

Approved: 4/1/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 4, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Carla Stovall, Kansas Attorney General
Darrell Masoner, Pittsburg State University Police
Gary Pettijohn, Kansas Peace Officers Association and Washburn University Police
Ralph Oliver, University of Kansas Police Officers
Ronny Grice, Kansas State University Police Officers
Charles Rummery, Chief, Wichita State University
Martha Neu Smith, Kansas Manufactured Housing Association
Rebecca Rice
A. J. Kotich, Chief Counsel, Department of Human Resources
George Wolf, Deputy Director, Employment Security Officer
Susan Hazlett, Hearing Officer for Labor Standards
John LaFaver, Secretary, Department of Revenue
Mary Jane Stattelman, Kansas Department of Agriculture
Glenda Cafter, General Counsel, Kansas Corporation Commission
Paul Wilson, Kansas Association of Public Employees (KAPE)

Others attending: See attached list

The Chair called the meeting to order.

HB 2676 **Providing for the disposition of valueless mobile and manufactured homes**

Martha Neu Smith, Kansas Manufactured Housing Association, testified in support of **HB 2676**. The conferee stated that this bill will provide for a timely process for disposition of valueless mobile homes that are abandoned in a mobile home park. The conferee detailed the current process. The conferee stated that this bill was modeled after Iowa's law. (Attachment 1)

The Committee members and Conferee Smith discussed due process protection and the standard for abandonment. In response to a question, Conferee Smith stated that under the Uniform Commercial Code statute a significant amount of time can pass before a sheriff's sales. This bill provides for a timely disposition of abandoned mobile homes sparing the property owner from additional expense of upkeep. Conferee Smith discussed the default time period.

The Chair closed the hearing on **HB 2676**.

SB 256 **Jurisdiction of university police officers**

Attorney General Carla Stovall testified in support of **SB 256**. The Conferee stated that this bill was a result of recommendations from the C.A.M.P.U.S. Task force. This bill will address the difficulty encountered by university police officers in responding to students and faculty when the property on which the offense occurred was not university property. The conferee stated that this bill does not automatically confer extended jurisdiction, but leaves it to the appropriate university and local government officials to reach an agreement as to the parameters and circumstances under which extended jurisdiction will be conferred. The conferee stated that this bill will allow the option to expand the jurisdiction, similar to the amendment in a previous session

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MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 4, 1998.

that dealt with the jurisdiction of the KU Medical Center. The conferee stated that this bill is supported by university police officers, municipal law enforcement officers, students and university administrators. (Attachment 2)

The conferee responded to Committee member's questions.

Darrell Masoner, Pittsburg State University Police, testified in support of **SB 256**. The conferee stated that he represents the Directors and Chiefs of Police of Regent's institutions in Kansas along with the Chief of Police at Washburn University. Conferee Masoner discussed the jurisdictional situation and problems in his area. The conferee stated that this bill will strengthen law enforcement capabilities in Pittsburg. (Attachment 3)

Conferee Masoner discussed with the Committee issues concerning the determination of jurisdiction and questions concerning potential liability for the state.

Gary H. Pettijohn, Director of Police/Security, Washburn University and Kansas Peace Officers Association testified in support of **SB 256**. The conferee discussed reasons this bill is needed by university police. The conferee stated that the university police often need to transport deposits off campus and transport prisoners to correctional facilities. The conferee stated that there are occasions where a campus police officer may be off campus on duty related business and observe a crime take place in front of him. The officer should have statute authority to take police action. (Attachment 4)

Ralph Oliver, University of Kansas Police Officers, testified in support of **SB 256**. The conferee stated that currently they have agreements with city officers as to who will work a case. This bill would put in statute those current agreements. The conferee stated that it is necessary to cross the city on the way to other campus buildings.

In response to a Committee member's question, the conferee stated that additional staff would not be required if this bill passed. The Conferee Oliver stated that campus police understand the students' needs and that the university has adequate staff.

Ronny Grice, Kansas State University Police Officers, testified in support of **SB 256**. The conferee stated that KSU has lost cases because they were out of the jurisdiction. Conferee Grice stated that there are 18,000 students and only 3,000 live on campus. The conferee stated that this bill will allow campus police to be a little more visible and act as a deterrent. This bill will help to improve the campus university police's investigative powers.

Charles Rummery, Chief, Wichita State University, testified in support of **SB 256**. The conferee stated that the University has approximately 2,000 students living in housing close to campus. The conferee noted that there are many international students attending Wichita State University and several have been victims of burglaries and robberies during the past two or three years. The conferee discussed language barriers presented by the international students and the resources at the university to handle those barriers. The conferee stated that in the transporting of prisoner, if a battery occurs, currently it would be a simple battery, with this bill the charge would be battery of an officer. The conferee stated that university police have KLETC service training. The conferee stated that this bill will provide better service for the students. (Attachment 5)

The Chair closed the hearing on **SB 256** and stated that the bill will be worked next week.

HB 2531 **Prevention of assisted suicide act**

The Chair opened discussion on **HB 2531** and referred to a balloon showing technical changes/corrections and changes to sections 8 and 9 of the bill. The Committee discussed the changes contained in the balloon. The Chair stated that the balloon should also include the Medical Society's requested balloon adding the word "intent" in two places. The Chair stated that on line 31 on the first page, the KMS requested that after the words, "with the" to insert the words, "intent and" ("with the intent and purpose of assisting another"). On page 2, line 1 should read, "ministered, prescribed or dispensed with the intent to cause death." The Chair stated that the purpose of the proposed amendment is to limit action for civil damages. The Chair stated that New Section 5 lists an action for injunctive relief against someone who is believed about to violate this act and it gives standing to various people. The Chair discussed New Section 6 of the bill. The cause of action for civil damages would be limited to those class of people listed in the bill for the intent to commit the act as well as for the commission of assisting in a suicide. The Chair stated that the balloon list specifies "the personal representative of" that could be a guardian or conservator etc. or the spouse, children, parent, sibling who are entitled to inherit from the person who did or would commit suicide.

Representative Pauls questioned the structure of the language in the balloon on page 2. The Chair suggested

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that the balloon language of New Sec. 6 could read: "who is the spouse, parent, child, sibling, or entitled to inherit from the person or who is the personal representative of the person who did or would commit suicide" (Attachment 6).

The Committee members discussed the impact this bill would have in various family situations. The Committee members discussed who would have standing to seek an injunction to stop a suicide or an attempt.

A motion was made by Representative Wilk, seconded by Representative Mays to adopt the balloon with the rephrasing of language in New Section 6 and the language of KMS. The motion carries.

Representative Klein raised the issue as to whether the terms, "force or duress" is consistent with the definition of suicide.

The Committee members discussed the potential for lawsuits among family members.

Representative Klein made a motion, second by Representative Kirk to add language stating that there would be immunity from suit if the person is related by blood or marriage to the person who committed suicide. The motion fails.

Representative Adkins stated that this civil cause of action represents "piling on" by those people that can bring suit against those being sued. The Representative discussed whether Sections 6 and 7 were necessary for the purpose of this bill and the problems that could result from those sections.

Representative Adkins made a motion, Representative Ruff seconded the motion to amend the bill by deleting Sections 6 and 7. The motion fails.

The Committee discussed the phrase, "providing a physical means by which another person commits or attempts to commit suicide."

Representative Pauls stated referring to line 17 on page one of the bill, that the word "assisting" should be "assisted" to keep the bill's vernacular consistent with the title.

Representative Pauls made a motion, seconded by Representative Wilks to amend line 17 on page one of the bill by changing the word, "assisting" to "assisted". The motion carries.

A motion was made by Representative Wilk, seconded by Representative Presta to recommend HB 2531 favorably as amended. The motion carries.

HB 2604 **Requiring all state agencies who conduct hearings under the administrative procedure act to use administrative law judges from the office of administrative hearings if not conducted by the agency head.**

The Chair opened the continuation of the hearing on **HB 2604**. The Chair stated that the proponents had testified on January 29, but time did not allow all of the opponents to testify. The Chair stated that an additional proponent, and two conferees who are neutral will also be testifying today.

John LaFaver, Secretary, Department of Revenue, testified in opposition to **HB 2604**. The conferee stated that the appeals process in his department has been changed. Conferee LaFaver expressed concern that the positive improvements made by his department would be compromised by this legislation. The conferee asked that the committee give consideration to clearly removing all the department's proceedings from the provisions of this bill. Conferee LaFaver stated that his department has very few KAPA hearings and that no appeals personnel could be transferred from his department since the vast bulk of their work involves non-KAPA matters. (Attachment 7)

The Committee and staff discussed with Conferee LaFaver the language pertaining to the transfer of staff. The Revisor suggested that language could be clarified to state that just the administrative officer assigned to the KAPA hearings be transferred. Conferee LaFaver stated that there are no officer specifically assigned to KAPA hearings at the Department of Revenue.

Mary Jane Stattelmann, Assistant Secretary of Administrative Programs and Chief Counsel for the Department of Agriculture testified in opposition to **HB 2604**. The conferee stated that since KDA has less administrative cases than other agencies, they are able to use existing department attorneys and this practice provides a cost savings. The conferee stated that KDA has recently contracted with an outside attorney to be

House and Senate Judiciary
1998 Conference Committee Index
prepared by Jan Brasher

April 1, 1998 CONTINUATION SHEET

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the presiding officer for the abandonment cases. The conferee stated that these cases are very complex and need to be handled as expeditiously and as well as possible. The conferee stated concerns regarding the expediency of hearings under the system proposed by this bill. The conferee stated concerns regarding the level of knowledge and the lack of familiarity of topic with presiding officers drawn from a pool. The conferee expressed concerns regarding how the Water Transfer Act hearings are to be handled. The conferee requested that **HB 2604** be amended with similar language as was used in House **Sub SB 140** which allows either party to appeal the presiding officer's initial order to the secretary for review. (Attachment 8)

Glenda Cafer, General Counsel, Kansas Corporation Commission, submitted written testimony in opposition to **HB 2604**. The testimony requested that the KCC be specifically exempted as an agency from the requirements of **HB 2604**. (Attachment 9)

Paul Wilson, Director of Labor Relations, Kansas Association of Public Employees (KAPE), testified in opposition to **HB 2604**. The conferee stated that KAPE believes that the best decisions are made by hearing officers who focus on a specialized body of law. The conferee expressed a concern held by KAPE that some of the hearings may include the State of Kansas as a petitioner or a respondent, and to allow the state to serve as both a party to an action as well as the trier of facts and court of record is clearly inappropriate. (Attachment 10)

The Committee and conferee discussed hearings where a conflict of interest might be an issue. The Committee discussed issues concerning levels of expertise necessary for presiding officers.

A. J. Kotich, Chief Counsel, Department of Human Resources, testified stating a neutral position on **HB 2604** and supplied information requested after the January 29th hearing on the bill. Conferee Kotich's information included the number of KDHR hearing officers and the requirements of compliance for receiving federal funds. Conferee Kotich noted that while many states have a centralized administrative hearings office, only the State of Washington places jurisdiction of unemployment insurance benefit (UI) appeals within its centralized panel of hearing officers. The conferee referred to a memorandum from William H. Layes, KDHR's Chief of Labor Market Information Services (attached to his testimony) concerning compliance issue that is attached to KDHR's testimony. (Attachment 11)

George M. Wolf, Deputy Director of Employment Security, referring to language in several sections of the bill, testified as to why this bill might include hearings conducted by the office of Public Employee Relations Board/Labor Relations. The conferee stated that if hearing officers who hear PEERA and PNA cases were moved under the Department of Administration, such change could create the appearance of bias as the Department of Administration is a party in at least 30% of the cases in PEERA. The conferee discussed the level of expertise necessary in PEERA and PNA cases. The conferee stated that to create a centralized unit of hearing officers would diminish the expertise of all and, in effect, create another court of general jurisdiction, even though its authority would be limited to administrative law issues. Conferee Wolf commented that a narrow view of the subject allows for a deeper understanding of that issue. (Attachment 12)

Rebecca Rice, attorney, appeared as an individual and not on behalf of any client to support **HB 2604**. Conferee Rice stated that she had requested the introduction of a bill to create a centralized pool in 1995. Conferee Rice stated that the need for this bill was a result of an experience with the implementation of the KAPA by SRS. The conferee stated that with a centralized agency there will be a mechanism to monitor appeals. The conferee offered reasons why a centralized office will reduce the number of appeals. The conferee stated that under a centralized pool, there will be a perception that the ALJ is not absolutely committed to the agency position before the hearing begins. (Attachment 13)

Phil Harness, Department of Human Resources, offered an amendment which would insert reference to the Kansas administrative procedure act on page 34 of the bill. (Attachment 14)

The Chair closed the hearing on **HB 2604**.

The Chair adjourned the meeting at 6:10 p.m.

The next meeting is scheduled for February 9, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 2-4-98

NAME	REPRESENTING
Julienne Masler	AG
Glenda Cooper	KCC
David W. Masow	PSU POLICE
Dore Wilson	KAPE
Kenneth Smith	KSU Police
Lynn Betty John	Washburn Police
Beth Engle	SRS
Marvin Burris	KBOR
Joe Patton	Kansans For life
Paul Fourn	SRS
Mary Jane Stettin	KDA
Jesse Cloe	KC DAA
Pat Johnson	Bd of Nursing
Janel Miller	AG's office
Natalie Haag	Gov. office
Bruce D. Smith	Kansas For Life
Martha Ann Smith	K177HA
MARK A. BURGHART	KMHA
Phil Harness	KDHR-Workers Comp.

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**TESTIMONY BEFORE
 THE
 HOUSE
 JUDICIARY COMMITTEE**

TO: Representative Tim Carmody, Chairman and
 Members of the Committee

FROM: Martha Neu Smith, Executive Director

DATE: February 4, 1998

RE: HB 2676 providing for disposition of valueless mobile and manufactured
 homes

Mr. Chairman and Members of the Committee, my name is Martha Neu Smith and I am the executive director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment. KMHA is a statewide trade association representing all facets of the manufactured housing industry.

I am here today to ask your support of HB 2676. This bill provides for a more timely process in the disposal of valueless mobile and manufactured homes that have been abandoned in manufactured home parks.

Under current law when a valueless home is abandoned in a park (K.S.A. 58-25,121) and there is no lien of record other than a tax lien, the real property owner goes through the following process:

- * Real property owner gives proper notice of lien (posted 30 days) K.S.A. 58-227
- * Real property owner then enforces and forecloses on the lien K.S.A. 58-227(c)
- * Real property owner waits for sheriff sale to dispose of abandoned mobile/manufactured home.

HB 2676 makes one change to this process; it eliminates the sheriff sale. With the elimination of the sheriff sale the real property owner would give written notice to the county treasurer within ten days of foreclosure. The notice would include a description of the valueless home, its owner or occupant's name and address, if known, date of removal OR the name and address of any disinterested third party to whom a new title should be issued.

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At this point HB 2676 gives the real property owner two options, have the home disposed of OR give it to a disinterested third party. If the home is given to a disinterested third party, the real property owner CANNOT receive money or anything of value when the home is turned over. Also, any tax lien is canceled and a new title is issued upon payment of a title fee by the third party.

HB 2676 also defines the term "valueless home" as the value of the home and other personal property being equal to or less than the reasonable cost of disposal plus all sums owing to the real property owner pertaining to the home.

It is important to note, while the elimination of the sheriff sale is new to manufactured housing in Kansas, a similar law has been used in Iowa since July 1, 1995, and to my knowledge has not had any problems or challenges.

In closing, we feel HB 2676 makes a reasonable change to the current process dealing with valueless homes abandoned in parks, the change is minor AND still provides due process to the homeowner. But without this change, the real property owner may be dealing with the abandoned home and the upkeep (mowing and heating bills) associated with it for months after foreclosure.

I respectfully ask for your support of HB 2676.

Thank you.



State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

HOUSE COMMITTEE ON JUDICIARY
ATTORNEY GENERAL CARLA J. STOVALL'S

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TESTIMONY IN SUPPORT OF
SENATE BILL NO. 256

February 4, 1998

Thank you Mr. Chairman, members of the committee, for this opportunity to testify in support of Senate Bill No. 256.

Two weeks ago, Deputy Attorney General Julene Miller was before you to discuss a bill that was recommended by my C.A.M.P.U.S. Taskforce to increase criminal penalties for the furnishing of liquor and cereal malt beverages to minors. The bill before you today is also a product of the Task Force and it too deals with a significant campus safety issue.

University police officers, municipal law enforcement officers, students and university administrators brought to the Task Force their concern regarding the difficulty for university police officers in responding to students and faculty when the property on which the offense occurred was not university property. This is often the case with student housing areas surrounding university property. Currently, with very limited exceptions, the municipal law enforcement agency must request assistance on a case-by-case basis for the university police to have jurisdiction on non-university property. Often, this significantly slows response time or places university police in the position of needing to respond without proper authority having been granted. The Task Force agreed that this was an untenable situation and so recommended Senate Bill No. 256. The bill does not automatically confer extended jurisdiction, but rather leaves it to the appropriate university and local government officials to reach an agreement as to the parameters and circumstances under which extended jurisdiction will be conferred. It is not mandatory that agreements be reached, but the option is made available for those in need of this

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flexibility.

Before the bill was introduced, the concept was presented to the State Board of Regents. The Board agreed to support the bill in its original form.

We appreciate your support of this bill. Thank you.

3
Comments on SB 256
House Judiciary Committee
1/04/98

Dear Representatives:

I'm here to speak in favor of SB 256. I represent the Directors and Chiefs of Police of Regent's institutions in Kansas, along with the Chief of Police at Washburn University. About a year and a half ago this group of officers was asked if anyone had any ideas or suggestions that could possibly improve the level of safety on University campuses across our state. We have met bimonthly for several years to discuss problems of common concern such as the question just asked. We all realize that each campus has its own unique set of issues and concerns and because of that, common solutions that would work on all campuses have been very elusive.

As a unit, we have all agreed that SB 256 would be a common solution to some of the jurisdictional problems we have struggled with for many years. Most of our campuses are surrounded with high density residential areas that contain mostly students. Under current Kansas law, university police departments do not have the authority to patrol these areas or answer calls for service in these areas without a specific request from local law enforcement authorities. This bill has been constructed in such a way that each institution can adapt it to their own particular needs. This will provide a workable solution to the problem.

At Pittsburg State University we have experienced several jurisdictional problems. If we get a call for police service that is across the street from the University, we are supposed to refer the call to the city police. It will usually take them longer to get there and they are providing the same service that we provide. When a University Police Officer makes an arrest, the fourteen-mile trip to the closest jail is entirely out of his jurisdiction. When an officer picks up money from sporting events and transports it to a bank night deposit, he does so completely out of his jurisdiction. This list could go on and on but the main issue to me is that we need SB 256 so we can better serve the students and citizens that reside in the high density residential areas adjacent to our universities.

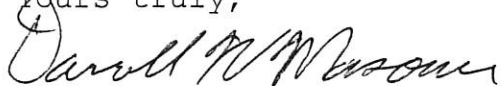
All eight of the municipal Chiefs of Police that would be affected by this bill have been contacted and provided with a copy of the proposal. None of the Chiefs have any objections to the proposal and several actively support it. This bill would allow each municipal jurisdiction and the university within that municipality to come to an appropriate agreement about what works

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Attachment 3

best for their university and city.

Thank you for your consideration.

Yours truly,

A handwritten signature in cursive script that reads "Darrell W. Masoner". The signature is written in dark ink and is positioned above the typed name.

Darrell W. Masoner
Director of Police
Pittsburg State University



WASHBURN UNIVERSITY
University Police/Security

February 4, 1998

Honorable Members
House Judiciary Committee

SUBJECT: SB 256- University Police

Dear House Judiciary Committee Members,

Senate Bill 256 authorizes cities and counties and the chief executive officers of any state or municipal university to enter into agreements whereby university police may exercise law enforcement powers beyond campus boundaries. Washburn University police have only been in operation since July 1, 1997. It has become very obvious during this short period of time, the need to function as law enforcement officers off campus for the following reasons:


1. It is often necessary to conduct follow up investigations off campus.
2. It would also be beneficial to local law enforcement, for campus law enforcement to be able to assist local law enforcement in the immediate area of the universities and beyond should the need arise.
3. When campus police make bank deposits off campus.
4. When campus police transport prisoners to correctional facilities.
5. To patrol areas where students are residing off campus (further than immediately adjacent to).

There are occasions where a campus police officer may be off campus on duty related business and observe a crime take place in front of him. The officer should have statute authority to take police action.

In short, SB 256 is a win, win, win, piece of legislation.

Thank you for your consideration and assistance on this important matter.

Sincerely,


Gary H. Pettijohn
Director of Police/Security
Washburn University
Member of Kansas Peace Officers Association Legislative Committee

House Judiciary
2-4-98
Attachment 4



WICHITA STATE UNIVERSITY

The Metropolitan Advantage

Police Department

MEMORANDUM

TO: House Judiciary Committee Chairperson

FROM: Charles Rummery, Chief of University Police
Wichita State University

DATE: February 2, 1998

SUBJECT: SB 256

The Wichita State University is very much a supporter of this bill. The Interim Vice President of Student Affairs and myself both attended meetings and made recommendations to the Kansas Attorney's Office that such a bill be introduced to expand University Police Powers. The Chief Watson of the Wichita Police Department is also in favor of our having our police powers enhanced. Chief Watson and myself are aware that any agreement to the expansion of our police powers would require an agreement between the President of the University and the City Manager. Both of us would make ourselves available for input on the agreement.

Currently the University has approximately 2,000 students living in apartments and houses close to campus. Many of these are international students. Several have been victims of burglaries and robberies during the past two or three years. This past year the University has had a noticeable decline in international students. Whether this decline is due to their concern for their safety or not is unknown. Expanding the University Police Officers Jurisdiction would assist in our ability to provide services to these students.

Many of the international students come from countries where the police are considered oppressors. For many of them, past experiences in their home country makes it hard for them to call the city police to make reports. Since the University Police is a part of the University, they are more willing to make reports and talk with us. We also have resources that the city doesn't have when it comes to a language barriers.

The University has three remote (off campus) centers where classes are held. The University Police jurisdiction at these facilities are not in question, however each center uses public parking for the students, faculty and staff. The jurisdiction in the public parking lots is in question. Also the question of to the officer being able to use his law enforcement powers while going to and from these locations. The same question could be raised when officers have to transport persons to jail, or the detectives going to and from the District Attorney's Office, Jail or Courts.

University Police officers periodically provide back-up for city officers when serious crimes that occur within a half mile of the University. The current Statutes require that on each of these type occasions, the City Police Department must ask for assistance. Due to the requirement and the time it consumes, the City usually does not make such a request. The trade off we receive for our assisting the city police include but are not limited to, professional crime scene investigators for major crime scenes, fingerprint identification processes, in-service training classes, and some laboratory analysis of criminal evidence.

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Attachment 5

HOUSE BILL No. 2531

By Committee on Calendar and Printing

3-14

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Attachment 6

9 AN ACT enacting the prevention of assisted suicide act; concerning the
10 assisting of suicide; providing criminal penalties; providing civil reme-
11 dy; providing injunctive relief; amending K.S.A. 21-3406, 65-2006 and
12 65-2896b and K.S.A. [1996] Supp. 65-1120, 65-1436, 65-1627 and 65-
13 2836 and repealing the existing sections.

1997

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. Sections 1, 2, 4, 5, 6, 7 and 14, and amendments
17 thereto, shall be known and may be cited as the "prevention of assisting
18 suicide act."

19 New Sec. 2. As used in this act:

20 (a) "Licensed health care professional" means a person licensed to
21 practice medicine and surgery, licensed podiatrist, registered physician
22 assistant, licensed nurse, dentist or licensed pharmacist.

23 (b) "Suicide" means the act or instance of taking one's own life vol-
24 untarily and intentionally.

25 Sec. 3. K.S.A. 21-3406 is hereby amended to read as follows: 21-
26 3406. Assisting suicide is intentionally advising, encouraging or assisting
27 another in the taking of the other's life which results in a suicide or
28 attempted suicide. Assisting suicide is a severity level 9, person felony:

29 (1) Knowingly by force or duress causing another person to commit
30 or to attempt to commit suicide, or:

31 (2) with the purpose of assisting another person to commit or to at-
32 tempt to commit suicide, knowingly either:

33 (A) Providing the physical means by which another person commits
34 or attempts to commit suicide, or

35 (B) participating in a physical act by which another person commits
36 or attempts to commit suicide.

37 Assisting suicide under (1) is a severity level 3, person felony. Assisting
38 suicide under (2) is a severity level 9, person felony.

39 New Sec. 4. (a) A health care professional who administers, pre-
40 scribes or dispenses medications or procedures to relieve another person's
41 pain or discomfort, even if the medication or procedure may hasten or
42 increase the risk of death, does not violate K.S.A. 21-3406 and amend-
43 ments thereto unless the medications or procedures are knowingly ad-

intent and

subsection
subsection

with the intent

6-2

1 ministered, prescribed or dispensed to cause death.
2 (b) Withholding or withdrawal of a life-sustaining procedure does not
3 violate K.S.A. 21-3406 and amendments thereto.

4 New Sec. 5. (a) A cause of action for injunctive relief may be main-
5 tained against any person who is reasonably believed to be about to violate
6 or who is in the course of violating K.S.A. 21-3406 and amendments
7 thereto by any person who is:

- 8 (1) The spouse, parent, child or sibling of the person who would
- 9 commit suicide.
- 10 (2) Entitle to inherit from the person who would commit suicide.
- 11 (3) A health care provider of the person who would commit suicide.
- 12 (4) A public official with appropriate jurisdiction to prosecute or en-
13 force the laws of this state.

14 New Sec. 6. A cause of action for civil damages against any person
15 who violates or who attempts to violate K.S.A. 21-3406 and amendments
16 thereto may be maintained by any person given standing by section 5 and
17 amendments thereto for compensatory damages and exemplary damages,
18 whether or not the plaintiff consented to or had prior knowledge of the
19 violation or attempt.

may be maintained

20 New Sec. 7. Reasonable attorney fees shall be awarded to the pre-
21 vailing plaintiff in a civil action brought pursuant to section 5 or 6 and
22 amendments thereto, or in a proceeding for a judgment of contempt of
23 court for violating an injunction issued under section 5 and amendments
24 thereto. If the defendant prevails, and the court determines that a plaintiff
25 brought the suit or the proceeding for a judgment of contempt frivolously
26 or in bad faith, reasonable attorney fees shall be awarded to the defend-
27 ant.

who is the personal representative of
or the spouse, parent, child, sibling,
or entitled to inherit from the person
who did or would commit suicide

*or who is the personal
representative*

28 Sec. 6. ~~[K.S.A. 1996 Supp. 65-1120 is hereby amended to read as~~
29 ~~follows: 65-1120. (a) Grounds for disciplinary actions. The board may~~
30 ~~deny, revoke, limit or suspend any license, certificate of qualification or~~
31 ~~authorization to practice nursing as a registered professional nurse, as a~~
32 ~~licensed practical nurse, as an advanced registered nurse practitioner or~~
33 ~~as a registered nurse anesthetist that is issued by the board or applied for~~
34 ~~under this act or may publicly or privately censure a licensee or holder~~
35 ~~of a certificate of qualification or authorization, if the applicant, licensee~~
36 ~~or holder of a certificate of qualification or authorization is found after~~
37 ~~hearing:~~

- 38 (1) To be guilty of fraud or deceit in practicing nursing or in procuring
- 39 attempting to procure a license to practice nursing;
- 40 (2) to have been guilty of a felony or to have been guilty of a mis-
- 41 demeanor involving an illegal drug offense, if the board determines, after
- 42 investigation, that such person has not been sufficiently rehabilitated to
- 43 warrant the public trust;

1 (3) to have committed an act of professional incompetency as defined
2 in subsection (e);

3 (4) to be unable to practice with skill and safety due to current abuse
4 of drugs or alcohol;

5 (5) to be a person who has been adjudged in need of a guardian or
6 conservator, or both, under the act for obtaining a guardian or conser-
7 vator, or both, and who has not been restored to capacity under that act;

8 (6) to be guilty of unprofessional conduct as defined by rules and
9 regulations of the board;

10 (7) to have willfully or repeatedly violated the provisions of the Kansas
11 nurse practice act or any rules and regulations adopted pursuant to that
12 act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

13 (8) to have a license to practice nursing as a registered nurse or as a
14 practical nurse denied, revoked, limited or suspended, or to be publicly
15 or privately censured, by a licensing authority of another state, agency of
16 the United States government, territory of the United States or country
17 or to have other disciplinary action taken against the applicant or licensee
18 by a licensing authority of another state, agency of the United States
19 government, territory of the United States or country. A certified copy of
20 the record or order of public or private censure, denial, suspension, lim-
21 itation, revocation or other disciplinary action of the licensing authority
22 of another state, agency of the United States government, territory of the
23 United States or country shall constitute prima facie evidence of such a
24 fact for purposes of this paragraph (8); or

25 (9) to have assisted suicide in violation of K.S.A. 21-3406 and amend-
26 ments thereto as established by any of the following:

27 (A) A copy of the record of criminal conviction or plea of guilty for a
28 felony in violation of K.S.A. 21-3406 and amendments thereto.

29 (B) A copy of the record of a judgment of contempt of court for vio-
30 lating an injunction issued under section 5 and amendments thereto.

31 (C) A copy of the record of a judgment assessing damages under sec-
32 tion 6 and amendments thereto.

33 (b) *Proceedings.* Upon filing of a sworn complaint with the board
34 charging a person with having been guilty of any of the unlawful practices
35 specified in subsection (a), two or more members of the board shall in-
36 vestigate the charges, or the board may designate and authorize an em-
37 ployee or employees of the board to conduct an investigation. After in-
38 vestigation, the board may institute charges. If an investigation, in the
39 opinion of the board, reveals reasonable grounds for believing the appli-
clicant or licensee is guilty of the charges, the board shall fix a time and
place for proceedings, which shall be conducted in accordance with the
provisions of the Kansas administrative procedure act.

42 (c) *Witnesses.* No person shall be excused from testifying in any pro-
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1 proceedings before the board under this act or in any civil proceedings under
2 this act before a court of competent jurisdiction on the ground that such
3 testimony may incriminate the person testifying, but such testimony shall
4 not be used against the person for the prosecution of any crime under
5 the laws of this state except the crime of perjury as defined in K.S.A. 21-
6 3805 and amendments thereto.

7 (d) *Costs.* If final agency action of the board in a proceeding under
8 this section is adverse to the applicant or licensee, the costs of the board's
9 proceedings shall be charged to the applicant or licensee as in ordinary
10 civil actions in the district court, but if the board is the unsuccessful party,
11 the costs shall be paid by the board. Witness fees and costs may be taxed
12 by the board according to the statutes relating to procedure in the district
13 court. All costs accrued by the board, when it is the successful party, and
14 which the attorney general certifies cannot be collected from the appli-
15 cant or licensee shall be paid from the board of nursing fee fund. All
16 moneys collected following board proceedings shall be credited in full to
17 the board of nursing fee fund.

18 (e) *Professional incompetency defined.* As used in this section, "pro-
19 fessional incompetency" means:

20 (1) One or more instances involving failure to adhere to the appli-
21 cable standard of care to a degree which constitutes gross negligence, as
22 determined by the board;

23 (2) repeated instances involving failure to adhere to the applicable
24 standard of care to a degree which constitutes ordinary negligence, as
25 determined by the board; or

26 (3) a pattern of practice or other behavior which demonstrates a man-
27 ifest incapacity or incompetence to practice nursing.

28 (f) *Criminal justice information.* The board upon request shall receive
29 from the Kansas bureau of investigation, without charge, such criminal
30 history record information relating to criminal convictions as necessary
31 for the purpose of determining initial and continuing qualifications of
32 licensees of and applicants for licensure by the board.

33 Sec. 9. K.S.A. 1996 Supp. 65-1436 is hereby amended to read as
34 follows: 65-1436. (a) The Kansas dental board may refuse to issue the
35 license provided for in this act, or may take any of the actions with respect
36 to any dental or dental hygiene license as set forth in subsection (b),
37 whenever it is established, after notice and opportunity for hearing in
38 accordance with the provisions of the Kansas administrative procedure
39 act, that any applicant for a dental or dental hygiene license or any li-
40 censed dentist or dental hygienist practicing in the state of Kansas has:

41 (1) Committed fraud, deceit or misrepresentation in obtaining any
42 license, money or other thing of value;

43 (2) habitually used intoxicants or drugs which have rendered such

- 1 person unfit for the practice of dentistry or dental hygiene;
- 2 (3) been determined by the board to be professionally incompetent;
- 3 (4) committed gross, wanton or willful negligence in the practice of
- 4 dentistry or dental hygiene;
- 5 (5) employed, allowed or permitted any unlicensed person or persons
- 6 to perform any work in the licensee's office which constitutes the practice
- 7 of dentistry or dental hygiene under the provisions of this act;
- 8 (6) willfully violated the laws of this state relating to the practice of
- 9 dentistry or dental hygiene or the rules and regulations of the secretary
- 10 of health and environment or of the board regarding sanitation;
- 11 (7) engaged in the division of fees, or agreed to split or divide the fee
- 12 received for dental service with any person for bringing or referring a
- 13 patient without the knowledge of the patient or the patient's legal rep-
- 14 resentative, except the division of fees between dentists practicing in a
- 15 partnership and sharing professional fees, or in case of one licensed den-
- 16 tist employing another;
- 17 (8) committed complicity in association with or allowed the use of
- 18 the licensed dentist's name in conjunction with any person who is engaged
- 19 in the illegal practice of dentistry;
- 20 (9) been convicted of a felony or a misdemeanor involving moral tur-
- 21 pitude in any jurisdiction and the licensee fails to show that the licensee
- 22 has been sufficiently rehabilitated to warrant the public trust;
- 23 (10) failed to pay license fees;
- 24 (11) used the name "clinic," "institute" or other title that may suggest
- 25 a public or semipublic activity except that the name "clinic" may be used
- 26 as authorized in K.S.A. 65-1435 and amendments thereto;
- 27 (12) committed, after becoming a licensee, any conduct which is det-
- 28 rimental to the public health, safety or welfare as defined by rules and
- 29 regulations of the board;
- 30 (13) engaged in a misleading, deceptive, untrue or fraudulent mis-
- 31 representation in the practice of dentistry or on any document connected
- 32 with the practice of dentistry by knowingly submitting any misleading,
- 33 deceptive, untrue or fraudulent misrepresentation on a claim form, bill
- 34 or statement, including the systematic waiver of patient co-payment or
- 35 co-insurance;
- 36 (14) failed to keep adequate records; or
- 37 (15) the licensee has had a license to practice dentistry revoked, sus-
- 38 pended or limited, has been censured or has had other disciplinary action
- 39 taken, an application for license denied, or voluntarily surrendered the
- 40 license after formal proceedings have been commenced by the proper
- 41 licensing authority or another state, territory or the District of Columbia
- 42 or other country, a certified copy of the record of the action of the other
- 43 jurisdiction being conclusive evidence thereof; or

1 (16) *assisted suicide in violation of K.S.A. 21-3406 and amendments*
2 *thereto as established by any of the following:*

3 (A) *A copy of the record of criminal conviction or plea of guilty for a*
4 *felony in violation of K.S.A. 21-3406 and amendments thereto.*

5 (B) *A copy of the record of a judgment of contempt of court for vio-*
6 *lating an injunction issued under section 5 and amendments thereto.*

7 (C) *A copy of the record of a judgment assessing damages under sec-*
8 *tion 6 and amendment thereto.*

9 (b) Whenever it is established, after notice and opportunity for hear-
10 ing in accordance with the provisions of the Kansas administrative pro-
11 cedure act, that a licensee is in any of the circumstances or has committed
12 any of the acts described in subsection (a), the Kansas dental board may
13 take one or any combination of the following actions with respect to the
14 license of the licensee:

15 (1) Revoke the license.

16 (2) Suspend the license for such period of time as may be determined
17 by the board.

18 (3) Restrict the right of the licensee to practice by imposing limita-
19 tions upon dental or dental hygiene procedures which may be performed,
20 categories of dental disease which may be treated or types of patients
21 which may be treated by the dentist or dental hygienist. Such restrictions
22 shall continue for such period of time as may be determined by the board,
23 and the board may require the licensee to provide additional evidence at
24 hearing before lifting such restrictions.

25 (4) Grant a period of probation during which the imposition of one
26 or more of the actions described in subsections (b)(1) through (b)(3) will
27 be stayed subject to such conditions as may be imposed by the board
28 including a requirement that the dentist or dental hygienist refrain from
29 any course of conduct which may result in further violation of the dental
30 practice act or the dentist or dental hygienist complete additional or re-
31 medial instruction. The violation of any provision of the dental practice
32 act or failure to meet any condition imposed by the board as set forth in
33 the order of the board will result in immediate termination of the period
34 of probation and imposition of such other action as has been taken by the
35 board.

36 (c) As used in this section, "professionally incompetent" means:

37 (1) One or more instances involving failure to adhere to the appli-
38 cable standard of dental or dental hygienist care to a degree which con-
stitutes gross negligence, as determined by the board;

39 (2) repeated instances involving failure to adhere to the applicable
40 standard of dental or dental hygienist care to a degree which constitutes
41 ordinary negligence, as determined by the board; or

42 (3) a pattern of dental or dental hygienist practice or other behavior
43

Sec. 8. K.S.A. 1997 Supp. 65-1120 is hereby amended to read as follows: 65-1120. (a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8): or

(9) to have assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments

hereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under section 5 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under section 6 and amendments thereto.

(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) Professional incompetency defined. As used in this section, "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; or

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

(f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

Sec. 9. K.S.A. 1997 Supp. 65-1436 is hereby amended to read as follows: 65-1436. (a) The Kansas dental board may refuse to

issue the license provided for in this act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

(1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;

(2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;

(3) been determined by the board to be professionally incompetent;

(4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;

(5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of this act;

(6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;

(7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another;

(8) committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;

(9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;

(11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;

(12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;

(13) failed to pay license fees;

(14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435 and amendments thereto;

(15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined

by rules and regulations of the board;

(16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;

(17) failed to keep adequate records;

(18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper licensing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof; or

(19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or

(20) assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under section 5 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under section 6 and amendments thereto.

(b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:

(1) Revoke the license.

(2) Suspend the license for such period of time as may be determined by the board.

(3) Restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions.

(4) Grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or remedial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the

board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.

(c) As used in this section, "professionally incompetent" means:

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

(3) a pattern of dental or dental hygienist practice or other behavior which demonstrates a manifest incapacity or incompetence to practice dentistry.

(d) In addition to or in lieu of one or more of the actions described in subsections (b)(1) through (b)(4), the board may assess a fine not in excess of \$10,000 against a licensee. All fines collected pursuant to this subsection shall be remitted to the state treasurer. Of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.

(e) The board, upon its own motion or upon the request of any licensee who is a party to a licensure action, may require a physical or mental examination, or both, of such licensee either prior to a hearing to be held as a part of a licensure action or prior to the termination of any period of suspension or the termination of any restrictions imposed upon the licensee as provided in subsection (b).

1 which demonstrates a manifest incapacity or incompetence to practice
2 dentistry.

3 ~~(d) The board may upon its own motion or upon the request of any
4 licensee who is a party to a licensure action require a physical or mental
5 examination, or both, of such licensee either prior to a hearing to be held
6 as a part of a licensure action or prior to the termination of any period of
7 suspension or the termination of any restrictions imposed upon the li-
8 censee as provided in subsection (b).~~

See attached sections

9 Sec. 10. K.S.A. ~~1996~~ Supp. 65-1627 is hereby amended to read as
10 follows: 65-1627. (a) The board may revoke, suspend, place in a proba-
11 tionary status or deny a renewal of any license of any pharmacist upon a
12 finding that:

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- 13 (1) The license was obtained by fraudulent means;
- 14 (2) the licensee has been convicted of a felony and the licensee fails
15 to show that the licensee has been sufficiently rehabilitated to warrant
16 the public trust;
- 17 (3) the licensee is found by the board to be guilty of unprofessional
18 conduct or professional incompetency;
- 19 (4) the licensee is addicted to the liquor or drug habit to such a degree
20 as to render the licensee unfit to practice the profession of pharmacy;
- 21 (5) the licensee has violated a provision of the federal or state food,
22 drug and cosmetic act, the uniform controlled substances act of the state
23 of Kansas, or any rule and regulation adopted under any such act;
- 24 (6) the licensee is found by the board to have filled a prescription not
25 in strict accordance with the directions of the practitioner;
- 26 (7) the licensee is found to be mentally or physically incapacitated to
27 such a degree as to render the licensee unfit to practice the profession
28 of pharmacy;
- 29 (8) the licensee has violated any of the provisions of the pharmacy
30 act of the state of Kansas or any rule and regulation adopted by the board
31 pursuant to the provisions of such pharmacy act;
- 32 (9) the licensee has failed to comply with the requirements of the
33 board relating to the continuing education of pharmacists;
- 34 (10) the licensee as a pharmacist in charge or consultant pharmacist
35 under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and
36 amendments thereto has failed to comply with the requirements of sub-
37 section (c) or (d) of K.S.A. 65-1648 and amendments thereto;
- 38 (11) the licensee has knowingly submitted a misleading, deceptive,
untrue or fraudulent misrepresentation on a claim form, bill or statement;
- 41 (12) the licensee has had a license to practice pharmacy revoked,
42 suspended or limited, has been censured or has had other disciplinary
43 action taken, or an application for license denied, by the proper licensing
authority of another state, territory, District of Columbia or other country.

1 a certified copy of the record of the action of the other jurisdiction being
2 conclusive evidence thereof; ~~or~~

3 (13) the licensee has self-administered any controlled substance with-
4 out a practitioner's prescription order; *or*

5 (14) *the licensee has assisted suicide in violation of K.S.A. 21-3406*
6 *and amendments thereto as established by any of the following:*

7 (A) *A copy of the record of criminal conviction or plea of guilty for a*
8 *felony in violation of K.S.A. 21-3406 and amendments thereto.*

9 (B) *A copy of the record of a judgment of contempt of court for vio-*
10 *lating an injunction issued under section 5 and amendments thereto.*

11 (C) *A copy of the record of a judgment assessing damages under sec-*
12 *tion 6 and amendments thereto.*

13 (b) In determining whether or not the licensee has violated subsec-
14 tion (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion
15 of such violation has authority to compel a licensee to submit to mental
16 or physical examination or drug screen, or any combination thereof, by
17 such persons as the board may designate. To determine whether reason-
18 able suspicion of such violation exists, the investigative information shall
19 be presented to the board as a whole. Information submitted to the board
20 as a whole and all reports, findings and other records shall be confidential
21 and not subject to discovery by or release to any person or entity. The
22 licensee shall submit to the board a release of information authorizing
23 the board to obtain a report of such examination or drug screen, or both.
24 A person affected by this subsection shall be offered, at reasonable in-
25 tervals, an opportunity to demonstrate that such person can resume the
26 competent practice of pharmacy with reasonable skill and safety to pa-
27 tients. For the purpose of this subsection, every person licensed to prac-
28 tice pharmacy and who shall accept the privilege to practice pharmacy in
29 this state by so practicing or by the making and filing of an annual renewal
30 to practice pharmacy in this state shall be deemed to have consented to
31 submit to a mental or physical examination or a drug screen, or any com-
32 bination thereof, when directed in writing by the board and further to
33 have waived all objections to the admissibility of the testimony, drug
34 screen or examination report of the person conducting such examination
35 or drug screen, or both, at any proceeding or hearing before the board
36 on the ground that such testimony or examination or drug screen report
37 constitutes a privileged communication. In any proceeding by the board
38 pursuant to the provisions of this subsection, the record of such board
39 proceedings involving the mental and physical examination or drug
40 screen, or any combination thereof, shall not be used in any other ad-
ministrative or judicial proceeding.

41 (c) The board may suspend, revoke, place in a probationary status or
42 deny a renewal of any retail dealer's permit issued by the board when
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1 information in possession of the board discloses that such operations for
2 which the permit was issued are not being conducted according to law or
3 the rules and regulations of the board.

4 (d) The board may revoke, suspend, place in a probationary status or
5 deny a renewal of the registration of a pharmacy upon a finding that: (1)
6 Such pharmacy has been operated in such manner that violations of the
7 provisions of the pharmacy act of the state of Kansas or of the rules and
8 regulations of the board have occurred in connection therewith; (2) the
9 owner or any pharmacist employed at such pharmacy is convicted, sub-
10 sequent to such owner's acquisition of or such employee's employment
11 at such pharmacy, of a violation of the pharmacy act or uniform controlled
12 substances act of the state of Kansas, or the federal or state food, drug
13 and cosmetic act; or (3) the owner or any pharmacist employed by such
14 pharmacy has fraudulently claimed money for pharmaceutical services.

15 (e) A registration to manufacture or to distribute at wholesale a drug
16 or a registration for the place of business where any such operation is
17 conducted may be suspended, revoked, placed in a probationary status
18 or the renewal of such registration may be denied by the board upon a
19 finding that the registrant or the registrant's agent: (1) Has materially
20 falsified any application filed pursuant to or required by the pharmacy
21 act of the state of Kansas; (2) has been convicted of a felony under any
22 federal or state law relating to the manufacture or distribution of drugs;
23 (3) has had any federal registration for the manufacture or distribution of
24 drugs suspended or revoked; (4) has refused to permit the board or its
25 duly authorized agents to inspect the registrant's establishment in accor-
26 dance with the provisions of K.S.A. 65-1629 and amendments thereto;
27 (5) has failed to keep, or has failed to file with the board or has falsified
28 records required to be kept or filed by the provisions of the pharmacy
29 act of the state of Kansas or by the board's rules and regulations; or (6)
30 has violated the pharmacy act of the state of Kansas or rules and regu-
31 lations adopted by the state board of pharmacy under the pharmacy act
32 of the state of Kansas or has violated the uniform controlled substances
33 act or rules and regulations adopted by the state board of pharmacy under
34 the uniform controlled substances act.

35 (f) Orders under this section, and proceedings thereon, shall be sub-
36 ject to the provisions of the Kansas administrative procedure act.

37 Sec. 11. K.S.A. 65-2006 is hereby amended to read as follows: 65-
38 2006. (a) The board, upon hearing, may revoke, suspend or limit any
39 license or permit to practice podiatry, may deny issuance or renewal of
40 v such license or permit, or may publicly or privately censure a licensee
41 permittee, if the person holding or applying for such license or permit
42 is found by the board to:

43 (1) Have committed fraud in securing the license or permit;

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1 (2) have engaged in unprofessional or dishonorable conduct or pro-
2 fessional incompetency;

3 (3) have been convicted of a felony if the board determines, after
4 investigation, that such person has not been sufficiently rehabilitated to
5 warrant the public trust;

6 (4) have used untruthful or improbable statements or flamboyant,
7 exaggerated or extravagant claims in advertisements concerning the li-
8 censee's or permit holder's professional excellence or abilities;

9 (5) be addicted to or have distributed intoxicating liquors or drugs
10 for any other than lawful purposes;

11 (6) have willfully or repeatedly violated the podiatry act, the phar-
12 macy act or the uniform controlled substances act, or any rules and reg-
13 ulations adopted thereunder, or any rules and regulations of the secretary
14 of health and environment which are relevant to the practice of podiatry;

15 (7) have unlawfully invaded the field of practice of any branch of the
16 healing arts;

17 (8) have failed to submit proof of completion of a continuing edu-
18 cation course required pursuant to the podiatry act;

19 (9) have engaged in the practice of podiatry under a false or assumed
20 name or impersonated another podiatrist, but practice by a licensee or
21 permit holder under a professional corporation or other legal entity duly
22 authorized to provide podiatry services in the state shall not be considered
23 to be practice under an assumed name;

24 (10) be unable to practice podiatry with reasonable skill and safety to
25 patients by reason of any mental or physical condition, illness, alcoholism
26 or excessive use of drugs, controlled substances or chemical or any other
27 type of material;

28 (11) have had the person's license or permit to practice podiatry re-
29 voked, suspended or limited, or have had other disciplinary actions taken
30 or an application for a license or permit denied, by the proper licensing
31 authority of any state, territory or country or the District of Columbia;

32 (12) have violated any rules and regulations of the board or any lawful
33 order or directive of the board; or

34 (13) have knowingly submitted a misleading, deceptive, untrue or
35 fraudulent misrepresentation on a claim form, bill or statement; or

36 (14) have assisted suicide in violation of K.S.A. 21-3406 and amend-
37 ments thereto as established by any of the following:

38 (A) A copy of the record of criminal conviction or plea of guilty for a
39 felony in violation of K.S.A. 21-3406 and amendments thereto.

40 (B) A copy of the record of a judgment of contempt of court for vio-
41 ating an injunction issued under section 5 and amendments thereto.

42 (C) A copy of the record of a judgment assessing damages under sec-
43 tion 6 and amendments thereto.

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1 (b) In determining whether or not a licensee or permit holder is un-
 2 able to practice podiatry with reasonable skill and safety to patients as
 3 provided in subsection (a)(10), the board, upon probable cause, shall have
 4 authority to compel a licensee or permit holder to submit to mental or
 5 physical examination by such persons as the board may designate. Failure
 6 of a licensee or permit holder to submit to such examination when di-
 7 rected shall constitute an admission of the allegations against the licensee
 8 or permit holder, unless the failure was due to circumstances beyond the
 9 licensee's or permit holder's control. A person affected by this subsection
 10 shall be offered, at reasonable intervals, an opportunity to demonstrate
 11 that such person can resume the competent practice of podiatry with
 12 reasonable skill and safety to patients. Each licensee or permit holder
 13 accepting the privilege to practice podiatry in this state, by practicing
 14 podiatry in this state or by making and filing an application for a license
 15 or permit, or renewal of a license or permit, to practice podiatry in this
 16 state, shall be deemed to have consented to submit to a mental or physical
 17 examination when directed in writing by the board pursuant to this sub-
 18 section and to have waived all objections to the admissibility of the tes-
 19 timony or examination report of the person conducting such examination
 20 at any proceeding or hearing before the board on the ground that such
 21 testimony or examination report constitutes a privileged communication.
 22 The record of any board proceedings involving a mental or physical ex-
 23 amination pursuant to this subsection shall not be used in any other ad-
 24 ministrative or judicial proceeding.

25 Whenever the board directs that a licensee or permit holder submit to
 26 an examination pursuant to this subsection, the time from the date of the
 27 board's directive until the submission to the board of the report of the
 28 examination shall not be included in the computation of the time limit
 29 for hearing prescribed by the Kansas administrative procedure act.

30 (c) As used in this section, "professional incompetency" and "unpro-
 31 fessional conduct" shall have the meanings ascribed thereto by K.S.A. 65-
 32 2837 and amendments thereto.

33 (d) The procedure for revocation, suspension, limitation, temporary
 34 suspension, temporary limitation, or for denial of issuance or renewal
 35 pursuant to this section, of any license or permit to practice podiatry shall
 36 be in accordance with the provisions of the Kansas administrative pro-
 37 cedure act.

38 Sec. 12. K.S.A. [1996] Supp. 65-2836 is hereby amended to read as
 39 follows: 65-2836. A licensee's license may be revoked, suspended or lim-
 40 ited, or the licensee may be publicly or privately censured, or an appli-
 41 cation for a license or for reinstatement of a license may be denied upon
 42 a finding of the existence of any of the following grounds:

43 (a) The licensee has committed fraud or misrepresentation in apply-

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- 1 ing for or securing an original, renewal or reinstated license.
- 2 (b) The licensee has committed an act of unprofessional or dishon-
3 orable conduct or professional incompetency.
- 4 (c) The licensee has been convicted of a felony or class A misde-
5 meanor, whether or not related to the practice of the healing arts.
- 6 (d) The licensee has used fraudulent or false advertisements.
- 7 (e) The licensee is addicted to or has distributed intoxicating liquors
8 or drugs for any other than lawful purposes.
- 9 (f) The licensee has willfully or repeatedly violated this act, the phar-
10 macy act of the state of Kansas or the uniform controlled substances act,
11 or any rules and regulations adopted pursuant thereto, or any rules and
12 regulations of the secretary of health and environment which are relevant
13 to the practice of the healing arts.
- 14 (g) The licensee has unlawfully invaded the field of practice of any
15 branch of the healing arts in which the licensee is not licensed to practice.
- 16 (h) The licensee has engaged in the practice of the healing arts under
17 a false or assumed name, or the impersonation of another practitioner.
18 The provisions of this subsection relating to an assumed name shall not
19 apply to licensees practicing under a professional corporation or other
20 legal entity duly authorized to provide such professional services in the
21 state of Kansas.
- 22 (i) The licensee has the inability to practice the branch of the healing
23 arts for which the licensee is licensed with reasonable skill and safety to
24 patients by reason of illness, alcoholism, excessive use of drugs, controlled
25 substances, chemical or any other type of material or as a result of any
26 mental or physical condition. In determining whether or not such inability
27 exists, the board, upon reasonable suspicion of such inability, shall have
28 authority to compel a licensee to submit to mental or physical examination
29 or drug screen, or any combination thereof, by such persons as the board
30 may designate. To determine whether reasonable suspicion of such ina-
31 bility exists, the investigative information shall be presented to the board
32 as a whole, to a review committee of professional peers of the licensee
33 established pursuant to K.S.A. 65-2840c and amendments thereto or to
34 a committee consisting of the officers of the board elected pursuant to
35 K.S.A. 65-2818 and amendments thereto and the executive director ap-
36 pointed pursuant to K.S.A. 65-2878 and amendments thereto, and the
37 determination shall be made by a majority vote of the entity which re-
38 viewed the investigative information. Information submitted to the board
39 as a whole or a review committee of peers or a committee of the officers
40 and executive director of the board and all reports, findings and other
41 records shall be confidential and not subject to discovery by or release to
42 any person or entity. The licensee shall submit to the board a release of
43 information authorizing the board to obtain a report of such examination

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1 or drug screen, or both. A person affected by this subsection shall be
2 offered, at reasonable intervals, an opportunity to demonstrate that such
3 person can resume the competent practice of the healing arts with rea-
4 sonable skill and safety to patients. For the purpose of this subsection,
5 every person licensed to practice the healing arts and who shall accept
6 the privilege to practice the healing arts in this state by so practicing or
7 by the making and filing of an annual renewal to practice the healing arts
8 in this state shall be deemed to have consented to submit to a mental or
9 physical examination or a drug screen, or any combination thereof, when
10 directed in writing by the board and further to have waived all objections
11 to the admissibility of the testimony, drug screen or examination report
12 of the person conducting such examination or drug screen, or both, at
13 any proceeding or hearing before the board on the ground that such
14 testimony or examination or drug screen report constitutes a privileged
15 communication. In any proceeding by the board pursuant to the provi-
16 sions of this subsection, the record of such board proceedings involving
17 the mental and physical examination or drug screen, or any combination
18 thereof, shall not be used in any other administrative or judicial proceed-
19 ing.

20 (j) The licensee has had a license to practice the healing arts revoked,
21 suspended or limited, has been censured or has had other disciplinary
22 action taken, or an application for a license denied, by the proper licensing
23 authority of another state, territory, District of Columbia, or other coun-
24 try, a certified copy of the record of the action of the other jurisdiction
25 being conclusive evidence thereof.

26 (k) The licensee has violated any lawful rule and regulation promul-
27 gated by the board or violated any lawful order or directive of the board
28 previously entered by the board.

29 (l) The licensee has failed to report or reveal the knowledge required
30 to be reported or revealed under K.S.A. 65-28,122 and amendments
31 thereto.

32 (m) The licensee, if licensed to practice medicine and surgery, has
33 failed to inform a patient suffering from any form of abnormality of the
34 breast tissue for which surgery is a recommended form of treatment, of
35 alternative methods of treatment specified in the standardized summary
36 supplied by the board. The standardized summary shall be given to each
37 patient specified herein as soon as practicable and medically indicated
38 following diagnosis, and this shall constitute compliance with the require-
39 ments of this subsection. The board shall develop and distribute to per-
40 sons licensed to practice medicine and surgery a standardized summary
41 the alternative methods of treatment known to the board at the time
42 distribution of the standardized summary, including surgical, radiolog-
43 ical or chemotherapeutic treatments or combinations of treatments and

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1 the risks associated with each of these methods. Nothing in this subsection
2 shall be construed or operate to empower or authorize the board to re-
3 strict in any manner the right of a person licensed to practice medicine
4 and surgery to recommend a method of treatment or to restrict in any
5 manner a patient's right to select a method of treatment. The standard-
6 ized summary shall not be construed as a recommendation by the board
7 of any method of treatment. The preceding sentence or words having the
8 same meaning shall be printed as a part of the standardized summary.
9 The provisions of this subsection shall not be effective until the stan-
10 dardized written summary provided for in this subsection is developed
11 and printed and made available by the board to persons licensed by the
12 board to practice medicine and surgery.

13 (n) The licensee has cheated on or attempted to subvert the validity
14 of the examination for a license.

15 (o) The licensee has been found to be mentally ill, disabled, not guilty
16 by reason of insanity, not guilty because the licensee suffers from a mental
17 disease or defect or incompetent to stand trial by a court of competent
18 jurisdiction.

19 (p) The licensee has prescribed, sold, administered, distributed or
20 given a controlled substance to any person for other than medically ac-
21 cepted or lawful purposes.

22 (q) The licensee has violated a federal law or regulation relating to
23 controlled substances.

24 (r) The licensee has failed to furnish the board, or its investigators or
25 representatives, any information legally requested by the board.

26 (s) Sanctions or disciplinary actions have been taken against the li-
27 censee by a peer review committee, health care facility, a governmental
28 agency or department or a professional association or society for acts or
29 conduct similar to acts or conduct which would constitute grounds for
30 disciplinary action under this section.

31 (t) The licensee has failed to report to the board any adverse action
32 taken against the licensee by another state or licensing jurisdiction, a peer
33 review body, a health care facility, a professional association or society, a
34 governmental agency, by a law enforcement agency or a court for acts or
35 conduct similar to acts or conduct which would constitute grounds for
36 disciplinary action under this section.

37 (u) The licensee has surrendered a license or authorization to practice
38 the healing arts in another state or jurisdiction, has surrendered the au-
39 thority to utilize controlled substances issued by any state or federal
40 agency, has agreed to a limitation to or restriction of privileges at any
41 medical care facility or has surrendered the licensee's membership on any
42 professional staff or in any professional association or society while under
43 investigation for acts or conduct similar to acts or conduct which would

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1 constitute grounds for disciplinary action under this section.

2 (v) The licensee has failed to report to the board surrender of the
3 licensee's license or authorization to practice the healing arts in another
4 state or jurisdiction or surrender of the licensee's membership on any
5 professional staff or in any professional association or society while under
6 investigation for acts or conduct similar to acts or conduct which would
7 constitute grounds for disciplinary action under this section.

8 (w) The licensee has an adverse judgment, award or settlement
9 against the licensee resulting from a medical liability claim related to acts
10 or conduct similar to acts or conduct which would constitute grounds for
11 disciplinary action under this section.

12 (x) The licensee has failed to report to the board any adverse judg-
13 ment, settlement or award against the licensee resulting from a medical
14 malpractice liability claim related to acts or conduct similar to acts or
15 conduct which would constitute grounds for disciplinary action under this
16 section.

17 (y) The licensee has failed to maintain a policy of professional liability
18 insurance as required by K.S.A. 40-3402 or 40-3403a and amendments
19 thereto.

20 (z) The licensee has failed to pay the annual premium surcharge as
21 required by K.S.A. 40-3404 and amendments thereto.

22 (aa) The licensee has knowingly submitted any misleading, deceptive,
23 untrue or fraudulent representation on a claim form, bill or statement.

24 (bb) The licensee as the responsible physician for a physician's assist-
25 ant has failed to adequately direct and supervise the physician's assistant
26 in accordance with K.S.A. 65-2896 to 65-2897a, inclusive, and amend-
27 ments thereto, or rules and regulations adopted under such statutes.

28 (cc) *The licensee has assisted suicide in violation of K.S.A. 21-3406 as*
29 *established by any of the following:*

30 (A) *A copy of the record of criminal conviction or plea of guilty for a*
31 *felony in violation of K.S.A. 21-3406 and amendments thereto.*

32 (B) *A copy of the record of a judgment of contempt of court for vio-*
33 *lating an injunction issued under section 5 and amendments thereto.*

34 (C) *A copy of the record of a judgment assessing damages under sec-*
35 *tion 6 and amendments thereto.*

36 Sec. 13. K.S.A. 65-2896b is hereby amended to read as follows: 65-
37 2896b. (a) The board of healing arts may remove a person's name from
38 the register of physicians' assistants for any of the following reasons:

39 (1) The person whose name is entered on the register of physicians'
40 assistants requests or consents to the removal thereof;

41 (2) the board of healing arts determines that the person whose name
42 is entered on the register of physicians' assistants has not been employed
43 as a physician's assistant or as a teacher or instructor of persons being

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1 educated and trained to become physicians' assistants in a course of ed-
 2 ucation and training approved by the state board of healing arts under
 3 K.S.A. 65-2896a and amendments thereto at some time during the five
 4 years immediately preceding the date of such determination;

5 (3) if the board determines, after notice and opportunity to be heard,
 6 in accordance with the provisions of the Kansas administrative procedure
 7 act, that a physician's assistant has violated any provision of K.S.A. 65-
 8 2896 to 65-2897a, inclusive, and amendments thereto, or any rules and
 9 regulations adopted pursuant thereto; ~~or~~

10 (4) if the board determines, after notice and opportunity to be heard,
 11 in accordance with the provisions of the Kansas administrative procedure
 12 act, that the request by the proposed responsible physician pursuant to
 13 subsection (a)(4) of K.S.A. 65-2896a and amendments thereto should not
 14 be approved; *or*

15 (5) *if the board determines, after notice and opportunity to be heard,*
 16 *in accordance with the provisions of the Kansas administrative procedure*
 17 *act, that a physician assistant has assisted suicide in violation of K.S.A.*
 18 *21-3406 and amendments thereto as established by any of the following:*

19 (A) *A copy of the record of criminal conviction or plea of guilty for a*
 20 *felony in violation of K.S.A. 21-3406 and amendments thereto.*

21 (B) *A copy of the record of a judgment of contempt of court for vio-*
 22 *lating an injunction issued under section 5 and amendments thereto.*

23 (C) *A copy of the record of a judgment assessing damages under sec-*
 24 *tion 6 and amendments thereto.*

25 (b) The board of healing arts may remove a person's name from the
 26 register of physicians' assistants or may refuse to place a person's name
 27 on the register of physicians' assistants, if the board determines, after
 28 notice and opportunity for hearing in accordance with the provisions of
 29 the Kansas administrative procedure act, that a physician's assistant has
 30 exceeded or has acted outside the scope of authority given the physician's
 31 assistant by the responsible physician or by this act.

32 New Sec. 14. If any one or more provision, section, subsection, sen-
 33 tence, clause, phrase or word of this act or the application thereof to any
 34 person or circumstance is found to be unconstitutional, the same is hereby
 35 declared to be severable and the balance of this act shall remain effective
 36 notwithstanding such unconstitutionality. The legislature hereby declares
 37 that it would have passed this act, and each provision, section, subsection,
 38 sentence, clause, phrase or word thereof, irrespective of the fact that any
 39 one or more provision, section, subsection, sentence, clause, phrase or
 40 word be declared unconstitutional.

41 Sec. 15. K.S.A. 21-3406, 65-2006 and 65-2896b and K.S.A. [1996]
 42 Supp. 65-1120, 65-1436, 65-1627 and 65-2836 are hereby repealed.

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1 Sec. 16. This act shall take effect and be in force from and after its
2 publication in the Kansas register.

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#7
STATE OF KANSAS
Bill Graves, Governor

2-4-98

DEPARTMENT OF REVENUE
John D. LaFaver, Secretary

Office of the Secretary
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588



(785) 296-3041
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Hearing Impaired TTY (785) 296-3909
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Office of the Secretary

January 29, 1998

Representative Tim Carmody, Chair
House Judiciary Committee
State Capitol
Topeka, KS

Dear Chairman Carmody:

I appreciate the opportunity to address our concerns with the provisions of H2604 as it affects the operation of the Department of Revenue.

A little history of the appeals process of the Department of Revenue may be in order. Until last year all tax appeals within the department were subject to the Administrative Procedures Act and were heard by an administrative law judge assigned to the division of taxation. Subsequent to the department appeal, a taxpayer also had the right to also appeal to the Board of Tax Appeals (BOTA). There were many criticisms of the procedure – most notably that appeals took literally years to be resolved; the appeals officer worked in the same division that generated the appeal, and thus, was not independent; that the process was duplicative of BOTA's.

As a result of these criticisms, several changes were made culminating in the Tax Equity and Fairness Act of 1997.

1. A nine-month time limit was set for resolving appeals.
2. Preassessment conferences were held to help avoid any appeal.
3. The appeals officers were made directly responsible to the Secretary.
4. The appeals officers now preside over a non-KAPA informal conference.
5. As a result of these changes appeals have fallen over 60% and the time to resolve them has fallen dramatically.

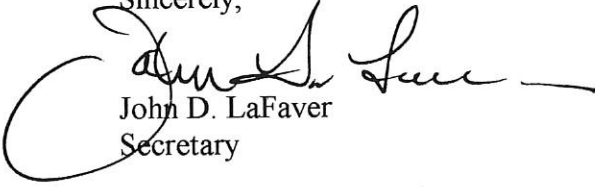
The effect of H2604 on the department and on the dramatic improvements we have made is not clear. There are now very few proceedings within the department under KAPA and they involve no full-time personnel. A few proceedings involving motor vehicle dealers, cigarette manufacturing, appeals from decisions of the director of alcoholic beverage control, and some property valuation matters are conducted under the provision of KAPA. All of these proceedings likely constitute less than five percent of department appeals, and involve very few staff hours.

House Judiciary
2-4-98
Attachment 7

Consequently, we ask that the committee give consideration to clearly removing all the department's proceedings from the provisions of these amendments. Certainly, if the bill passed and the few KAPA proceedings went to the department of administration, no appeals personnel could be transferred with them since the vast bulk of their work involves non-KAPA matters.

Increasingly, we hope that all departmental appeals can be informal and that KAPA proceedings relating to the department can be carried out by BOTA.

Sincerely,

A handwritten signature in cursive script, appearing to read "John D. LaFaver", with a horizontal line extending to the right.

John D. LaFaver
Secretary

#8
STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1280
(913) 296-3558
FAX: (913) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

House Judiciary Committee
Thursday, January 29, 1998
HB 2604

My name is Mary Jane Stattelmann and I am the Assistant Secretary of Administrative Programs and Chief Counsel for the Department of Agriculture. The Department of Agriculture has several concerns regarding the bill. While none of these issues are insurmountable, we do believe that they need to be addressed at some point in time, if this bill is to be enacted.

Since KDA has less administrative cases than other agencies we are able to use existing department attorneys who have no connection to the issue as hearing officers for most of our cases. Under HB 2064, this cost saving means would no longer be available.

Secondly, we recently contracted with an outside attorney to be the presiding officer for the abandonment cases. These cases are fairly complex and can be extensive. We needed to ensure that these cases are handled as expeditiously and as well as possible. By contracting with this attorney, we can establish timeframes and performance expectations.

Under HB 2604, it is unclear as to how many attorneys would be part of the presiding officer pool and how promptly we would be assigned an officer and what timeframe to expect a hearing. We are also unsure as to whether one person would be assigned to certain topics/agencies or if the work would be assigned to the first available attorney. We would prefer to work with the same individual so that the individual could develop an understanding of our relevant issues and hopefully be able to hear the cases more quickly and render decisions that would be well reasoned.

We are also concerned about how Water Transfer Act hearings are handled. The Water Transfer Act originally allowed the panel to select a hearing officer with specific statutory qualifications that the presiding officer "be an independent person knowledgeable in water law, water issues and hearing procedures". This bill requires the panel to select a hearing officer from the pool and eliminates the statutory qualifications that the presiding officer should have to hear these cases.

The other change regarding Water Transfer Act is that currently allows for the costs of a presiding officer to be apportioned between the parties as long as the presiding officer is not paid for by state funds. Under this bill, the presiding officer would presumably be paid by state general funds and therefore the costs associated with the presiding officer could not be apportioned.

Finally, I would respectfully request that HB 2604 be amended with similar language as was used in House Substitute for SB 140 (L.1997, Ch. 182, Sec. 94) which allows either party to appeal the presiding officer's initial order to the secretary for review. This review and issuance of a final order by an agency head is an integral and important part of KAPA.

Thank you for your attention. I would be glad to try an answer any questions that you may have at this time.

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TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
HB 2604

2-4-98
PRESENTED BY GLENDA L. CAFER, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
JANUARY 29, 1998

I. Introduction

The Kansas Corporation Commission (Commission) requests that it be specifically exempted as an agency from the requirements of HB 2604.

II. KAPA Hearings - KSA 77-514; HB 2604, Section 35.

Section 35 of HB 2604 has a significant effect upon the Commission's ability to conduct hearings efficiently and effectively. Nearly all Commission hearings are subject to KAPA, and occasionally the Commission appoints a member of its staff to serve as hearing examiner for prehearing conferences, discovery disputes, oral arguments, and other matters presented to the Commission through the hearing process. These proceedings involve highly technical issues regarding telecommunications, electric, gas, and water utilities, and conservation matters. It is not reasonable to assign an individual to preside over these hearings who has little or no knowledge about the underlying subject matter. For the most part, someone lacking a good understanding of the technical issues involved in a hearing would be unable to function as the presiding officer for the hearing. Because of the very specialized and highly technical nature of the matters coming before the Commission, a presiding officer at a Commission hearing must understand the industries regulated by the Commission. Any staff member who might serve as a hearing examiner for the Commission is uniquely able to perform in that capacity and is always readily available and flexible, since they are already a full-time Commission employee with full-time responsibilities at the Commission beyond their periodic assignment as a hearing officer. Outside contractors are also used by the Commission when circumstances require additional or unusual levels of expertise and the law allows.

As an example of the needs of the Commission regarding presiding officers at hearings, the Commission is now searching for an individual who could potentially serve as a hearing examiner and consultant to the Commission in its upcoming docket establishing prices for unbundled elements of the telecommunications network. Someone who does not understand the configuration of a telephone network, the restrictions in the Federal and State Telecommunication Acts on pricing the network, the historical and future methods for costing out a network, and the activity of other states and the FCC on the costing issue, would hinder, not help, in a hearing process addressing the issue. People who understand telecommunications are few, and lawyers

who understand it and who are not already representing a party to the proceeding, are even fewer. Someone with the necessary technical expertise would not be in the Office of Administrative Hearings.

III. Motor Carrier Certification Hearings - KSA 66-1,117; HB 2604, Section 23.

The KCC schedules motor carrier certification hearings on a bi-weekly basis, however, the parties frequently stipulate to the evidence at issue and hearings are then canceled. When a hearing is held, an available Commission attorney is assigned to preside as hearing officer. This involves reviewing prefiled testimony of applicants, presiding at the actual hearing, and making recommendations to the Commissioners regarding applications. Although the issues are specialized, involving matters concerning the trucking industry, federal motor carrier safety regulations, and Commission motor carrier laws and regulations, they are not so complicated that an outside hearing examiner could not learn them over a certain period of time. However, the present procedure used by the Commission has worked efficiently for many years, and the Commission has received no complaints from applicants, or their attorneys, regarding the Commission's appointment of a staff attorney as hearing officer in the certification procedure.

HB 2604, Section 23, amends the Commission's motor carrier hearing procedure so as to disallow the Commission from designating a staff member to preside at these hearings, and instead requires the use of a presiding officer from the Office of Administrative Hearings. This appears to be an unnecessary change in Commission procedure which reduces the efficiency of the hearing process and potentially increases costs to the Commission. In the past three months, all motor carrier certification hearings have been canceled due to a stipulation being reached between the parties. As such, the Commission has incurred no cost for a hearing examiner during this time because the staff attorney assigned to preside is already a full time employee of the Commission who has a full level of responsibilities otherwise. If the Commission is required to pay the Office of Administrative Hearings in order to keep a hearing officer on call for these hearings which are ultimately canceled, or if it must pay for the time necessary to train the hearing officer in the subject matter of the hearings, costs would increase.

Because of the somewhat specialized nature of the motor carrier certification hearings, and because the Commission's present procedure appears to be more efficient and cost effective, the Commission believes the amendment in Section 23 of HB 2604 is unnecessary for our agency and may, in fact, be counter-productive.

IV. Summary

The Commission respectfully requests that it be exempted as an agency from HB 2604. The legislature has seen fit to exempt the Commission previously from the requirement that presiding officers be appointed from the Office of Administrative Hearings. The Commission

hopes the legislature will continue to understand our need, and continue to allow the Commission the flexibility to appoint hearing officers who are able to effectively serve in that capacity because of their unique experience and knowledge of the technical subject matter which the Commission must address in its hearings.



The Kansas Association of Public Employees
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Testimony of Paul K. Wilson
Director of Labor Relations
Kansas Association of Public Employees before
The House Committee on the Judiciary on
House Bill 2604

Members of the committee, good afternoon and thank you for allowing me to come before you to offer testimony in opposition to House Bill 2604.

My name is Paul Wilson and I am the Director of Labor Relations for the Kansas Association of Public Employees. The bill under consideration here deals with the proposition of creating an office of administrative appeals within the Department of Administration.

At first blush this bill appears to be an effort at consolidation and efficiency. In practice, however, it may have exactly the opposite effect and/or destroy the purposes of some of the boards affected. As a former state employee who conducted many hearings during my tenure, I believe I can speak from experience and possibly offer some explanations which might otherwise be overlooked.

Many of the boards which conduct hearings as a portion of the duties of their office develop a unique body of knowledge about their specific subject area over time. In addition, hearing officers who have been involved in that subject area for any period of time become familiar conversant with past decisions and interpretations developed in the administration of the laws of the agency or board. That body of knowledge allows the hearing officer to fashion his or her recommended decision based on the past practices of the agency without spending vast amounts of research time in recreating the philosophy and interpretations of the agency for whom they are holding the hearing.

In other professions, specialization has emerged as the practice of choice. If an individual needs a heart transplant, they seldom go to a general practitioner. They go to a specialist, and they do so for good reason. No one can be expected to be an expert at everything. I'm reminded of the expression, "Jack of all trades and master of none". The public expects government to make the best possible decisions, and KAPE believes that goal is best served by allowing hearing examiners to focus on a specialized body of law in order to develop their expertise.

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A second concern held by KAPE is the fact that some of the boards who hold hearings under Kansas law may include the State of Kansas as a petitioner or a respondent, and to allow the state to serve as both a party to an action as well as the trier of facts and court of record is clearly inappropriate. In this instance I am reminded of another expression about, "Putting the fox in charge of guarding the chicken house", and KAPE does not believe the legislature wishes to create that situation either.

In summary, KAPE acknowledges that there may be instances where consolidation of state operations may result in worthwhile efficiencies, but does not believe that end will be met by the elements of this bill. KAPE, therefore, opposes House Bill 2604.

Thank you for your attention and I will attempt to answer any questions you may have.

5 //

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE

By A. J. Kotich, Chief Counsel
Kansas Department of Human Resources
February 3, 1998

Topic: House Bill 2604

The purpose of my testimony today is to provide information requested by the committee during its January 29, 1998 meeting. Specifically, the committee inquired as follows:

1. How many hearing officers does KDHR have?
2. Since Professor Dave Ryan testified that other states have pools of hearing officers as is contemplated by HB 2604 and Philip Harness' testimony stated that the Employment Security Law is federally funded and removal of these hearings would cause federal compliance problems, how do other states do it without losing federal dollars?

The Kansas Department of Human Resources has 24 hearing officers throughout the state of which ten are administrative law judges who hear Workers Compensation cases; eleven hear unemployment insurance matters; one and one-half full time equivalent employees hear wage claim matters, and one and one half hear PEERA/PNA matters.

According to Jack Bright, UI Appeal Specialist, United States Department of Labor, of the states that have centralized panels of hearing officers for administrative hearings, only the State of Washington places jurisdiction of unemployment insurance benefit (UI) appeals within its centralized panel of hearing officers. Those hearing officers who hear UI appeals specialize in that area and do very little except UI appeals. Mr. Bright points out two areas of possible compliance problems, funding and time lapse. The funding problem is that no federal UI funds may be intermingled or used for other programs. The time-lapse problem is that 60% of all referee appeal decisions must be mailed within 30 days of filing and 80% must be mailed within 45 days. If the UI case load were adjudicated under the Kansas Administrative Procedures Act, decisions could exceed required UI time-lapse standards and jeopardize federal funding.

Attached for the committee's information is a memorandum to me regarding the compliance issue from William H. Layes, KDHR's Chief of Labor Market Information Services.

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Memorandum

Kansas Department of Human Resources

Date: February 3, 1998

To: A. J. Kotich
Legal Services

From: William H. Layes, Chief
Labor Market Information Services

Subject: Appeals Hearing Officers

DEPARTMENT OF
HUMAN RESOURCES

FEB 4 1998

RECEIVED
LEGAL SECTION

Following our discussion of January 30, we have prepared the following information.

1. Workload volume of unemployment insurance hearing referees,
2. Organization structure for referees in surrounding states,
3. Contact with the U. S. Department of Labor staff concerning certification.

A total of 10,480 UI benefit appeals were heard during CY 1997. In CY 1996 there were 11,481 appeals heard. The cases were heard by 15 referees.

Mr. Steve Weigel of the Kansas City ETA Regional Office was contacted on Friday, January 30, 1998. Mr. Weigel stated that no state in Region 7 (Nebraska, Kansas, Missouri, Iowa) has an arrangement whereby attorneys are "pooled" to perform tasks other than Unemployment Insurance activities. It is not known if arrangements of this sort exist in states outside of Region 7.

We contacted Mr. Robert Johnson of the U. S. Department of Labor in Washington, DC concerning possible issues with tax credit certification. As you know, employers receive a "credit" for taxes in states which maintain conformity with federal requirements. State laws are then certified as in compliance by the Secretary of Labor. Mr. Johnson assured us that "pooling" of attorneys would not raise an issue of certification and thereby put the employer tax credit at risk. However, Mr. Johnson did suggest that an arrangement of this sort might well raise problems with the **proper and efficient administration** of the Unemployment Insurance grant.

Specifically, Section 303 of the Social Security Act (SSA) provides a means by which the Secretary of Labor shall make payments for administration of a grant for Unemployment Insurance. This section 303(a)(8)(9) provides that:

"The Secretary of Labor shall make no certification of payment to any state unless he finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

Page 2
Mr. A. J. Kotich
February 3, 1998

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law."

Proper and efficient administration of the grant could be jeopardized if moneys expended for the payment of staff for Unemployment Insurance referee activities is used for other purposes. Mr. Johnson indicated that what is considered "proper and efficient" for Kansas may not be shared by the national office. At a minimum, a separate account would be required to insure costs charged against the Unemployment Insurance program is for activity conducted in performance of Unemployment Insurance work.

The National Office requires SESAS (State Employment Security Agency) to perform at certain levels relative to the administration of the Unemployment Insurance program. Appeal referees are to provide hearings and dispose of cases on a timely basis. The standard used by the national Office to measure performance is termed, "Desired Level of Achievement (DLA)." DLA's for lower and higher authority appeals are as follows:

Lower authority. A state will be deemed to comply substantially with the requirement of Section 303(a)(3) of the SSA with respect to first level administrative benefit appeals if the state has issued at least 60 per cent of all first level benefit appeal decisions within 30 days of the date of appeal, and at least 80 per cent of all first level benefit appeal decisions within 45 days.

Higher authority. The desired levels of achievement for higher authority appeals calls for 40 per cent of decisions to be made within 45 days, and 80 per cent of decisions to be made with 75 days.

Should a state fail to meet the DLA, a "corrective action plan" is required. The "plan" would detail the steps to be taken to rectify the problem(s). The "plan" would be monitored by the National Office at specified intervals to determine compliance. Should the issue be found to be one of nonconformity or failure on the part of the State to provide sufficient priority in relation to current funding, the National Office could elect to withhold funds or reduce funding levels. Conceivably, funds may have to be returned to the National Office. USDOL maintains serious concerns about not retaining direction and control of appeals referees in state agencies administering the Unemployment Insurance program. Should this connection be severed, in all likelihood, some risk will be brought to bear on the Unemployment Insurance administration grant.

cc: Roger Aeschliman
Reggie Davis

WHL:mm

H.B. 2604

Legislative committee hearing, 1-4-98

Arguably, this bill does not affect the PEERA at KSA 75-5413 *et seq.* or the PNA at KSA 72-4321 *et seq.* as the legislature has specifically targeted other acts and agencies, and neither PEERA nor PNA are being amended. However, Sections 30(i) and 39 refer to "all agencies" and Sections 34 and 35 amend the KAPA, specifically KSA 77-514. Since all hearings under both the PEERA and the PNA must be held in accordance with the KAPA, it could be concluded that this bill is intended to affect the hearings conducted by the office of PERB/Labor Relations.

The following are the highlights of arguments that hearings under PEERA and PNA should *not* be included in this bill:

1. KDHR, the agency, is not a party in PEERA and PNA hearings -- therefore, no problem with any appearance of institutional bias. If the hearing officer was moved under the Department of Administration, such a move would *create* an appearance of bias as the Department of Administration is a party in at least 30% of the cases in PEERA.

2. The Kansas Supreme Court has stated that "the ruling of an administrative agency on questions of law ... may carry with it a strong presumption of correctness, especially if the agency is one of special competence and experience." *USD No. 500 v. Womack*, 20 KanApp2d 608 (1995). If administrative decisions are made by ALJ's with no special expertise or experience in a particular area of law, the courts may be reluctant to give such deference to agency decisions.

3. Cases under PEERA and PNA are now being handled in a manner using alternative

dispute techniques, which are dramatically reducing the need for hearings. Even when mediation is not successful, the parties often choose to have the mediator also act as the hearing officer because that individual is familiar with the parties and the facts in that case, saving everyone time and money.

4. The PERB/Labor Relations office performs many functions besides holding hearings, such as handling impasse cases, assigning federal mediators and fact finding panels. The office consists of 1 hearing officer and 1 support staff person. If both of these positions were transferred to the Dept. of Administration Office of Administrative Hearings, the questions would become, who would perform these other functions? Another support person? If so, how would this be cost effective? The support person handling these functions at this time has been doing so for 23 years.

7 #12
#B

**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON FEBRUARY 4, 1998
BY GEORGE M. WOLF
DEPUTY DIRECTOR OF EMPLOYMENT SECURITY**

H.B. 2604
Legislative Committee Hearing, 2-4-98

Arguably, this bill does not affect the Public Employee Employer Relations Act "PEERA" at K.S.A. 75-5413 et seq. or the Professional Negotiations Act "PNA" at K.S.A. 72-4321 et seq. as the legislature has specifically targeted other acts and agencies, and neither PEERA nor PNA are being amended. However, sections 30(i) and 39 refer to "all agencies" and Sections 34 and 35 amend the Kansas Administrative Procedures Act "KAPA", specifically K.S.A. 77-514. Since all hearings under both the PEERA and the PNA must be held in accordance with the KAPA, it could be concluded that this bill is intended to affect the hearings conducted by the office of Public Employee Relations Board/Labor Relations.

The following are reasons that hearings under PEERA and PNA should *not* be included in this bill:

1. Kansas Department of Human Resources, the agency, is not a party in PEERA and PNA hearings; therefore, there is no problem with the appearance of institutional bias. If hearing officers who hear PEERA and PNA cases were moved under the Department of Administration, such change could *create* the appearance of bias as the Department of Administration is a party in at least 30% of the cases in PEERA.

2. The Kansas Supreme Court has stated that "the ruling of an administrative agency on questions of law. . . may carry with it a strong presumption of correctness, especially if the agency is one of special competence and experience." U.S.D. No. 500 v. Womack, 20 KanApp2d 608

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(1995). If administrative decisions are made by Administrative Law Judges with no special expertise or experience in a particular area of law, the courts may be reluctant to give such deference to agency decisions.

3. Cases now being filed under PEERA and PNA are now being handled in a manner employing alternative dispute techniques, which have and are dramatically reducing the need for formal adversarial hearings. Even when mediation or other alternative dispute resolution technique is unsuccessful, the parties often choose (by written waiver) to have the mediator also act as the hearing officer because that individual is familiar with the parties and the facts in that case, saving everyone time and money.

4. The PERB/Labor Relations office performs many functions besides holding hearings, such as handling impasse cases, assigning federal mediators and fact finding panels. The office consists of an Executive Director, one hearing officer and one support staff person, who acts as the clerk to the Labor Relations office. If one or more of these positions were transferred to the Department of Administration, Office of Administrative Hearings, the question would become, who would perform these other functions? (The "Clerk" performing these functions at this time has been doing so for 23 years.)

5. Hearing officers who hear PEERA and PNA cases must have an in-depth knowledge of the respective statutes which would be difficult to duplicate if cases were to be heard by a member of a panel of hearing officers unfamiliar with the respective statutes.

6. To create a centralized unit of hearing officers would diminish the expertise of all and, in effect, create another court of general jurisdiction, even though its authority would be limited to administrative law issues.

7. 13

**TESTIMONY PRESENTED TO
HOUSE JUDICIARY COMMITTEE**

RE: CENTRALIZED POOL FOR ADMINISTRATIVE LAW JUDGES

HB 2604

By: Rebecca Rice

February 4, 1998

Mr. Chairman and members of the Committee, my name is Rebecca Rice and I am appearing as an individual and not on behalf of any client. I support the concept of a centralized pool for administrative law judges.

Upon discussion with some members of this committee, I had made the decision to not appear on this bill, as we believed it was progressing nicely on its own. However, after last weeks hearing, we decided that perhaps I could help address some of your concerns and questions.

As some of you may recall, I requested that this committee introduce a bill to create a centralized pool in 1995. At that time, we had new leadership in the House and a large number of new legislators-many of whom had asked to be elected so they could come to Topeka to help "reinvent government". I believed the time was right for the promotion of the pool concept. It was. That bill--although probably needing clean-up amendments-- passed the House unanimously. The House members understood instinctively that the current system is perceived by the public as a weapon for agencies to use against them--your constituents. As the system operates now, most who encounter it believe the it is a kangaroo court designed to favor the government bureaucracy at the expense of and against regular citizens. Once an agency digs its heels in, they can literally prevent indefinitely an individual from proceeding to the courts for relief. That ability encourages the attitude held by too many that the government works against anyone who does not have money or power.

My request in 1995 grew out of an unbelievable experience with the implementation of the KAPA by SRS. I have had only one experience with the KAPA and, although I eventually prevailed at district court, I do not intend to ever represent another client whose appeal is under the jurisdiction of the KAPA as it is currently written and implemented.

Some of the questions asked at the last hearing addressed the issue of cost. How many hearings; how many judges; how many agencies? These questions are important and raise one of the issues-- we have no records for the state as a whole regarding the number of times the KAPA is utilized in appeals from agency decisions. A centralized pool will allow you to monitor those appeals. I think we additionally need to know the number of times ALJs uphold agency decisions. Is it 95% or 45%. Right now, there is no mechanism to monitor these hearings.

How many times are ALJ opinions overturned by a district court? How can a fiscal note be attached to this bill until we know the answer to that question? If a central pool all but eliminates appeals to district court, how much money will ultimately be saved by the pool concept.

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We have no information regarding the average length of time to return decisions and the average duration from the time an initial decision is appealed until it finally reaches district court. We have no records regarding the average cost of appeals, the number of hearings heard by ALJs, whether certain types of decisions within an agency are more likely to be appealed than others, and, in fact, we have no information about how well or not the KAPA is working because each department utilizes it differently and acts autonomously in this area.

It is my contention that a central pool will cause more agencies to try to work things out with your constituents rather than have the questionable decision appealed to an ALJ who has no allegiance to the agency. I believe that is human nature. Is that possibility being factored into the cost analysis? It is very possible that over time, the number of appeals could be sufficiently reduced to allow for a reduction in the total number of ALJs.

Our present system operates--and I assume was not originally intended to do so--to reward those with the money to hire the attorneys to protect them until they can reach district court, like my clients. However, if individuals do not have the resources to fight the employees in any particular agency, then they will always lose. At least under a centralized pool, there will be a perception that the ALJ is not absolutely committed to the agency position before the hearing begins. Additionally, it will be a tool for the legislature to use to monitor agency activity and its acceptability to the general public. It is very possible this factor alone is the primary reason agencies have traditionally opposed this legislation.

As you may know, the bill the House Judiciary Committee adopted in 1995 experienced great opposition from the establishment bureaucracy, its supporters and sympathizers. Most of this opposition was not public, was paid for by tax dollars and was very effective because of the work that went on outside the public eye.

If we need to wait until the bill is written without flaws or wait until there are no more predictions of possible dire consequences, then the bill will never be passed. The excuse that there might be unknown problems that might arise from one piece of legislation or another is becoming more frequent in this process. Mr. Chairman, I submit that there is no perfectly drafted legislation or statute. They don't exist. Waiting until the legislation can be written perfectly or just bringing in minor agencies or boards who don't have any hearings and therefore no detractors is doublespeak for not doing it. This legislation will probably get us close and that is all we do with most legislation. And then we fix and tinker and fix. Laws evolve and change as we evolve and change. Even if we somehow managed to get it completely wrong, it doesn't really matter because the system we have now is wrong anyway.

I believe the efforts made last year in this area will prove to be very helpful. The changes in some of the hearings at the department of revenue and the child support law has already helped some to realize the change really isn't the terrible destructive step they predict. Hopefully, institutional opposition will continue to lessen and the legislature will be allowed to make more of these kinds of changes.

Mr. Chairman, thank you for allowing me to speak to this issue out of the traditional order. I appreciate the committee's indulgence.

Phil Harris

1 consent of the employing agency. The designee must possess the same
2 qualifications required of presiding officers employed by the office.

3 (d) The director may furnish presiding officers on a contract basis to
4 any governmental entity to conduct any proceeding not subject to the
5 Kansas administrative procedure act ~~or not listed in K.S.A. 77-551 and~~
6 ~~amendments thereto.~~

7 (e) The secretary of administration may adopt rules and regulations:

8 (1) To establish procedures for agencies to request and for the di-
9 rector to assign presiding officers. ~~The department of social and rehabil-~~
10 ~~itation services~~ An agency may neither select nor reject any individual
11 presiding officer for any proceeding except in accordance with the Kansas
12 administrative procedure act;

13 (2) to establish procedures and adopt forms, consistent with the Kan-
14 sas administrative procedure act, the model rules of procedure, and other
15 provisions of law, to govern presiding officers; and

16 (3) to facilitate the performance of the responsibilities conferred
17 upon the office by the Kansas administrative procedure act.

18 (f) The director may implement the provisions of this section and
19 rules and regulations adopted under its authority.

20 (g) The secretary of administration may adopt rules and regulations
21 to establish fees to charge a state agency for the cost of using a presiding
22 officer.

23 (h) Effective July 1, 1998, personnel in the administrative hearings
24 section of the department of social and rehabilitation services and support
25 personnel for such presiding officers, shall be transferred to and shall
26 become employees of the office of administrative hearings. Such person-
27 nel shall retain all rights under the state personnel system and retirement
28 benefits under the laws of this state which had accrued to or vested in
29 such personnel prior to the effective date of this section. Such person's
30 services shall be deemed to have been continuous. All transfers of per-
31 sonnel positions in the classified service under the Kansas civil service act
32 shall be in accordance with civil service laws and any rules and regulations
33 adopted thereunder. This act shall not affect any matter pending before
34 an administrative hearing officer at the time of the effective date of the
35 transfer, and such matter shall proceed as though no transfer of employ-
36 ment had occurred.

37 (i) *Effective July 1, 1999, personnel in the administrative hearings*
38 *section of all agencies and support personnel for such presiding officers,*
39 *shall be transferred to and shall become employees of the office of admin-*
40 *istrative hearings. Such personnel shall retain all rights under the state*
41 *personnel system and retirement benefits under the laws of this state*
42 *which had accrued to or vested in such personnel prior to the effective*
43 *date of this section. Such person's services shall be deemed to have been*

which conduct hearings pursuant to the Kansas administrative procedure act

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