

Approved: March 5, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:12 a.m. on February 25, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Senator Harris opened the meeting for subcommittee reports:

SB 67 - Amendments to the protection from abuse act

Senator Petty reported on **SB 67**, amendments to the protection from abuse act, and stated the subcommittee resolves that the bill be passed out of committee and recommended favorably for passage. (attachment 1) Discussion followed regarding technical language changes needed in the bill to be amended as follows: 1-18 add the word "had"; 2-1 add "court finds"; and 2-22 after sworn testimony add "at a hearing". Senator Harrington made a motion to pass the SB 67 out favorably as amended. Senator Emert seconded. Motion carried.

SB 70 - Expanding the definition of community service work under the tort claims act to include assignments by the parole board or the department of corrections

Senator Harrington reported on **SB 70**, Kansas tort claims act. She stated that Senator Petty had questions regarding this bill and asked that her opinion be submitted. Jan Johnson, Kansas Dept. of Corrections explained on inquiry by committee that the bill was introduced so that minimum custody offenders who are working outside the correctional facility in the community could have immunity from liability. Senator Oleen suggested that language in the bill be included that would identify that these are minimum security people. The subcommittee was divided on **SB 70** and recommended the bill be heard before the full committee. (attachment 2) No action taken at this time.

SB 96 - Marital property to include professional goodwill in certain circumstances

Senator Harrington reported on **SB 96**, a bill brought forth by the Kansas Bar Asso. which relates to domestic relations; marital property and professional goodwill and essentially amends KS A 23-201. The subcommittee resolved that due to the controversial nature of the amendments, **SB 96** should be heard before the full committee. (attachment 3) Senator Emert moved the bill be passed without amendments. Senator Petty seconded. Motion carried.

SB 255 - Persons in custody after felony conviction who file habeas corpus petition not entitled to be provided counsel

Senator Emert reported on **SB 255**, persons in custody after felony conviction who file habeas corpus petition not entitled to be provided counsel. He stated that there are two types of habeas corpus actions that are brought by people that are confined after conviction. One is commonly referred to as 1501 action and the other is 1507 actions. He described 1501's as condition of confinement actions. A district judge has been appointing attorneys requiring the Board of Indigents' Defense to pay for those. There is no constitutional requirement that attorneys be appointed for those condition of confinement type actions. 1507 actions says that if anyone is unlawfully incarcerated under the law, the court can determine if it has merit, to determine merit an attorney is then appointed. The bill provides clarification on when the state is required to appoint lawyers and when they are not. Senator Emert moved that SB 255 be passed out favorably. Senator Goodwin seconded. After discussion the motion carried.

SB 269 - Collection of fingerprints and criminal history for persons applying for admission to practice law

Senator Schraad reported on **SB 269**. He stated the subcommittee resolved that **SB 269** be passed out of committee and recommended for passage. (attachment 4) Senator Schraad made a motion to pass SB 269 out favorably. Senator Feleciano seconded. Following discussion, motion carried.

SB 214 - Law enforcement; sheriffs qualifications and officer training requirements

Senator Harris reported on **SB 214**, a bill requested by Kyle Smith, KBI. It provides that if law enforcement officers have been out of the law enforcement business for 5 years or more than they must retrain or recertify at a law enforcement training center if they wish to retain privileges as law enforcement officers; the second provision of the bill makes law enforcement officers not capable of carrying a weapon if they have been convicted of domestic violence. This brings Kansas law into conformity with the federal requirement that was passed last year; the last provision of the bill provides that a database cannot be accessed by a felon employed by a law enforcement agency. No opponents to the bill. Senator Harris moved that the bill be passed out favorably. Senator Oleen seconded. Motion carried.

SB 257 - Penalties for certain violations involving minors and alcoholic liquor and cereal malt beverages

Senator Harris reported on **SB 257**, the attorney general's Campus package which enhances the penalty for selling or furnishing liquor or cereal malt beverages to minors. It's a B Misdemeanor under this bill and upon second or subsequent convictions it becomes an A Misdemeanor. There were no opponents to the bill. Senator Harris moved the bill be reported out favorably. Senator Gilstrap seconded. Motion carried with Senators Pugh and Oleen voting nay.

SB 258 - Attendance of defendants or parolees at secondary or post secondary educational institutions

Senator Harris reported on **SB 258**, a bill that is part of the attorney general's Campus package. The bill allows the authorities supervising convicted felons to, under appropriate circumstances, review and deny their rights to attend certain institutions of higher learning. An amendment places this onus on the court services officers rather than the parole board and there was an amendment requested by the Kansas NEA to require that the institutions be notified concerning this question. Following discussion Senator Harris moved to pass the bill out favorably. Senator Gilstrap seconded. Motion failed.

SB 291 - Registration requirements for persons who commit certain crimes involving children and sex offenses

SB 311 - Registration of murderers

Senator Harris reported on **SB 291**, registration of sexual offenders. This bill brings Kansas into federal compliance with the sexual offender registration act. It expands the list of crimes to more crimes involving children and provides for location checks on the registrants every 90 days. Senator Harris suggested **SB 311**, which is similar to **SB 291**, be amended into **SB 291** so that certain language in **SB 311** would be included in **SB 291**, that is "murder, second degree murder, and manslaughter". Following discussion Senator Harris moved that **SB 311** be amended into **SB 291** and the bills be passed out favorably with technical amendments. Senator Emert seconded. Motion carried.

The chair adjourned the meeting at 11:03 a.m.

The next scheduled meeting is on the call of the Chair.

5/16/88 2/25 AT#1

Judiciary Subcommittee Report - SB 67

Wednesday, February 19, 1997

Members: Senator Nancey Harrington
Senator Marge Petty

SB 67 was brought forth with a request by the Family Law Advisory Committee to the Kansas Judicial Council, Brian Moline appearing as a conferee, and relates to the Protection from Abuse Act.

The first section of the bill would expand the Protection from Abuse Act to include persons who have a child in common, although they may not have been married or shared a residence. It also replaces language to "intentionally" and "intentionally and recklessly" for "willfully" and "willfully and wantonly" to conform with criminal code.

The third section prevents a temporary order from modifying an existing custody, residency or visitation order without showing good cause.

Next, the bill allows the court to prevent the party not granted possession of the residence or household from canceling utility service.

Finally, the bill insures consistency and that the appropriate order controls when both a protection from abuse action order and a divorce or other action exist contemporaneously.

Your subcommittee resolves that SB 67 should be passed out of committee and recommended favorably for passage.

*Senate Judiciary
Attachment 1
2-25-97*

TESTIMONY OF BRIAN J. MOLINE ON SB67

Good morning.

My name is Brian Moline, and I appear today on behalf of the Family Law Advisory Committee to the Kansas Judicial Council. I have served on the Committee for over 20 years and most of the current statutory domestic law of the state is a product of Committee deliberations.

SB67 represents a clean-up of the existing Protection From Abuse Act - K.S.A. 60-3102 et seq. - and results from either complaints brought to the Committee's attention by judges and practitioners or an attempt to conform the Kansas statute as much as possible to the Model State Code.

Section 1-16-18 simply adds a new classification - persons "who have a child in common" - to the current classification of persons who reside together or who formerly resided together within the purview of the Protection From Abuse Act.

Several Kansas judges complained of this omission and, in fact, there is evidence that persons who may never have resided together but have a child in common are among the most frequent fact situations coming to court.

Section 1(a) simply substitutes the words "intentionally" and "intentionally and recklessly" for "willfully" and "willfully and wantonly," respectively. This conforms the language to the criminal where "intentionally" and "intentionally and recklessly" have been systematically replaced with the suggested language.

Section 2(a) and (b) simply adds the new "or has a child in common" language to the existing sub-sections.

Section 1(e) is an attempt to provide statutory underpinning for a commonly exercised discretion of the district judges and is adopted at the request of several district judges around the state.

Section 3(b) attempts to address a problem brought to the Committee's attention by Mr. Charles Harris, an active family law practitioner in Wichita. According to Mr. Harris, there have been more than a few cases where attempts have been made to utilize the summary and ex parte protection from abuse process to amend an existing custody, residency or visitation order. This provision is meant to assure that the protection from abuse process cannot be utilized to change an existing order.

Section 4(2) is proposed to be amended to insure that a party not granted possession of a common residence by the court but in whose name the utilities are registered cannot retaliate against the abused party by canceling utility service. This situation was brought to the Committee's attention by Judge Nelson Toburen of Pittsburgh.

Section 4 (9)(b) is proposed to be amended to attempt to insure consistency and that the appropriate Order controls when both a protection from abuse action under K.S.A. 60-3102 and a divorce or other action under K.S.A. 60-1601 exist contemporaneously.

These suggested amendments will, in the belief of the Committee and the Judicial Council, strengthen and improve the Protection From Abuse Act.



KANSAS JUDICIAL COUNCIL

JUSTICE TYLER C. LOCKETT, CHAIR, TOPEKA
JUDGE J. PATRICK BRAZIL, TOPEKA
JUDGE MARLA J. LUCKERT, TOPEKA
JUDGE NELSON E. TOBUREN, PITTSBURG
SEN. MICHAEL T. HARRIS, WICHITA
REP. TIM CARMODY, OVERLAND PARK
J. NICK BADGEROW, OVERLAND PARK
GERALD L. GOODELL, TOPEKA
PHILLIP MELLOR, WICHITA
MARVIN E. THOMPSON, RUSSELL

Kansas Judicial Center
301 West Tenth Street, Suite 262
Topeka, Kansas 66612-1507

Telephone (913) 296-2498
Facsimile (913) 296-1035

RANDY M. HEARRELL
RESEARCH DIRECTOR
MATTHEW B. LYNCH
RESEARCH ASSOCIATE
JANELLE L. WILLIAMS
ADMINISTRATIVE ASSISTANT
TAMMIE L. STANLEY
ADMINISTRATIVE ASSISTANT

February 19, 1997

Senator Nancey Harrington
State Capitol, Room 128-S

Senator Marge Petty
State Capitol, Room 422-S

Re: 1997 Senate Bill 67

Dear Senator Harrington and Senator Petty:

Thank you for your favorable consideration of 1997 Senate Bill 67 relating to protection from abuse which was recommended by the Kansas Judicial Council and heard in your subcommittee Wednesday, February 19, 1997. I am writing to follow up on the discussion of the changes in the bill, occurring on page 1 between lines 19 and 21, which involve the striking of the word "willfully" and substituting the word "intentionally" and striking the word "wantonly" and substituting the word "recklessly."

Despite the fact the protection from abuse Act is in K.S.A. Chapter 60, the Committee recognized that the kinds of acts that give rise to the issuance of protection from abuse orders are "criminal-like" acts. It is consistent with the criminal code to substitute "intentionally" for "willfully" and "recklessly" for "wantonly." (L. 1993, ch. 291 made these substitutions throughout the criminal code.)

In the criminal code, the definitions are found at K.S.A. 21-3201 (b) and (c) and read as follows:

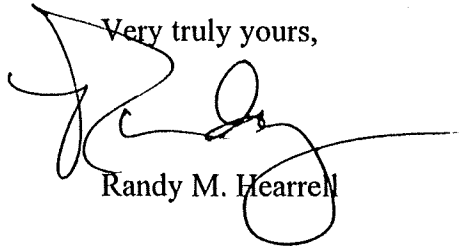
"(b) Intentional conduct is conduct that is purposeful and willful and not accidental. As used in this code, the terms 'knowing,' 'willful,' 'purposeful,' and 'on purpose' are included within the term 'intentional.'"

Senator Harrington and Senator Petty
February 19, 1997
Page 2

“(c) Reckless conduct is conduct done under circumstances that show a realization of the imminence of danger to the person of another and a conscious and unjustifiable disregard of that danger. The terms ‘gross negligence,’ ‘culpable negligence,’ ‘wanton negligence’ and ‘wantonness’ and included within the term ‘recklessness’ as used in this code.”

I hope this information helps you when the bill is discussed. Please contact me if I can be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Randy M. Hearrell", with a long horizontal flourish extending to the right.

Randy M. Hearrell

RMH/ts

Judiciary Subcommittee Report - SB 70

Wednesday, February 19, 1997

Members: Senator Nancey Harrington
Senator Marge Petty

SB 70 was brought forth with a request by the Department of Corrections, Charles Simmons, Secretary, and relates to tort claims, expanding the definition of community service work. Secretary Simmons was unable to attend the subcommittee meeting, but submitted written testimony in favor of the bill.

This bill provides for governmental immunity for claims arising out of community service work performed by offenders assigned by the Kansas Parole Board and the Department of Corrections. This immunity would be identical to that currently provided under the Tort Claims Act for work performed by other offenders in conjunction with: a diversion from criminal prosecution; court-ordered placement into a community corrections program; probation or suspended sentence; in lieu of a fine; or a juvenile disposition.

Secretary Simmons feels the opportunities provided by community service work contribute to the Department of Corrections' goals of assuring accountability and responsibility of the offender population, and providing programs and services that increase the chances for offenders to succeed in the community.

Senator Petty submitted the following opinion on SB 70:

SB 70 sends a questionable public safety message to communities. The bill removes the state from any liability if inmates of DOC creates damage when they are a member of a community work crew. Inmates in this bill have committed higher level crimes than those for whom the state's liability has been removed.

The "community work" is designed to teach inmates to take responsibility for themselves. It is paradoxical if, at the same time, we are relieving the state from responsibility of someone under the state's supervision. Communities need to be assured the state will take responsibility for tight supervision of those in their custody, exercise the duty of care and that the state is accountable for that population.

Your subcommittee is divided on SB 70, and recommends the bill be heard before the full committee.

*Senate Judiciary
Attachment 2
2-25-97*



DEPARTMENT OF CORRECTIONS
 OFFICE OF THE SECRETARY
 Landon State Office Building
 900 S.W. Jackson — Suite 400-N
 Topeka, Kansas 66612-1284
 (913) 296-3317

Bill Graves
 Governor

Charles E. Simmons
 Secretary

MEMORANDUM

Date: February 19, 1997
 To: Senate Judiciary Subcommittee
 From: Charles E. Simmons, Secretary
 Subject: Testimony on SB 70

SB 70 was introduced at the request of the Department of Corrections and amends KSA 1996 Supp. 75-6102(e), a section of the Tort Claims Act. The bill expands the definition of "community service work" to include public or community service work performed pursuant to assignment by the Kansas Parole Board or the Department of Corrections. The effect of the amendment is to provide governmental immunity for claims arising out of work performed by offenders pursuant to assignment by the Kansas Parole Board and the Department of Corrections. This immunity would be identical to that currently provided under the Tort Claims Act for work performed by other offenders in conjunction with: a diversion from criminal prosecution; court-ordered placement into a community corrections program; probation or suspended sentence; in lieu of a fine; or, a juvenile disposition.

The opportunities provided by community service work contribute to departmental goals of assuring accountability and responsibility of the offender population and providing programs and services that increase the chances for offenders to succeed in the community. By eliminating potential claims against the state and other governmental entities, SB 70 will facilitate the department's efforts to fully develop community service work projects to be implemented by offenders as a condition of release or sanction for violation of release conditions, and by inmates on work details assigned to assist government agencies and charitable organizations.

The department recently has undertaken initiatives to expand community service work performed by inmates and by offenders under postincarceration supervision. In FY 1996, inmates performed over 600,000 hours in community service work. In June 1996, the department received federal grant funds to establish supervised work details in Wichita, Kansas City, and Topeka—which will result in a significant increase in community service performed by offenders on postrelease supervision, and will also provide additional sanction options for noncompliant offenders. SB 70 would simply afford the department with the same immunity which currently exists for other jurisdictions who order community service work to be performed by offenders.

93WA 2/25/97 1013

Judiciary Subcommittee Report - SB 96

Wednesday, February 19, 1997

Members: Senator Nancey Harrington
Senator Marge Petty

SB 96 was brought forth by the Kansas Bar Association, Steve Blaylock, and relates to domestic relations; marital property and professional goodwill.

This bill essentially amends KSA 23-201 to include professional goodwill in the division of marital property during a divorce proceeding.

Two amendments have been offered by the Kansas Medical Society, Jerry Slaughter, Executive Director. The first amendment provides a more detailed definition of "professional goodwill"; to the extent that it is recognized as a factor in the valuation of a spouse's professional business.

The second amendment attempts to provide confidentiality and prevent the disclosure or release of business documents which pertain to any partners, owners, directors, officers or other persons who are not a party to the divorce action.

Both of these amendments are supported by the Kansas Chapter, American Institute of Architects. Trudy Aron, Executive Director, testified before the subcommittee.

The Kansas Bar Association remains opposed to these amendments, and is of the opinion that the suggested amendment limits professional goodwill to the extent it can be identified in the business records of a spouse. To properly value a professional practice, the full business records need to be examined, even if not under the control of the spouse involved in the divorce proceeding. The valuation should also include future contracts, work in progress, etc.

On the second amendment, the Kansas Bar Association's opinion is that existing statutes provide for confidentiality if requested by the lawyer in a divorce case, and the court determines that the statutory requirements for confidentiality are met.

Your subcommittee resolves that due to the controversial nature of the amendments, SB 96 should be heard before the full committee.

*Senate Judiciary
attachment 3
2-25-97*

WOODARD, BLAYLOCK, HERNANDEZ, ROTH & DAY

ATTORNEYS AT LAW

833 NORTH WACO, RIVERFRONT PLACE

P.O. BOX 127

WICHITA, KANSAS 67201-0127

TELEPHONE (316) 263-4958

TELEFAX (316) 263-0125

STEPHEN J. BLAYLOCK
CINDY L. CLEOUS
STEVEN C. DAY
JAMES Z. HERNANDEZ
JAMES R. ROTH
LEE H. WOODARDJULIE BEEMILLER
PAMELA CLANCY
CHRISTOPHER S. COLE
DWIGHT D. FISCHER
TERESA L. MAH
JERRY D. RANKOF COUNSEL
GREER GSELL**TRANSMITTED VIA FACSIMILE****Memorandum**

To: Ron Smith

From: Stephen J. Blaylock

Date: February 20, 1997

Subject: Senate Bill No. 96

Ron, to supplement my oral and written testimony presented to the Senate Judiciary Committee, I have the following comments as they relate to the memo and proposed amendments by Jerry Slaughter on behalf of the Kansas Medical Society.

1. The suggested amendment limits professional good will in divorces to the extent it is recognized in the business records of either spouse. Under current law, when we value a professional practice, we look at the business records of whoever is in control of the records, which person may not necessarily be the spouse of the individual in that particular profession. Thus, we are entitled to examine all aspects of the business, which extends to taking depositions of other shareholders and partners to determine the value without regard to professional good will. This is due to the fact that when a divorce action is filed, the valuation of every marital asset is mandatory and the attorneys are free to pursue all necessary legal avenues to achieve that valuation.

Valuation is not simply limited to business records. For example, it includes future contracts, work in process, fair market analysis, etc., which are sometimes not reflected in business records. Therefore, not only is this amendment unacceptable, but it would be a step backward in the valuation of any practice, including that of lawyers, under the current law. Also the suggested amendment takes away the definition of practice good will which needs to be defined to protect the professionals.

In regard to the amendment suggesting confidentiality, upon a request by the lawyer in a divorce case, the divorce court will grant it after satisfying itself that the statutory requirements for confidentiality are met. I don't think we should interfere with the existing statutes.

With regard to Mr. Slaughter's concerns of how Senate Bill 96 will apply to current practice arrangements, they are totally without merit. This is because in more than 90% of these practices, the professional value is determined by arm's length buy-sell agreements. These are typically binding on the court and exclude good will.

If there is anything else the Committee or Subcommittee needs, please feel free to contact me.

AIA Kansas

A Chapter of The American Institute of Architects

February 21, 1997



TO: Senator Nancey Harrington and Senator Marge Petty

FROM: Trudy Aron, Executive Director

RE: SB 96

President

Vincent Mancini, AIA
Garden City

President Elect

Alan M. Stecklein, AIA
Hays

Secretary

Gregory E. Schwerdt, AIA
Topeka

Treasurer

David G. Emig, AIA
Emporia

Directors

Neal J. Angrisano, AIA
Overland Park

Richard A. Bartholomew, AIA
Overland Park

Leslie L. Fedde, Associate AIA
Wichita

Robert D. Fincham, AIA
Topeka

Tod A. Ford, Associate AIA
Wichita

Sarah L. Garrett, AIA
Manhattan

John Gaunt, FAIA
Lawrence

Diana L. Hutchison, AIA
Topeka

Eugene Kremer, FAIA
Manhattan

Bruce E. McMillan, AIA
Manhattan

Wendy Ornelas, AIA
Manhattan

Charles R. Smith, AIA
Topeka

F. Lynn Walker, AIA
Wichita

John M. Wilkins, Jr., AIA
Lawrence

Executive Director

Trudy Aron, Hon. AIA, CAE

Thank you for allowing me to testify, again, before your Subcommittee on SB 96. I appreciate your willingness to give us additional time to get more information on this issue.

After reading the testimony offered by Steve Blaylock of the Family Law Section of the Kansas Bar Association, we now have a better understanding of the bill. However, we still have some concerns which are very similar to those expressed by Jerry Slaughter of the Kansas Medical Society.

These concerns center on the lack of definition of "professional goodwill to the extent that it is marketable" and the protection of the confidentiality of partners or co-owners records not involved in the divorce. We, like the Medical Society, would prefer that the issue be further studied before the current law is amended. However, if the bill will be moved out of committee, we support the amendments proposed by the Medical Society which are attached.

Thank you for giving me an opportunity to clarify our position and provide you with additional information. I would be happy to answer any questions you may have.

700 SW Jackson, Suite 209
Topeka, Kansas 66603-3757
Telephone: 913-357-5308
800-444-9853
Facsimile: 913-357-6450

3-4

SENATE BILL No. 96

By Committee on Judiciary

1-24

9 AN ACT concerning domestic relations; relating to marital property; pro-
10 fessional goodwill; amending K.S.A. 23-201 and repealing the existing
11 section.

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

14 Section 1. K.S.A. 23-201 is hereby amended to read as follows: 23-
15 201. (a) The property, real and personal, which any person in this state
16 may own at the time of the person's marriage, and the rents, issues, profits
17 or proceeds thereof, and any real, personal or mixed property which shall
18 come to a person by descent, devise or bequest, and the rents, issues,
19 profits or proceeds thereof, or by gift from any person except the person's
20 spouse, shall remain the person's sole and separate property, notwith-
21 standing the marriage, and not be subject to the disposal of the person's
22 spouse or liable for the spouse's debts.

23 (b) All property owned by married persons, including the present
24 value of any vested or unvested military retirement pay, or, for divorce
25 matters commenced on or after July 1, 1997, professional goodwill to the
26 extent that it is marketable for that particular professional, whether de-
27 scribed in subsection (a) or acquired by either spouse after marriage, and
28 whether held individually or by the spouses in some form of co-owner-
29 ship, such as joint tenancy or tenancy in common, shall become marital
30 property at the time of commencement by one spouse against the other
31 of an action in which a final decree is entered for divorce, separate main-
32 tenance, or annulment. Each spouse has a common ownership in marital
33 property which vests at the time of commencement of such action, the
34 extent of the vested interest to be determined and finalized by the court,
35 pursuant to K.S.A. 60-1610 and amendments thereto.

36 Sec. 2. K.S.A. 23-201 is hereby repealed.

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

extent that it is recognized in the business records of either spouse who is a professional as a factor in the valuation of such spouse's professional business

(c) The information and records necessary to establish professional goodwill pursuant to subsection (b) which pertain to or identify any partners, owners, directors, officers or other persons not a party to the divorce, separate maintenance or annulment action are confidential and shall not be released, disclosed, made the subject of discovery or evidentiary proceedings in the action

3-5



KANSAS MEDICAL SOCIETY

February 11, 1997

TO: Senate Judiciary Committee

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 96; relating to professional goodwill in divorce actions

Because of a conflicting hearing in Public Health & Welfare, I was not able to comment on SB 96 when it was heard on Thursday, February 6. We would like to take this opportunity to offer a couple of points for the committee's consideration. Let me make it clear that we neither oppose or support this bill. We do have some questions about the potential effects, possibly unintended, of the legislation.

Our concerns are in two areas. First, the valuation of "goodwill" is entirely subjective, and will require that all the business records of the partnership become a matter for various experts to review to establish goodwill value. This will subject the other partners, officers and directors in a professional practice to deposition and disclosure of their confidential business records, merely because one of the partners is going through a divorce. This will be intrusive, time consuming and potentially damaging to the partners if proprietary or confidential business information becomes public as a result of the divorce proceeding.

Second, we are concerned about how this provision will be applied in the context of current practice arrangements. The growing influence of managed care is transforming the business, as well as the clinical side of medicine. Physicians are entering into practice arrangements that simply didn't exist only a few years ago. Independent Practice Associations, sometimes known as "clinics without walls," in which multiple groups share varying levels of financial integration and risk, are becoming common. How will the proposed change in SB 96 affect these IPAs? Will the business records of every independent physician in the IPA be subjected to disclosure in order to value the professional goodwill of the one going through the divorce? What about physician practices which are owned in whole or in part by hospitals? Will the assets, and the goodwill, of the hospital figure into the calculation of professional goodwill of the employed or affiliated physician? What impact will the various managed care contracts which are in place in a physician's practice affect the goodwill valuation? Do contracts in which some of the financial risk of patient care is transferred to a physician, such as capitation or withhold arrangements, increase or decrease the goodwill of a practice?

Senate Judiciary Committee
SB 96
February 11, 1997
Page Two

These questions should be addressed in advance through some definition of terms or expression of legislative intent. For example, the phrase "professional goodwill to the extent that it is marketable" is not defined, making it very subjective and open to interpretation. What is "professional goodwill" and what is "marketable?" Because these terms are not defined, we think the whole issue needs to be further studied before the current law is amended. However, if the committee wants to move the bill out, we would suggest a couple of amendments to address the concerns identified above.

We have attached a balloon containing some amendments which should make the new provision less subject to wide interpretation, as well as protecting the business records of partners not involved in the divorce. We would urge their adoption if the committee decides to work the bill. Thank you for the opportunity to offer these comments.

S. 507 2/25/97 attached

JUDICIARY SUBCOMMITTEE REPORT - Senate Bill 269
Wednesday, February 19, 1997

Members: Senator Keith Schraad
Senator Paul Feliciano

SB 269 was brought forth with a request by the office of Judicial Administration.

The bill allows the Supreme Court to receive all applicants for regular admission to practice law in this state to be fingerprinted. The fingerprints will be used to determine whether the applicant has a record of criminal arrests. The cost of the fingerprinting would be borne by the applicant.

Paul Shelby, of the Office of Judicial Administration and Mark Anderson, the Disciplinary Administrator, spoke as proponents of this bill.

There were no opponents.

Your subcommittee resolves that SB 269 should be passed out of committee and recommended for passage.

Senate Judiciary
Attachment 4
2-25-97