

MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hayzlett at 1:35 p.m. on February 7, 2002 in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

Bruce Kinzie, Revisor
Chris Courtright, Legislative Research Department
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Brian Cox, Attorney, Kansas Department of Revenue
Judy Moler, Kansas Association of Counties
Eileen King, Riley County Treasurer/Kansas County Treasurer's Association
Douglas Smith, Kansas Academy of Physician Assistants
Terri Roberts, Kansas State Nurses' Association
John Peterson, Segway LLC

Others attending:

See attached sheet

HB 2662 - accessible parking fees

Chairman Hayzlett opened hearings on **HB 2662** and called on Brian Cox, attorney, as the first conferee. He said this bill proposes to eliminate the County "service fee" on applicants for disabled parking placards and ID cards. This bill also proposes to eliminate portions of K.S.A. 8-1, 125 (a) relating to the authority of the Secretary of Revenue to provide additional fees by regulation. (Attachment 1)

Judy Moler, Kansas Association of Counties, spoke in support of **HB 2662**. She stated several lawsuits around the county have held that the ADA specifically prohibits government agencies from charging persons with disabilities to participate in programs aimed at making public accommodations, such as parking lots, more accessible. This will be a monetary loss for counties; however, we feel it is the right thing to do. (Attachment 2)

Eileen King, Riley County Treasurer, also presented testimony in support of **HB 2662**. She told the committee since the county service fee is established in statute rather than rules and regulation, it is necessary to change the statutes to comply with the decisions of the Division of Vehicles. She concluded that if it is determined that the State cannot charge a fee, then it is only reasonable that the County Treasurer's should not be charging a fee either. (Attachment 3)

Douglas Smith, Kansas Academy of Physician Assistants, requested an amendment to this bill which would add "advanced registered nurse practitioner and licensed physician assistant" to Section 2, line 39. He stated Physician Assistants serve an integral part in the practice of medicine by providing needed health care services across this state. He concluded without the use of PA's the accessibility to medical care can be limited, particularly in rural areas. (Attachment 4)

Terri Roberts, Executive Director of the Kansas State Nurses Association, stood in support of the amendment which states who is authorized to sign an application for a disabled special license plate or permanent/temporary placard. She stated ARNP's provide primary care throughout Kansas in a variety of settings including local health departments, free health clinics, community clinics, hospice, rural health clinics and in medical clinics and offices. (Attachment 5)

There were no opponents. Chairman Hayzlett closed hearings on **HB 2663**.

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 519-S of the Capitol at 1:35 p.m. on February 7, 2002.

HB 2663 - electric personal assistive mobility device

Chairman Hayzlett opened hearings on **HB 2663**. John Peterson, Segway LLC , presented testimony and showed a video on the electric personal assistive mobility device. He said the electric mobility device is a self-balancing two non-tandem wheeled device designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less. It includes an assistive device for the elderly and disabled, as a transportation option for delivery services, and as a tool for public safety officials. They currently are being evaluated by the United States Postal Service, National Park Service, City of Atlanta, Michelin North America, Inc., GE Plastics and Amazon.com. He appeared before the Committee to request passing **HB 2663** to provide a legal and regulatory structure for this 21st century transportation technology which will improve productivity, enhance mobility for a variety of individuals and improve the environment. (Attachment 6)

There were no opponents. Chairman Hayzlett closed hearings on **HB 2663**.

There being no opponents, and with committee approval, Chairman Hayzlett called for final action on **HB 2662**. Representative Dillmore made a motion to introduce the admendment regarding adding advanced registered nurse practitioners to the current list of people certified to issue placards, seconded by Representative Osborne.

The bill also amends KSA 8-1, 130 to add ARNPs and licensed optometrists to a statute making persons who willfully and falsely make such certifications guilty of a class C misdemeanor. Bruce Kinzie, Revisor said this amendment was a statutory clean-up.

Representative Dillmore and Representative Osborne added this amendment to their motion and their 2nd. The motion carried.

Representative Dreher made a motion to pass **HB 2662** favorable, as amended, seconded by Representative Aday and the motion carried.

Chairman Hayzlett opened **HB 2663** for final action.

Representative Powers made a motion to pass **HB 2663** favorably, seconded by Representative Humerickhouse and the motion carried. Representative Beggs wished his "no" vote to be recorded.

Chairman Hayzlett adjourned the meeting at 2:45 p.m. The next meeting of the House Transportation Committee will be held on Tuesday, February 12th, 2002 at 1:30 p.m.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: February 7, 2002

NAME	REPRESENTING
Donna Deane	self
Cileen King	KCTA & Riley Co Trans.
Maura Bean	Driver Review
Diane Albert	KDOOR-DMV
Sheela Walker	KDOOR-DMV
Kim Fisher	self
Tom Roberts	KSNJA
Doug Smith	KAPA

TESTIMONY

To: Presented to the House Transportation Committee, 2002 Legislature

FROM: Brian Cox, attorney, Kansas Department of Revenue, Legal Services Bureau

DATE: February 7, 2002

RE: House Bill 2662 relating to charges for disabled parking placards and ID cards

I am Brian Cox, and I am an attorney with the Kansas Department of Revenue, Legal Services Bureau. Thank you for the opportunity to present testimony to the Committee on House Bill 2662. This Bill proposes to eliminate the County "service fee" provided for by K.S.A. 8-145d on applicants for disabled parking placards and ID cards pursuant to K.S.A. 8-1,124 *et seq.* Such applicants can be disabled persons or persons responsible for the transportation of such persons. This bill also proposes to eliminate portions of K.S.A. 8-1,125(a), (c) relating to the authority of the Secretary of Revenue to provide additional fees by regulation.

Preferential disabled parking spaces are generally required by the Americans with Disabilities Act ("ADA") and its implementing regulations. In Kansas (as in other State), the only way disabled persons (or transporters of the same) can lawfully park in such spaces is by display of a disabled parking placard (or disabled license plate), and ID card. The ADA and implementing regulations generally prohibit charging disabled persons for the costs of the non-discriminatory treatment required by the ADA (for example, if the ADA requires accessible bathroom stalls, the cost for such modification must be borne by all persons and cannot be imposed just on the users of such stalls). The Department understands that some States do not impose such charges. Suits in other States challenging such fees have been on file for a number of years and, although some such challenges have been lost on procedural grounds (including the States' immunity from suit in federal court), it appears that such fees have generally been held illegal in cases where the merits of the issue have been reached. *E.g., Dare v. California*, 191 F.3d 1167 (9th Cir. 1999), *cert. denied* (2001); *Duprey v. State of Conn., Dept. of Motor Vehicles*, 28 F. Supp. 2d 702 (D. Conn. 1998).

Since 1996, the State of Kansas has been a defendant in such a federal case involving the legality under the ADA of its charge(s) for disabled parking placards (and identification cards). Kansas has (or until recently, had) a two (2) part fee imposed on applicants for disabled parking placards and ID cards (there is no extra charge for disabled parking plates):

First, former K.A.R. 92-52-40 imposed a \$2.00 fee for placards and a \$1.00 fee for the ID card. Such funds came to the State.

Second, K.S.A. 8-145d imposes a \$3.00 County "service fee" for disabled parking placards and ID cards (as well as on applicants for vehicle registration). Such funds remain with the Counties.

Significant events occurred in this case in 2001. First, a Tenth Circuit decision (federal courts in Kansas are in the 10th Circuit) held that a State would not have to pay reimbursement for fees

previously collected, however, that case is now before the United States Supreme Court (petition for certiorari filed January 2002). A reversal of the case would open the State up to paying reimbursement. Second, the plaintiffs added two (2) individual defendants which detoured around one of the State's main defenses (*i.e.* State's Eleventh Amendment immunity from suit), and left the State open to an order that such fees no longer be charged.

These events spurred the State to rethink its strategy. Part of that strategy was to eliminate the regulation, K.A.R. 92-51-40, providing for the first part of the fee, above, and to seek repeal of those portions of K.S.A. 8-1,125(a), (c), which permit such a regulation. This strategy might also have the effect of rendering the plaintiffs' claim in the lawsuit moot which could conceivably avoid an order for payment of attorney's fees in the case. Effective September 27, 2001, the Secretary repealed K.A.R. 92-51-40 providing for the first part of the fee. This bill will clean up the related statutory language in K.S.A. 8-1,125(a), (c). If the case is not settled, this strategy would come into play.

Settlement talks, however, are near final and our intent is that such settlement will have the effect of barring any claim for reimbursement from the State of any fees paid in the past.

This bill also proposes to repeal the second part of the fee, the Counties' "service fee" provided for by K.S.A. 8-145d. Settlement of the case would not bar collection of these fees, nor does it, however, provide any protection to the Counties from a second suit for reimbursement of such fees paid in the past. I am advised that a judgment was recently rendered against the State of Florida for \$30 million for reimbursement of such fees (although that case will be appealed).

Although there remain some issues which might be litigated concerning the legality of K.S.A. 8-145d, their merit is uncertain and the repeal of the statute will end the contest. There are also some policy choices for the Legislature in any amendment of this provision. For example, Kansas also provides placards for temporary disabilities. Temporary conditions are not challenged by this litigation and are generally not covered by the ADA (there may be an issue concerning whether Kansas' provision tracks the ADA definition). This bill proposes to repeal the "service fee" for both.

As noted, while repeal of this portion of K.S.A. 8-145d will not stop a second lawsuit seeking reimbursement from the Counties, it will, however, be a good faith sign that the costs of disabled parking will no longer be imposed *solely* on disabled persons. Given that the plaintiffs in this litigation had primarily sought injunctive relief (that is, an order barring such fees in the future), it may also persuade them that a second action is unnecessary. It will certainly mitigate damages in any such second suit.

Estimates of revenue loss to the Counties from repeal of this portion of K.S.A. 8-145d are not entirely precise. By one estimate, an average of several years, the revenue loss to all 105 Counties on a yearly basis, not counting temporary placards and not counting fees for lost or stolen placards or ID cards, is approximately \$100,000 to \$200,000. This number will vary, of course, with the number of applicants.

Thank you for your time, and I will stand ready to answer whatever questions the Committee may have.



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
House Transportation Committee
On
HB 2662
February 7, 2002

Thank you Chairman Hayzlett and Members of the House Transportation Committee for allowing me to speak today. I am Judy Moler, representing the Kansas Association of Counties. I am here today to voice support for HB 2662 on behalf of our member counties.

The Kansas Association of Counties adopted their platform at our Annual Meeting in November of 2001. We adopted language within our 2002 platform that supports repeal of the statute to remove the county service fee charged on parking placards for the disabled.. Several lawsuits around the county have held that the ADA specifically prohibits government agencies from charging persons with disabilities to participate in programs aimed at making public accommodations, such as parking lots, more accessible. This will be a monetary loss for counties; however, we feel it is the right thing to do.

The Kansas Association of Counties respectfully requests passage of HB 2662.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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email kac@ink.org

House Transportation Committee
February 7, 2002
Attachment 2



TREASURER'S OFFICE

R. Eileen King, CFE
County Treasurer

110 Courthouse Plaza
Manhattan, Kansas 66502-0108
Phone: 785-537-6320
Fax: 785-537-6326
E-mail: eking@co.riley.ks.us

TO: House Transportation Committee, Gary Hayzlett, Chairman.
FROM: Eileen King, Riley County Treasurer and Representative for the Kansas
County Treasurer's Association
RE: HB 2662

Every County Treasurer's office in Kansas acts as an agent for the state in Titling and Registering vehicles. We receive a compensation of \$3.00 per transaction to offset the cost of administering the vehicle department. When Kansas started issuing Handicap Placards, we followed the direction of the Division of Vehicles. Thus the \$3.00 County fee, as set forth in K.S.A. 8-145d and 8-1,125 was added to the State amount.

On Thursday, Sept. 27, 2001, the Joint Committee on Rules and Regulations repealed KAR 92-52-40, requiring fees for disabled placard and identification cards. Since the county service fee is established in statute rather than rules and regulation, it is necessary for us to ask for a change in the statutes to comply with the decisions of the Division of Vehicles. If it is determined that the State cannot charge a fee, then it is only reasonable that the County Treasurer's should not be charging a fee either.

Therefore, we are requesting that this language be deleted from K.S.A. 8-145d and 8-1,125 as presented in HB 2662.

Kansas Academy of Physician Assistants

Post Office Box 597

Topeka, Kansas 66601-0597

Telephone Number: 785-235-5065

Facsimile Number: 785-235-8676

February 7, 2002

House Transportation Committee

Amendment to House Bill No. 2662

Chairman Hayzlett and Members of the House Transportation Committee:

The Kansas Academy of Physician Assistants appears today to request consideration of the attached amendments to House Bill No. 2662.

In Kansas, there are more than 430 Physician Assistants (PA) licensed by the Board of Healing Arts. A Physician Assistant serves an integral part in the practice of medicine by providing needed health care services across this state. Without the use of Physician Assistant, the accessibility to medical care is can be limited, particularly in rural areas.

In some of our communities, Physician Assistants are the providers of daily primary care medical services and are qualified to perform physical examinations, diagnose and treat illnesses, order and interpret laboratory tests and offer patient education and counseling.

We believe that in the current health care environment Physician Assistants, are properly trained to perform the examinations needed to determine a disability which may require a special license plate or permanent placard and should be permitted by Kansas law to document to the Department of Revenue such disability.

We ask for your favorable action on this request as you consider this legislation.

Thank you for your time today.

Douglas E. Smith
Executive Director
Kansas Academy of Physician Assistants

House Transportation Committee
February 7, 2002
Attachment 4

HOUSE BILL No. 2662

By Committee on Transportation

1-23

AN ACT relating to accessible parking; concerning certain fees; amend- ing K.S.A. 8-145d and 8-1,125 and repealing the existing sections.

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

Section 1. K.S.A. 8-145d is hereby amended to read as follows: 8- 145d. In addition to the annual vehicle registration fees prescribed by K.S.A. 8-143, 8-143b, 8-143c, 8-143g, 8-143h, 8-143i, 8-167, 8-172 and 8-195, and amendments to any of such sections thereto, any applicant for vehicle registration or renewal thereof for registration or any applicant for a placard or identification card issued under K.S.A. 8-1,125, and amendments thereto, shall pay a service fee in the amount of \$3 to the county treasurer at the time of making such application. In addition to such service fee, the county treasurer may charge any applicant for vehicle registration or renewal thereof for registration, a satellite registration fee in an amount not to exceed \$5 per vehicle registration or renewal thereof for registration, when such application is made at a satellite registration facility established by the county treasurer. The county treasurer shall deposit all amounts received under this section in the special fund created pursuant to K.S.A. 8-145, and amendments thereto, and such amounts shall be used by the county treasurer for all purposes for which such fund has been appropriated by law, and such additional amounts are hereby appropriated as other amounts deposited in such fund.

Sec. 2. K.S.A. 8-1,125 is hereby amended to read as follows: 8-1,125. (a) Any Kansas resident who submits satisfactory proof to the director of vehicles, on a form provided by the director, that such person is a person with a disability or is responsible for the transportation of a person with a disability shall be issued a special license plate or a permanent placard for any motor vehicle owned by such person or shall be issued a temporary placard. Satisfactory proof of disability, condition or impairment shall include a statement from a person licensed to practice the healing arts in any state, a licensed optometrist or a Christian Science practitioner listed in The Christian Science Journal certifying that such person is a person with a disability. The placard shall be suspended immediately below the rear view mirror of any motor vehicle used for the transportation of a person with a disability so as to be maximally visible from outside the

, an advanced registered nurse practitioner as authorized by K.S.A. 65-1130, a licensed physician assistant

1 shall be white on a blue background and the temporary placard shall be
2 white on a red background.

3 (e) In addition to such other information contained on identification
4 cards, cards issued or reissued on and after July 1, 2000, shall have the
5 date of birth and the sex of the person to whom the card is issued.

6 (f) Permanent placards and individual identification cards shall be
7 returned to the department of revenue upon the death of the person with
8 a disability. Temporary placards shall be returned to the department of
9 revenue upon the expiration of the placard or upon the death of the
10 person with a disability. Special license plates shall be returned to the
11 county treasurer to be exchanged for another license plate upon the death
12 of the person with a disability. The individual identification cards issued
13 with the special license plates shall be returned to the department of
14 revenue upon the death of the person with a disability.

15 (g) Violation of subsection (f) is an unclassified misdemeanor punish-
16 able by a fine of not more than \$50.

17 Sec. 3. K.S.A. 8-145d and 8-1,125 are hereby repealed.

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

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Terri Johnson, M.S.N., A.
President

Terri Roberts, J.D., R.N.
Executive Director

For More Information Contact
Terri Roberts J.D., R.N.
troberts@sound.net
February 7, 2002

H.B. 2662 Relating to Accessible Parking, Concerning Fees

Representative Hayzlett and members of the House Transportation Committee, my name is Terri Roberts and I am the Executive Director of the Kansas State Nurses Association. I am here to ask for your support of a substantive change to K.S.A. 8,1,125 that lists in statute who is authorized to sign an application for verifying what constitutes a "disability" pursuant to statute. This language was presented by Doug Smith on behalf of the Physician Assistants.

The current law authorizes *"a person licensed to practice the healing arts in any state, a licensed optometrist or a Christian Science practitioner listed in The Christian Science Journal"* to certify a person with a disability.

We would like to ask for your support to add Advanced Registered Nurse Practitioners (ARNP's), authorized pursuant to K.S.A. 65-1130 to be added to list of those qualified to certify and sign an application for a disabled special license plate or permanent/temporary placard. This is particularly important in small rural communities that have rural health clinics staffed exclusively by ARNP's (and PA's) and in the medically underserved clinics meeting the needs of the uninsured.

Since 1976 in Kansas there have been Advanced Registered Nurse Practitioners (ARNP's) that function in an expanded role of nursing. ARNP's provide primary care throughout Kansas in a variety of settings including local health departments, free health clinics, community clinics, hospice, rural health clinics and in medical clinics & offices.

We appreciate your consideration of this proposed amendment, we wouldn't anticipate much of a fiscal impact except changing the form to reflect the new categories of licensed health professionals authorized to certify disabled status.



5-2

[Home](#) > [Kansas Statutes](#) > Kansas Statute No. 8-1,124

8-1,124

Chapter 8.--AUTOMOBILES AND OTHER VEHICLES Article 1.--GENERAL PROVISIONS

8-1,124. Accessible parking, definition. As used in this act, "person with a disability" means any individual who:

- (a) Has a severe visual impairment;
- (b) cannot walk 100 feet without stopping to rest;
- (c) cannot walk without the use of or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;
- (d) is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (e) uses portable oxygen;
- (f) has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American heart association; or
- (g) is severely limited in such person's ability to walk at least 100 feet due to an arthritic, neurological or orthopedic condition.

History: L. 1986, ch. 36, § 1; L. 1987, ch. 44, § 1; L. 1988, ch. 45, § 1; L. 1991, ch. 35, § 2; L. 1992, ch. 105, § 11; L. 1999, ch. 68, § 1; July 1.

HOUSE TRANSPORTATION COMMITTEE
John C. Peterson, Segway LLC
February 7, 2002
HB-2663

Mr. Chairman and members of the Committee.

I am John C. Peterson, representing Segway LLC. I appreciate the opportunity to appear before your Committee today to present testimony in support of HB 2663.

This legislation amends the motor vehicle code to provide for the operation of electric personal assistive mobility devices (EPAMDs) in Kansas. The purpose of this Act is to provide a legal and regulatory structure for the introduction of a new transportation technology that is not currently defined in our motor vehicle laws.

The bill defines an Electric Personal Assistance Mobility Device (EPAMD), as a self-balancing two non tandem wheeled device designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

The first EPAMD was released in early December by Segway, a company founded by renowned inventor and entrepreneur Dean Kamen. The EPAMD utilizes clean fuel and quiet technology. Its uses include an assistive device for the elderly and disabled, as a transportation option for delivery services, and as a tool for public safety officials.

The EPAMD employs the revolutionary self-balancing and stabilizing technology first used in the stair-climbing mobility aid for the physically challenged called the INDEPENDENCE™ 3000 IBOT™. The self-balancing technology used in the IBOT allows it to climb stairs and stand upright on only two of its wheels while transporting a full-size adult.

The EPAMD uses this same self-balancing technology to operate with only two non tandem wheels on a single axle. It is powered by a quiet, electric propulsion system with zero emissions. While emulating the human ability to balance, the EPAMD can travel as far as 17 miles on a single charge and at speeds of up to 12.5 mph.

The EPAMD has a footprint that is narrower than the average adult's shoulders and a length no greater than a large shoe. When operated, the EPAMD uses the same space as a pedestrian and takes up less space than a bicycle or other tandem-wheeled device. It can turn in place without impacting any nearby object, something no other vehicle can do. The EPAMD works seamlessly with the body's movements. Gyroscopes and tilt sensors monitor a user's center of gravity at about 100 times a second. When a person leans slightly forward, EPAMD moves forward. When leaning back, Segway moves back.

The technology employed in the EPAMD makes it attractive for use in a variety of commercial applications, including manufacturing plants and warehousing operations, travel and tourism, public safety, corporate and campus transportation, mail, packaging and product delivery. Initial commercial customers evaluating the product include the United States Postal Service, the National Park Service, City of Atlanta, Michelin North America, Inc., GE Plastics and Amazon.com. Consumers will use the EPAMD for transportation purposes and persons that have medical conditions that prevent them from walking any significant distance will also realize tremendous benefits from this new technology.

The National Highway Traffic Safety Administration (NHTSA) has ruled that EPAMD is not a "motor vehicle" and therefore should not be under their jurisdiction; as well, the US Consumer Product Safety Commission (CPSC) has concluded that they should have jurisdiction over EPAMD under the Consumer Product Safety Act as a "consumer product."

I appreciate the opportunity to appear before this Committee. I would request that you act favorably on HB 2663 to provide a legal and regulatory structure for this innovative 21st Century transportation technology which will improve productivity, enhance mobility for a variety of individuals, and improve the environment. I would be happy to answer any questions at this time.