

Approved: 2-11-99  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Sandy Praeger at 10:00 a.m. on February 4, 1999 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Norman Furse, Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:  
Barbara Hinton, Legislative Post Auditor

Others attending: See attached list

**Hearing and Action on: SB 128 - Child care; civil fines**

Barbara Hinton, Legislative Post Auditor, testified before the Committee in support of **SB 128** that could require a maximum civil fine of \$500 be levied against a maternity center or day care provider that commits a violation of the law. The bill also provides that for each day the violation continues, a fine of \$500 could be levied because each day could constitute a separate violation. Ms. Hinton noted that this legislation addresses a recommendation made in their performance audit report. In the cases that they reviewed, Post Audit found examples where serious violations had occurred, and where child-care providers sometimes hadn't corrected those violations even after repeated warnings and re-inspections as outlined in her written testimony. (Attachment 1)

Written testimony in support of **SB 128** was received from State Senator Lana Oleen. (Attachment 2)

After Committee discussion relating to the number of day care violations reported and requirements for a day care license, Senator Jones made a motion the Committee recommend SB 128 favorably for passage, seconded by Senator Becker. The motion carried with Senator Bleeker voting 'No'.

**Hearing and Action on: SB 135 - Health Care Reform Oversight Committee expiration date**

Staff briefed the Committee on **SB 135** which would create a Health Care Reform Legislative Oversight Committee. After Committee discussion on the makeup and duties of the SRS Transition Oversight Committee and the Health Care Reform Legislative Oversight Committee, Senator Becker made a motion to amend SB 135 by striking subsection (g) on page 4 of the bill, and also on page 4, line 28, striking the date "June 30, 2001", and inserting "July 1, 2001", and that the Committee recommend SB 135 as amended favorably for passage, seconded by Senator Jones. The motion carried.

**Action on: SB 71 - Applicants appearance before Kansas Dental Board; penalty fees for late renewal, practice location address**

After Committee discussion on the amount of penalty fees that should be applied for late renewal of a dental license, staff overview of current penalties of other agencies, and duties of the State Dental Board when handling late renewals, Senator Hardenburger made a motion the Committee recommend SB 71 favorably for passage, seconded by Senator Jones. The motion carried with Senator Salmans voting 'No'.

**Adjournment**

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 9, 1999.



**Testimony for the  
Senate Public Health and Welfare Committee  
SENATE BILL 128**

Barb Hinton, Legislative Post Auditor  
February 4, 1999

Madame Chair and members of the Committee, I'm appearing before your Committee today on behalf of Senate Bill 128. This bill, as introduced by the Legislative Post Audit Committee, would clearly specify the authority the Department of Health and Environment has in applying fines for violations of the State's child-care regulations.

This legislation addresses a recommendation we made in our performance audit report, *Reviewing the Department of Health and Environment's Regulation of Child Care Facilities and Family Day Care Homes*. In that audit, we noted that State law subjects child-care providers to fines when they've violated regulations that "significantly and adversely" affect the health, safety, or sanitation of children.

In the cases we reviewed, we found examples where serious violations had occurred, and where child-care providers sometimes hadn't corrected those violations even after repeated warnings and re-inspections. For these situations, the law wasn't clear about whether the maximum fine that could be levied was \$500 per day, per violation, or per incident.

In the few instances we saw where fines were assessed, the amount of fine levied generally was per "provider." Unfortunately, this approach creates little incentive for problem child-care providers to come into compliance. For example, even after the Department found multiple and repeated violations by a provider in inspection after inspection, over a long period of time, it was applying the maximum \$500 fine to the "provider." When we looked at examples of other State agencies' fining authority, we found that most were for each violation, not each violator.

The bill before you would allow (but not require) the Department to assess a civil fine of up to \$500 for each violation that could significantly affect children's safety or well-being. For continuing violations, every day the violation continues counts as a separate violation.

Senate Public Health and Welfare  
Date: 2-4-99  
Attachment No. 1



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Gary R. Mitchell, Secretary

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December 10, 1998

Barbara J. Hinton  
Legislative Post Auditor  
Mercantile Bank Tower  
Jackson Street, Suite 1200  
Topeka, Kansas 66612-2212


Dear Ms. Hinton:

Thank you for allowing us time to review the draft legislation being proposed by the Legislative Post Audit Committee regarding an audit of the Child Care Regulation in 1997.

We find the language of the proposed bill appropriate to clarify whether the fine amount applies on a per provider, per violation, and per day basis.

Should you have any further questions or concerns, please feel free to contact me at 296-0461.

Sincerely,



Gary R. Mitchell  
Secretary

**Examples of other agencies' fining authority:**

State Agency	Type of Fraud/Violation	Fine or Penalty Provision
Board of Accountancy	Fraud or deceit in obtaining a certificate to practice accounting or in practicing accounting; willful violation of rules of professional conduct, etc.	...an administrative fine not exceeding \$1,000, for <b><u>any one or any combination of the following causes...</u></b>
Board of Cosmetology	Failure to comply with any provision of the Act, with rules and regulations of the Board, etc.	...a fine not to exceed \$1,000 <b><u>per violation...</u></b>
Securities Commissioner	Violation of the Securities Act or any rule, regulation, or order of the Commissioner.	...a civil penalty up to a maximum of \$5,000 for <b><u>each</u></b> violation
Board of Healing Arts	Violations of the Kansas Healing Arts Act ( <i>misdemeanor penalties</i> )	...a fine of not less than \$50 nor more than \$200 <b><u>for each separate offense...</u></b>
Board of Healing Arts	Violations of the Kansas Healing Arts Act ( <i>administrative fines</i> )	...a fine...not to exceed \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third violation and for <b><u>each</u></b> subsequent violation
KCC (Gas Pipelines)	Violation of any rule or regulation adopted pursuant to the Gas Pipeline Safety Act, or any regulation adopted by the KCC.	...a civil penalty not to exceed \$25,000 <b><u>for each violation for each day the violation persists.</u></b> not to exceed \$500,000 for any related series of violations.
KCC (Common Carriers)	Violation of any provision of the Motor Carrier Act, failure to uphold KCC order or final judgment by court.	...for <b><u>every such</u></b> violation, failure, or refusal, forfeit and pay to the State Treasurer...not less than \$100 and not more than \$1,000 for such offense.
KDHE (Hazardous Waste)	Violation of any provision of the Hazardous Waste Act.	...in the case of a continuing violation, <b><u>every day such violation continues shall be deemed a separate violation.</u></b>

## Reviewing the Department of Health and Environment's Regulation of Child Care Facilities and Family Day Care Homes

**Audit finding:** KDHE can fine providers up to \$500 for violating child care regulations that "affect significantly and adversely the health, safety, or sanitation" of children. However, State law doesn't specify whether this fine applies on a per-day, per-violation, or per-incident basis. KDHE is applying that fine on a per-provider basis.

**Impact:** Reinspections sometimes showed homes and facilities didn't take corrective action, and continued to violate child care regulations. In these cases, providers have little incentive to come into compliance, and KDHE has little recourse to force compliance. Children's safety and well-being can be affected.

**Draft legislation:** Allows KDHE to assess a civil fine of up to \$500, after proper notice and hearing, for each violation that could significantly affect children's safety or well-being. For continuing violations, every day the violation continues counts as a separate violation. (KDHE still has discretion as to when to assess a fine, and by how much.)

We reviewed 40 "enforcement" actions taken when violations were identified during an annual licensing inspection or complaint investigation. Most violations resulted in "notices of noncompliance" (KDHE advised provider of problem, gave 5 days to correct). Each notice can contain multiple violations. The most common ones we saw:

- **Violations regarding treatment of children.** Examples: Corporal punishment. Verbal abuse. Inappropriate discipline methods (withholding food from children as punishment).
- **Violations regarding the provider's "environment."** Examples: Matches, knives, cleaning products, etc., within children's reach. Dangerous equipment in children's play area. Guns not locked away; medication accessible. Outlets uncovered. Stairs not gated. Bannister rails too wide.
- **Violations regarding child supervision.** Examples: Provider caring for more children than authorized. Children playing outside unsupervised. Child not supervised in bathroom. Infants in playpen outside provider's hearing range. Infant left 1 hour without toys.
- **Violations regarding paperwork.** Examples: No background checks for employees. No proof of provider's training and qualifications. Missing health assessments for children and provider. Children had no paperwork, and provider didn't know their last name.

In 8 instances, a reinspection showed the provider hadn't corrected one or more of the violations identified. These violations were:

1. not supervising children
2. stairway not gated
3. unanchored swing set, hazardous personal products within reach, missing paperwork
4. children sleeping in basement
5. children left outside unsupervised
6. missing training docs and health assessments
7. missing KBI report, licensing fee not paid, relicensing paperwork not completed
8. no working telephone on premises

LANA OLEEN  
SENATOR, 22ND DISTRICT  
GEARY AND RILEY COUNTIES



TOPEKA

SENATE CHAMBER

CHAIR: FEDERAL AND STATE AFFAIRS  
CHAIR: CORRECTIONS/JUVENILE JUSTICE  
CHAIR: LEGISLATIVE POST AUDIT  
VICE CHAIR: JUDICIARY  
MEMBER: EDUCATION  
CONFIRMATION OVERSIGHT  
LEG. EDUCATIONAL PLANNING  
KANSAS SENTENCING COMMISSION

LEGISLATIVE HOTLINE  
1-800-432-3924

**TESTIMONY BEFORE THE  
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE  
ON SENATE BILL 128**

Senator Lana Oleen, Vice-Chair  
Legislative Post Audit Committee  
February 4, 1999, 10:00 a.m., Room 526-S

Madame Chair and members of the Committee, thank you for allowing me the opportunity to speak before you today on Senate Bill 128. I was Chair of the Legislative Post Audit Committee when this bill was approved for introduction, and I'm appearing on behalf of the Committee in support of this bill.

This legislation addresses a recommendation Legislative Post Audit made in its report about the Department of Health and Environment's regulation of child-care providers. That recommendation called for the Legislature to clarify State law regarding civil fines for providers who violate child-care regulations.

At issue is whether the maximum fine the Department can levy for serious or repeat violations that affect children's health and safety is \$500 per day, per violation, or per incident. This bill would allow that fine to be levied for each violation. For continuing violations, every day the violation continues counts as a separate violation.

The Post Audit Committee introduced this bill so that the Department has both the legislative guidance and the enforcement tools it needs to help bring problem providers into compliance. We think this bill also can help make sure that children in State-licensed child-care facilities are safer from harm.

I am supportive of this bill, and would urge the Committee to give it favorable consideration.

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Senate Public Health and Welfare  
Date: 2-4-99  
Attachment No. 2