20-2904 and amendments thereto, to serve from said Monday in March until the end of the unexpired term. If any such vacancy occurs in a lawyer's position on the nominating commission leaving an unexpired term of office of ninety (90) days or less, there shall be no appointment or election of a successor to fill the unexpired term.

(f) Whenever a vacancy for any reason other than the expiration of a term of office shall occur in a non-lawyer's position on the district judicial nominating commission, a successor of like qualification shall be appointed in the same manner as the member whose position is vacant was appointed.

subsection (d) of

and amendments thereto,

Sec. 5. K.S.A. 20-126, 20-128, 20-2904, and 20-2906 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

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September 19, 1991

DRAFT EDUCATION Bill

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

Section 1. (a) There is hereby established in the state treasury a judicial branch education fund.

(b) All money credited to the fund shall be used for the purpose of education and training of judicial branch officers and employees, for administering the training, testing and education of municipal judges as provided in K.S.A. 12-4114, and for education and training of municipal judges and municipal court support staff. Expenditure from the judicial branch education fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the supreme court or by a person or persons designated by the chief justice.

(c) The chief justice may apply for, receive and accept money from any source for the purposes for which money in the judicial branch education fund may be expended. Upon receiving any such money, the chief justice shall remit the entire amount at least monthly to the state treasurer, who shall deposit it in the state treasury and credit it to the judicial branch education fund.

Section 2. Of the remittances of the balance of docket fees received monthly by the state treasurer from clerks of the district court pursuant to Section 4(f) of this act, the state treasurer shall deposit and credit to the juvenile detention facilities fund, a sum equal to 5.85% of the remittances of docket fees and to the judicial branch education fund the state treasurer shall deposit and credit a sum equal to 4.85% of the remittances; the balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

Section 3. K.S.A. 8-2107 is hereby amended as follows: 8-2107.

(a)

(1) Notwithstanding any other provisions of the uniform act regulating traffic on highways, when a person is stopped by a police officer for any of the offenses described in subsection (d) and such person is not immediately taken before a judge of the district court, the police officer may require the person stopped, subject to the provisions of subsection (c), to deposit with the officer a valid Kansas driver's license in exchange for a receipt therefor issued by such police officer, the form of which shall be approved by the division of vehicles. Such receipt shall be recognized as a valid temporary Kansas driver's license authorizing the operation of a motor vehicle by the person stopped until the date of the hearing stated on the receipt. The driver's license and a written copy of the notice to appear shall be delivered by the police officer to the court having jurisdiction of the offense charged as soon as reasonably possible. If the hearing on such charge is

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continued for any reason, the judge may note on the receipt the date to which such hearing has been continued and such receipt shall be recognized as a valid temporary Kansas driver's license until such date, but in no event shall such receipt be recognized as a valid Kansas driver's license for a period longer than 30 days from the date set for the original hearing. Any person who has deposited a driver's license with a police officer under this subsection (a) shall have such license returned upon final determination of the charge against such person.

(2) In the event the person stopped deposits a valid Kansas driver's license with the police officer and fails to appear in the district court on the date set for appearance, or any continuance thereof, and in any event within 30 days from the date set for the original hearing, the court shall forward such person's driver's license to the division of vehicles with an appropriate explanation attached thereto. Upon receipt of such person's driver's license, the division shall suspend such person's privilege to operate a motor vehicle in this state until such person appears before the court having jurisdiction of the offense charged, the court makes a final disposition thereof and notice of such disposition is given by the court to the division. No new or duplicate license shall be issued to any such person until such notice of disposition has been received by the division. The provisions of K.S.A. 8-256 and amendments thereto limiting the suspension of a license to one year, shall not apply to suspensions for failure to appear as provided in this subsection (a).

(b) No person shall apply for a duplicate or new driver's license prior to the return of such person's original license which has been deposited in lieu of bond under this section. Violation of this subsection (b) is a class C misdemeanor. The division may suspend such person's driver's license for a period of not to exceed one year from the date the division receives notice of the disposition of the person's charge as provided in subsection (a).

(c) (1) In lieu of depositing a valid Kansas driver's license with the stopping police officer as provided in subsection (a), the person stopped may elect to give bond in the amount specified in subsection (d) for the offense for which the person was stopped. When such person does not have a valid Kansas driver's license, such person shall give such bond. Such bond shall be subject to forfeiture if the person stopped does not appear at the court and at the time specified in the written notice provided for in K.S.A. 8-2106 and amendments thereto.

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(2) Such bond may be a cash bond, a bank card draft from any valid and unexpired credit card approved by the division of vehicles or superintendent of the Kansas highway patrol or a guaranteed arrest bond certificate issued by either a surety company authorized to transact such business in this state or an automobile club authorized to transact business in this state by the commissioner of insurance. If any of the approved bank card issuers redeem the bank card draft at a discounted rate, such discount shall be charged against the amount designated as the fine for the offense. If such bond is not forfeited, the amount of the bond less the discount rate shall be reimbursed to the person providing the bond by the use of a bank card draft. Any such guaranteed arrest bond certificate shall be signed by the person to whom it is issued and shall contain a printed statement that such surety company or automobile club guarantees the appearance of such person and will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person not to exceed an amount to be stated on such certificate.

(3) Such cash bond shall be taken in the following manner: The police officer shall furnish the person stopped a stamped envelope addressed to the judge or clerk of the court named in the written notice to appear and the person shall place in such envelope the amount of the bond, and in the presence of the police officer shall deposit the same in the United States mail. After such cash payment, the person stopped need not sign the written notice to appear, but the police officer shall note the amount of the bond mailed on the notice to appear form and shall give a copy of such form to the person. If the person stopped furnishes the police officer with a guaranteed arrest bond certificate or bank card draft, the police officer shall give such person a receipt therefor and shall note the amount of the bond on the notice to appear form and give a copy of such form to the person stopped. Such person need not sign the written notice to appear, and the police officer shall present the notice to appear and the guaranteed arrest bond certificate or bank card draft to the court having jurisdiction of the offense charged as soon as reasonably possible.

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(d) The offenses for which appearance bonds may be required as provided in subsection (c) and the amounts thereof shall be as follows:

Reckless driving	~~$60~~ $71
Failure to comply with lawful order of officer	~~44~~ 46
Registration violation (registered for 12,000 pounds or less)	~~39~~ 41
Registration violation (registered for more than 12,000 pounds)	~~79~~ 81
No driver's license for the class of vehicle operated or violation of restrictions	~~39~~ 41
Spilling load on highway	~~39~~ 41
Overload:	
Gross weight of vehicle or combination of vehicles	an amount equal to the fine plus docket fee to be imposed if convicted
Gross weight upon any axle or tandem, triple or quad axles	an amount equal to the fine plus docket fee to be imposed if convicted
Failure to obtain proper registration, clearance or to have current certification as required by K.S.A. 66-1324 and amendments thereto	~~259~~ 261
Insufficient liability insurance for motor carriers pursuant to K.S.A. 66-1,128 or 66-1314 and amendments thereto	~~109~~ 111
Failure to obtain interstate motor fuel tax authorization pursuant to K.S.A. 79-34,122 and amendments thereto	~~109~~ 111
Improper equipment (glass or fire extinguishers)	~~39~~ 41
No authority as private, contract or common carrier	~~109~~ 111
No current driver's daily log	~~39~~ 41
Invalid or no physical examination card	~~39~~ 41
Transporting open container of alcoholic liquor or cereal malt beverage accessible while vehicle in motion	~~209~~ 211

(e) In the event of forfeiture of any bond under this section, ~~$32~~ 34 of the amount forfeited shall be regarded as ~~court costs~~ a docket fee in any court having jurisdiction over the violation of state law.

(f) None of the provisions of this section shall be construed to conflict with the provisions of the nonresident violator compact.

(g) When a person is stopped by a police officer for any traffic infraction and the person is a resident of a state which is not a member of the nonresident violator compact, K.S.A. 8-1219 *et seq.* and amendments thereto or the person is licensed to drive under the laws of a foreign country, the police officer may require a bond as provided for under subsection (c). The bond shall be in the amount specified in the uniform fine schedule in subsection (c) of K.S.A. 8-2118 and amendments thereto, plus ~~$32~~ 34, which shall be regarded as ~~court costs~~ a docket fee in any court having jurisdiction over the violation of state law.

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Sect. 4. K.S.A. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to $10 for each docket fee paid pursuant to K.S.A. 60-2001 and amendments thereto during the preceding calendar month;

(2) a sum equal to $10 for each $35 or $60 docket fee paid pursuant to K.S.A. 61-2501 and amendments thereto; and

(3) a sum equal to $5 for each $15 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704 and amendments thereto during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170 and amendments thereto during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to $.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170 and amendments thereto during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to $5 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto, during the preceding calendar month.

(f) ~~To the state treasurer, for deposit in the state treasury and credit to the juvenile detention facilities fund, a sum equal to 5.85% of the remittances of docket fees paid during the preceding calendar month.~~

~~(g)~~ To the state treasurer, for deposit in the state treasury and ~~credit to the state general fund~~, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d), (e) ~~and (f)~~.

~~and~~ distribution according to section 2 of this act

and

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Sect. 5. K.S.A. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter	$152
Other felony	122
Misdemeanor	92
Forfeited recognizance	52
Appeals from other courts	52

(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 1989 Supp. 8-2118 and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~$32~~ 34 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 1989 Supp. 8-2118 and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~$22~~ 34.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund and the prosecuting attorneys' training fund shall be paid from the docket fee. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a and amendments thereto or as specified in K.S.A. 75-4508 and amendments thereto the clerk shall tax a fee of $2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a and amendments thereto shall be $3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and $2 of any

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Section 6. K.S.A. 32-1050 is hereby amended to read as follows: 32-1050. (a) Whenever any person is issued a citation by a conservation officer or deputy conservation officer of the wildlife and parks conservation service or by any law enforcement officer for any of the violations described in subsection (b), the officer may require such person to give bond in the amount specified in subsection (b) for the offense for which the person was charged, which bond shall be subject to forfeiture if the person does not appear at the court at the time specified in the written citation. The bond shall be a cash bond and shall be payable using cash or legal tender identified as travelers checks, certified checks, cashiers checks and postal money orders. The cash bond shall be taken in the following manner: The officer shall furnish the person charged with a stamped envelope addressed to the judge or clerk of the court named in the written citation and the person shall place in such envelope the amount of the bond, and in the presence of the officer shall deposit the same in the United States mail. After having complied with these requirements, the person charged need not sign the citation, but the officer shall note the amount of the bond mailed on the citation and shall give a copy of such citation to the person.

(b) The offenses for which a cash bond may be required as provided in subsection (a) and the amounts thereof shall be as follows:

Hunting without a license..... ~~$61~~ 86
Fishing without a license ..... ~~59~~ 61
Operation of motorboat or sailboat without first obtaining a certificate of number..... ~~31~~ 36
Failure to properly display the required identification number on the bow of a motorboat or sailboat when underway..... ~~31~~ 36
Failure to properly display the required lights on vessel during hours of darkness..... ~~31~~ 36
Failure to have on vessel the correct number and type or types of personal flotation devices readily accessible or immediately available and in good and serviceable condition ..... ~~31~~ 36
Operation of a motorboat or vessel in nonboating area ..... ~~59~~ 61
Operating a vessel towing a person or persons on water skis or other device without a proper observer or a rearview mirror on vessel ..... ~~21~~ 36

(c) In the event of forfeiture of any of the bonds set forth in this section, ~~$32~~ 34 of the forfeited bond shall be regarded as ~~court costs.~~ a docket fee

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Sect. 7. K.S.A. 12-4112 is hereby amended to read as follows: 12-4112

No person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-4411 and amendments thereto and for the assessment required by ~~K.S.A. 12-4116 for the training, testing and continuing~~ judicial education ~~of municipal judges~~ section 1 branch fund.

Sect. 8. K.S.A. 12-4114 is hereby amended to read as follows: 12-4114

(a) Any person who holds the position of municipal judge in any city in this state on January 1, 1990, and any person who thereafter becomes a municipal judge in any city in this state who has not been admitted to practice law in Kansas, as required by K.S.A. 12-4105 and amendments thereto, shall be permitted to temporarily commence the duties of office, conditioned that such judge becomes certified as being qualified to hold such office as provided in this section. The supreme court shall adopt rules and regulations to provide for a training program and an examination to ensure that each such municipal judge possesses the minimum skills and knowledge necessary to carry out the duties of such office. Such examination and training shall be administered without charge and such examination shall be given at least once each six months at a time and place designated by the supreme court. If a municipal judge fails to successfully complete such examination within 18 months after the date such judge takes office, such judge shall forfeit such judge's office and the municipal judge position previously held by such judge shall be vacant at the expiration of such eighteen-month period. A municipal judge who fails to successfully complete any examination may take such examination again at the next time it is offered prior to the expiration of such eighteen-month period. Any municipal judge who fails to successfully complete the examination within the prescribed time shall be ineligible to be a municipal judge, unless such person subsequently meets all the qualifications prescribed by K.S.A. 12-4105 and amendments thereto.

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(b) Any person who successfully completes the examination administered under this section or who meets all of the qualifications prescribed by K.S.A. 12-4105 and amendments thereto, shall be certified by the supreme court as being qualified to hold such office. In order to continue to hold such office, such judge must attend at least 10 hours of continuing judicial education as approved by the supreme court in each calendar year. A continuing judicial education program offering at least 10 hours of credit shall be provided at least once each year at no expense to either the municipal judge or the municipality.

(c) The supreme court shall administer the training, testing and continuing judicial education provided for in this section, which shall be funded by the ~~municipal judge training~~ fund as provided for in K.S.A. ~~12-4115~~ or may contract with another person or organization for that service.

judicial branch education

section 1

Sect. 9. K.S.A. 12-4116 is hereby amended to read as follows: 12-4116.

In each case filed in municipal court where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond, or a diversion, a sum in an amount not to exceed $1 shall be assessed for the training, testing and continuing judicial education of municipal judges as provided in K.S.A. 12-4114. The judge or clerk of the municipal court shall remit at least monthly all assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the ~~municipal judge training~~ fund. The specific amount of the assessment shall be fixed by order of the supreme court and shall apply uniformly to all cities. For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed against one individual arising out of the same incident, all such complaints shall be considered as one case. For the purpose of this section, parking violations shall not be considered as cases.

judicial branch education

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Section 10 - On the effective date of this bill, the monies held in the municipal judge training fund shall be transferred to the judicial branch education fund. Whenever the municipal judge training fund, or words of like effect, is referred to or designated by any statute, contract, or other document, such reference or designation shall be deemed to apply to the judicial branch education fund.

Section 11. K.S.A. 1991 Supp. 8-2107, K.S.A. 12-4112, 12-4114, 12-4115, 12-4116, 20-362, 28-172a, and 32-1050 are hereby replaced.

Section 12. This act shall take effect and be in froce from and after its publication in the statute book.

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September 30, 1991

DRAFT BILL

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

Section 1. K.S.A. 20-349 is hereby amended to read as follows: 20-349. The administrative judge in each judicial district shall be responsible for the preparation of the budget to be submitted to the board of county commissioners of each county. The board of county commissioners shall then have final authority to determine and approve the budget for district court operations payable by their county. The judicial administrator of the courts shall prescribe the form upon which such budgets shall be submitted. The budget shall include all expenditures payable by the county for operations of the district court in such county. A separate budget shall be prepared for each county within the district and the judges of the district court shall approve the budget for the county in which said judges are regularly assigned prior to submission of said budget to the board of county commissioners. The compensation to be paid to district court personnel excluded from the judicial personnel classification system pursuant to subsection (b) of K.S.A. 20-162 shall be listed in the budget as a separate item for each job position. After the amount of said district court budget is established, the expenditures under said budget, other than expenditures for job positions contained in the budget, shall be under the control and supervision of the administrative judge, subject to supreme court rules relating thereto, and the board of county commissioners shall approve all claims submitted by the administrative judge within the limits of said district court budget. No board of county commissioners shall decrease such budget for district court operations to a level below the amount of the ~~1978~~ 1991 calendar year budget approved by the board of county commissioners ~~less the amount of compensation and fringe benefits provided in such budget for judges and other personnel positions which are assumed by the state pursuant to this act~~. The financial affairs of the district court in each county shall be subject to audit pursuant to the provisions of K.S.A. ~~1978 Supp.~~ 75-1122 as part of the annual county audit; however, reports of fiscal or managerial discrepancies or noncompliance with applicable law shall be made to the judicial administrator of the courts as well as to the county commissioners.

~~(b) The provisions of this subsection (b), as constituted immediately prior to the effective date of this act shall continue to be applicable to counties until January 1, 1979.~~

including, but not limited to, nonexpendable trust funds, law library funds and court trustee operations

Sec. 2. K.S.A 20-349 is hereby repealed.

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

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October 23, 1991

D R A F T LIEN FILING BILL

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

Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-1102.

(a) *Filing.* Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, shall file with the clerk of the district court of the county in which property is located, within four (4) months after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing:

(1) The name of the owner,

(2) the name of the claimant, and address sufficient for service of process

(3) a description of the real property,

(4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) *Recording.* Immediately upon the receipt of such statement the clerk of the court shall ~~enter a record in a book kept for that purpose, to be called the mechanic's lien docket, which docket shall be ruled off into separate columns, with the headings as follows: "When filed," "Name of owner," "Name of claimant," "Amount claimed," "Description of property," and "Remarks", and the clerk shall make the proper entry in each column~~. index the lien in the general index by party names and file number.

Sec. 2. K.S.A 60-1103 is hereby amended to read as follows: 60-1103.

(a) *Procedure.* Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or consumed at the site of the property subject to the lien, under an agreement with the contractor, subcontractor or owner contractor may obtain a lien for the amount due in the same manner and to the same extent as the original contractor except that:

(1) The lien statement must state the name of the contractor and be filed within three months after the date supplies, material or equipment was last furnished or labor performed by the claimant;

(2) if a warning statement is required to be given pursuant to K.S.A. 1986 Supp. 60-1103a, there shall be attached to the lien statement the affidavit of the supplier or subcontractor that such warning statement was properly given; and

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(3) a notice of intent to perform, if required pursuant to K.S.A. 1986 Supp. 60-1103b, must have been filed as provided by that section.

(b) Owner contractor is defined as any person, firm or corporation who:

(1) Is the fee title owner of the real estate subject to the lien; and

(2) enters into contracts with more than one person, firm or corporation for labor, equipment, material or supplies used or consumed for the improvement of such real property.

(c) *Recording and notice.* When a lien is filed pursuant to this section, the clerk of the district court shall enter the filing in the ~~mechanic's lien docket~~ general index. The claimant shall (1) cause a copy of the lien statement to be served personally upon any one owner and any party obligated to pay the lien in the manner provided by K.S.A. 60-304 and amendments thereto, for the service of summons within the state, or by K.S.A. 60-308 and amendments thereto, for service outside of the state, (2) mail a copy of the lien statement to any one owner of the property and to any party obligated to pay the same by restricted mail or (3) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. The provisions of this subsection requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, if it is proven that the person to be served actually received a copy of the lien statement.

(d) *Rights and liability of owner.* The owner of the real property shall not become liable for a greater amount than the owner has contracted to pay the original contractor, except for any payments to the contractor made:

(1) Prior to the expiration of the three-month period for filing lien claims, if no warning statement is required by K.S.A. 1986 Supp. 60-1103a; or

(2) subsequent to the date the owner received the warning statement, if a warning statement is required by K.S.A. 1986 Supp. 60-1103a.

The owner may discharge any lien filed under this section which the contractor fails to discharge and credit such payment against the amount due the contractor.

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Sec. 3. K.S.A. 60-1104 is hereby amended to read as follows: 60-1104. All claims for liens and rights of action to recover therefor under this act shall be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses thereto that might be made if such assignment had not been made. Where a statement has been filed and recorded as herein provided, such assignment may be made by ~~an entry, on the same page of the mechanic's lien docket containing the record of the lien, signed by the claimant or his or her lawful representative, and attested by the clerk; or such assignment may be made by a~~ separate instrument in writing

filing with the clerk of the court

to be attached to the original lien.

Sec. 4. K.S.A. 60-1108 is hereby amended to read as follows: 60-1108. If any lien or liens shall be filed under the provisions of this article and no action to foreclose any of said liens shall have been commenced, the owner of the land may file his or her petition in the district court of the county in which said land is situated, making said lien claimants defendants therein, and praying for an adjudication of said lien or liens so claimed, and if any such lien claimant shall fail to establish his or her lien, the court may tax against said claimant the whole or such portion of the costs of such action as may be just. If no action to foreclose or adjudicate any lien filed under the provisions of this article shall be instituted within the time provided in K.S.A. 60-1105 (a) ~~the clerk of the district court shall enter under the head of "Remarks," in the mechanic's lien docket hereinbefore named, that said~~ lien ~~is~~ canceled by limitation of law.

the

shall be considered

Sec. 5. K.S.A. 55-209 is hereby amended to read as follows: 55-209.

Any person claiming a lien, for labor or materials or both, furnished to owners of leaseholds for oil and gas purposes, as may be provided by law, shall file in the office of the clerk of the district court of the county in which the land and leasehold is situated, a statement setting forth the amount claimed and the items thereof, as nearly as practicable, the name of the owner of the land, the name of the owner of the leasehold, the name of the contractor, the name of the claimant and a description of the property subject to the lien, whether personal or real or both, verified by affidavit:

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Provided, That if any promissory note bearing a lawful rate of interest shall have been taken for such labor or material, it shall not be necessary to file an itemized statement of labor or material furnished, but in lieu thereof it shall be sufficient to file a copy of such note, with a sworn statement that said note or any part thereof, was given for such labor or material furnished said leaseholder or contractor, on said leasehold.

Such statement shall be filed within six (6) months after the date upon which material was last furnished or labor last performed under contract as aforesaid. Immediately upon the receipt of such statement the clerk of the district court shall enter ~~a record of the same in a book kept for that purpose, the same as is provided by law, in case of~~ the lien in the general index as are liens against real estate.

Sec. 6. K.S.A 55-209, 60-1102, 60-1103, 60-1104, and 60-1108 are hereby repealed.

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

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December 12, 1991

D R A F T CLERK BOND BILL

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

Section 1. K.S.A. 2-2209 is hereby amended to read as follows:

2-2209. Seizures. (a) Any agricultural chemical that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation: (1) If it is adulterated or misbranded; (2) if it has not been registered under the provisions of K.S.A. 2-2204; (3) if it fails to bear on its label the information required by this act; (4) if it is a white powder agricultural chemical and is not colored as required under this act.

(b) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the state treasurer: *Provided,* That the article shall not be sold contrary to the provisions of this act: *And provided further,* That upon payment of costs and upon the execution and delivery to the clerk of such court, of a good and sufficient bond to be approved by the ~~clerk~~ judge, conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(c) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

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Sec 2. K.S.A. 19-1426 is hereby amended to read as follows:

19-1426. Appeal from report of survey; recordation of survey. Upon the filing of the report of each survey, any person interested in the same can at any time within thirty days thereafter appeal to the district court, by filing with the county surveyor a notice of his intention to appeal and by giving a bond, to be approved by the ~~clerk~~ judge of the district court, conditioned for the payment of costs of the appeal if the report of the county surveyor shall be affirmed by the court. Upon the filing of such notice and bond the county surveyor shall certify the appeal to the clerk of the district court, and shall file with said clerk a certified copy of the report appealed from, including the affidavits, if any, filed therewith. The court shall hear and determine said appeal, and enter an order of judgment approving or rejecting said report, or modifying or amending the same, or may refer the same back to the surveyor to correct his survey and report in conformity with the decree of the court, or may, for good cause shown, set aside the report and appoint one or more surveyors, who shall proceed at the time mentioned in the order of the court, to survey and determine the corners and boundaries of the land in question, and shall report the same to the court for further action.

The corners and boundaries established in any survey made in pursuance of an agreement, or in any survey where no appeal is taken from the surveyor's report, and such corners and boundaries as are established by the decree of the court, shall be held and considered as permanently established, and shall not thereafter be changed. When any report of a survey made in pursuance of an agreement, or of legal notice, or by the order of court, shall have become final, it shall be the duty of the county surveyor to record the same in the records of permanent surveys. He shall also make a certified record of such survey on paper of the same size as the record of permanent surveys, suitable for binding, and shall file the same in the office of register of deeds.

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Sec. 3. K.S.A. 22-2806 is hereby amended to read as follows:

22-2806. Justification and approval of sureties. Every surety, except an insurance company authorized to transact business pursuant to subsection (d) of K.S.A. 40-1102 and acts amendatory thereof, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified. The appearance bond and the sureties thereon may be approved and accepted by a ~~magistrate, by the clerk~~ judge of the court where the action is pending or by the sheriff of the county.

Sec. 4. K.S.A. 24-701 is hereby amended to read as follows:

24-701. Application to district court for drainage in certain cases; petition; bond. That whenever any owner or owners of land which would be benefited by drainage, which cannot be accomplished in the best and cheapest manner without affecting the lands of others, shall desire such drainage; or whenever any township board shall desire to provide for the drainage of a public highway; or whenever any school-district board shall desire to provide for the drainage of the grounds of a public school, which drainage shall affect the lands of others; or whenever the mayor and council of any city shall find it necessary for the successful drainage of such city to construct any drain as an inlet or outlet leading into or out of such city, or to construct drains outside said city to prevent the flooding of said city, which drain, inlet or outlet cannot be constructed without affecting the lands of others, such owner or owners, township board, school-district board, or mayor and council of any city, as the case may be, may apply for such drainage by petition to the district court of the county in which any of the lands of the petitioner or petitioners are situated; or, in case of a township board or school-district board or the mayor and council of a city, to the district court of the county in which such township, school district or city is located.

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The petition shall describe the lands which will be affected by such drain in tracts of forty acres according to the government survey, or in smaller fractions of a section if owned in smaller tracts, and shall describe by metes and bounds all lands not susceptible of description as fractions of a section, and shall give the name or names of the occupant or occupants and of the owner or owners of each tract, if known, and if not known shall so state, and shall also name any township and highway and grounds of any public school by the appropriate number of the district and appropriate description of the grounds, and the name of any city which it is believed would be benefited by such drainage or in which the drainage of a public highway, the grounds of a public school or street would be improved. If any of the lands to be so benefited or damaged lie within the corporate limits of any city or town, the same shall be described by lots or blocks, by their appropriate numbers, when such lots or blocks are numbered on the plat books in the office of the register of deeds of the county. If the right of way of any railroad, interurban railway or street-car company is believed to be affected, it shall be sufficient to describe it as the right of way of such railroad or company, naming it, through the sections, townships and ranges on which it is located, giving the number of the same.

Such petition shall be sufficient to give the court jurisdiction over all lands described therein, and power to fix a lien thereon, if they are described as belonging to the persons who appear to be the owners, according to the last assessment roll or record of transfers kept by the county clerk of the county in which such lands are situated. The petition shall also state that in the opinion of the petitioner or petitioners the public health will be improved, or that one or more public highways in the county, or

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streets in a city or town therein, will be benefited by the proposed drainage, or that the proposed work will be of public utility; and it shall state, generally, the method by which it is believed such drainage can be accomplished in the cheapest and best manner, and the belief of the petitioner or petitioners that the cost, damages and expenses of such drainage will be less than the benefits which will result to the owners of the lands and other properties and easements, and to such lands, easements and other properties and to municipalities likely to be benefited thereby. Such petition shall be verified by the affidavit of one or more of the petitioners.

At the time of filing the petition the petitioner or petitioners shall also give bond, payable to the state of Kansas, with one or more sureties to be approved by the ~~clerk~~ judge of the district court, conditioned for the payment of all expenses in the event the court shall not establish such proposed work of drainage.

Sec. 5. K.S.A. 24-702 is hereby amended to read as follows:

24-702. Hearing and proceedings on the petition; notice; commissioners, bonds, oath and duties; remonstrance by landowners; appeal to supreme court, time. Upon the filing of the petition for drainage, as provided in K.S.A. 24-701, in the office of the clerk of the district court, the clerk shall enter a minute of the filing of such petition in the civil appearance docket of the court and shall fix a time for the hearing of such petition by the court, which time fixed shall not be less than forty-five days nor more than sixty days after the filing of such petition: *Provided*, That if no term of the district court shall convene until more than forty-five days after the filing of such petition, the time fixed for the hearing of said petition shall be on the first day of the next ensuing term of the court, even though such day be more than sixty days after the date of the filing of the petition, and shall note the time of filing on the back of the petition, and shall issue a notice under the seal of the court directed to all persons, corporations and municipalities named in said petition as occupants or owners of lands, easements or

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other property to be a ected by such drainage, other than the petitioners themselves, which notice shall be written or printed, and shall set forth the route of the proposed drain, as described in the petition, the fact of the filing and pendency of the petition, and the time when such petition will be heard.

The notice, when issued by the clerk, shall be delivered by him to the sheriff of the county, and it shall be the duty of the sheriff to cause to be published in some newspaper printed and published in the county in which such drain is proposed to be established a copy of said notice, which notice shall be published and proof of publication made in the same manner as is provided by law for the publication of summons for nonresident defendants in civil action, the first publication of such notice to be at least forty-one days prior to the day fixed for the hearing of such petition. All persons appearing at the hearing of such petition, and all persons, corporations or municipalities named in the notice published, as hereinbefore provided, shall thereafter be deemed to have notice of all steps taken in such proceedings. If it appear to the court, at the time fixed for the hearing of said petition, that the publication has been made as hereinbefore provided, the court shall consider such petition and hear any demurrer or written objection to the sufficiency of the petition offered by any person named in such petition, or by any other person who shall satisfy the court, by such showing as the court may require, that he has an interest that will be affected by such drainage. All questions arising at the hearing of said petition shall be heard and determined by the court.

If the court shall find the petition defective, the same may be amended, by leave or order of the court, and if not so amended may be dismissed at the cost of the petitioner or petitioners. If, upon the hearing of such petition, the court shall find and determine such petition to be sufficient, the court shall appoint two discreet citizens of the county, who, together with a civil engineer, who need not be a resident of the county, also to be appointed by the court, shall be commissioners to manage, control and conduct said proposed drainage, and shall fix a bond to be given by such commissioners, in such sum as the court may deem requisite, and such petition shall be referred to said commissioners for their action thereon; but before entering upon their duties as such commissioners they shall give a joint and several bond to the state of Kansas in the sum fixed by the court, with one or more good and sufficient sureties thereon, to be approved by the ~~clerk~~ judge of the court, conditioned for the faithful perform-

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ance of their duties as such commissioners, and that they will faithfully account for and pay over all moneys that may come into their hands as such commissioners, and shall take and subscribe an oath before the clerk of said court that they will support the constitution of the United States and the constitution of the state of Kansas, and faithfully perform the duties of commissioners of drainage in said proceeding, and obey and perform all of the orders and directions of the court made therein. All objections to the petition or to any drainage commissioner not made before the reference of the petition to the drainage commissioners shall be deemed waived.

The court shall have the power in the interest of justice to adjourn the hearing of said petition from time to time, in order that all persons interested may have an opportunity to be heard before the reference of said petition to the drainage commissioners. In the order of the court appointing said drainage commissioners, the court shall fix a time and place for the meeting of the drainage commissioners, and a time when they shall file their preliminary report. The clerk shall deliver to the commissioners a certified copy of the petition and of the order of their appointment, and they shall meet accordingly. They shall make personal inspection of the land described in the petition, and of all other lands likely to be affected by the proposed work, and the commissioner who is an engineer shall make the necessary surveys for the purpose of ascertaining the facts from which to make their report, and such commissioners shall, within a reasonable time allowed and fixed by the court, make to the court a preliminary report in which they shall show:

(1) The source or head and general direction and outlet of the drain and of each arm or branch thereof, and average width and the depth, what part is to be opened and what part is to be tiled, if any, and whether it is to be dug by shovel, dredge or otherwise.

(2) A description of all lands which will be affected by the proposed drainage, with the names and residence of the owners, if known, and if not, so stating; also the name of any city, school district or other public corporation or highway or street not named in the petition which will be affected by such drainage.

(3) Whether such drainage is practicable and will be sufficient properly to drain the lands to be affected.

(4) Whether, when accomplished, the proposed drainage will improve the public health, benefit any public highway or grounds in the county, or any street or public grounds of any city therein, or be of public utility.

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Such report of the drainage commissioner shall, in all subsequent proceedings, be prima facie evidence of the facts therein stated. In case any lands not named in the petition and not owned by any person who has appeared in the petition are named in the second item of such preliminary report of the commissioners, notice of such report, setting out the substance thereof, shall be issued by the clerk, and shall be served and published by the sheriff in the same manner as provided for notice of the hearing of the petition. Any petitioner, landowner, corporation or municipality named in the petition, or who has appeared thereto, shall have twenty days from the filing of such preliminary report within which to file any exceptions thereto, and any landowner not named in the petition and whose lands are not described therein, but who is named in such report and his lands therein described, and any city, school district or other municipality so brought in, shall have the same time for filing exceptions to such preliminary report as is required to be given of the time and place of the hearing of the petition.

If the court, on examination of the preliminary report of the commissioners, herein provided for, shall find that such drainage is not practicable, and will not be sufficient to properly drain the lands to be affected by it, or that it will not improve the public health, nor benefit any public highway or grounds in the county, or streets or public ground in any city, or be of public utility, or if two-thirds of the landowners affected, as shown by such preliminary report, shall, within twenty days after the filing of such report, remonstrate against the construction of proposed drain, the petition shall be dismissed, and the court shall enter judgment against the petitioner or petitioners for all costs and expenses, including all compensation of the drainage commissioners. But if the court find affirmatively as to each of such items, and if no remonstrance signed by two-thirds of the persons to be affected by such drainage shall have been filed, it shall refer the petition back to the drainage commissioners, with directions to proceed with the work and make their final report, as provided in the next section of this act. Such order and judgment of the court in dismissing the petition or in referring it back to the drainage commissioners for a final report, and of prior rulings and orders of the court in relation to such drainage, shall be conclusive, unless proceedings in error be prosecuted therefrom to the supreme court, as hereinafter provided. Any person, corporation or municipality deeming himself or itself aggrieved by such judgment or dismissal or order of reference, or by any prior ruling or order of the court, may at the time of the ruling of the

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court on the preliminary report of the commissioners prosecute proceedings in error in the supreme court of the state of Kansas for the purpose of reversing any judgment, order or ruling of the court by which he may feel himself aggrieved, by filing a written notice of such appeal within three days after the final order of the court made on the hearing of said preliminary report, and by filing with the clerk of said court, within thirty days thereafter, a bond, the amount to be fixed by the order of the court, or of the judge in vacation, conditioned that such person prosecuting error will pay all costs, expenses, damages and loss occasioned by his proceeding in error, and by perfecting his proceedings in error by filing in the supreme court of the state of Kansas his petition in error, with a case-made or transcript of the record thereof attached, within ninety days after the rendition of the judgment and the order of the court upon the hearing of the preliminary report of the commissioners.

All parties affected by such proceedings shall take notice of such proceeding in error and be bound thereby, and all proceedings in the matter of such drainage shall be stayed until the determination of such proceeding in error. The rule of procedure for extending time for making a case and for suggesting amendments thereto and for settling and signing the same shall be the same as in ordinary civil actions: *Provided,* That no appeal from the judgment or orders of the court made upon the hearing of the preliminary report of commissioners shall be taken unless the same shall be perfected within ninety days after such judgment or order, but upon perfecting such proceeding in error, all previous orders and rulings of the court, made at any time in the proceedings, may be reviewed.

Sec. 6. K.S.A. 40-2705 is hereby amended to read as follows:

40-2705. Deposit of bond or procurement of certificate by unauthorized insurer before pleading in action; continuance; setting aside service. (a) Before any unauthorized insurer files or causes to be filed any pleading in any court action, suit or proceeding, or any notice, order, pleading or process in an administrative proceeding before the commissioner of insurance, instituted against such person or insurer by services made as provided in K.S.A. 40-2704, such insurer shall either:

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(1) Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner of insurance in administrative proceedings before him, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the ~~clerk~~ or commissioner of insurance, respectively, in an amount to be fixed by the court or commissioner, as the case may be, sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding; or

judge

(2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph, the commissioner of insurance need not assert the provisions of K.S.A. 40-253 against such insurer with respect to its application, if he determines that such company would otherwise comply with the requirements for such certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in K.S.A. 40-2704, may in his discretion order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) of this section and to defend such action.

(c) Nothing in subsection (a) of this section shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof, made in the manner provided in K.S.A. 40-2704, on the ground that such unauthorized insurer has not done any of the acts enumerated in K.S.A. 40-2702.

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Sec. 7. K.S.A. 41-805 is hereby amended to read as follows:

41-805. Nuisances; places and properties operated or used in violation of act; lien for fines and costs; leases void; procedure for seizure and sale of vehicles and airplanes; appeals; stay of proceedings. (1) Any room, house, building, boat, vehicle, airplane, structure or place of any kind where alcoholic liquors are sold, manufactured, bartered or given away, in violation of this act, or any building, structure or boat where persons are permitted to resort for the purpose of drinking alcoholic liquors, in violation of this act, or any place where such liquors are kept for sale, barter or gift, in violation of this act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance is guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine not exceeding $25,000, or by both. If the court finds that the owner of real property knew or should have known under the circumstances of the maintenance of a common nuisance on such property, contrary to the liquor laws of this state, and did not make a bona fide attempt to abate such nuisance under the circumstances, such property shall be subject to a lien for, and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of this act; and such lien shall be immediately enforced by civil action, in any court having jurisdiction, by the county or district attorney of the county wherein such building or premises may be located, or by the attorney for the director, when ordered by the director. For purposes of this section, evidence of a bona fide attempt to abate such nuisance by the owner of the property shall include, but not be limited to, the filing of a written report, by such owner or at such owner's direction, to the local law enforcement agency that the property is suspected by the owner of the property of being used in maintaining a common nuisance as set forth in K.S.A. 22-3901 and amendments thereto contrary to the liquor laws of this state. If a tenant of any building or premises uses the building or premises, or any part thereof, in maintaining a common nuisance as hereinbefore defined, or knowingly permits such use by another, such use shall

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render void the lease under which the tenant holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may invoke the remedy provided for the forcible detention thereof.

(2) Upon the filing of a complaint or information charging that a vehicle or airplane is a common nuisance as above declared, a warrant shall be issued authorizing and directing the officer to whom it is directed to arrest the person or persons described in the complaint or information or the person or persons using the vehicle or airplane in violation of this act and to seize and take into the officer's custody all such vehicles and airplanes so used which the officer finds, and safely keep them subject to the order of the court. In the complaint or information it shall not be necessary to accurately describe the vehicle or airplane so used, but only such description shall be necessary as will enable the officer executing the warrant to identify it properly.

Whenever any vehicles or airplanes shall be seized under any such warrant, whether an arrest has been made or not, a notice shall issue within 48 hours after the return of the warrant in the same manner as a summons, directed to the defendant in such action and to all persons claiming any interest in such vehicles or airplanes, fixing a time, to be not less than 60 days, and place at which all persons claiming any interest therein may appear and answer the complaint made against such vehicles or airplanes and show cause why they should not be adjudged forfeited and sold as hereinafter provided. Such notice shall be served upon the defendant in the action in the same manner as a summons if the defendant be found within the jurisdiction of the court, and a copy thereof shall also be posted in one or more public places in the county in which the cause is pending. If at the time for filing answer the notice has not been duly served or sufficient cause appear, the time for answering shall be extended by the court and such other notice issued as will supply any defect in the previous notice and give reasonable time and opportunity for all persons interested to appear and answer. At or before the time fixed by notice, any person claiming an interest in the vehicles or airplanes seized, may file an answer in writing, setting up a claim thereto, and shall thereupon be admitted as a party defendant to the proceedings against such vehicles or airplanes. The complaint or information and an-

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swer or answers that may be filed shall be the only pleadings required. At the time fixed for answer, or at any other time to be fixed by the court, a trial shall be held in a summary manner before the court on the allegation of the complaint or information against the property seized. Whether any answer shall be filed or not, it shall be the duty of the county or district attorney to appear and adduce evidence in support of such allegation.

(3) If the court finds that such vehicles or airplanes were at the time a common nuisance, as defined in this section, the court shall adjudge forfeited so much thereof as the court finds to be a common nuisance, and shall order the officer in whose custody they are to sell them publicly. The officer shall cause notice to be given by publication for at least one week in the official county paper of the time and place of the sale of the property and shall file in the court a return showing the sale of the property and the amount received therefor and shall pay the same into court to await the order of the court. The court, if it approves such sale, shall declare forfeited the proceeds of the sale and, after paying out of the proceeds of the sale the costs of the action, including costs of sale and the keeping and maintenance of the property, shall out of the balance of the money received from the property at the sale, pay all liens, according to their priorities, which are established by intervention or otherwise at the hearing or another proceeding brought for that purpose as being bona fide and for value and as having been created without the lienor having any notice that the vehicle or airplane was being used in so violating the provisions of this act and without the lienor having any notice at any time subsequent to the creation of the lien and prior to the seizure in time to have protected the lien that the vehicle was so being used. The balance remaining shall be paid to the state treasurer pursuant to K.S.A. 20-2801 and amendments thereto, except that, if upon proper proof, a lien as herein provided is established in excess of the value of the vehicle as found by the court, the court may order, without sale, the surrender of such vehicle to such lienor upon the payment of all costs as is herein provided.

(4) Either the state or any defendant or other person claiming the vehicle or airplane seized, or an interest therein, may appeal from the judgment of the court in any such proceedings against the property seized in the manner provided for taking appeals in criminal

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cases. Any claimant of such property who appeals, in order to stay proceedings, must enter into an undertaking with two or more sureties to the state of Kansas, to be approved by the ~~trial~~ court ~~or the clerk thereof~~, in the sum of not less than $100 nor less than double the amount of the value of the property as fixed by the court and the costs adjudged against the property, conditioned that the claimant will prosecute the appeal without unnecessary delay, and if judgment is entered against the claimant on appeal, the claimant will satisfy the judgment and costs, and no bond shall be required for an appeal by the state, and such appeal shall stay the execution of the judgment.

judge of the district

Sec. 8. K.S.A. 44-530 is hereby amended to read as follows:

44-530. Staying proceedings upon an award. In any proceedings upon the application of a workman for judgment against his employer upon an award hereinbefore provided and before judgment has been granted, the employer may stay proceedings upon such application by filing with the clerk of said district court a bond to be approved by the ~~clerk of said~~ court undertaking to secure the payment of the compensation as in said award provided, or by filing with said clerk a certificate of a licensed or authorized insurance company or reciprocal or interinsurance exchange or association that the amount of compensation to the workman is insured by it.

judge of the district

Sec. 9. K.S.A. 60-722 is hereby amended to read as follows:

60-722. Bond of defendant for payment of judgment. The defendant may at any time after the proceeding is commenced file with the clerk of the court a bond, to be approved by the ~~clerk~~, in double the amount of the claim or such lesser amount as shall be approved by order of the judge to the effect that the defendant will pay to the plaintiff on demand the amount of the judgment and costs that may be assessed against him or her, and thereupon the garnishee shall be discharged and any money or property paid or delivered to any officer shall be delivered to the person entitled thereto.

judge of the district court

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Sec. 10. K.S.A. 60-1005 is hereby amended to read as follows:

60-1005. Replevin; claim for possession of property. The plaintiff, in an action to recover possession of specific personal property, may at any time before the judgment is rendered claim immediate possession thereof under the following procedure:

(a) *Affidavit.* The plaintiff shall file an affidavit, unless his or her petition shall have been verified, which in either event shall show:

(1) That the plaintiff is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to the possession thereof,

(2) that it is wrongfully detained by the defendant, or if it is held by an officer under legal process, that demand for the same has been made and refused, and

(3) the estimated value thereof.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to him or her in the manner prescribed by subsection (b) of K.S.A. 60-207, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the delivery of the property to the plaintiff.

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an *ex parte* hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger

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that the defendant will destroy or conceal the property.

In lieu of the foregoing procedure providing for the issuance of an order for the delivery of the property, the plaintiff may apply to the court for a restraining order directed to the defendant, imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property.

Prior to the issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the value of the property as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be to the effect that plaintiff shall duly prosecute the action, and pay all costs and damages that may be awarded against him or her, and that if the plaintiff is given possession of the property he or she will return it to defendant if it be so adjudged. If the bond shall be found to be sufficient, the ~~clerk~~ judge of the district court shall approve the same and note his or her approval thereon. The defendant may challenge the sufficiency of the bond as provided in subsection (b) of K.S.A. 60-705.

(c) *Property in custodia legis.* If the property the possession of which is sought is in the custody of an officer under any legal process it shall nevertheless be subject to replevin under this section, but if the same is in the custody of any officer under any process issued out of a judicial proceeding, the petition or affidavit and bond shall be filed in the same proceeding out of which such process issued.

(d) *Order for delivery of property.* The order for the delivery of the property to the plaintiff shall be delivered to the sheriff of any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the sheriff to take immedi-

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ate possession of the property and deliver it to plaintiff at the expiration of twenty-four (24) hours unless there is compliance with the requirements of subsection (f) of this section and make return of the order on the day named therein. If the sheriff is a party defendant, then the order shall be served upon him or her by the clerk of the court.

(e) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the sheriff may break open any building or enclosure in which the property is located, if he cannot otherwise obtain possession of the property or entrance.

(2) *Execution.* The sheriff shall execute the order by taking possession of the property described therein, and serving a copy on the person charged with the unlawful detainer in the same manner as for personal service if the person can be found in the county.

(3) *Return.* The return day of the order of delivery shall be twenty (20) days after it is issued.

(f) *Redelivery bond.* The defendant, within twenty-four (24) hours after service of a copy of the order, may deliver to the sheriff a bond to be approved by the sheriff, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff shall return the property to the defendant. The bond shall be to the effect that the defendant will deliver the property to the plaintiff if it be so adjudged, and will pay all costs and damages that may be adjudged against him or her. The sheriff shall file the bond with the clerk after noting his or her approval thereon. If the defendant is a public officer, board, or government agency, such officer, board or agency, in lieu of giving a redelivery bond, may retain possession of the property seized by filing with the clerk within the time required for giving the redelivery bond a writing certifying that the public health, safety or welfare would be jeopardized or impaired if the plaintiff acquired possession of the property prior to final judgment, in which case hearing may be had on the issue of public interest at the instance of any party.

(g) *Judgment in action.* In an action to recover the possession of personal property, judgment for the plaintiff may be for possession or for the recovery of possession, or the value thereof in case a delivery cannot

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be had, and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

Sec. 11. K.S.A. 60-1006 is hereby amended to read as follows:

60-1006. Foreclosure of security interest. A secured party may bring an action in the district court to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The secured party, at any time before judgment is rendered, may cause the specified security to be taken into the possession of the appropriate officer to await further order of the court under the following procedure:

(a) *Affidavit or petition.* The plaintiff shall file an affidavit, unless the plaintiff's petition shall have been verified, which in either event shall show: (1) The instrument of indebtedness or the terms thereof; (2) the amount of the indebtedness owed; (3) the security agreement or the terms thereof; (4) a description of the personal property; (5) that plaintiff is lawfully entitled to the foreclosure of the specific personal property; (6) the estimated value of the personal property to the best of plaintiff's knowledge and belief, and when several articles are claimed, the estimated value of each article shall be so stated; and (7) that the personal property is wrongfully detained by the defendant.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to him or her in the manner prescribed by subsection (b) of K.S.A. 60-207, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an

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order for the delivery of the property as provided in subsection (c).

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an *ex parte* hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

In lieu of the foregoing procedure providing for the issuance of an order for the delivery of the property, the plaintiff may apply to the court for a restraining order directed to the defendant, imposing such conditions and restrictions as the court deems necessary to protect the property during the pendency of the action and to protect the court's jurisdiction over such property. Such restraining order may be issued without the requirement that the plaintiff file a bond as required for issuing an order for the delivery of the property.

Prior to issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the estimated value of the property, as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be in favor of the defendant and shall be to the effect that plaintiff shall duly prosecute the action and pay all costs and damages that may be awarded against him or her, and that if plaintiff is given possession of the property he or she will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the ~~clerk~~ judge of the district court shall approve the same and note approval thereon. The defendant may challenge the sufficiency of the bond in the manner provided in subsection (b) of K.S.A. 60-705.

(c) *Order.* The order shall be delivered to the sheriff of any county in the state in which the property is located. The order

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shall state the names of the parties, the description of the property and the estimated value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the sheriff to take immediate possession of the property and to keep it until further order of the court, subject to the provisions of subsections (e), (f) and (g), and to make return of the order on the day named therein.

(d) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the sheriff may break open any building or enclosure in which the property is located, if he or she cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) *Execution.* Said officer shall execute the order by taking possession of the property described therein, and by serving a copy on the person charged with the unlawful detainer. Should the officer be unable to serve the defendant in accordance with the provisions of K.S.A. 60-304, but can take possession of the personal property described in the order, the action may proceed to foreclose the security interest once service is made pursuant to K.S.A. 60-307.

(3) *Perishable goods.* When there shall be actually seized property which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold by the sheriff on such terms and conditions as the judge may direct, and a return of the proceedings thereon shall be made by the sheriff at a time to be fixed by the judge.

(4) *Return.* The time for return of the order of delivery shall be as prescribed by subsection (d) of K.S.A. 60-312.

(e) *Redelivery bond.* The defendant, within twenty-four (24) hours after service of a copy of the order, may deliver to the sheriff a bond to be approved by him or her, in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff shall return the property to the defendant. The bond shall be in favor of the plaintiff and shall be to the effect that the defendant will deliver the property to the sheriff if it be so adjudged, and will pay all

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costs and damages that may be adjudged against him or her. The sheriff shall file the bond with the clerk after noting approval thereon. If the defendant does not file a redelivery bond as provided above, then the sheriff shall deliver the property to the custody of the plaintiff, unless the plaintiff directs that the officer retain possession of the property and deposits sufficient security, as determined by the court, to pay the cost of storing said property.

(f) *Possession in third party.* When the sheriff finds the property in possession of a person other than a defendant and deems it advisable to leave said person in possession, the sheriff shall declare to the person in possession that said person shall hold such property in his or her possession, subject to the further order of the court, and shall summon him or her as a garnishee by serving upon him or her a copy of the order which directs the sheriff to take immediate possession of the property. The sheriff may require of such person in possession an undertaking with good and sufficient sureties in such sum as he or she deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the sheriff at the time and place fixed for sale, if such be ordered by the court. The sheriff shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

(g) *Property claimed by third person.* If the sheriff, by virtue of the order, shall take possession of, or be requested by the plaintiff to take possession of, personal property claimed by any person other than a defendant, the sheriff, before proceeding, may require the plaintiff to give him or her an undertaking with good and sufficient sureties to pay all costs and damages that the sheriff may sustain by reason of the execution of such order.

(h) *Judgment.* Judgment for the plaintiff shall be for a money judgment and foreclosure of the security interest, and the plaintiff may proceed to foreclose the security interest in accordance with the terms of the security agreement covering the property, as governed by the provisions of the uniform commercial code, unless the court otherwise directs. If the court directs the plaintiff to proceed to enforce the judgment other than pursuant to the security agreement, and if the judgment is not satisfied

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within ten (10) days thereafter, then the clerk shall issue an order of special execution directed to the sheriff to sell the property in accordance with K.S.A. 60-1007. If the property is not then in the possession of the sheriff, the order also shall direct the person having possession to deliver said property to the sheriff. If the property has been delivered to the sheriff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property and damages for the taking and withholding of same.

Sec. 12. K.S.A. 60-1110 is hereby amended to read as follows:

60-1110. Bond to secure payment of claims. The contractor or owner may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum not less than the contract price, with good and sufficient sureties, to be approved by, and filed with, a judge of the district court the clerk of the district court, and when such bond is so approved and filed no lien shall attach under this act, and if when such bond is filed liens have already been filed, such liens are discharged. Suit may be brought on said bond by any person interested.

Sec. 13. K.S.A. 60-1111 is hereby amended to read as follows:

60-1111. Public works bond. (a) *Bond by contractor.* Except as provided in subsection (c), whenever any public official, under the laws of the state, enters into contract in any sum exceeding $10,000 with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take, from the party contracted with, a bond to the state of Kansas with good and sufficient sureties in a sum not less than the sum total in the contract, conditioned that such contractor or the subcontractor of such contractor shall pay

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ll indebtedness incurred f labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

(b) *Approval, filing and limitations.* The bond required under subsection (a) shall be approved by and filed with the a judge of the district court clerk of the district court of the county in which such public improvement is to be made. When such bond is filed, no lien shall attach under this article, and if when such bond is filed liens have already been filed, such liens shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in the preceding section, or such person's assigns, may bring an action on such bond for the recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of said public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741 and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to K.S.A. 60-1112. When such certificate of deposit is so accepted, no lien shall attach under this article, and if when such certificate of deposit is so accepted, liens have already been filed, such liens shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements, shall make a claim therefor with the director of purchases under K.S.A. 60-1112.

Sec. 14. K.S.A. 61-2402 is hereby amended to read as follows:

61-2402. Foreclosure of security interest. A secured party may bring an action to reduce an indebtedness to a money judgment and to foreclose the security interest in specific personal property given to secure such indebtedness. The secured party, at any time before judgment is rendered, may cause the specified security to be taken into the possession of the appropriate officer to await further order of the court under the following procedure:

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(a) *Affidavit or petition.* The plaintiff shall file an affidavit, unless his or her petition shall have been verified, which in either event shall show: (1) The instrument of indebtedness or the terms thereof; (2) the amount of the indebtedness owed; (3) the security agreement or the terms thereof; (4) a description of the personal property; (5) that plaintiff is lawfully entitled to the foreclosure of the specific personal property; (6) the estimated value of the personal property to the best of plaintiff's knowledge and belief, and when several articles are claimed the estimated value of each article shall be so stated; and (7) that the personal property is wrongfully detained by the defendant.

(b) *Hearing, notice; bond.* Except as otherwise provided herein, after filing the affidavit or verified petition, the plaintiff shall apply to the court for an order for the delivery of the property to him or her in the manner prescribed by subsection (b) of K.S.A. 60-207, and the motion made thereunder shall be served upon the defendant pursuant to K.S.A. 60-205. After a hearing and presentation of evidence on plaintiff's motion, and if the judge is satisfied as to the probable validity of plaintiff's claim and that delivery of the property to the plaintiff is in the interest of justice and will properly protect the interest of all the parties, the judge may enter or cause to be entered an order for the delivery of the property as provided in subsection (c).

Notwithstanding the foregoing provisions of this subsection, the judge may enter or cause to be entered the order for delivery of property after an *ex parte* hearing and without notice to and the opportunity for a hearing by the defendant, only if the judge is satisfied as to the probable validity of the following allegations to be contained in plaintiff's affidavit or verified petition:

(1) Possession of the property by the plaintiff is directly necessary to secure an important governmental or general public interest; and

(2) There is a special need for very prompt action due to the immediate danger that the defendant will destroy or conceal the property.

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Prior to the issuance of the order for delivery of the property, the plaintiff shall file with the clerk of the court in which the action is brought a bond in not less than double the amount of the estimated value of the property, as stated in the affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion, with one or more sufficient sureties. It shall be in favor of the defendant and shall be to the effect that plaintiff shall duly prosecute the action and pay all costs and damages that may be awarded against him or her, and that if plaintiff is given possession of the property he or she will return it to the defendant if it be so adjudged. If the bond shall be found to be sufficient, the ~~clerk~~ judge of the district court shall approve the same and note ~~his or her~~ approval thereon. The defendant may challenge the sufficiency of the bond in the manner provided in subsection (b) of K.S.A. 60-705.

(c) *Order.* The order shall be delivered to the appropriate officer in any county in the state in which the property is located. The order shall state the names of the parties, the description of the property and the estimated value as set out in plaintiff's affidavit or verified petition, or as found by the court at the hearing on plaintiff's motion pursuant to subsection (b). It shall command the appropriate officer to take immediate possession of the property and to keep it until further order of the court, subject to the provisions of subsections (e), (f) and (g) below, and make return of the order on the day named therein.

(d) *Return and execution of order.* (1) *Obtaining possession.* In the execution of the order the officer to whom the order is directed may break open any building or enclosure in which the property is located, if such officer cannot otherwise obtain possession of the property or entrance to the building on demand.

(2) *Execution.* Said officer shall execute the order by taking possession of the property described therein, and by serving a copy on the person charged with the unlawful detainer in the manner provided in article 18 of this chapter. Should the officer be unable to serve the defendant in accordance with the provisions of K.S.A. 61-2403 but can take possession of the personal property described in the order, the action may proceed to foreclose the security interest once service is made pursuant to K.S.A. 61-2403.

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(3) *Perishable goods.* When property shall be actually seized which is likely to perish or to materially depreciate in value or threatens to decline speedily in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, the court may order the same to be sold on such terms and conditions as the judge may direct, by the officer having charge of the property, and a return of the proceedings thereon shall be made by the officer at a time to be fixed by the judge.

(4) *Return.* The return day of the order of delivery shall be nine (9) days after it is issued, if the order is executed within the county where the court is situated. In all other cases, the return day shall be twenty (20) days after the order is issued.

(e) *Redelivery bond.* The defendant, within twenty-four (24) hours after service of a copy of the order, may deliver to the appropriate officer a bond to be approved by him or her in not less than double the amount of the value of the property as stated in the order, with one or more sufficient sureties, and the sheriff or marshal shall return the property to the defendant. The bond shall be in favor of the plaintiff and shall be to the effect that the defendant will deliver the property to the delivering officer if it be so adjudged, and will pay all costs and damages that may be adjudged against him or her. The sheriff or marshal shall file the bond with the clerk after noting his or her approval thereon. If the defendant does not file a redelivery bond as provided above, then the officer shall deliver the property to the custody of the plaintiff unless the plaintiff directs that the officer retain possession of the property and deposits sufficient security, as determined by the court, to pay the cost of storing said property.

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(f) *Possession in third party.* When the officer finds the property in possession of a person other than a defendant and deems it advisable to leave said person in possession, the officer shall declare to the person in possession that said person shall hold such property in his or her possession, subject to the further order of the court, and shall summon him or her as a garnishee by serving upon said person a copy of the order which directs the officer to take immediate possession of the property. The officer may require of such person in possession an undertaking with good and sufficient sureties in such sum as the officer deems sufficient. The undertaking shall be to the effect that such person will deliver the property to the officer at the time and place fixed for sale, if such be ordered by the court. The officer shall give such person written notice of the time and place fixed for the sale by delivery in person or by restricted mail.

(g) *Property claimed by third person.* If the officer, before proceeding, may require the possession of, or be requested by the plaintiff to take possession of, personal property claimed by any person other than a defendant, the officer, before proceeding, may require the plaintiff to give the officer an undertaking with good and sufficient sureties to pay all costs and damages that the officer may sustain by reason of the execution of such order.

(h) *Judgment.* Judgment for the plaintiff shall be for a money judgment and foreclosure of the security interest, and the plaintiff may proceed to foreclose the security interest in accordance with the terms of the security agreement covering the property, as governed by the provisions of the uniform commercial code, unless the court otherwise directs. If the court directs the plaintiff to proceed to enforce his or her judgment other than pursuant to the security agreement, and if the judgment is not satisfied within ten (10) days thereafter, then the clerk shall issue an order of special execution directed to the appropriate officer to sell the property in accordance with K.S.A. 61-2403. If the property is not then in the possession of the officer, the order shall also direct the person having possession to deliver said property to the officer. If the property has been delivered to the officer, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property and damages for the taking and withholding of same.

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Sec. 15. K.S.A. 65-1628a is hereby amended to read as follows:

65-1628a. Review bond. If the licensee, registrant or permit holder petitions for review, the only bond required shall be one running to the state, in an amount to be fixed by the court for the payment of the costs both before the board and in the district court. Such bond shall be approved by the ~~clerk~~ judge of the district court. The giving of such a bond by the licensee, registrant or permit holder shall not operate to stay the order of the board or restore the right of the licensee, registrant or permit holder to engage in the profession or business for which the license, registration or permit was issued or remove any condition upon engaging therein pending review, but a stay may be granted in accordance with K.S.A 77-616 and amendments thereto.

Sec. 16. K.S.A. 65-2850 is hereby amended to read as follows:

65-2850. Same; appeal bond of licensee. In the event the board appeals, no bond shall be required. If the licensee appeals, the only bond required shall be one running to the state, in an amount to be fixed by the court for the payment of the costs both before the board and in the district court, and said bond shall be approved by the ~~clerk~~ judge of the district court.

Sec. 17. K.S.A. 2-2209, 19-1426, 22-2806, 24-701, 24-702, 40-2705, 41-805, 44-530, 60-722, 60-1005, 60-1006, 60-1110, 60-1111, 61-2402, 65-1628a and 65-2850 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

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December 10, 1991

D R A F T PROCESS SERVICE BILL

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

Section 1. K.S.A. 1991 Supp. 60-305 is hereby amended to read as follows: 60-305.

Every individual, partnership, association or corporation engaged in the business of transmission of communications, or the distribution of electricity, gas, water or petroleum products, which is subject to regulation by the state corporation commission, doing business in this state, shall designate ~~some person residing in each county into which its lines or pipes run, or in which its business is transacted, on whom all process and notices issued by any court of record of such county may be served. In every case such company or corporation shall file a certificate of the appointment and designation of such person in the office of the clerk of the district court of the county in which such person resides, and the service of the process upon the person so designated, in any civil action, shall be deemed and held to be as effectual and complete as if service of such process were made upon the president or other chief officer of such company or corporation~~ in accordance with section 2 and amendments thereto a resident of the state of Kansas upon whom process may be served. Any company or corporation may revoke the appointment and designation of such person upon whom process may be served, by appointing any other person qualified as above specified and filing ~~a certificate~~ an instrument of ~~such~~ appointment as provided in section 2. Every second or subsequent appointment shall also designate the person whose place is filled by such appointment.

If any such company or corporation fails to designate and appoint such person, as required by this section, such process may be served ~~in such county~~ as provided by the other provisions of this article 3 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 2. K.S.A. 60-306 is hereby amended to read as follows: 60-306.

Any individual, partnership, association or corporation may file in the office of the ~~clerk of the district court of any county~~ Secretary of State an instrument appointing a resident of the state of Kansas as agent upon whom process for such person, fiduciary, company or corporation may be served, and consenting without limitation or exception other than as provided in this act that service of process may be issued out of any court of said county upon such service agent as the agent of such individual, partnership, association or corporation. The instrument appointing such service agent shall be ac-

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knowledged, shall state the residence or office address of the service agent[,] shall be recorded at length upon the register of service agents and shall state that such designation is made pursuant to this section.

(b) ~~*Register and index.* The clerk of the district court in each county shall maintain in his or her office a register of service agents in which the instruments of appointment provided for in subsection (a) hereof, shall be recorded at length and such clerk shall maintain an alphabetical index of the names of the service agents and a like index of the names of the principals. The clerk of the district court shall be liable on his or her bond for any damages arising from said clerk's failure to maintain the register of service agents or any index thereof.~~

~~(c)~~ *Change of address.* ~~The clerk of the district court shall from time to time, when requested by the service agent, note upon the margin of the record any change in the office or resident address of the service agent.~~

(~~d~~) *Period of appointment.* The appointment ~~made under subsection (f) of this section~~ shall remain in effect for a period of three ~~(3)~~ years from the date of its filing unless revoked in writing, executed in the same manner as such appointment, which revocation shall be recorded and indexed in the register of service agents~~, in the same manner as is provided for appointments~~, ~~and the clerk shall enter upon the record of the original appointment the statement that it has been revoked, giving the date of such revocation and the book and page where the same is recorded.~~

~~(e)~~ *Collection of fee.* ~~The clerk of the district court shall collect a fee of five dollars ($5) for the recording of each appointment and no fee for the recording of each revocation. Such fees shall be accounted for in the same manner as other costs and fees collected by said clerk.~~

(~~f~~) *Effect of service upon agent.* When any person, fiduciary or corporation shall have appointed such a service agent and such appointment remains unexpired and unrevoked, process issued in any action or proceeding against such person, fiduciary or corporation in any ~~of the~~ courts ~~of the county~~ may be served upon such service agent. Service by publication shall be of no force or effect where an appointment of service agent made and filed as herein provided remains in effect, unless process showing upon its face the name and address of such service agent shall have been duly issued to the proper officer of the county of such service agent's residence as shown on the register of service agents and returned by such officer to whom it has been directed, with a notation, that said officer cannot find such service agent in the county. Such notation shall also state the name of the service agent who could not be found.

and

An appointment shall be amended with a writing whenever the name or address of the service agent is no longer accurate.

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(d) The fee for filing an appointment, amendment or revocation shall be $20. The secretary of state shall remit to the state treasurer at least monthly all fees received pursuant to this section. The state treasurer shall deposit the entire amount in the state treasury and credit the amount to the information and copy services fund.

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Sec. 3. K.S.A 1991 Supp. 60-305 and K.S.A. 60-306 are hereby repealed.

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

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RE: PROPOSAL NO. 15 – JUDICIAL ADMINISTRATION*

Proposal No. 15 -- Judicial Administration calls for the Committee to review the issue of eliminating statutory restrictions requiring the placement of judges in each county and the placement of other nonjudicial personnel and other related topics designed to promote judicial economy and efficiency.

Background

During the 1991 Legislature four bills were considered dealing with this issue. They are described below.

S.B. 436, as amended by the Senate on Final Action, would remove restrictions on the number of state court judges, would give the Supreme Court the authority to manage judicial and nonjudicial personnel, and would modify the requirement that a judge reside in each county to provide instead that each county shall have an office of the district court. Further, the bill would require the Supreme Court to request a study of the court system by the National Center for State Courts. The bill is in the House Appropriations Committee and generated the most public debate regarding this issue.

S.B. 433 would clarify the ability of the judicial branch to administer personnel within the court system. The bill would provide that the Supreme Court shall have the authority to establish a personnel classification system and to eliminate or shift individual job positions in the Judicial branch by court order. The Judicial Administrator's Office suggested the bill be amended to cover both judicial and nonjudicial personnel as well as other clarifying amendments. The bill is in the Senate Ways and Means Committee.

H.B. 2604 would repeal K.S.A. 20-301b requiring a judge reside in each county. The bill is assigned separately to the House Judiciary and Appropriations committees.

H.B. 2627 would amend several statutes pertaining to the holding of court in more than one city in a county to make this permissive rather than mandatory. Covered are Pittsburg and Girard in Crawford County and Parsons and Oswego in Labette County. The bill is in the House Judiciary Committee.

Report of the Judicial Redistricting Advisory Committee

The Kansas Judicial Council agreed to study the issue of judicial redistricting in March, 1990, after receiving multiple requests for such a study. A 12-member Judicial Redistricting Advisory Committee of the Judicial Council was formed in June, 1990, with Retired Chief Justice David Praeger as chairman. The Committee was made up of lawyers, judges, nonjudicial personnel, and legislators.

The Advisory Committee held seven meetings, heard a number of conferees, sent out questionnaires to over 900 persons involved in the judicial process, received correspondence from a number of persons, and received research information from the Judicial Administrator's Office and the Judicial Council staff.

The Advisory Committee made the following findings:

1. The present geographic configurations of the judicial districts require no change.

2. The present allocation of judges has resulted in an unequal and inefficient distribution of judicial personnel.

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* H.B. 2673 accompanies this report.

3. The present allocation of nonjudicial personnel has resulted in an unequal and inefficient distribution of nonjudicial personnel.

4. Long-distance out-of-district assignments are not the most efficient use of judicial personnel.

5. The concept of geographic pay differentials for judges should not be implemented.

6. In order to have efficient administration of the judicial system, the Supreme Court should be given broad discretion in the areas of assignment of judicial and nonjudicial positions. The specific statutes which limit such discretion are impediments to judicial efficiency and should be amended or repealed.

The following is a summary of specific recommendations made by the Advisory Committee:

1. Statutory changes should be made to allow the Supreme Court to more effectively exercise its authority to administer the Judicial branch of government.

2. K.S.A. 20-301b, which requires a resident judge in each county, should not be repealed at this time. K.S.A. 20-301b should be amended to authorize the Kansas Supreme Court to allocate judicial personnel upon receipt and review by the Court of a study by the National Center for State Courts, funded by the Legislature, regarding allocation of judicial and nonjudicial resources and the effective administration of justice in the state.

3. A contract should be entered into with the National Center for State Courts to study judicial and nonjudicial personnel needs of the judicial districts and other matters.

4. The Supreme Court should establish an ongoing committee to advise it in the area of allocation of judicial and nonjudicial personnel.

Financing of the Judicial Branch

The judicial branch budget includes the operations of the Kansas Supreme Court, Court of Appeals, judicial and professional review boards and commissions, and most of the personnel costs of the 105 district courts. Appellate operations and district court personnel expenditures are financed by the state while generally the other operating expenditures of the district courts are paid directly by the counties and do not show up in the state budget. In recent fiscal years, State General Fund support of the district courts has represented approximately 74 percent of the direct costs associated with the district courts.

State Expenditures. The State General Fund budget for FY 1992, as approved by the 1991 Legislature totaled $57,295,396, including $6,046,107 for appellate operations and $51,249,289 for district court operations. Executive Order 91-144, dated August 30, 1991, made a 1 percent reduction in all General Fund appropriations resulting in an overall reduction of $572,590 in the FY 1992 appropriation.

County Expenditures for the District Courts. K.S.A. 20-348 requires county government to be responsible for all expenses incurred for the operation of the district court in the county. The Office of Judicial Administration reports actual county expenditures for CY 1989 to be $15,609,790, approximately 26 percent of the cost of the district court operation. Since county budgets are set for the calendar year, the most recent year for which expense information is available is CY 1989. Several caveats to the county data should be kept in mind including the following: the amounts reported by the counties as actual expenditures have not been verified against county audits; a couple of the large counties include the costs of operating the court supervised juvenile detention

facilities in this data; county costs for court trustees are included in some instances; and no attempt is made to ascertain the cost of facilities provided for the courts by the counties.

Revenues Generated by the Judicial Branch. District court collections for various court costs and other charges submitted to the State Treasurer in FY 1991 were $24,254,716 which reflects an increase of 5.6 percent over actual FY 1990 collections of $22,974,573. Of the total amount in FY 1991, the State Treasurer reported that $18,678,137 was credited to the State General Fund. The remainder of funds was earmarked for particular purposes, such as the law library fund, prosecutors' training fund, aid to indigent defendants fund, law enforcement training fund, alcohol and drug safety action program fund, protection from abuse fund, family and children trust fund, and juvenile detention facilities.

Structure of the Judicial Branch

Supreme Court. The Kansas Supreme Court is the state court of last resort. It hears direct appeals from the district courts in the most serious criminal cases and appeals in any cases in which a statute has been held unconstitutional. It may review cases decided by the Court of Appeals, and may transfer cases from the Court of Appeals to the Supreme Court. It also has original jurisdiction in several types of cases.

The Supreme Court, by constitutional mandate, has general administrative authority over all Kansas courts. Supreme Court rules govern appellate practice in the Supreme Court and the Court of Appeals, and procedures in the district courts. Supreme Court rules also provide for the examination and admission of attorneys, set forth the code of professional responsibility which governs the conduct of attorneys, and include the canons of judicial ethics which govern the conduct of judges. Rules also provide for the examination and certification of official court reporters.

The Chief Justice serves as the administrative head of the judicial system. The supervisory responsibilities of the Chief Justice extend to all aspects of system management. The Chief Justice is empowered by statute to delegate responsibility and authority necessary to insure smooth and effective operation of the system.

The Supreme Court consists of seven justices who serve six-year terms. Supreme Court justices are appointed by the Governor from nominees of the Supreme Court Nominating Commission. Once appointed, Supreme Court justices are retained in office with voter approval.

All nonjudicial employees of the Kansas court system (1,510.5 FTE nonjudicial employees in FY 1990) are under a personnel plan adopted and administered by the Supreme Court. The Supreme Court adopts and submits to the Legislature an annual budget for the entire judicial branch of government.

Actual FY 1990 expenditures from the State General Fund for the Supreme Court were $1,248,939. There are 15.0 nonjudicial personnel that support the Supreme Court.

Court of Appeals. Statutory provisions, which took effect in January, 1977, established a Court of Appeals, an intermediate appellate court. The Court of Appeals hears all appeals from orders of the State Corporation Commission and all appeals from the district courts in both civil and criminal cases except those which may be appealed directly to the Supreme Court. It also has jurisdiction over original actions in habeas corpus.

The entire ten-member Court of Appeals may hear cases, but the court usually sits in panels of three. The Court of Appeals may sit anywhere in the state. Effective July 1, 1987, this Court was expanded from seven to ten members. Court of Appeals judges are appointed by the Governor from nominees of the Supreme Court Nominating Commission. Once appointed, Court of Appeals Judges are retained in office with voter approval.

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Pro. No. 15

Actual FY 1990 expenditures for the Court of Appeals were $1,939,910. There are 32.0 nonjudicial personnel positions assigned to the Court of Appeals program.

Office of Judicial Administration. This office is responsible for the implementation of rules and policies of the Court as they apply to the operation and administration of the courts. Duties include: accounting, personnel, education and training, municipal judge support, compiling statistical information, data processing, and child support enforcement. Actual FY 1990 State General Fund expenditures totaled $1,186,891 and 31.0 FTE positions were employed in the Office of Judicial Administration, including the data processing section.

Clerk of Appellate Courts. The Clerk of the Supreme Court is a constitutional officer appointed by the justices of the Supreme Court. The clerk's office dockets new cases and appeals, processes all motions, prepares a hearing docket for both courts, and other duties. Actual FY 1990 State General Fund expenditures were $372,069 and there were 10.0 FTE positions.

Appellate Reporter. The Reporter of the Supreme Court is a constitutional officer and an attorney who, by statute, also serves as Reporter of the Court of Appeals. The Reporter's primary function is to edit and publish those opinions which each court has designated for publication. Actual FY 1990 State General Fund expenditures were $413,219 and there were 6.5 FTE positions.

Kansas Supreme Court Law Library. The primary function of the law library is to support the research needs of the judicial branch. However, users of the library include employees of the executive and legislative branches, attorneys from across the state, and the general public. Total State General Fund expenditures in FY 1990 were $549,401 and the library employed 9.0 FTE positions.

Judicial and Professional Review. These activities are conducted through four boards and commissions:

Commission on Judicial Qualifications
Judicial Nominating Commission
Board for Admission of Attorneys
State Board of Examiners of Court Reporters

The former two commissions are funded from the State General Fund and the latter two boards are funded from fee funds.

District Courts. District courts are created by the *Kansas Constitution*. District courts are the trial courts of Kansas with general original jurisdiction over all civil and criminal cases. The district court has appellate jurisdiction over municipal courts. Kansas is divided into 31 judicial districts, with varying numbers of judges in each district. In each county of the state, there is a district court and an office of the clerk of the court where cases may be filed.

Judges of the district court include district judges, of which there are 148, and district magistrate judges, of which there are 70. District judges must be lawyers and district magistrate judges may or may not be lawyers. The statutes require at least one resident judge of the district court in each county. At the option of the judicial district, judges may be selected by a nonpartisan method (17 districts) or directly elected (14 districts). Those selected by the nonpartisan method are subject to retention elections. FY 1990 expenditures for salaries and wages of judges of the district courts totaled $13,689,147.

The state is divided into six judicial departments, each of which includes several judicial districts. One justice of the Supreme Court serves as the departmental justice over each department. The departmental justice may assign judges from one judicial district to another.

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The Supreme Court appoints a district judge as administrative judge for each judicial district. The administrative judge, in addition to judicial responsibilities, has general control over the assignment of cases within the district and general supervisory authority over the clerical and administrative functions of the court.

To carry out the administrative function of the courts, the administrative judge in each district is directed under K.S.A. 20-343 to appoint, with the approval of the majority of other judges of the judicial district, a clerk of the district court in each of the counties. The administrative judge also appoints such other staff as are necessary to perform the duties of the clerk. In all four larger courts and in ten other judicial districts approved by the Supreme Court, the administrative judge, with the approval of the other judges, appoints a district court administrator.

Each judicial district has a court services division, except for the 25th and 26th judicial districts (Southwest Kansas) where one court services staff provides support for both districts.

There were a total of 1,402.0 nonjudicial positions in the district courts in FY 1990, of which 351.5 FTE were Court Service Officers. Total State General Fund expenditures for nonjudicial personnel in the district courts were $35,600,624.

District Court Caseload

District court caseload data was presented to the 1991 Special Committee on Judiciary. Data for FY 1990 was included for each county and included the county's population, total filings of cases, number of judges, number of clerks, caseload per judge, and caseload per clerk. Sedgwick County, the largest county, with a population of 403,662, has 24 judges and 157 clerks with a caseload of 67,801 cases. This translates into a caseload per judge of 2,825 and a caseload per clerk of 432. Greeley County, the smallest county (with a population of 1,774) has one judge and 1.5 clerks handling a caseload of 227 cases.

Testimony of Conferees

The Committee heard from the Chief Justice of the Supreme Court, a former chief justice who served as Chairman of the Judicial Councils Advisory Committee on Judicial Redistricting, a district court judge, a magistrate district court judge, representatives of the Judicial Administrator's Office, the Kansas County and District Attorney's Association, the Kansas Association of Counties, a state representative, several individual county attorneys, and several attorneys in private practice primarily from the western portion of the state.

The Chief Justice, former chief justice, and representatives of the Judicial Administrator's Office supported legislative changes that would enhance the judicial branch's ability to efficiently manage the court system.

The former chief justice emphasized the finding of the Advisory Committee regarding the inequity of caseloads in various judicial districts. He noted the data is not weighted as to the type of case filings and includes everything from traffic cases to murder trials. He said the statutory mandate that requires one judge reside in each county severely restricted the efficient management of the state judicial branch. He endorsed the Advisory Committee recommendation for engaging the National Center for State Courts to study the allocation of judicial and nonjudicial resources and needs in Kansas. He recommended that the Legislature appropriate money to fund a study of the allocation of judicial and nonjudicial personnel needs by the National Center for State Courts.

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The representative of the Judicial Administrator's Office gave an historical sketch of the judicial branch. He endorsed S.B. 436 stating the question before the Legislature is who should manage the court system, the Supreme Court or the Legislature.

The Chief Justice did not specifically endorse the repeal of the statutory mandate requiring one judge per county. He said he would not support S.B. 436 if the legislation were simply a vehicle for the Legislature to appropriate less money but delegate accountability to the chief justice, but if the legislation were adopted for the correct purpose it would provide the court with a good management tool. In regard to the possible inherent power of the Supreme Court to compel a certain level of funding for the court system, the Chief Justice said he would be extremely reluctant to use such power and considered it a tool of last resort. He said that he had no problem with the quality of work being done by magistrate judges. He said judge turnover was due primarily to younger judges leaving the bench after their retirement had vested rather than burnout by judges complaining of overwork. He noted that these were inherent problems in trying to weight cases to determine balance in workload due to the vast degrees of variance in each type of case. He said a study of the court system by the National Center for State Courts would be beneficial.

All of the other conferees who appeared opposed eliminating the statutory mandate that one judge reside within each county. They argued that such a change would result in added delays and more travel, more expense for all parties, administration of justice problems, further erosion of the quality of life in rural areas, and the erosion of legislative input into the judicial branch. Many defended the system of using magistrate district judges. Some suggested magistrate district judges may be a solution for solving the high caseload problem in the larger judicial districts. Several conferees took issue with using caseload data where there was no attempt to weight cases. Several of these conferees endorsed the proposed study by the National Center for State Courts.

Committee Conclusions and Recommendations

The Committee is mindful that budget reductions have been imposed on state agencies in recent years. Most recently, a Governor's Executive Order in late August of this year imposed a 1 percent reduction in all General Fund appropriations, which resulted in an overall reduction of nearly $600,000 in the judicial branch budget. This reduction followed an earlier 4 percent reduction in the number of nonjudicial personnel imposed by the Chief Justice and announced in mid-July as a result of budget decisions made by the 1991 Legislature. The Committee is aware that when budget cuts are made, these cuts impact most directly on nonjudicial personnel and operating costs other than judges and their salaries, since judges' salaries and the number of judges are specifically controlled by statute.

As a result, the Committee believes the Legislature should give the Chief Justice and the Judicial Branch more flexibility in basic personnel matters affecting the administration of justice. The Committee believes however, that the one judge per county rule should be retained at this time. The Committee believes more flexibility can be achieved by allowing the Court to do the following:

1. reassign vacant judge positions in a judicial district to any judicial district in the state where there is a need without violating the one judge per county rule;

2. allow the court to use the money appropriated for a judge's position that becomes vacant for use to fund needed nonjudicial personnel in any area of the state; and

3. allow the Supreme Court by court order to create, eliminate, or shift individual nonjudicial job positions in the state court system.

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The Committee believes that the Legislature should permanently codify language now contained in the 1992 appropriation bill, which states that no limitation shall be imposed by any appropriation act of the Legislature on the number of nonjudicial personnel in the court system.

These recommendations are contained in H.B. 2673, which the Committee recommends for consideration by the 1992 Legislature.

The Committee believes the above management tools should be made available to the Judicial Branch as a first step toward granting more flexibility to the court for handling all personnel matters, both judicial and nonjudicial. The Committee believes the Legislature needs more accurate and reliable information before it can act on the proposal to repeal the statutory mandate that one judge must reside in each county and other suggestions for the improvement of the administration of the Kansas judicial branch. As a result, the Committee recommends that the 1992 Legislature appropriate sufficient moneys to fund the study of the Kansas court system and its use of judicial and nonjudicial personnel by the National Center for State Courts as endorsed by the Judicial Council's Advisory Committee on Judicial Redistricting.

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RE: PROPOSAL NO. 12 -- JUVENILE ISSUES*

Proposal No. 12 called for the Committee to review the following juvenile issues: the enactment of a model bill which would provide for the creation of a child death review team when a "suspicious" death occurs; court ordered placement of juvenile offenders in state youth detention facilities; confidentiality under the Juvenile Code; screening procedures for children admitted to state hospitals; and safety of children who are placed in child protective services.

Background

The study was requested by Representative Kathleen Sebelius, Chairwoman of the House Federal and State Affairs Committee. Part of the impetus behind the request was the assignment of two 1991 bills, H.B. 2630 and H.B. 2582, to the House Federal and State Affairs Committee.

Placement of Misdemeanants and D and E Felony Offenders

H.B. 2630, requested by Representative Joan Adam, would prohibit the direct placement of misdemeanant type juveniles in youth centers by the courts. Under the bill, the court could send a juvenile offender, 13 or older, who commits a felony type offense to the Youth Center at Topeka or the Youth Center at Atchison. For those juvenile offenders, 13 and over, who have a previous juvenile offender adjudication under the Juvenile Offender Code or as a delinquent or miscreant under the Kansas Juvenile Code, or who have been adjudicated as a juvenile offender for the commission of an act which is the equivalent of a class A, B, or C felony, the court may commit the juvenile offender to the Youth Center at Beloit. Other options available to the court include house arrest and court ordered mediation.

This placement restriction on misdemeanants to the youth centers is believed by many to be necessary due to the inappropriate placements of misdemeanants that are currently overwhelming the system and necessitating the early release of other youths. Those youths who are released early to make way for misdemeanant juvenile offender placements are thereby deprived of the advantages, such as treatment programs and the like, of their placement.

Suspicious Child Death

H.B. 2582, requested by Representative Joan Wagnon, would require the establishment of review teams whenever a suspicious or unexplained death of a child occurs. A child is defined as anyone under 18. Proper notice of a suspicious child death shall be made to the coroner who is required to investigate the death and direct a pathologist to perform an autopsy. A coroner could not specify that a child under the age of one died of sudden infant death syndrome (SIDS) unless an autopsy is performed. After an investigation and autopsy, the coroner can do one of two things: complete and sign a nonsuspicious child death form or notify, within 24 hours, the chairperson of the state review board. Within 72 hours of such notification, a local child death review team would be activated to investigate and make a written report, within 15 days, to the state review board and to the local prosecutor in the county where the child's death occurred. The local review team is responsible for maintaining permanent records of all written reports about child deaths. All records not subject to public disclosure would remain confidential, not subject to disclosure, subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

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* S.B. 476, S.B.477, and S.B. 478 accompany this report.

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A state child death review board would be established to develop the protocol, including written guidelines for coroners to use in identifying any suspicious deaths, guidelines for organizing local review teams, procedures to be used by local review teams in investigating child deaths, methods to ensure coordination and cooperation among all agencies involved in child deaths, and procedures for facilitating prosecution whenever it appears that a child's death was the result of abuse or neglect.

Confidentiality Under the Juvenile Code

The confidentiality issue was included in the request since it appears that confidentiality, in some instances, impedes the effective delivery of services to children and inappropriate releases of juveniles can occur due to a lack of information to those in authority. It is believed by many that the original goal of confidentiality, which was to protect juveniles, deserves a re-examination in order to balance the protection of youth and the public safety.

Screening Procedures for State Hospital Admissions

On the subject of screening procedures for children admitted to state hospitals, the request was to review the current practice and study methods that could improve the current practice.

Safety of Children in Protective Services

Children in protective services concerns relate to the pending lawsuit by the American Civil Liberties Union (ACLU). The case was filed in Shawnee County in January, 1990. Children placed in the custody of the Department of Social and Rehabilitation Services (SRS) as Children in Need of Care (CINC) or those children who are at risk of being placed in SRS are the subject of the lawsuit. The District Court Judge has ruled that SRS not only owes a duty of responsibility to CINC in SRS custody, but also those at risk of being placed in SRS custody. A Post Audit report entitled *Assessing How Effectively the Department of Social and Rehabilitation Services Handles Reports of Child Abuse and Neglect* and another performance audit report entitled *Kansas Foster Care Program, Part IV: Summary Report* were recently completed on the issue of child protective services. The finding in the *Child Abuse and Neglect* Post Audit report showed that, among other things:

1. Eighty percent of the 133 SRS investigations reviewed appeared to be timely and adequate. Some reports of abuse and neglect were not investigated at all. Sometimes SRS procedures designed to ensure a timely investigation of complaints were not followed. Post Audit opined that some of these procedures could be improved.

2. Some SRS staff surveyed indicated that they do not have adequate resources to deal with child abuse reports.

3. Preventative family services had, according to Post Audit, enjoyed mixed success. Often the lack of success could be attributed to uncooperativeness on the part of families. Post Audit concluded that some family services could be improved.

Prior Studies

Several prior and current studies have been conducted involving children and juvenile offenders. In th 1990 interim, the Special Committee on Judiciary conducted a study on Proposal No. 16 -- Juvenile Offenders. Th request for the study came from the chairmen of the Senate and House Judiciary committees on behalf of th

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Criminal Justice Coordinating Council which requested two bills during the 1990 Session, namely S.B. 521 and H.B. 2667, both of which would have created a Master Planning Commission for Juvenile Affairs.

Under these bills, the 18-member Commission would have included the following members: Secretary of SRS or designee; Commissioner of Education or designee; Secretary of the Department of Health and Environment or designee; Secretary of the Department of Human Resources or designee; Secretary of the Department of Corrections or designee; Chairperson of the Kansas Parole Board or designee; Chief Justice of the Kansas Supreme Court or designee; a district court judge from an urban district appointed by the Chief Justice; a district court judge from a rural area appointed by the Chief Justice; the Attorney General or designee; the Governor's Pardon Attorney; four legislators: one appointed by the President of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the House of Representatives; and three public members appointed by the Governor.

The Governor would have appointed the chairperson and the Commission would have designated other officers. There would have been at least two subcommittees, *i.e.*, the advisory subcommittee on juvenile offender programs and the children and youth advisory subcommittee. Members of the Commission attending either full Commission meetings or subcommittee meetings would have been paid according to statutory provisions governing compensation and allowances for public officers and employees. The Commission would have met at least quarterly and on call of the chairperson. Basically, the aim of the Commission would have been to help juveniles cope with adolescence, substance abuse, and criminal behavior. In carrying out this end, the Commission would have been charged with the following: (1) to reduce duplication of effort; (2) to enhance consolidation of programs; and (3) to reduce redundancy of paperwork. The Commission would have reported annually (before January 15) to the Legislature.

Both bills also would have included the transfer of the Advisory Commission on Juvenile Offender Programs (ACJOP) from SRS to the Master Planning Commission. The membership of the Advisory Commission would have been expanded from the present 14 members to 19. Additional duties of the Advisory Commission would be to develop longitudinal data on juveniles determined to be at risk by the education, social and rehabilitation services, or judicial systems. Further, the bill would have transferred the Children and Youth Advisory Committee from SRS to the Master Planning Commission. Membership of the Advisory Committee would have been expanded from 14 to 28 members. An added goal of the Advisory Committee would have been to increase communication between public and private agencies about children at risk, develop programs to enhance reporting of child and spouse abuse, and increase programs to reduce illiteracy and school dropouts.

A third bill, H.B. 2703, dealt with a method of handling juvenile offenders. In particular, the bill would have amended the Community Corrections Act to require counties wanting to participate in community corrections to develop a subplan, as a part of the mandatory comprehensive plan, for the treatment and handling of juveniles in the respective county or groups of counties. Another feature of the bill would have permitted each Corrections Advisory Board to include a Juvenile Offender Advisory Board. Membership would have included, but not be limited to, one representative of each of the following: the board of education of each unified school district or portion of such school district within a county; any organized mental health programs; any organized domestic violence programs; any organized chemical dependency treatment programs; the juvenile court; the juvenile court service administrator; law enforcement agencies; and the area SRS office.

The 1990 interim Committee, in its recommendations, urged passage of the following bills for presentation to the 1991 Legislature:

1. H.B. 2010 would establish the Kansas Children's Service Planning Commission to develop and propose a coordinated system of programs and policies to better serve the children throughout the state. The Commission would be required to report to the Legislature by January 15, 1992, and then terminate on June 30, 1992. The bill is currently in the House Federal and State Affairs Committee.

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2. H.B. 2011 would clarify the laws regarding moneys to be credited to the Juvenile Detention Facilities Fund and would abolish the Juvenile Detention Facilities Capital Improvements Fund. The bill also would implement a 5 percent (one-half of 10 percent) allocation from the Gaming Revenue Fund to the Juvenile Detention Facilities Fund for FY 1992, *i.e.*, ending on June 30, 1992. The bill passed the House Judiciary Committee and is currently in the Senate Ways and Means Committee.

3. H.B. 2012 would merge the state ACJOP and the federally required State Advisory Group (SAG) into an expanded ACJOP. ACJOP has 14 members, but under the bill, membership would increase to 25 members. The Secretary of the Department of Corrections or a designee would be added to the Commission and the Governor would be empowered to appoint ten additional members. At least five of the additional members must be under the age of 24 with three of the five required to have been in the jurisdiction of the juvenile justice system. The Legislature passed this bill but it was vetoed by the Governor partly because of the funding provisions which would have provided additional appropriations to the Juvenile Detention Facilities Fund.

Also during the 1990 interim, a Task Force on Social and Rehabilitation Services, was formed to evaluate the structure and functioning of SRS. Two of the four subcommittees dealt with issues pertinent to this study. One subcommittee dealt with Mental Health and Retardation Services (MHRS), while the other delved into the topic of children's services. The MHRS subcommittee looked at 1990 H.B. 2586, which established a seven-year phase in program aimed at reducing the number of state hospital beds for children, as well as adults. Based on testimony received, the Task Force recognized the Mental Health Reform Act as new legislation which was, in 1990, in the initial stage of implementation. Approving of measures taken to date, the Task Force urged no further studies be undertaken at the time but recommended periodic updates be provided to the Legislature.

On the subject of children's services, a subissue that was examined by the assigned subcommittee was child protective services. The Task Force reviewed the Legislative Post Audit report entitled *Assessing How Effectively the Department of Social and Rehabilitation Services Handles Reports of Child Abuse and Neglect*, which pointed out the shortcomings and areas of needed improvement within the structure of SRS. Responding to the audit, SRS indicated the agency would, among other things, develop a *Child Protective Services Policy and Procedures Manual* and a *Child Services Handbook*, which should be ready by October, 1991. The Task Force indicated approval of the responses developed by SRS but further stated, in emphatic terms, that urgent action is needed to protect Kansas children at risk of abuse and neglect. SRS was requested to follow up with an account of options designed to effectuate radical improvements in child protective services. Early in the 1991 Legislative Session, SRS presented a plan outlining the procedures designed to better serve children in, or at risk of being in, child protective services.

An outside consultant, with the Child Welfare League of America, was brought in to assist SRS in the development of initiatives to respond to the SRS Task Force Report, the Legislative Post Audit Reports, as well as SRS' in-house assessment. As a result, SRS has developed the *SRS Family Agenda for Children and Youth* geared toward strengthening the effectiveness of the Department's programs that serve children, youth, and families. The report also is known as the "Three Year Plan" and a copy can be obtained from Jo Ann Hewett, SRS Youth and Adult Services, State Complex West, 300 Southwest Oakley, Topeka, Kansas 66606.

The agenda for SRS' child welfare and juvenile justice services proposes the following:

- continuation of the shift in emphasis from separation of children and youth from their families and removal from their communities to a commitment to enabling families to better care for their children;

- an increase in the array of services designed around the unique needs of each child and family being served in the least restrictive setting possible;

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- a collaboration among state agencies, providers, communities, and families to more effectively serve children and youth; and

- an emphasis on community prevention and earlier intervention services.

During the current interim, the Children's Initiatives Committee has been conducting meetings that have focused on assessing the needs of Kansas children and then formulating a plan or blueprint to meet those needs. The Committee has issued its report entitled *A Blueprint for Investing in the Future of Kansas Children and Families*. Part of the recommendations are geared toward improving the physical and mental health status of children. Specifically, the recommendations target foster care and providing a continuum of community services. For example, in five years the Committee would like to see a reduction of 25 percent of children in foster care. Additionally, the Committee recommends that SRS identify alternatives to placement in family and residential foster care, mental health and retardation institutions, and juvenile offender institutions. Other recommendations, some of which overlap areas within the charge of the Special Committee on Judiciary, are contained in the report.

Committee Activity

At the hearing, the Committee received testimony on the issue of restricting a district judge's ability to place misdemeanant juvenile offenders as well as those who commit D and E felony offenses in a youth center from the legislator who requested 1991 H.B. 2630, District Court Judges from Sedgwick and Shawnee counties, the Director of Juvenile Offender Programs in SRS, and the Superintendent of the Youth Center at Atchison. Conferees on the issue of restricted placement for misdemeanant juvenile offenders and those who commit the equivalent of D and E felonies emphasized the need for alternative options and community-based programs for these juveniles. The Superintendent from the Youth Center at Atchison noted that for the first time they are seeing readmissions which may be due to the early release policy that has been initiated since the facility is overcrowded in large part with the misdemeanant as well as D and E felony type juvenile offenders. Speakers on the juvenile offender issue also brought the Committee's attention to a recent case involving juveniles, *State v. Frazier* at 248 Kan. 963, which overturned the policy of excluding traffic offenders from the Juvenile Code. For traffic offenses, prior to *Frazier*, juveniles were treated the same as other adult citizens. After *Frazier*, juveniles who committed traffic offenses would be handled under the Juvenile Offender Code, which would result in an additional burden on an already burgeoning system. A district court judge advocated the start-up of a state mid-level facility such as one for programs of out-of-home placements and rehabilitation for those juvenile offenders that need to be withdrawn from society.

The issue of confidentiality in the Juvenile Code was addressed by the Deputy Director of Kansas Legal Services and the Counsel for Youth Services in SRS. The official representing Kansas Legal Services, on the issue of confidentiality, recommended opening the juvenile courts to the public and media or at least to open a public debate on the issue. According to the witness, confidentiality has shielded the public from information the public has a right to know. Access to information could then allow the public to support changes in the juvenile system. Representing SRS, the witness stated to the Committee that a proper balance needs to be maintained between the obligation to the community, the public's right to know, and the privacy interests of youth and their families.

On the topic of child death review teams, the Committee heard from the legislator who requested 1991 H.B. 2582, an official with Child Protective Services within SRS; a Deputy Attorney General; a physician experienced in pediatrics at the University of Kansas Medical Center; a delegate from the Kansas Child Abuse Prevention Council; the Director of the Metropolitan Child Abuse Network in Kansas City, Missouri; the Kansas County and District Attorneys Association; and the Christian Science Committee on Publication for Kansas. All who appeared on the issue of child death review teams basically favored the concept. Some were concerned with the fiscal impact. The physician who appeared stated it is virtually impossible to determine whether an infant, under the age of one year, had died of SIDS, without a cranial autopsy.

Regarding the concern for the safety of children who are placed in Child Protective Services, the Committee listened to testimony from the Legislative Post Auditors and the SRS official with Child Protective Services. On the issue of concerns raised by the Post Audit reports regarding children in SRS custody, the official with SRS Child Protective Services indicated SRS has begun to implement some corrective measures as well as a comprehensive three-year plan which should be completed in the near future. Upon completion, the document will be available for dissemination. The primary goal of the three-year plan is to address, in detail, the goals of SRS to enhance the delivery of family services.

The last issue within the charge considered by the Committee concerned screening procedures for children admitted to state hospitals. On this topic, the conferees included the Director of Mental Health for SRS; the Director of Social Work Services for Topeka State Hospital; the Superintendent at Osawatomie State Hospital; the Chief of Social Services in Kansas City; a representative of the Association of Community Mental Health Centers in Kansas Inc.; and a representative of the Family Service and Guidance Center in Topeka. Admission of children and youth to state psychiatric hospitals was the subject of discussion by several expert conferees who stressed the lack of community-based services. Mental Health Reform progress should resolve inappropriate admissions as the reform is implemented.

Committee Conclusions and Recommendations

Based on the evidence and testimony received by the Committee, the consensus on the placement of juvenile offenders is SRS, under the Juvenile Offender Code, currently possesses the discretion to assign and reassign juveniles to whichever facility deemed appropriate. The Committee believes that rather than solving the overcrowding problem, H.B. 2630 would create a new problem for the courts. The situation created by *State v. Frazier*, whereby juvenile traffic offenders would come under the Juvenile Offender Code, should be corrected in S.B. 476 which would treat all traffic matters the same and not involve the Juvenile Offender Code. Jail terms in those situations in which the five-day mandatory jail sentence is involved would be nonmandatory for juveniles; but, any incarceration sentence for a juvenile would be served at a juvenile detention facility instead of jail.

On the issue of child death review teams, the Committee believes it is a question of whether such teams are needed or whether it is a matter of better implementing current law. Rather than favor H.B. 2582 for passage, the Committee recommends new legislation be drafted which extends the responsibility of the Kansas Department of Health and Environment (KDHE) to review suspicious and unknown child deaths, and give KDHE the power to access necessary evidence for investigative purposes. A suspicious death would be defined to include a death of any child under ten that was unattended or under suspicious circumstances. For children under the age of one year, a cranial autopsy will be required. The Committee also recommends the language suggested by the representative from the Christian Science Publication for Kansas, which excludes the requirement of an investigation or autopsy when a death occurs without a physician present solely because the deceased was under treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing permitted by Kansas law. S.B. 477 contains these recommendations. The Committee further believes that additional training should be offered for health care providers and others responsible for the reporting of such child deaths.

On the matter of screening procedures for children admitted to state hospitals, the Committee urges and encourages mental health reform to go forward, with the assurance that alternative placement facilities are available.

Regarding the confidentiality issue, the Committee concluded that the files that pertain to the well being of the child, subject to any federal restrictions, of both children in need of care and juvenile offenders, should be available and accessible to foster parents, for example, and any other person who is responsible for the youth. Disclosure of pertinent information shall be limited to those designated individuals. Further disclosure shall not be permitted.

The Committee further recommends that SRS undertake a review of K.S.A. 1990 Supp. 38-134 regarding information available to foster parents concerning foster children. Passed in 1990, the legislation, S.B. 434, created a new statute that set out the types of information that the Secretary of SRS is to share with prospective family foster care providers and foster parents who are providing care for a child who has been placed in the custody of the Secretary. Under the statute, the Secretary is to seek and to share designated information with a foster family for the purpose of assisting the foster family in making a decision about accepting the child for placement or to help a foster family meet the needs of a child who has been placed with the family for foster care. The sharing of information is limited to the foster parent who is the licensee responsible for the care of the foster child, rather than with all persons who may be living in the foster home. Information to be shared with the licensee includes the strengths, needs, and general behavior of the child; circumstances which led to placement; such information about the child's family and the child's relationship with his family as may affect the placement; important live experiences and relationships that may affect the foster child's behavior, attitude, and adjustment; medical history; and educational history.

SRS is requested to report back to the 1992 Legislature on the workability of the statute, along with a request for any needed measures designed to ensure that SRS workers in the field are knowledgeable about the provisions of the law. Cooperation between the foster care professional and foster parents or prospective foster parents is viewed as crucial by the Committee. Likewise, sharing of similar information about the welfare of juveniles in the juvenile justice system should be available to those who are responsible for the welfare of such juveniles.

The Committee further recommends passage of legislation that would amend the Children in Need of Care Code and the Juvenile Offender Code to ensure that foster parents would have access to a child's official file. Further disclosure by a foster parent of any information contained in such a file would be prohibited. Additionally, the bill would allow a foster parent to request appropriate information from SRS who, as a result of such a request, must either advise the requestor of the unavailability of the information or provide the information requested. S.B. 478 contains these recommendations.

Session of 1992

SENATE BILL No. 476

By Special Committee on Judiciary

Re Proposal No. 12

12-23

AN ACT concerning traffic offenses; relating to juveniles prosecuted as adults; amending K.S.A. 8-262 and 8-2204 and repealing the existing sections.

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

Section 1. K.S.A. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked shall be guilty of a class B misdemeanor on the first conviction, a class A misdemeanor on the second conviction and for third and subsequent convictions shall be guilty of a class E felony.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license or was, at the time of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply for a new license to operate a motor vehicle.

(3) Except as otherwise provided by ~~subsection~~ *subsections* (a)(4) *and (a)(5)*, every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least $100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment *and if such person is under the age of 18 years, the mandatory 90 days' imprisonment sentence shall not apply but, the court may commit such person to a juvenile detention facility for not more than 90 days*, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(5) If the person convicted of a violation of this section is under the age of 18 years, the mandatory five days' imprisonment sentence shall not apply but, the court may commit such person to a juvenile detention facility for not more than five days.

(b) The division upon receiving a record of the conviction of any person under this section or any ordinance of any city or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.

Sec. 2. K.S.A. 8-2204 is hereby amended to read as follows: 8-2204. This act shall be known and may be cited as the uniform act regulating traffic on highways. The uniform act regulating traffic on highways includes K.S.A. 8-1334 to 8-1341, inclusive, and all sections located in articles 2, 10 and 14 to 22, inclusive, of chapter 8 of Kansas Statutes Annotated and K.S.A. ~~1988 Supp.~~ 8-1,129, 8-1,130a, 8-1428a, 8-1742a and 8-2118, and amendments to these sections.

Sec. 3. K.S.A. 8-262 and 8-2204 are hereby repealed.

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

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Session of 1992

SENATE BILL No. 477

By Special Committee on Judiciary

Re Proposal No. 12

12-23

AN ACT concerning children; relating to the death of children; requiring autopsies in certain situations; relating to spiritual treatment; amending K.S.A. 22a-231 and 22a-238 and K.S.A. 1991 Supp. 38-1522 and repealing the existing sections.

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

Section 1. K.S.A. 22a-231 is hereby amended to read as follows: 22a-231. When any person dies, or human body is found dead in any county of the state, and the death is suspected to have been the result of violence, caused by unlawful means or by suicide, or by casualty, or suddenly when the decedent was in apparent health, or when decedent was not regularly attended by a licensed physician, or in any suspicious or unusual manner, or when in police custody, or when in a jail or correctional institution, or in any circumstances specified under K.S.A. 22a-238, *and amendments thereto,* or when the determination of the cause of a death is held to be in the public interest, the coroner or deputy coroner of the county in which such death occurred or dead body was found, shall be notified by the physician in attendance, by any law enforcement officer, by the embalmer, by any person who is or may in the future be required to notify the coroner or by any other person. *An investigation or autopsy shall not be required in any case where death occurs without the attendance of a licensed physician solely because the deceased was under treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing permitted under the laws of this state.*

Sec. 2. K.S.A. 22a-238 is hereby amended to read as follows: 22a-238. (a) When a liveborn person ~~in the first year of life~~ *under the age of 10* dies within this state under circumstances in which death is not anticipated, ~~or~~ *and* is found dead, cause unknown, that death shall be immediately reported to the coroner.

(b) Upon receipt of a report required under subsection (a), the coroner, or a person designated by the coroner, shall inform the parent or legal guardian of the deceased that an autopsy will be performed *and on persons under the age of one, a cranial autopsy will be performed,* the costs of which shall be paid by the state. The autopsy shall be conducted in accordance with K.S.A. 22a-233, and amendments thereto, and the coroner shall notify the parent or legal guardian of the results of the autopsy as soon as possible after the completion of the autopsy.

(c) The fee for an autopsy performed under this section shall be the usual and reasonable fee and travel allowance authorized under K.S.A. 22a-233 and amendments thereto, and shall be paid from moneys available therefor from appropriations to the department of health and environment. The reasonableness of all claims for payment of a fee for an autopsy under this section shall be determined by the secretary of health and environment.

(d) The coroner shall not make a determination that a death described in subsection (a) was caused by sudden infant death syndrome unless ~~an~~ *a cranial* autopsy is performed.

(e) The coroner shall send, within the next business day of completion of such report, by telefacsimile communication as defined in K.S.A. 60-467, and amendments thereto, a copy of the autopsy report required under this section to the Kansas department of health and environment and the county or district attorney of the county where the death took place. After review by the staff of the department of health and environment, the secretary of health and environment or the secretary's designee, may request that the coroner hold an inquest pursuant to K.S.A. 22a-230, and amendments thereto. The department of health and environment shall keep and compile statistical data on the autopsy reports received pursuant to this section. The secretary of health and environment shall have the authority to promulgate rules and regulations to implement this section.

Sec. 3. K.S.A. 1991 Supp. 38-1522 is hereby amended to read as follows: 38-1522. (a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c) or (e): Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed psychologists; licensed professional or practical nurses examining, attending or treating a child under the age of 18; teachers,

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school administrators or other employees of a school which the child is attending; chief administrative officers of medical care facilities; registered marriage and family therapists; persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; licensed social workers; firefighters; emergency medical services personnel; mediators appointed under K.S.A. 23-602 and amendments thereto; and law enforcement officers. The report may be made orally and shall be followed by a written report if requested. When the suspicion is the result of medical examination or treatment of a child by a member of the staff of a medical care facility or similar institution, that staff member shall immediately notify the superintendent, manager or other person in charge of the institution who shall make a written report forthwith. Every written report shall contain, if known, the names and addresses of the child and the child's parents or other persons responsible for the child's care, the child's age, the nature and extent of the child's injury (including any evidence of previous injuries) and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons responsible for the injuries.

(b) Any other person who has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse may report the matter as provided in subsection (c) or (e).

(c) Except as provided by subsection (e), reports made pursuant to this section shall be made to the state department of social and rehabilitation services. When the department is not open for business, the reports shall be made to the appropriate law enforcement agency. On the next day that the state department of social and rehabilitation services is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports may be made orally or, on request of the department, in writing.

(d) Any person required by this section to report an injury to a child and who has reasonable cause to suspect that a child died from injuries resulting from physical, mental or emotional abuse or neglect or sexual abuse shall notify the coroner or appropriate law enforcement agency of that suspicion.

(e) Reports of child abuse or neglect occurring in an institution operated by the secretary shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(f) A child who is furnished with spiritual treatment solely through prayer in accordance with a recognized religious method of healing permitted under the laws of this state in lieu of medical treatment shall not for this reason alone be considered to be abused or neglected.

~~(f)~~ *(g)* Willful and knowing failure to make a report required by this section is a class B misdemeanor.

~~(g)~~ *(h)* Preventing or interfering with, with the intent to prevent, the making of a report required by this section is a class B misdemeanor.

Sec. 4. K.S.A. 22a-231 and 22a-238 and K.S.A. 1991 Supp. 38-1522 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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Session of 1992

SENATE BILL No. 478

By Special Committee on Judiciary

Re Proposal No. 12

12-23

AN ACT concerning children; relating to information accessible to foster parents or individuals caring for children; amending K.S.A. 1991 Supp. 38-134, 38-1506, 38-1607 and 38-1608 and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 38-134 is hereby amended to read as follows: 38-134. (a) As used in this section:

(1) "Child" means a person under 18 years of age who has been removed from the home of a relative as a result of judicial determination and whose placement and care is the responsibility of the secretary.

(2) "Family foster home" means a private home in which care is given for 24 hours a day for children away from their parent or guardian and which is licensed under K.A.R. 28-4-311 et seq.

(3) "Foster family" means all persons living in the foster home other than foster children.

(4) "Foster parent" means the licensee who is responsible for the care of foster children.

(5) "Secretary" means the secretary of social and rehabilitation services.

(b) In order to assist the foster family to make an informed decision regarding their acceptance of a particular child, to help the foster family anticipate problems which may occur during the child's placement and to help the foster family meet the needs of the child in a constructive manner, the secretary shall seek to obtain and shall provide the following information to the foster parent as the information becomes available to the secretary:

(1) Strengths, needs and general behavior of the child;

(2) circumstances which necessitated placement;

(3) information about the child's family and the child's relationship to the family which may affect the placement;

(4) important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;

(5) medical history of the child, including third-party coverage which may be available to the child; and

(6) education history, to include present grade placement, special strengths and weaknesses.

(c) The foster parent may request additional information that would pertain to one of the categories listed in subsection (b) and the secretary shall respond to such request with the information or advise the foster parent of the unavailability of the information.

Sec. 2. K.S.A. 1991 Supp. 38-1506 is hereby amended to read as follows: 38-1506. (a) *Official file.* The official file of proceedings pursuant to this code shall consist of the petition, process, service of process, orders, writs and journal entries reflecting hearings held and judgments and decrees entered by the court. The official file shall be kept separate from other records of the court. The official file shall be privileged and shall not be disclosed directly or indirectly to anyone except:

(1) A judge of the district court and members of the staff of the court designated by a judge of the district court;

(2) the guardian *ad litem* and the parties to the proceedings and ~~their~~ *such parties'* attorneys;

(3) a public or private agency or institution having custody of the child under court order; ~~and~~

(4) an individual or individuals who are responsible for the care of the child under court order or placement by the department of social and rehabilitation services. Such individual or individuals shall not further disclose information in the official file; and

~~(4)~~ *(5)* any other person when authorized by a court order, subject to any conditions imposed by the order.

(b) *Social file.* Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by the guardian *ad litem* or an attorney for an interested party or upon court order. The reports shall not be further disclosed by the guardian *ad litem* or attorney without approval of the court or by being presented as admissible evidence.

(c) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas code for care of children whenever such records otherwise would be destroyed. No such records in the custody of the Kansas

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state historical society shall be disclosed directly or indirectly to anyone for 100 years after creation of the records, except as provided in subsections (a) and (b). Pursuant to subsections ~~(a)(4)~~ *(a)(5)* and (b), a judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas code for care of children.

Sec. 3. K.S.A. 1991 Supp. 38-1607 is hereby amended to read as follows: 38-1607. (a) *Official file.* The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held and judgments and decrees entered by the court. The official file shall be kept separate from other records of the court. The official file shall be open for public inspection as to any juvenile 16 or more years of age at the time any act is alleged to have been committed. The official file shall be privileged as to any juvenile less than 16 years of age at the time any act is alleged to have been committed and shall not be disclosed directly or indirectly to anyone except:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) a public or private agency or institution having custody of the juvenile under court order;

(4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties; ~~and~~

(5) an individual or individuals who are responsible for the care of the juvenile under court order or placement by the department of social and rehabilitation services. Such individual or individuals shall not further disclose information in the official file; and

~~(5)~~ *(6)* any other person when authorized by a court order, subject to any conditions imposed by the order.

(b) *Social file.* Reports and information received by the court other than the official file shall be privileged and open to inspection only by attorneys for the parties or upon order of a judge of the district court or an appellate court. The reports shall not be further disclosed by the attorney without approval of the court or by being presented as admissible evidence.

(c) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile offenders code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 16 or more years of age at the time an offense is alleged to have been committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 100 years after creation of the records, except as provided in subsections (a) and (b). Pursuant to subsections ~~(a)(5)~~ *(a)(6)* and (b), a judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile offenders code.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

Sec. 4. K.S.A. 1991 Supp. 38-1608 is hereby amended to read as follows: 38-1608. (a) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile under 16 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge and members of the court staff designated by the judge of a court having the juvenile before it in any proceedings;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services or the officers of public institutions or agencies to whom the juvenile is committed;

(4) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties;

(5) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 38-1618, and amendments thereto; ~~and~~

(6) an individual or individuals who are responsible for the care of the juvenile under court order or placement by the department of social and rehabilitation services. Such individual or individuals shall not further disclose information in the official file; and

~~(6)~~ *(7)* any other person when authorized by a court order, subject to any conditions imposed by the order.

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes

Annotated or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile 16 or 17 years of age shall be subject to the same disclosure restrictions as the records of adults.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

Sec. 5. K.S.A. 1991 Supp. 38-134, 38-1506, 38-1607 and 38-1608 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

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RE: PROPOSAL NO. 14 -- RIGHT TO DIE*

Proposal No. 14 directed the Special Committee on Judiciary to review the Kansas Natural Death Act and the changes proposed to it contained in the Uniform Right of the Terminally Ill Act to see if changes are needed and review the responsibilities of emergency medical services personnel in the prehospital setting in regard to this issue.

Background

The request for the current interim proposal on right-to-die issues emanated from the Chairman of the Senate Judiciary Committee which, during the 1991 Session, heard testimony on two bills assigned to the Committee, namely, S.B. 272 and S.B. 350. S.B. 350 was requested by the Kansas Bar Association. S.B. 272 was requested by the State of Kansas Board of Emergency Medical Services on behalf of the Johnson County Med-Act.

S.B. 272 would amend the Kansas Natural Death Act, K.S.A. 65-28,101 *et seq.*, dealing with living wills. Basically, it would provide for prehospital "do not resuscitate" orders (DNRs) in the event of acute cardiac or respiratory arrest, which means no cardiopulmonary resuscitation (CPR) would be initiated. The DNR would have to be in writing, signed by the patient or someone authorized to sign for the patient, dated, and witnessed by one or more individuals who are 18 years of age or older, and signed by the attending physician, who, in addition, must certify that the DNR order is appropriate and documented in the patient's permanent record. A DNR form is included in the bill. Other parts of the bill contain provisions for revocation of the DNR order and immunity for health care providers or emergency medical services providers who, in good faith, cause or participate in the withholding or withdrawal of CPR in compliance with a prehospital DNR order. Some confusion may result from the language in the new Section 6 regarding immunity, which refers to withdrawing CPR measures which, by definition, can include endotracheal intubation and defibrillation, in addition to cardiac compression. This withdrawal of CPR is different from the language of new Section 4, which addresses withholding of CPR.

S.B. 350 would enact the Uniform Rights of the Terminally Ill, which dictates that anyone of sound mind over 18, or a qualified designee, can execute a document that governs the withholding or withdrawal of life-sustaining treatment. Sample forms to execute a declaration, containing directions to a physician, and a declaration that appoints a designee to make decisions regarding withholding or withdrawing treatment that only prolongs the dying process are included in the bill. A physician or health care provider would not be authorized, under the bill, to withhold treatment, including food and water, for a patient's comfort or for relief from pain. Likewise, life-sustaining treatments must not be withheld from a pregnant patient as long as it is probable that the fetus will continue to develop to the point of live birth if the life-sustaining treatment is continued.

Written consent regarding treatment, when given to an attending physician, may be exercised when the individual is no longer able to make decisions regarding life-sustaining treatment and has no effective declaration. The decisions regarding the authority to consent or withhold consent about life-sustaining treatment may be exercised in order of priority by the following:

1. the spouse of the patient;

2. an adult child of the patient or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

3. the parents of the patient;

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* H.B. 2671 and H.B. 2672 accompany this report.

4. an adult sibling of the patient or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

5. the nearest other adult relative of the patient by blood or adoption who is reasonably available for consultation.

Any physician unable to comply with the provisions of the Act must transfer care of the patient to another physician or health care provider who is willing to comply.

Immunity is provided for physicians or health care providers who act in accordance with the declaration of a patient or the directions of authorized designees; whose action is in compliance with reasonable medical standards; and whose decisions about the validity of consent, as contained in the Act, are made in good faith. Criminal penalties, class A misdemeanors, are provided in the bill for failure to transfer the care of a patient when required to do so; failure to record a terminal condition or terms of a declaration; willful concealment, cancellation, defacing, or obliteration of a declaration without consent or falsifying a revocation of a declaration; concealment of withholding of personal knowledge of a revocation of a declaration; and coercing or fraudulently inducing anyone to execute a declaration, and either requiring or prohibiting the execution of a declaration for insurance or health care services purposes.

Death resulting from withholding or withdrawing life-sustaining treatment will not constitute homicide or suicide under the Act and the Act does not condone mercy killing or euthanasia.

Prior Studies

Recently, in September, 1990, the Joint Committee for Health Care Decisions for the 1990s held a meeting on various medical ethics topics. The Committee recognized the current trend toward patients' right to know what is happening to them and the informed consent doctrine whereby a patient is able to make knowledgeable decisions regarding treatment. Concern was directed toward those situations in which a patient is unable to make self-determining decisions and relies on a surrogate or a guardian to make such treatment decisions. One point raised during the hearing was that when competition entered the picture in the form of health care for-profit businesses, a new ethic was unleashed as entrepreneurial efforts were linked to the medical profession. Other ethical dilemma were presented ranging from abortion to euthanasia to care of the chronically ill and the elderly.

A significant portion of the Committee's time was devoted to cost issues and the limit to which Kansas society can be expected to shoulder the burden of financing, via taxes, the medical needs of some of its citizens. Typically, questions were raised about whether it makes sense to fund a transplant and then run out of vaccine availability. As a result of the hearing, the Committee decided to make no recommendations regarding the various right to die issues that were presented. A possible factor in the decision was the newly enacted Durable Power of Attorney for Health Care Act as discussed below.

In 1988, the interim Special Committee on Judiciary held hearings on Proposal No. 20 -- Durable Power of Attorney. This study was conducted to evaluate the enactment of a Durable Power of Attorney for Health Care Act. As a result of deliberations the Committee recommended the passage of H.B. 2009 which eventually became the current law, K.S.A. 1990 Supp. 58-625 *et seq.*, covered in the section on current law.

Earlier, a 1977 legislative interim Special Committee on Judiciary studied the issue of living wills in Proposal No. 41. A bill was enacted in 1979 which established the Kansas Natural Death Act, also covered in the section on current law.

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Current Law

The Kansas Natural Death Act at K.S.A. 65-28,101 *et seq.*, deals with "living wills" and provides for the withholding or withdrawal of life sustaining medical treatment procedures for persons diagnosed as affected with a terminal condition by two physicians who have personally examined the patient, one of whom is the attending physician. Life-sustaining procedure means any medical procedure or intervention which would only serve to prolong the dying process where death will occur whether or not the procedure is used. Such procedures do not include the administration of medication or medical procedures necessary to provide comfort and care. Any adult so diagnosed may direct that life sustaining techniques and procedures not be used. The statutes set out the procedures and requirements by which an individual may execute such a declaration, how the original declaration may be revoked, and provisions for transfer of the patient to another physician if the original attending physician cannot abide by the patient's declaration. The declaration has no effect during the course of a patient's pregnancy. Immunity is provided for a physician who, in good faith and pursuant to reasonable medical standards, follows the declaration. A failure of the attending physician who failed to comply with a patient's wishes under the Act to effect a transfer of the patient to another physician may constitute unprofessional conduct.

In 1989, the Legislature enacted a Durable Power of Attorney (DPOA) for Health Care Decisions bill found at K.S.A. 1990 Supp. 58-625 *et seq.*, by which an individual (principal) may designate, in writing, an agent (attorney in fact) to make health care decisions for the principal. If a guardian is subsequently appointed, the guardian would be able to revoke or amend the DPOA the same as the principal would have been able to do if not disabled or incapacitated. Voluntary revocation or termination is ineffective to anyone who, without actual knowledge, acts in good faith under the DPOA.

An agent under the DPOA may do the following:

1. consent, refuse consent, or withdraw consent for health care decisions affecting the mental or physical condition of the principal, as well as make postmortem decisions;

2. make all necessary arrangements for the principal at any medical facility and employ or discharge health care personnel; or

3. request, receive, and review any information concerning the principal's personal or medical affairs or records.

An agent may not:

1. act beyond the extent set out in the written DPOA;

2. revoke or terminate an existing living will;

3. exercise the powers under the DPOA until the principal is disabled or incapacitated, unless the DPOA provides otherwise;

4. act in a manner inconsistent with the expressed desires of the principal;

5. be the treating health care provider, an employee of the treating health care provider, or the employee, owner, director, or officer of certain medical facilities unless:

   a. related to the principal by blood, marriage, or adoption; or

   b. the principal and agent are members of the same religious community whose members, among other things, perform health care services.

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To be effective a DPOA must meet the following requirements:

1. be dated and signed in the presence of two witnesses, at least 18, who are not the agent, not related to the principal by blood, marriage, or adoption, and not entitled to receive any part of the principal's estate; or

2. be acknowledged by a notary public.

A DPOA form is included in the statute.

Federal legislative efforts include the recently passed Federal Patient Self Determination Act (also known as the Danforth bill) which takes effect in December, 1991. The measure will require hospitals and nursing homes to advise patients of state laws on living wills and health care processes when they are admitted.

Selected Recent Cases

Fifteen years ago the New Jersey Supreme Court decided in *In Re Quinlan* 355 A 2nd 647 (1976), that Karen Ann Quinlan's right to privacy outweighed the state's interest in keeping her alive with no reasonable chance of recovery. Miss Quinlan was gradually removed from the respirator and lived another nine years in a persistent vegetative state (PVS). As recently as January, 1991, the New Jersey Legislature was still debating living wills.

In *Cruzan v. Director of Missouri Department of Health* 111 L. Ed. 2nd 224 which was decided in June, 1990, the U.S. Supreme Court in a 5-4 decision recognized a constitutional liberty inherent under the Due Process Clause for a competent person to refuse unwanted medical treatment as well as lifesaving hydration and nutrition. The Court held that the U.S. Constitution did not forbid Missouri to require a clear and convincing evidence standard regarding an incompetent's wishes to withdraw life-sustaining treatment since the state may legitimately seek to protect an individual's choice between life and death and safeguard against potential abuses by surrogates who may not act to protect patients. Part of the reasoning behind the holding, as noted by Chief Justice William Rehnquist, is that a wrong decision to continue care would result in maintaining the *status quo* and can be corrected, whereas a wrong decision to discontinue care is "not susceptible of correction." Following the decision, Miss Cruzan's life-sustaining treatment was not withdrawn until after further hearings by a probate judge who received additional testimony that Miss Cruzan would not want to live like a vegetable. The feeding tube was removed as a result and death occurred in late 1990. Following *Cruzan* national attention has been focused on the need for living wills and other measures such as Durable Power of Attorneys for Health Care Decisions.

In a related instance from the State of Missouri, severely brain damaged Christine Busalacchi was the center of efforts by her father to move her to Minnesota where there would be more discretion in removing the feeding tube that keeps her alive. At the trial court level permission was granted to move the comatose patient. An appeals court, however, rejected the request. Since Miss Busalacchi was a minor of 17 in 1987 when she was injured, the appellate court ruled she was legally incompetent to make her own decisions regarding her medical treatment. The court did not rule on whether Miss Busalacchi could have met the legal test of providing clear and convincing evidence that she would have wanted to stop treatment. Distinguishing the case from *Cruzan*, the court stated the Busalacchi matter was not a right-to-die issue but involves the question whether a guardian, Mr. Busalacchi, is properly discharging his duties when he attempts to remove his ward, his daughter, from Missouri which had one of most strict right to die laws in the country. The court expressed a reluctance to allow a guardian to forum shop in an effort to control whether a ward lives or dies. The dissent stated a belief that the majority exhibited arrogance in its opinion that only in Missouri could Miss Busalacchi's best interests be

protected. Currently, the case *In the Matter of Christine Busalacchi* is to be heard by the Missouri Supreme Court, Docket No. 73677, in either September or October.

Helga Wanglie, 87, who lived in Minnesota was one of the more recent patients caught up in the right to die controversy. Mrs. Wanglie suffered a fall and complications ensued. As a result, she was kept alive by a respirator and feeding tubes. Medical professionals attempted to obtain court permission to discontinue Mrs. Wanglie's life support by arguing that to continue such measures was "not in her medical interest." Opposition to such a move was expressed by her husband who said his wife stated "only He who gives life has the right to take life." Mrs. Wanglie died before a court decision was issued.

Committee Activity

The Committee held a two-day hearing on the topic and conferees appearing before the Committee included representatives of the Kansas Bar Association (KBA); Kansas Advocacy and Protective Services; the Pro-Choice Action League; Bioethics of Kansas City; State Board of Emergency Medical Services; Sedgwick County Emergency Medical Services; Johnson County MedAct; Douglas County Ambulance; Medevac Medical Services, Inc.; Kansas Hospital Association; Kansas Medical Society; Catholic Health Association of Kansas; the Kansas Catholic Conference; St. Francis Hospital of Topeka; Right to Life of Kansas, Inc.; Kansans for Life; Christian Science Committee on Publication for Kansas; and the Society of Critical Care Medicine. Also appearing were a professor of law and a professor of philosophy from the University of Kansas as well as the attorney for the family in the *Cruzan* case. A representative of the American Civil Liberties Union (ACLU) submitted written testimony.

Testifying on behalf of the KBA, the conferee urged passage of S.B. 350 which deals only with the terminally ill and defines the term "terminal condition," unlike the Kansas Natural Death Act which contains no similar definition. Additionally, the conferee stressed the need for such a Uniform Act in a mobile society such as ours. According to the witness the provisions of S.B. 350 are not designed to deal with a *Cruzan* type patient who is in a persistent vegetative state. Such provisions need to be dealt with separately. A number of conferees who testified on S.B. 350 expressed concerns regarding the workability of various provisions contained in the bill.

A conferee on behalf of Kansans for the Improvement of Nursing Homes expressed concern about the duplication of forms in S.B. 350 with those already in the Durable Power of Attorney for Health Care Decisions, about certain terminology in S.B. 350 which is different from that contained in other existing laws on the subject, and concerns about the section in S.B. 350 regarding revocation of declaration. Similar concerns were expressed by the Kansas Hospital Association regarding various inconsistencies between S.B. 350 and the Durable Power of Attorney for Health Care Act.

A representative of the Kansas Advocacy and Protective Services, Inc. said the determination of a terminal condition should be made by two physicians rather than only the attending physician as proposed in S.B. 350. Concern also was expressed about the ambiguous nature of various terms used in the definition of terminal condition in S.B. 350. Various other concerns with S.B. 350 were presented by this representative.

A professor of law at the University of Kansas generally supported S.B. 350 but said the act may make it too easy for families to withdraw life-sustaining treatment from conscious but incompetent persons. He suggested several amendments. He also said S.B. 350 could be read to exclude many permanently unconscious patients from the provisions, when, in his opinion, treatment should be withdrawn.

Several conferees suggested that a comma in the bill between the words "comfort" and "care" altered the entire content and suggested its removal. Testimony on behalf of the Pro-Choice Action League, Bioethics of Kansas City and the ACLU indicated concern with the pregnancy clause in the bill.

Representatives of the Kansas Catholic Conference; the Catholic Health Association of Kansas; the Right to Life of Kansas, Inc.; Kansans for Life; and the Society of Critical Care Medicine all opposed S.B. 350. All expressed belief the current law was adequate, some said that S.B. 350 did not contain sufficient safeguards, and others said the bill contained too many ambiguities.

Conferees representing emergency medical services (EMS) testified regarding the need for certain measures contained in S.B. 272 but did not agree on the need to amend the Kansas Natural Death Act. Immunity for EMS personnel who provide services without the knowledge of a DNR order was urged by many of those who testified on S.B. 272. Opposition to S.B. 272 was reflected in testimony on behalf of the Kansas Catholic Conference and the Kansas Medical Society (KMS). The delegate from KMS suggested an amendment to the EMS statutes giving immunity to EMS professionals who honor an apparent lawfully executed DNR order.

The KMS indicated in a follow-up memorandum that, after review of S.B. 350, the bill would be preferable, as drafted, to existing law in a number of ways; particularly (1) it establishes a hierarchy of family members that a physician may consult; (2) it allows a physician to diagnose a terminal, incurable condition without a requirement to consult another physician (the requirement in current law was cited as problematic in rural areas); (3) it provides statutory immunity to physicians and other health care providers who follow the guidelines; (4) it combines two somewhat complex laws (the Natural Death Act and Durable Power of Attorney for Health Care Decisions) into one simpler law; and (5) it could become "portable" as more states adopt its provisions.

Committee Conclusions and Recommendations

As a part of the deliberations following the hearings, the Committee discussed the liability issue and immunity from liability when a DNR order is followed. Following discussion, the Committee concluded that amendatory language addressing immunity should be contained in the statutes governing emergency medical services. H.B. 2672 contains the provision that in the event of an acute cardiac or respiratory arrest, no health care provider (HCP) or EMS personnel who, in good faith, causes or participates in the withholding or withdrawal of cardiopulmonary resuscitation pursuant to a valid DNR order shall not be subject to civil or criminal liability or be found to have committed an act of unprofessional conduct. Conversely, an HCP or EMS person whose decision concerning the validity of a DNR order is made in good faith shall not be subject to criminal or civil liability or disciplinary measures.

The Committee further recommends H.B. 2671 which would enact the Medical Treatment Decision Act and would allow any competent individual, over 18, to make and fully participate in decisions regarding the individual's medical care and treatment. Such participation may be effectuated by oral or written communication to an attending physician, through an agent duly designated pursuant to the Durable Power of Attorney for Health Care Decisions, K.S.A. 1991 Supp. 58-625 *et seq.* or by means of a declaration signed by the declarant and two witnesses using a form substantially as provided in the bill. The bill further designated the procedure for surrogate decision makers for individuals who are incompetent, comatose, or unconscious and in a terminal condition. Various forms of misconduct specified in the bill are punishable as a class A misdemeanor. The Committee additionally recommends the 1992 Legislature consider the merits of S.B. 350 in conjunction with H.B. 2671.

Session of 1992

HOUSE BILL No. 2671

By Special Committee on Judiciary

Re Proposal No. 14

12-23

AN ACT enacting the medical treatment decisions act; amending K.S.A. 1991 Supp. 58-629, 59-3018 and 65-2837 and repealing the existing sections; also repealing K.S.A. 65-28,101 through 65-28,109.

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

New Section 1. As used in this act, unless the context otherwise requires:

(a) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient;

(b) "declaration" means a writing executed in accordance with the requirements of section 3;

(c) "health care provider" means a person who is licensed, certified or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession;

(d) "life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying;

(e) "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity;

(f) "physician" means an individual licensed to practice medicine in this state;

(g) "qualified patient" means a patient 18 or more years of age who has executed a declaration and who has been determined by the attending physician to be in a terminal condition;

(h) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States; and

(i) "terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

New Sec. 2. An individual of sound mind and 18 or more years of age is competent to make and fully participate in decisions concerning such individual's medical care and treatment.

New Sec. 3. An individual otherwise competent as described in section 2 may communicate such individual's decisions on medical care and treatment by any one or more of the following:

(a) Oral or written communication directly to the attending physician when such communication is contemporaneous with the provision of the proposed care or treatment and the patient is conscious and competent.

(b) Through an agent duly designated in a durable power of attorney for health care decisions pursuant to K.S.A. 1991 Supp. 58-625 *et seq.*, and amendments thereto.

(c) By means of a declaration signed by the declarant and either witnessed by two individuals or acknowledged by a notary public, which declaration may be substantially in the following form:

Declaration on Medical Treatment

I, _____, being of sound mind and at least 18 years of age, direct the following:

(*initials of declarant*) I wish to receive all medically necessary or desirable care and treatment, including nourishment and hydration until my death.

OR

(*initials of declarant*) (1) If at any time my attending physician and one other qualified physician certify in writing that:

(A) I have an injury, disease, or illness which is not curable or reversible and which, in their judgment, is a terminal condition, and

(B) I am unconscious, comatose, or otherwise incompetent so as to be unable to make or communicate responsible decisions concerning my person, then

I direct that, life-sustaining treatment shall be withdrawn and withheld pursuant to the terms of this declaration, it being understood that life-sustaining treatment shall not include any medical procedure or intervention for nourishment considered necessary by the attending physician to provide comfort or alleviate pain. However, I may specifically direct that artificial nourishment be withdrawn or withheld pursuant to the terms of this declaration.

(2) In the event that the only procedure I am being provided is artificial nourishment, I direct that one of the following actions be taken:

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(*initials of declarant*) (A) Artificial nourishment shall not be continued when it is the only procedure being provided; or

(*initials of declarant*) (B) Artificial nourishment shall be continued for _____ days when it is the only procedure being provided; or

(*initials of declarant*) (C) Artificial nourishment shall be continued when it is the only procedure being provided.

(*initials of declarant*) (3) The above shall be considered null and void if I am found to be pregnant.

I execute this declaration, as my free and voluntary act, this _____ day of _____, 19 ____.

By _____

(Declarant)

The foregoing instrument was signed and declared by _____ to be such person's declaration, in the presence of us, who, in the declarant's presence, in the presence of each other, and at the declarant's request, have signed our names below as witnesses, and we declare that, at the time of the execution of this instrument, the declarant, according to our best knowledge and belief, was of sound mind and under no constraint or undue influence.

Dated at _____, Kansas, this _____ day of _____, 19 ____.

_____

Name and Address

_____

Name and Address

STATE OF KANSAS)

) ss.

County of _____)

SUBSCRIBED and sworn to before me by _____, the declarant, and _____ and _____, witnesses, as the voluntary act and deed of the declarant this _____ day of 19 ____.

My commission expires:

_____

Notary Public

New Sec. 4. (a) A declarant may revoke a declaration at any time and in any manner, without regard to the declarant's mental or physical condition. A revocation is effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(b) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

New Sec. 5. (a) If an individual who is legally incompetent, unconscious or comatose and who, while competent, has not communicated such individual's decisions on the individual's medical care and treatment pursuant to section 3, it shall be presumed that it is such individual's intent that the individual shall be provided with life-sustaining treatment, including nourishment and hydration.

(b) The presumption set out in subsection (a) shall not exist if it has been determined by the attending physician that: (1) The patient is in a terminal condition; and (2) the authority to consent or withhold consent is exercised by the following individuals, in order of priority:

(A) The spouse of the individual;

(B) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(C) the parents of the individual;

(D) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(E) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation; or

(F) the guardian of the individual, as appointed by article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, if such consent has been approved by the court.

(c) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide, or declines to decide, the next class is authorized to decide, but an equal division in a class does not authorize the next class to decide.

(d) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(e) A decision of the attending physician acting in good faith that a consent is valid or invalid is conclusive.

New Sec. 6. An attending physician or other health care provider who is unwilling to comply with this act shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

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New Sec. 7. (a) A physician or other health care provider is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a declaration, in the absence of knowledge of the revocation of a declaration, or for giving effect to consent under section 5.

(b) A physician or other health care provider, whose action under this act is in accord with reasonable medical standards, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that action.

(c) A physician or other health care provider, whose decision about the validity of consent under section 5 is made in good faith, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that decision.

(d) An individual authorized to consent pursuant to section 5, whose decision is made or consent is given in good faith pursuant to this act, is not subject to criminal or civil liability, or discipline for unprofessional conduct, with respect to that decision.

New Sec. 8. (a) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with section 6 is guilty of a class A misdemeanor.

(b) An individual who willfully conceals, cancels, defaces or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual is guilty of a class A misdemeanor.

(c) An individual who falsifies or forges the declaration of another individual, or willfully conceals or withholds personal knowledge of a revocation, is guilty of a class A misdemeanor.

(d) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a class A misdemeanor.

(e) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a class A misdemeanor.

(f) The penalties provided in this section do not displace any sanction applicable under other law.

New Sec. 9. (a) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this act does not constitute, for any purpose, a suicide or homicide.

(b) The making of a declaration pursuant to section 3 does not affect the sale, procurement or issuance of a policy of life insurance or annuity, nor does it affect, impair or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

(c) A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.

(d) This act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding or withdrawal of life-sustaining treatment in the event of a terminal condition.

(e) This act does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical care.

(f) This act does not require a physician or other health care provider to take action contrary to reasonable medical standards.

(g) This act does not condone, authorize or approve mercy killing or euthanasia.

New Sec. 10. (a) In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with this act and is valid.

(b) A declaration or other similar instrument executed in another state or executed by a resident of another state in compliance with the law of that state or of this state is valid and shall be deemed to have been validly executed, both as to form and substance, for purposes of this act and shall be recognized in this state in the same manner as if such declaration were in form and substance substantially as provided in subsection (c) of section 3.

(c) A declaration or other similar instrument executed anywhere before the effective date of this act which sets out the substance of the wishes of the declarant with respect to the matters covered by this act, shall be effective under this act to the same extent as if such declaration substantially complied with subsection (c) of section 3.

(d) It is recognized as to citizens of other states and declared as to citizens of this state, that the law of the state of the legal residence of a person executing a declaration of the type described in this act governs the form, manner of execution and requirement for the instrument to be witnessed or acknowledged. The law of Kansas governs the wording, the interpretation and the effectiveness of such declaration.

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New Sec. 11. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

New Sec. 12. This act may be cited as the medical treatment decisions act.

New Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 14. K.S.A. 1991 Supp. 58-629 is hereby amended to read as follows: 58-629. (a) A durable power of attorney for health care decisions may convey to the agent the authority to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body;

(2) make all necessary arrangements for the principal at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for the physical, mental and emotional well being of the principal; and

(3) request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

(b) The powers of the agent herein shall be limited to the extent set out in writing in the durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate a previously existing declaration by the principal in accordance with the natural death act. No agent powers conveyed pursuant to this section shall be effective until the occurrence of the principal's disability or incapacity, as defined in K.S.A. 59-3002 and amendments thereto, as determined by the principal's attending physician, as defined in subsection (a) of ~~K.S.A. 65-28,102~~ *section 1,* and amendments thereto, unless the durable power of attorney for health care decisions specifically provides otherwise. Nothing in this act shall be construed as prohibiting an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member.

(c) In exercising the authority under the durable power of attorney for health care decisions, the agent has a duty to act consistent with the expressed desires of the principal.

(d) Neither the treating health care provider, as defined by subsection (c) of K.S.A. 65-4921 and amendments thereto, nor an employee of the treating health care provider, nor an employee, owner, director or officer of a facility described in *subsection (a)(2) of* K.S.A. ~~1989~~ *1991* Supp. ~~58-629(a)(2)~~ 58-629, *and amendments thereto,* may be designated as the agent to make health care decisions under a durable power of attorney for health care decisions unless:

(1) Related to the principal by blood, marriage or adoption; or

(2) the principal and agent are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

(e) A durable power of attorney for health care decisions shall be:

(1) Dated and signed in the presence of two witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's health care; or

(2) acknowledged before a notary public.

(f) Death of the principal shall not prohibit or invalidate acts of the agent in arranging for organ donation, autopsy or disposition of body.

Sec. 15. K.S.A. 1991 Supp. 59-3018 is hereby amended to read as follows: 59-3018. (a) A guardian shall be subject to the control and direction of the court at all times and in all things. It is the general duty of an individual or corporation appointed to serve as a guardian to carry out diligently and in good faith the specific duties and powers assigned by the court. In carrying out these duties and powers, the guardian shall assure that personal, civil and human rights of the ward or minor whom the guardian services are protected.

(b) The guardian of a minor shall be entitled to the custody and control of the ward and shall provide for the ward's education, support and maintenance.

(c) A limited guardian shall have only such of the general duties and powers herein set out as shall be

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specifically set forth in the dispositional order pursuant to K.S.A. 59-3013, and amendments thereto, and as shall also be specifically set forth in "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014, and amendments thereto.

(d) A guardian shall have all of the general duties and powers as set out herein and as also set out in the dispositional order and in the letters of guardianship.

(e) The general powers and duties of a guardian shall be to take charge of the person of the ward and to provide for the ward's care, treatment, habilitation, education, support and maintenance and to file an annual accounting. The powers and duties shall include, but not be limited to, the following:

(1) Assuring that the ward resides in the least restrictive setting reasonably available;

(2) assuring that the ward receives medical care or nonmedical remedial care and other services that are needed;

(3) promoting and protecting the care, comfort, safety, health and welfare of the ward;

(4) providing required consents on behalf of the ward;

(5) exercising all powers and discharging all duties necessary or proper to implement the provisions of this section.

(f) A guardian of a ward is not obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(g) A guardian shall not have the power:

(1) To place a ward in a facility or institution, other than a treatment facility, unless the placement of the ward has been approved by the court.

(2) To place a ward in a treatment facility unless approved by the court, except that a ward shall not be placed in a state psychiatric hospital or state institution for the mentally retarded unless authorized by the court pursuant to K.S.A. ~~1986~~ *1991* Supp. 59-3018a, *and amendments thereto.*

(3) To consent, on behalf of a ward, to psychosurgery, removal of a bodily organ, or amputation of a limb unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(4) To consent on behalf of the ward to the withholding of life-saving medical procedures, except in accordance with provisions of ~~K.S.A. 65-28,101 through 65-28,109~~ *sections 1 through 13*, and amendments thereto.

(5) To consent on behalf of a ward to the performance of any experimental biomedical or behavioral procedure or to participation in any biomedical or behavioral experiment unless:

(A) It is intended to preserve the life or prevent serious impairment of the physical health of the ward; or

(B) it is intended to assist the ward to develop or regain that person's abilities and has been approved for that person by the court.

(6) To prohibit the marriage or divorce of a ward.

(7) To consent, on behalf of a ward, to the termination of the ward's parental rights.

(8) To consent, on behalf of a ward, to sterilization of the ward, unless the procedure is first approved by order of the court after a full due process hearing where the ward is represented by a guardian *ad litem.*

(h) The guardian shall at least annually file a report concerning the personal status of the ward as provided by K.S.A. 59-3029, and amendments thereto.

Sec. 16. K.S.A. 1991 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

(2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

(2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.

(3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.

(4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise

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ing that such person is entitled to practice a branch of the healing arts for which such person is licensed.

(5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.

(6) Willful betrayal of confidential information.

(7) Advertising professional superiority or the performance of professional services in a superior manner.

(8) Advertising to guarantee any professional service or to perform any operation painlessly.

(9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.

(10) Failure to effectuate the declaration of a qualified patient as provided in ~~subsection (a) of K.S.A. 65-28,107~~ *section 8*, and amendments thereto.

(11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.

(12) Conduct likely to deceive, defraud or harm the public.

(13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

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(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

Sec. 17. K.S.A. 65-28,101 through 65-28,109 and K.S.A. 1991 Supp. 58-629, 59-3018 and 65-2837 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

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HOUSE BILL No. 2672

By Special Committee on Judiciary

Re Proposal No. 14

12-23

AN ACT concerning emergency medical services; relating to do not resuscitate orders; amending K.S.A. 1991 Supp. 65-6124 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 65-6124 is hereby amended to read as follows: 65-6124. (a) No person licensed to practice medicine and surgery or registered professional nurse, who gives emergency instructions to a mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate during an emergency, shall be liable for any civil damages as a result of issuing the instructions, except such damages which may result from gross negligence in giving such instructions.

(b) No mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate who renders emergency care during an emergency pursuant to instructions given by a person licensed to practice medicine and surgery or a registered professional nurse shall be liable for civil damages as a result of implementing such instructions, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate rendering such emergency care.

(c) No person certified as an instructor-coordinator shall be liable for any civil damages which may result from such instructor-coordinator's course of instruction, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of the instructor-coordinator.

(d) No medical adviser who reviews, approves and monitors the activities of attendants shall be liable for any civil damages as a result of such review, approval or monitoring, except such damages which may result from gross negligence in such review, approval or monitoring.

(e) In the event of a person's acute cardiac or respiratory arrest, no health care provider or emergency medical service personnel, as specified in K.S.A. 1991 Supp. 65-6112, and amendments thereto, who in good faith causes or participates in the withholding or withdrawing of cardiopulmonary resuscitation pursuant to a do not resuscitate order shall be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct. As used in this section, a do not resuscitate order shall be signed by the person making the order, or by another person in the presence of the person making the order and by the expressed direction of the person making the order, and: (1) Signed in the presence of two or more witnesses at least 18 years of age neither of whom shall be the person who signed the order on behalf of and at the direction of the person making the order, related to the person making the order by blood or marriage, entitled to any portion of the estate of the person making the order according to the laws of intestate succession of this state or under any will of the person making the order or codicil thereto, or directly financially responsible for the medical care of the person making the order; or (2) signed by the person's attending physician. A health care provider or emergency medical services personnel whose decision about the validity of the signed do not resuscitate order is made in good faith is not subject to criminal or civil liability, or discipline for unprofessional conduct with respect to that decision.

Sec. 2. K.S.A. 1991 Supp. 65-6124 is hereby repealed.

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

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