

Approved: 3-13-01  
Date

## MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 20, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Jordan (EA)

Committee staff present: Mrs. Chris Courtney, Legislative Research Department  
Ms. Renae Jefferies, Revisor of Statutes  
Ms. Lisa Montgomery, Revisor of Statutes  
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Ms. Phyllis Gillmore, Executive Director,  
Behavioral Sciences Regulation Board  
Ms. Roberta McKenna, SRS,  
Children/ Family Policy Division  
Ms. Pam Scott, Kansas Funeral Directors Association  
Mr. Steve Ryan, Vice President, Kansas State Board of  
Mortuary Arts

Others attending: See attached guest list.

### Approval of Minutes

The Minutes distributed on February 13, 2001 are approved, as there was no response received from Committee members.

### Distribution of Handouts

Upon calling the meeting to order, Chairperson Wagle referred the Committee the following handouts before them. The first three are in reference to the final presentation of yesterday's committee meeting.

1. Written testimony in support of **SB 187** from Ms. Jackie Rawlings, PT, and Director of a Rehab Department in a general acute hospital;
2. Written testimony in opposition of **SB 187** from Ms. Carolyn Gaughan, Executive Director, Kansas Academy of Family Physicians;
3. Memorandum from Mr. Norman Furse, Revisor of Statutes regarding the comparison of **SB 186** to the current BSRB statutes;
4. Fiscal Note for **SB 187**; and
5. Fiscal Note for **SB 214**

A copy of the first 3 handouts above are (Attachments #1, 2, and 3) attached hereto and incorporated into the Minutes by reference.

### Hearing on **SB 186** - Behavioral sciences regulatory board investigations procedures and subpoena power.

With that business aside, Chairperson Wagle then introduced Ms. Phyllis Gillmore, Executive Director, Behavioral Sciences Regulatory Board who was the first proponent to testify for **SB 186**. Ms. Gillmore gave a brief overview of the BSRB and voiced her support of passage of the bill which would allow investigations to be conducted in a fair and reasonable manner and to obtain information needed to protect the public. A copy of her written testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference.

Next to present proponent testimony and introduced by Chairperson Wagle was Ms. Roberta McKenna, SRS, Children/Family Policy Division, who requested the phrase be added, "unless otherwise prohibited by law" at line 24 of the bill. A copy of her request is (Attachment #5) attached hereto and incorporated into the Minutes by reference.

A healthy discussion of questions, comments, and answers ensued between Senators Praeger, Barnett, Wagle, and Salmans and Ms. Gillmore and Ms. McKenna concerning response to Health Oversight Committee, how obstructive is the SRS amendment, to where the phrase should be inserted.

Senator Salmans made a motion to adopt amendment one of **SB 186**. Senator Praeger seconded the motion. The motion carried.

As to the second amendment, after a discussion between Senators Brungardt and Harrington, Ms. Jefferies, and Ms. McKenna regarding does the provision negate what's already there and is the amendment being superfluous. Chairperson Wagle then asked that both the revisor and researcher get together and discuss, then there would be a meeting at the rail after the Senate.

#### **Hearing on SB 214 - Regulation and licensing of crematories**

The next order of business was the hearing of **SB 214**. The first proponent conferee to testify was Mr. Steve Ryan, Vice President, Kansas state Board of Mortuary Arts. Mr. Ryan stated the Mortuary Arts Board had met with the Kansas Funeral Directors Association and worked together on the bill to make it as fair and workable as possible and asked to consider one letter amendment to the bill, changing "of" to "or" in line 34. A copy of his written testimony is (Attachment #6) attached hereto and incorporated into the Minutes by reference.

Ms. Pam Scott, Funeral Directors Association, was the second proponent conferee to testify. Ms. Scott stated that with the increase in cremations occurring in Kansas, the KFDDA believes it is time to adopt comprehensive legislation regulating the operation of crematories in the State of Kansas. A copy of her written testimony is (Attachment #7) attached hereto and incorporated into the Minutes by reference.

A healthy question, answer, and comments discussion ensued between Senators Praeger, Salmans, and Haley and Ms. Scott and Mr. Ryan regarding how this bill is different from those in the past, no grandfather clause, projected trends, to why the increase in cremation.

#### **Action on SB214 and SB 149 - addiction counselor act.**

Senator Brungardt requested the Committee pass **SB 214** as amended. Senator Haley seconded the motion. The motion carried.

A motion to move the bill was introduced by Senator Brungardt. Senator Salmans seconded the motion. The motion carried.

Next on the agenda was the blessing of **SB 149**. After a discussion between Senators Salmans, Praeger, Barnett, and Harrington regarding the precedent set and introduction of an interim committee and Chairperson Wagle agreed to allow the bill to be blessed but stated that the PT bill would not be blessed at this time. Senator Barnett requested the Committee pass **SB149**. Senator Steineger seconded the motion and the motion carried.

#### **Introduction of SCR - urging Secretary of KDHE to review the effects of obesity on health complications.**

A motion was then requested by Senator Barnett to introduce **Senate Concurrent Resolution 1608** bill on obesity. Senator Praeger seconded the motion. The motion carried.

**Adjournment**

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for February 28,2001

**Action on SCR 1608**

The February 20, 2001 meeting-at -the- rail took place at 4:25 p.m. in which the **SCR 1608** amendment was discussed between the revisor and the Committee. It was decided that the amendment was redundant Senator Brungardt requested the bill be passed as amended. Senator Salmans seconded the motion. The motion carried. The meeting ended.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Tuesday, February 20

NAME	REPRESENTING
Mack Smith	Kansas <sup>State</sup> Board of Mortuary Arts
Steve Ryan	"
Barry Bedene	"
Cathy Hennessy Salton	KS Social Work Educators
Mike Duffay	OK. Social Work Educators
Dan Scott	KS Funeral Directors Assn
Mary Ellen Coole	Via Christi
Ellen Pie Kolbiewicz	Assn. of CMHCs
Roger Scorslock	Behavioral Sciences
Camille Nohe	Assistant Attorney General
Phyllis Gilmore	Executive Director Behavioral Sciences
Pat Morgan	Wichita State University Social Work Dept
Elvia Cash Zornick	WSU SW Dept.
Judy Zeln	WSU - SW dept
Shaul Washington	WSU - SW dept
Amy Dexter	WSU - SW dept.
Dirk Hanson	KS Bd of Vet Examiners
Kevin M. Walker	American Heart Assn.
Scott Bruner	DOB
Craig Collins	KAAP

Ron Eisenbarth  
R.S. Mckeuna  
Amy Campbell

"  
SRS  
KMHC ; KSOS



February 19, 2001

To the Senate Health Committee:

I am writing in support of SB187. I am a physical therapist and the director of a rehabilitation department in a general acute hospital. If the provision that allows the physical therapist assistants to initiate physical therapy after a verbal contact with a PT was eliminated, it would not impact our department at all. We never have the assistants initiate treatment prior to the physical therapist's evaluation. Medicare does not pay for treatment given prior to the evaluation, the physical therapist assistants are not trained to evaluate patients and most do not want to see patients prior to the evaluation. I have never supported this provision of our practice act. As a former member of the Physical Therapy Examining Committee, I oppose assistants being allowed to initiate treatment prior to the PT evaluation. It is a good way for unscrupulous practitioners and hospital administrators to provide less than quality patient care.

Jackie Rawlings  
700 Gillespie Drive  
Manhattan, Kansas 66502

*Senate Public Health & Welfare Committee  
Meeting Date February 20, 2001  
Attachment 1-1*



## Kansas Academy of Family Physicians

889 N. Maize Rd, Suite 110 • Wichita, KS 67212 • 316-721-9005  
1-800-658-1749 • Fax 316-721-9044 • [kafp@southwind.net](mailto:kafp@southwind.net) • <http://www2.southwind.net/~kafp/>

February 19, 2001

Charles T. Alfred, MD  
*President*

Robert P. Moser, Jr., MD  
*President-Elect*

Richard M. Glover, II, MD  
*Vice President*

Carol A. Johnson, MD  
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John R. Eplee, MD  
Rick D. Kellerman, MD  
*AAFP Delegates*

Diane D. Klingman, MD  
Dennis D. Tietze, MD  
*Alternate Delegates*

Gregory Chambon, MD  
Joe D. Davison, MD  
Kim M. Hall, MD  
Pam D. Harrison, MD  
Verlin K. Janzen, MD  
Thomas L. Koksai, MD  
Mary Beth Miller, MD  
Gregg Wenger, MD  
*Board of Directors*

Mike Kennedy, MD  
*KAFFP-Foundation President*

Kathy Gooch, MD  
*Resident Representative*

Caroline Vansant-Crowle  
*Student Representative*

Carolyn N. Gaughan, CAE  
*Executive Director*



Representing the largest  
medical specialty group  
in Kansas

To: Senate Committee on Public Health & Welfare

From: Carolyn Gaughan, CAE, Executive Director

Re: SB 187, Licensure of Physical Therapists

Thank you for the chance to provide written testimony in opposition to SB 187. We do not oppose the licensure of physical therapists, but are concerned about the significant expansion of their scope of practice this bill also includes.

Family physicians respect the care expertise and skills of physical therapists and refer patients to them often. However, our members do not believe that patients should be allowed to self-refer without first seeing a physician to diagnose the complaint. Self-referral to a physical therapist would not improve patient care. It also includes the possibility of increasing utilization unnecessarily. We believe family physicians and physical therapists should work together for the good of the patient.

For all these reasons we oppose SB 187 and urge its defeat.

Senate Public Health & Welfare Committee  
Meeting Date February 20, 2001  
Attachment 2-1

MEMORANDUM

TO: Senator Susan Wagle

FROM: Norman J. Furse, Revisor of Statutes

DATE: February 19, 2001

RE: Comparison of SB 186 to Current BSRB Statutes

1. Subsection (a). This language which relates to investigations conducted by the behavioral sciences regulatory board would be new to board language. Similar language to this subsection is found in 65-2839a which is part of the healing arts act.
2. Subsection (b) subpoenas. Similar language to subsection (b) is found in 65-2839a. The current behavioral sciences regulatory board language is the language in strike type on page 3 of SB 186. The language in subsection (b) would clarify that the BSRB has subpoena power in investigations as well as in proceedings before the board. Procedure in both the new language and in the old stricken language would authorize the board initially to issue subpoenas and if necessary to enforce those subpoenas by application to a district court. The current BSRB subpoena language is similar to that found in 65-1452, the dental practices act.
3. Subsection (c). This subsection provides for the maintenance of confidentiality of subpoenaed documents. 65-2839a of the healing arts act makes information about the patient or a patient's family and other records obtained by the board as a result of an investigation procedure confidential. Subsection (c) of SB 186 makes information as part of an investigation confidential except the information may be disclosed in a proceeding conducted by the board, or in an appeal of an order of the board entered in a proceeding, or to the person who is subject to the information, or any person or entity when requested by the person who is subject to the information (subject to the board requiring disclosure of the information in a manner that would prevent identification of any other person who is the subject or source of the information) or to a state or federal licensing, regulatory or enforcement agency which has jurisdiction over acts in conduct similar to the acts or conduct under investigation. Confidential information disclosed by the board under SB 186 is not to be redisclosed by the receiving agency except as otherwise authorized by law.
4. Subsection (d). This subsection is similar to language in 65-2839a of the healing arts act.

*Senate Public Health & Welfare Committee  
Meeting Date February 20, 2001  
Attachment 3-1*

State of Kansas  
Behavioral Sciences Regulatory Board

BILL GRAVES  
Governor

PHYLLIS GILMORE  
Executive Director



712 S. Kansas Ave.  
Topeka, Kansas 66603-3817  
(785) 296-3240  
FAX (785) 296-3112  
www.ink.org/public/bsrb

SENATE TESTIMONY  
PUBLIC HEALTH AND WELFARE  
FEBRUARY 20, 2001

SB 186

Madam Chair and Committee Members:

Thank you for the opportunity to testify today in support of SB 186. I am Phyllis Gilmore the Executive Director of the Behavioral Sciences Regulatory Board (BSRB).

The BSRB is the licensing board for most of the state's mental health professionals, the doctoral level psychologists, the master level psychologists, the clinical psychotherapists, the bachelor, master and clinical level social workers, the master and clinical level professional counselors, and the master and clinical level marriage and family therapists. Additionally, some of the drug and alcohol counselors are registered with the board, although most of them are certified with SRS at the present time.

SB 186 amends current law to grant subpoena power in connection with investigations to the Behavioral Sciences Regulatory Board, subject to the scrutiny of the district court. It also allows for confidentiality of information obtained during investigations.

I should note that the language of this bill was taken from the Board of Healing Arts Act.

Under current law the BSRB can only ask for information. If a respondent chooses not to cooperate, we have no recourse. This ties the board's hands and offers little public protection. The public is not protected if we cannot compel the production of evidence in a fair and reasonable manner.

In one case the respondent may be exploiting dependent adults. However, we cannot gain enough information to fully know the situation. He refuses to cooperate with an investigation and tells his clients to not talk with us. We believe he may be involved in fraudulent billing as well, but we cannot confirm this. We cannot access any of his records, so the investigation is basically halted.

At times, a respondent does not hold records needed. One example is that a licensee may no longer be working for an agency and we might need to access that agency's records. Another example might be when the records are in the hands of a third party who feels a subpoena is necessary before releasing records.

I would also like to draw your attention to line 16 on the first page of the bill. I would suggest qualifying "any investigation" with words to the effect, "based upon a written complaint or other reasonably reliable written information." Examples of this could be a newspaper article or Kansas Supreme Court decision.

Passage of SB 186 would allow the Behavioral Sciences Regulatory Board to conduct investigations in a fair and reasonable manner and to obtain information needed to protect the public.

Thank you for the opportunity to speak to you this afternoon. I will be happy to stand for questions.

Senate Public Health & Welfare Committee  
Meeting Date February 20, 2001  
Attachment 4-1

## RAV Statistics for FY 2001

<b>July 2000</b>		Pre 1998	2	FY 1998	6
FY 1999	21	FY 2000	25	FY 2001	0
Received				4	
Closed				7	
Total # of Cases				<b>51</b>	

<b>August 2000</b>		Pre 1998	2	FY 1998	6
FY 1999	16	FY 2000	23	FY 2001	4
Received				5	
Closed				19	
Total # of Cases				<b>37</b>	

<b>September 2000</b>				FY 1998	1
FY 1999	13	FY 2000	15	FY 2001	8
Received				4	
Closed				1	
Total # of Cases				<b>40</b>	

<b>October 2000</b>				FY 1998	1
FY 1999	13	FY 2000	14	FY 2001	12
Received				5	
Closed				3	
Total # of Cases				<b>42</b>	

<b>November 2000</b>				FY 1998	1
FY 1999	12	FY 2000	12	FY 2001	17
Received				6	
Closed				5	
Total # of Cases				<b>43</b>	

<b>December 2000</b>				FY 1998	1
FY 1999	10	FY 2000	12	FY 2001	20
Received				6	
Closed				5	
Total # of Cases				<b>44</b>	

<b>January 2001</b>				FY 1998	1
FY 1999	8	FY 2000	11	FY 2001	24
Received				6	
Closed				4	
Total # of Cases				<b>46</b>	

<b>February 2001</b>				FY 1998	1
FY 1999	8	FY 2000	11	FY 2001	26
Received					
Closed					
Total # of Cases				<b>46</b>	

January 26, 1998

## STATE AGENCIES' SUBPOENA POWER

**Summary.** The following brief description of subpoena power of state agencies is based upon a discussion of this topic in Professor David Ryan's book, *Kansas Administrative Law*, Kansas Bar Association, (1991). The attached tables display state entities that have subpoena power, the purpose for which that power is granted in statute, procedural limitations on the authority, and bills introduced in the 1998 Legislature that would alter subpoena power of some agencies.

A subpoena is a written order to appear at a specific time and place to provide testimony on a particular matter. A *subpoena duces tecum* demands that the recipient make certain books and records or other items available. In Kansas, many administrative agencies in addition to courts and some legislative committees have subpoena powers. An agency only has subpoena power if it is specifically authorized in statute. The *United States Constitution*, the rules of civil procedure, and the Kansas Administrative Procedure Act (KAPA), and some of the authorizing statutes, all place limitations on the use of subpoena power by state agencies.

Briefly, one must satisfy three elements for relevancy of subpoenas:

1. The agency must be authorized to make the inquiry.
2. The demand must be specific.
3. The information sought must be reasonably relevant.

Statutes granting power of subpoena are generally liberally construed to permit inquiry. The trial court has discretion to:

1. modify subpoenas,
2. quash subpoenas,
3. weigh reasonableness, and
4. require showing of relevancy.

**United States Constitution.** The Fourth Amendment to the *United States Constitution* provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated." This amendment is not limited to law enforcement officers. It also provides protection from searches and seizures by

Senate Public Health & Welfare Committee  
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Attachment 5-1



administrative agencies. Furthermore, the Fourth Amendment does not require a criminal investigation or arrest relative to searches or inspections for administrative or fact gathering purposes by agency inspectors or regulatory control officers. In short, no exceptions are stated in the amendment except that the search must be reasonable. "Reasonableness" has generally come to mean the presence of a warrant for inspections, and a protection against unreasonable subpoena requests.

The Fifth Amendment protection against self-incrimination also limits agency subpoena powers. However, the self-incrimination defense is subject to significant limitations. The defense is *not* available to a corporation or a union. Additionally, the custodian of records for a corporation or a union may not refuse to produce documents. But the custodian may have his or her own privilege to refuse to answer specific questions. In an appropriate case an agency may compel testimony by granting immunity from prosecutions.

**Statutory Authority.** The basic method of satisfying the government's need for information where an individual or business will not voluntarily comply is the use of the subpoena to compel the production of documentary evidence, witnesses, or materials. The subpoena power is generally not implied. If the enabling act is silent on subpoena, no subpoena power exists. There is currently no indication Kansas common law is any different for state-level and local agencies not covered under KAPA. (*Yellow Freight v. KCCR*, 214 Kan. 120, 519 P. 2d 1092 (1974); *Kansas Department of Revenue v. Coca Cola Company*, 240 Kan. 548, 731 P. 2d 273 (1987); See also, *Olathe Community Hosp. v. Kansas Corporation Commission*, 652 P.2d 726, 232 Kan. 161 (1982); *Woods v. Midwest Conveyor Co., Inc.*, 648 P.2d 234, 231 Kan. 763, appeal after remand 697 P.2d 52, 236 Kan. 734 (1982); and more recently, *Patel v. Kansas State Board of Healing Arts*, 920 P. 2d 477, 22 Kan. App. 2d 712 (1996), review denied; *Appeal of Alex R. Masson, Inc.*, 909 P. 2d 673, 21 Kan. App. 2d 863 (1995); *Cline v Meas.*, 905 P. 2d 1072, 21 Kan.App2d 622 (1995), review denied.)

Subpoenas are authorized for all agencies that are covered by KAPA at K.S.A. 77-522. A number of state-level agencies have statutory subpoena power which the attached table reflects. In addition to procedures that may be articulated in authorizing statutes, subpoenas generally must be issued in accordance with the Rules of Civil Procedure (K.S.A. 60-245 and 60-245a).

**Reasonableness.** Kansas common law does not require the agency to know of wrongdoing before a subpoena is issued. Basically, the test is one of "reasonableness" and not "probable cause." Kansas courts apply the test used in *Yellow Freight* for judicial review of agency subpoena issuance. That is, if there is a possibility of relevancy in documents subpoenaed and there is no showing that the subpoena is unreasonable or oppressive, then the statutes granting subpoena power will be liberally construed to permit inquiry.

Three questions should be asked in reference to the issuance of subpoenas by state agencies:

1. Is the subpoena authorized?
2. Is the subpoena within the agency's scope of authority?
3. Is the subpoena "reasonable"?

**Enforcement.** While the agency issues the subpoena, a court must enforce it. Enforcement is generally considered to require such interference with liberty or property as to be a purely judicial type power, constitutionally limited to the judiciary in most jurisdictions. Consequently, courts must enforce agency subpoenas.

The standard of "reasonableness" incorporates "seizure" and "due process," constitutional limitations on agency power. The scope of the request may not be unreasonable which means among other things, that the agency cannot impose an undue burden for production of documents.

A subpoena that is so vague that the respondent does not know what document or material is requested will not be enforced by a court. Subpoenas are frequently challenged because of vagueness. If the court feels that the burden of compliance is too great, it may compel the agency to reduce its request. The court may also request the agency to treat information received as confidential, or require the agency to inspect documents where they are located.

**Kansas Case Law.** Kansas opinions have generally held that the agency is free to use its investigative powers, subject to the standard court review test for enforcement.

- In *Kansas Commission on Civil Rights v. Carlton*, 216 Kan. 735 (1975) and *Atchison, Topeka & S.F. Railway v. Lopez*, 216 Kan. 108 (1975), the court recognized that if the KCCR subpoena was "oppressive or unreasonable" it was subject to modification or quashing by the district court.
- *KCCR v. Sedgwick County Mental Health Clinic*, 220 Kan. 653 (1976) held the limits of subpoena power are subject to the sound discretion of the court.
- *Cessna Aircraft Co. v. KCCR*, 229 Kan. 15 (1981) found that in determining whether the subpoena is oppressive or unreasonable, the court must apply the statute liberally. Some showing of relevancy must be made. Due process places limitations upon the agency powers and "it cannot exercise unbridled power based purely on whim and speculation."
- *Matter of Collingwood Grain Inc.*, 891 P.2d 422, 257 Kan. 237(1995) found that the Board of Tax Appeals (a quasi-judicial entity) has discretion in the enforcement of a subpoena filed by the Department of Revenue. Such subpoenas are subject to the Rules of Civil Procedure, must be relevant, and not unreasonable or oppressive.

Enforcement of many state-level agency subpoenas is under the Judicial Review and Civil Enforcement of Agency Action Act (K.S.A. 77-624). That Act allows a private party to a proceeding to bring a subpoena, discovery order, or protective order enforcement by bringing a Petition for Civil Enforcement in district court. For agencies outside the Judicial Review Act, most subpoena enforcement is by court issuance of its own subpoena when requested by the agency, thereby utilizing the standard court enforcement and judicial subpoena procedures.

**AGENCIES WITH SUBPOENA POWER**

Agency/Official	Purpose	Special Procedures <sup>1</sup>
Any agency head or designee serving as a presiding officer in accordance with the Kansas Administrative Procedure Act (KAPA)	Conduct of hearings governed by KAPA (K.S.A. 77-522)	None
Kansas Commission on Governmental Standards and Conduct	Investigations under campaign finance laws (K.S.A. 25-4158)	Must be authorized by affirmative vote of at least three-fourths of the Commission after the subject has had 30 days to respond to written allegations
	Investigations under ethics laws (K.S.A. 46-260)	
	At the request of any party to a campaign finance or ethics hearing (K.S.A. 25-4163, 46-257)	
Healing Arts Board	Enforcement of laws under its jurisdiction (K.S.A. 65-2839a)	Within five days of service recipient may petition the board to revoke, limit, or modify the subpoena
Healing Arts Board—Disciplinary Counsel	Investigation of matters that may result in action against a licensee (K.S.A. 65-2840a)	Must apply to court for issuance of subpoena
Professional Practices Commission (appointed by the State Board of Education)	Investigating cases related to the State Board's rules and regulations governing certification of teachers and school administrators (K.S.A. 72-8507)	In accordance with an order of the State Board of Education
Interstate Grain Marketing Commission	Enforcement of compact under K.S.A. 2-3101	Majority vote of Commission and then application to any state or federal court for a subpoena
Child Death Review Board	Investigations of certain child deaths (K.S.A. 22a-243)	Apply to district court for subpoena.

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

*attachment 5-4*

02/20/2001 11:08:50 AM FAX 913-296-2310

GOVERNMENTAL ETHICS COMM

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Agency/Official	Purpose	Special Procedures <sup>1</sup>
District Judges	Summoning witnesses under Uniform Act to Secure Attendance of Witnesses From Without State (K.S.A. 22-4202)	Hearing required
	Inquisitions in certain criminal cases (K.S.A. 22-3101)	Action initiated by filing of application by Attorney General, County or District Attorney
Secretary of SRS or law enforcement officer	Child abuse or neglect investigations—request for disclosure of child abuse documents under K.S.A. 38-1523	Application to the district court for a subpoena or order
	Child in need of care hearing—interested party entitled to subpoena for witnesses' attendance (K.S.A. 38-1537)	None
	Juvenile offender hearing--party entitled to subpoena for witnesses (K.S.A. 38-1633)	None
Secretary of SRS	In any Title IV-D (child support enforcement) case in order to obtain information about a parent's whereabouts or finances (K.S.A. 39-7,144)	Respondent has 14 days to comply; served only by personal service; subject to an administrative hearing or a <i>de novo</i> review by court
	In connection with investigations of claims and vouchers and persons and businesses who provide services to the Department or to its clients, and eligibility of clients and vendors (K.S.A. 75-3306)	None
Legislative Investigating Committees	Investigations of authorized subjects of inquiry (K.S.A. 46-1001, <i>et seq.</i> )	If to compel attendance at a hearing, must be served at least three days prior to the hearing
Secretary of Health and Environment	Hearings under the food and drug law (K.S.A. 65-673)	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Attachment 5-5

02/20/2001 11:09:01 AM 103460340

GOVERNMENTAL FINANCE UNIT

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Agency/Official	Purpose	Special Procedures <sup>1</sup>
	Hearings regarding enrichment of flour and bread (K.S.A. 65-2305)	None
	Food and lodging licensee hearings (K.S.A. 36-509)	None
	Hearings and investigations under the mined land conservation laws (K.S.A. 49-405)	None
Dairy Commissioner	Enforcement of milk and dairy product laws (K.S.A. 65-702)	None
Dental Board	Enforcement of dental regulatory laws (K.S.A. 65-1452)	None
Barber Board	Enforcement of barber regulatory law (K.S.A. 65-1824)	None
Board of Adult Care Home Administrators	Enforcement of laws under its jurisdiction (K.S.A. 65-3503)	None
Emergency Medical Services Board	Enforcement of laws under its jurisdiction (K.S.A. 65-6130)	None
Corporation Commission	Hearings of complaints about municipal utilities (K.S.A. 66-133)	None
	Hearings under laws governing the production and sale of oil and gas (K.S.A. 55-605, 55-706, 55-1310)	None
State Board of Education and any state facility providing special education services	In connection with a hearing or review under the special education laws (K.S.A. 72-975)	None
Board of Nursing	Investigations and proceedings under its jurisdiction (K.S.A. 74-1106)	None
Board of Examiners in Optometry	Enforcement of laws under its jurisdiction (K.S.A. 74-1504)	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

*Attachment 5-6*

02/20/2007 11:00 AM FAX (862) 672-318

GOVERNMENTAL ETHICS COMM

02/20/2007

Agency/Official	Purpose	Special Procedures <sup>1</sup>
Board of Mortuary Arts	Enforcement of laws under its jurisdiction (K.S.A. 74-1704)	None
Board of Tax Appeals	Enforcement of laws under its jurisdiction (K.S.A. 74-2437a)	None
Abstracters' Board of Examiners	Enforcement of laws under its jurisdiction (K.S.A. 74-3902)	None
Law Enforcement Training Commission	Enforcement of laws under its jurisdiction (K.S.A. 74-5607)	None
Crime Victims Compensation Board	Enforcement of laws under its jurisdiction (K.S.A. 74-7304)	None
Behavioral Sciences Regulatory Board	Enforcement of laws under its jurisdiction (K.S.A. 74-7508)	None
Lottery	Enforcement of laws under its jurisdiction (K.S.A. 74-8704)	None
Racing and Gaming Commission	Enforcement of laws under its jurisdiction (K.S.A. 74-8804)	None
State Gaming Agency	Enforcement of laws under its jurisdiction (K.S.A. 74-9805)	None
Board of Accountancy	Enforcement of laws governing licensed municipal accountants (K.S.A. 75-1119)	None
Public Employee Relations Board	Enforcement of laws under its jurisdiction (K.S.A. 75-4323, 75-4332)	None
Secretary of Corrections	Investigations of alleged improper conduct of department employees (K.S.A. 75-5251)	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Attachment 5-7

STATE OF KANSAS DEPARTMENT OF REVENUE





Agency/Official	Purpose	Special Procedures <sup>1</sup>
Attorney General	Investigations of Medicaid fraud and abuse (K.S.A. 21-3852)	None
	Investigations of suspected violations of laws regarding unfair trade practices (K.S.A. 50-153)	None
	Investigations of suspected violations of consumer protection or odometer fraud laws (K.S.A. 50-631, 50-653a)	None
	Enforcement of laws governing private investigators (K.S.A. 75-7b15)	None
Attorney General or County or District Attorney	Investigation of violations of the Charitable Organizations and Solicitations Act under K.S.A. 17-1767	None
	Investigations under the Kansas Standard Asset Seizure and Forfeiture Act (K.S.A. 60-4118)	None
	Inquisitions in certain criminal cases (K.S.A. 22-3101)	None
Prosecutor and Person Charged	To obtain attendance of witnesses in accordance with criminal procedure (K.S.A. 22-3214)	None
Credit Union Administrator	Investigation of credit union business under K.S.A. 17-2206	None
Kansas Parole Board	Hearings under K.S.A. 22-3720	None
Coroner	Inquest under K.S.A. 22a-230	None
Court Trustee	Child support enforcement under K.S.A. 23-496	None
State Fire Marshal	Hearings regarding orders of the Fire Marshal under K.S.A. 31-141	None
Secretary of Kansas State Grain Inspection Department	Examine licensee books and records under K.S.A. 34-230a	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Attachment 5-9

02/20/2001 11:00 AM FAX 1832082348

GOVERNMENTAL ETHICS COM

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Agency/Official	Purpose	Special Procedures <sup>1</sup>
Secretary of Senate	Impeachment proceedings under K.S.A. 37-106	None
Insurance Commissioner	Hearings related to insurance under K.S.A. 40-281	None
	Liquidation of insurance company under K.S.A. 40-3625	None
Director of Division of Alcohol Beverage Control	Licensure hearings under K.S.A. 41-209	None
Secretary of Department of Revenue	Licensure appeal under liquor laws (K.S.A. 41-322)	None
Director of Workers Compensation and the Board	Hearings under K.S.A. 44-549	None
Workers Compensation Administrative Law Judges	Powers listed under K.S.A. 44-551	None
Secretary of Human Resources	Investigations of employer-worker disputes under K.S.A. 44-611 and 44-635	None
	Enforcement of laws governing teacher contracts (K.S.A. 72-5432, 72-5442)	None
Secretary of Human Resources, Chairs of Appeal Tribunals, or Appeal Referees	Hearings under the unemployment law (K.S.A. 44-714)	None
Agricultural Labor Relations Board	Implementation of the law under its jurisdiction (K.S.A. 44-820)	None
Human Rights Commission	Implementation of the law under its jurisdiction (K.S.A. 44-1004)	None
Secretary of State	Enforcement of the Kansas Athlete Agent Act (K.S.A. 44-1514)	None
Adjutant General	Gathering information under the emergency preparedness laws (K.S.A. 48-912)	None

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Attachment 5-10

02/20/2007 10:00 AM FAX (827)827240

GOVERNMENTAL ETHICS COMM

013

Agency/Official	Purpose	Special Procedures <sup>1</sup>
Military Judge of a Court Martial or a Summary Court Officer, Military Courts	In connection with proceedings under the Kansas Code of Military Justice (K.S.A. 48-2711, 48-3107)	None
Securities Commissioner	Hearings and investigations under the securities laws (K.S.A. 50-1009)	None
	Hearings and investigations under the Uniform Land Sales Practices Act (K.S.A. 58-3311)	None

R22769.01(1/28/98(10:34AM))

1. Information in this column only indicates special procedures in the authorizing statutes. "None" does not mean that the agency can disregard the Rules of Civil Procedure, KAPA, or applicable case law.

Attachment 5-11

02/20/2007 10:07:07 AM

GOVERNMENTAL ETHICS COMM

FILE

**BILLS ADDRESSING STATE AGENCY SUBPOENA POWER**

Bill No.	Agency	Change to Subpoena Power*	Status of Bill (1-26-98)
S.B. 248	Board of Healing Arts	The bill would expand existing subpoena authority and apply existing procedures to all entities licensed by the Board. The bill also would require hearings related to actions against a license issued by the Board be conducted in accordance with the Kansas Administrative Procedure Act (KAPA). The Board would be authorized to use emergency proceedings in accordance with KAPA when a licensee fails to comply with a subpoena or protective order.	In Senate Committee on Public Health and Welfare (carried over from 1997)
S.B. 283	Attorney General	The bill would require approval by the Attorney General when a nonprofit health care organization transfers assets to a for-profit organization. The Attorney General would be authorized to subpoena information and witnesses, administer oaths, and require sworn statements prior to making a decision on the nonprofit's application.	In Senate Committee on Public Health and Welfare (carried over from 1997)
S.B. 372	Secretary of Health and Environment and the Attorney General	The bill would require a for-profit entity engaged in the acquisition of a nonprofit hospital to receive approval of the Secretary of Health and Environment and, in some cases, the Attorney General. Both officials would be authorized to subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the Act.	In Senate Committee on Financial Institutions and Insurance (carried over from 1997)
S.B. 341	Commission on Governmental Standards and Conduct	The bill would authorize the Commission to issue subpoenas by the affirmative vote of 3/4 of its members if it finds a reasonable suspicion that a violation of the Campaign Finance Act has occurred. Current law requires the Commission to first communicate in writing with the person being investigated and allow the person 30 days to respond to allegations, and then, if more information is needed, the Commission may issue a subpoena.	In Senate Committee on Elections and Local Government (carried over from 1997)
S.B. 390	Commission on Governmental Standards and Conduct	The bill would remove the requirement that before a subpoena can be issued the Commission find there is reasonable suspicion that a violation of the campaign finance or ethics laws have occurred; that the commission communicates its allegations to the person being investigated; and that the person be allowed 30 days to respond. The existing requirements that all subpoenas be issued upon the affirmative vote of 3/4 of the Commission and that subpoenas for records be relevant to any alleged violations of the acts would be retained in statute.	In Senate Committee on Elections and Local Government
S.B. 348	Kansas Tax Review Commission	The bill would abolish the State Board of Tax Appeals and create the Kansas Tax Review Commission. The Commission would have the same subpoena authority as the State Board of Tax Appeals.	In Senate Committee on Assessment and Taxation (carried over from 1997)

*Attachment 5-12*

Bill No.	Agency	Change to Subpoena Power*	Status of Bill (1-26-98)
H.B. 2602	Kansas Tax Appeals Commission	The bill would create the Kansas Tax Appeals Commission to replace the Board of Tax Appeals. The Commission would have the same subpoena powers as the Board.	In the House Committee on Taxation
S.B. 378	Insurance Commissioner	The bill would enact the "Fraudulent Insurance Act." The Act would authorize the Insurance Commissioner, the Commissioner's designee, and special investigators in the Insurance Department to subpoena witnesses and any books, papers, correspondence, memoranda, agreements, or other documents or records relevant to an investigation under the Act.	In Senate Judiciary Committee (carried over from 1997)
<p>* In many of these bills, changes to subpoena authority or procedures are incidental to the primary purpose of the bill. One exception is S.B. 390, the major purpose of which is to alter the subpoena procedures that apply to the Commission on Governmental Standards and Conduct.</p>			



1 member of the board, or any agent designated by the board, may admin-  
2 ister oaths or affirmations, examine witnesses and receive such documents,  
3 reports, records or other physical evidence.

4 (2) The district court, upon application by the board or by the person  
5 subpoenaed, shall have jurisdiction to issue an order:

6 (A) Requiring such person to appear before the board or the board's  
7 duly authorized agent to produce documents, reports, records or other  
8 physical evidence relating to the matter under investigation; or

9 (B) revoking, limiting or modifying the subpoena if in the court's  
10 opinion the evidence demanded does not relate to practices which may be  
11 grounds for disciplinary action, is not relevant to the allegation which is  
12 the subject matter of the hearing or investigation or does not describe  
13 with sufficient particularity the documents, reports, records or other  
14 physical evidence which is required to be produced.

15 (c) Any complaint or report, record or other information relating to  
16 a complaint which is received, obtained or maintained by the behavioral  
17 sciences regulatory board shall be confidential and shall not be disclosed  
18 by the board or its employees in a manner which identifies or enables  
19 identification of the person who is the subject or source of the information  
20 except the information may be disclosed:

21 (1) In any proceeding conducted by the board under the law or in an  
22 appeal of an order of the board entered in a proceeding, or to any party  
23 to a proceeding or appeal or the party's attorney;

24 (2) ~~to the person who is the subject of the information or to any person~~—unless otherwise prohibited by law  
25 or entity when requested by the person who is the subject of the infor-  
26 mation, but the board may require disclosure in such a manner that will  
27 prevent identification of any other person who is the subject or source of  
28 the information; or

29 (3) to a state or federal licensing, regulatory or enforcement agency  
30 with jurisdiction over the subject of the information or to an agency with  
31 jurisdiction over acts or conduct similar to acts or conduct which would  
32 constitute grounds for action under this act. Any confidential complaint  
33 or report, record or other information disclosed by the board as author-  
34 ized by this section shall not be redisclosed by the receiving agency except  
35 as otherwise authorized by law.

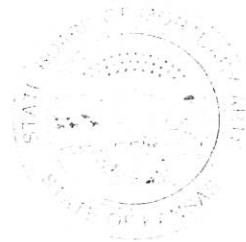
36 (d) Nothing in this section or any other provision of law making com-  
37 munications between a practitioner of one of the behavioral sciences and  
38 the practitioner's client or patient a privileged or confidential communi-  
39 cation shall apply to investigations or proceedings conducted pursuant to  
40 this section. The behavioral sciences regulatory board and its employees,  
41 agents and representatives shall keep in confidence the content and the  
42 names of any clients or patients whose records are reviewed during the  
43 course of investigations and proceedings pursuant to this section.

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*The Kansas*  
**State Board of Mortuary Arts**

CREATED AUG. 1, 1907

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SUSAN J. TEMPLE,  
OFFICE SPECIALIST

Tuesday, February 20, 2001

Senator Susan Wagle, Chairperson  
Kansas Senate Public Health and Welfare Committee

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Steve Ryan, and I am a third generation Kansas licensed embalmer and funeral director. Our firm, Ryan Mortuary and Crematory, is located in Salina and we have operated a crematory for the past 16 years. As a member of the Kansas State Board of Mortuary Arts, I appear before you today in support of Senate Bill 214, which would authorize the Mortuary Arts Board to license and regulate all crematories in the state of Kansas, with the exception of K.U.M.C., Sec. 9 (g).

This bill is based on existing cremation statutes from several states and with guidance from the Cremation Association of North America (CANA). The Mortuary Arts Board has met with the Kansas Funeral Directors Association (KFDA), and we have worked together on the contents of this bill in an attempt to make the final product as fair and workable as possible. I believe that a representative from the association is present to testify today.

I would ask the committee to consider one letter amendment to the bill. In line 34, I would request that the third word be changed from "of" to "or".

The Mortuary Arts Board currently licenses, inspects and regulates over 340 funeral homes in the state of Kansas. With 14 of the 15 crematories located in conjunction with funeral homes, the board's inspector would be able to conduct the necessary inspections with relative ease. The board does not anticipate the need for any additional personnel should this legislation pass and become law on January 1, 2002.

Start up costs for the board would include the training of staff relating to inspection and regulation of crematories. The Cremation Association of North America (CANA) offers a course for cremation operators that would need to be attended by staff, and there would be costs of licenses, developing and administrating the applications, inspections reports and similar documents. The board anticipates clarifying many of the specific requirements for the crematories with regulation, similar to the manner in which funeral homes are

currently licensed and regulated. The development of these regulations will allow input from all interested parties; both prior to and during the actual hearing process required with adopting regulations in the state of Kansas.

The bill contains provisions defining the maximum fees that could be charged by the board, with the actual fees being set by regulation. The board is requesting that the fee maximum currently in place be increased as many are near the end of current limits. Fees currently in place were increased January 1, 2000, the first increase in six years.

Crematories are not licensed or regulated in the state of Kansas. Upon death, the number of Kansas consumers selecting the cremation process before their final disposition upon death has increased drastically through the years. In 1970, only 4.59% of all deaths in the United States selected cremation. The rate almost doubled again in the following ten year period with a 9.74% in 1980. Approximately the same rate increase moved the cremation rate to 17.02% in 1990 and the projected rate is 26.21% of all deaths in the United States that were cremated in the year 2000. The cremation rate in the state of Kansas in 1999 (the most recent statistical year available) was 18.32%. Through this entire thirty year period, CANA (Cremation Association of North America) has often made cremate rate projections for the next year, five years and ten years. These projections have invariably been on the conservative side. Kansas is projected to have a cremation rate of 20.60% for last year and a cremation rate in 2010 of 65+%! Furthermore, there are only fourteen other states projected to have a cremation rate as high or higher than Kansas in 2010.

This salient change in Kansas citizens social attitude about the cremation process and disposition of the body requires this board to request this new authority to license and regulate the expanding number of cremation facilities. With 26 of 50 states (based on figures provided by the International Conference of Funeral Service Examining Boards as of October of 1999) currently regulating cremation, the increased number of questions coming into the board's office relating to cremation, the known problems in other states with high cremation rates, the Mortuary Arts Board believes that now is the appropriate time, maybe even past time, to request this legislation, and I would ask your support of the bill. The board's executive secretary, Mack Smith and I would be glad to attempt to answer any questions of the committee. The time you have provided us to testify is greatly appreciated.

Respectfully submitted,



Stephen C. Ryan  
Vice President

Kansas State Board of Mortuary Arts



# KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

1200 S. KANSAS AVENUE ♦ PO BOX 1904 ♦ TOPEKA, KS 66601-1904

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## EXECUTIVE DIRECTOR

**PAM SCOTT**  
Topeka

To: Senate Public Health and Welfare Committee

From: Pam Scott, Executive Director  
Kansas Funeral Directors and Embalmers Association

Re: Senate Bill No. 214

Date: February 20, 2001

Madam Chair and Members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA). I appear before you today in support of Senate Bill No. 214.

The KFDA represents over 300 funeral establishment in the state of Kansas. Of the fifteen crematories operating in Kansas today, fourteen are affiliated with licensed funeral establishments.

Crematories currently are not regulated in the State of Kansas. With the increase in the number of cremations occurring in the United States including Kansas, the KFDA believes it is time to adopt comprehensive legislation regulating the operation of crematories in the State of Kansas. The KFDA has worked closely with the Kansas State Board of Mortuary Arts on the contents of this legislation to make it acceptable to our membership while at the same time beneficial to the Kansas consumer.

I thank you for the opportunity to testify and urge you to support Senate Bill No. 214!

*"Honoring our Heritage ~ Embracing the Future"*

*Senate Public Health & Welfare Committee  
Meeting Date February 20, 2001  
Attachment 7-1*