Approved
Date: 1-28-02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:39 a.m. on January 23, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (excused)
Senator Haley (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Tim Madden, Department of Corrections (DOC)
John Parisi, Kansas Trial Lawyers Association (KTLA)
Paul Davis, Kansas Bar Association (KBA)
Dr. Ernest Pogge, AARP, Kansas
Mark Stafford, State Board of Healing Arts (SBHE)
Chip Wheelen, Association of Osteopathic Medicine (AOM)
Jerry Slaughter, Kansas Medical Society (KMS)
Tom Bell, Kansas Hospital Association (KHA)
Ron Hein, Wesley Medical Center (WMC)
Phil Journey, Kansas, President, Kansas 2nd Amendment Society (PAC) and Kansas State Rifle Association
Robert Hodgdon, President, Hodgdon Powder Company (HPC)
Sandy Jacquot, League of Kansas Municipalities (LKM)
Karole Bradford, Safe State Kansas
Kelly Johnston, Safe State Kansas

Others attending: see attached list

The minutes of the January 22, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

Conferee Madden requested introduction of two bills drafted by the DOC. The first bill addresses the issue of unlawful sexual relations between employees and incarcerated offenders (attachment 1) and the second addresses the issue of postrelease supervision for certain felony DUI convictions. (attachment 2) Senator O'Connor moved to introduce the bills, Senator Schmidt seconded. Carried.

SB 377–concerning access to health care records by patients and authorized representatives

Conferee Parisi testified in support of **SB 377**, a bill which provides Kansans a statutory right of access to health records at an affordable cost within a reasonable amount of time. He elaborated on how the procedures and standards in the bill accomplish this. He addressed several arguments made by opponents of the bill (attachment 3) and briefly discussed an amendment to the bill which was proposed by the KBHA and agreeable to KTLA. (attachment 4)

Conferee Davis testified in support of **SB 377**. He cited several changes to the original bill as a result of discussion and compromise with opponents of that bill and briefly discussed vital provisions in the bill which he felt could not be compromised. (attachment 5)

Conferee Madden discussed concerns DOC has with **SB 377** and offered an amendment to address those concerns. The concerns relate to the authority of an offender to limit distribution of his/her health care records and the release of mental health records to an offender. (attachment 6 and 7)

Conferee Pogge testified in support of **SB 377** and expressed the views of AARP regarding the bill. (attachment 8)

Conferee Stafford testified in support of **SB 377**. He stated that the American Medical Association (AMA) recognized it's ethical duty on the part of physicians to grant a patient access to their medical record and he cited the federal Health Insurance Portability and Accountability Act (HIPPA) regulations which establish this right. He proposed broader legislation for health care providers who are not covered by the Board's (BHA) regulatory power. (attachment 9)

Conferee Wheelen testified in opposition to **SB 377**. He stated that state and federal laws already exist which assure access to medical records information and provide for disciplinary action against physicians who fail to adhere to the law. He further stated that patient rights to obtain medical record information should be enforced by the agencies that regulate professions and institutions creating those records and not by the courts. (attachment 10)

Conferee Slaughter testified in opposition to **SB 377.** He presented arguments as to why the bill is unnecessary and offered an amendment to cover the cost issue, an issue which does not have parameters set out in federal or state regulation. (attachment 11)

Conferee Bell testified in opposition to **SB 377.** He commented on provisions of the bill and offered similar arguments for why the KHA feels the bill is unnecessary. (attachment 12)

Conferee Hein testified in opposition to **SB 377** because of certain provisions in the bill and the proposed statutory charges for obtaining healthcare records. He discussed this and offered a balloon amendment to address these issues. (attachment 13)

Written testimony supporting **SB 377** was submitted by: American Cancer Sociey; (attachment 14) Kansas AFL-CIO; (attachment 15) NAMI; (attachment 16) ALFA-KAN; (attachment 17) and Joyce Volmut, KAMU (attachment 18).

SB 116–concerning firearms; re: limitation on certain civil actions

Conferee Journey testified in support of **SB 116** a bill which grants immunity to firearm manufacturers from lawsuits filed against them by cities or counties in Kansas. He cited lawsuits filed in Chicago and Atlanta and discussed why he felt these suits are attempts to end firearm ownership in the United States. He presented statistical data relating to the amount of revenue Kansas realizes from the hunting industry and stated that citizens involved in the sport deserve to have their sport protected from lawsuits. He stated that the bill does not prevent appropriate suits from being filed where warranted but does stop the threat of frivolous civil suits. (attachment 19)

Conferee Hodgdon testified in support of **SB 116.** He detailed the economic importance of the firearms and related industries to the State of Kansas citing the industries which depend on firearms and maintained that hunting, recreational shooting, or the purchase of firearms for personal or home protection are part of our nation's heritage. (attachment 20)

Conferee Jacquot testified in opposition to **SB 116.** She stated that the fundamental power of cities is the power to sue and be sued and strongly urged committee reject the bill as a matter of sound public policy. (attachment 21)

Conferee Bradford testified in opposition to **SB 116** stating that the bill would "encourage the manufacture of dangerously poorly made firearms, and endanger gun owners and the general public." (attachment 22)

Conferee Johnston testified in opposition to **SB 116**. He expressed concerns regarding the bill which he stated would serve to insulate and immunize the firearm industry from civil legal liability. (attachment 23)

Conferee Parisi testified in opposition of **SB 116** stating that the bill sets a "dangerous precedent" in denying Kansas cities and counties access to our court system. He urged Committee to leave the decision to pursue action against a firearms dealer with those duly elected or appointed by the people of Kansas. (attachment 24)

Written testimony supporting **SB 116** was submitted by the National Rifle Association. (attachment 25)
Written testimony opposing **SB 116** was submitted by: MAINstream Coalition; (attachment 26) Johnson County Board of County Commissioners; (attachment 27) NCJW; (attachment 28) and City of Wichita. (attachment 29)

The meeting adjourned at 10:34 a.m. The next meeting is January 24, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 23, 2002

NAME	REPRESENTING
Joe Herold	KSC
Phil Journey	KSRA & KSAS
Mark Gleeson	Judicial Branch
Bruce Dionnotti	Independent
Tom Bell	KHA
Doug Smith	Ks. Academy of Physician Assts
KEITH LAUDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Natalie Bright	Via Christi Health System
Bob Williams	Ks Pharmacists Assoc
Chip Wheelen	Assn of Osteopathic Med.
Paul Jones	KSC
Sarah Payne	Heim + Weir
George Petersen	Ks 2nd Amendment Soc
Emily Allen	Safe State KS
Kelly W Johnston	Safe State KS
Randle Bradford	Safe State Kansas
Chris Canfield	Safe State Kansas
Helen Pedigo	Governor's office
Jeff Bottenberg	Kansas Sheriffs Assn
Elizabeth Schleicher	Federico Consulting
Sheila Walker	Kansas DMV

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 23 02

NAME	REPRESENTING
[illegible]	[illegible]
Barbara Belcher	Merck
[illegible]	[illegible]
[illegible]	[illegible]
Ashley Sherard	Johnson County
[illegible]	Wesley Med Ctr
[illegible]	Ks. Public Health Assn.
Ks Dept on Aging	Elaine Seinwerth
Monica Mayer	SRS/Medicaid
Mike Burgess	Kansas Sportmen's Alliance
Mark Stafford	Bd of Healing Arts
LARRY BUENING	BD OF HEALING ARTS
Chris Collins	Kansas Medical Society
Ron Hein	Wesley Medical Center
Joanne Ann Power	KAHP
Jan Barden	KADC
Brenda Harmon	KSC
[illegible]	Health Midwest
Bill Grosz	SCSW Health System

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 23, 2002

NAME	REPRESENTING
Ernest Kahly	AARP Kansas
Ernie Poggo	AARP Kansas
John Parisi	KTLA
[illegible]	KTLA
Stephanie Sharp	Amer. Cancer Society
Cathy McMann	KTLA
Barb Conant	KTLA
Lynaia South	JJA
Jim Sullinger	KC STAR
Amit Parekh	KBA
Paul Davis	KBA
Susan Bichard	KTDAA
Tom Burgess	Kansas Sportsmens Alliance
ROBERT HODGDON	" " "
Kathy Damron	St Luke Shawnee Mission Health System
Nancy Lindberg	AG
Sandy Jacquot	LKM
LARRY R BAER	LKM
Trudy Racine	SRS

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-23-02

NAME	REPRESENTING
Carolyn McKeender	KS St Ds Assn
Tim Madden	KDOC

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: January 23, 2002

TO: Senate Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: Request for Bill Introduction

The Department of Corrections respectfully requests introduction by the Senate Judiciary Committee of the attached bill draft. A summary of the proposed bill is presented below.

Unlawful Sexual Relations

K.S.A. 21-3520 would be amended to prohibit sexual relations between an employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and a person who is under the direct supervision and control of the contract employee.

Additionally, K.S.A. 21-3520 would be amended to clarify the prohibition against sexual relations between contract employees and incarcerated offenders.

I appreciate your consideration of the department's request, and would be pleased to answer any questions that you might have.

CES/TGM

w/attachment

cc: Legislation file w/attachment

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STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
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Memorandum

DATE: January 23, 2002

TO: Senate Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: Request for Bill Introduction

The Department of Corrections respectfully requests introduction by the Senate Judiciary Committee of the attached bill draft. A summary of the proposed bill is presented below.

Postrelease Supervision for 4th and Subsequent Felony DUI Convictions

During the 2001 Legislative session, K.S.A. 8-1567 was amended in regard to the sentencing disposition for offenders convicted of a fourth or subsequent violation of Driving Under the Influence of alcohol or drugs. L.2001, ch. 200 §14 (SB 67). The 2001 amendment provides for a term of imprisonment in the custody of county officials and upon completion of the term of imprisonment, the offender being placed into the custody of the secretary of corrections. While the offender is in the secretary's custody, he or she is required to participate in an inpatient or outpatient program for alcohol and drug abuse as determined by the secretary. Upon completion of the required treatment program, the offender is to be release to a mandatory one-year period of postrelease supervision, also supervised by the Department of Corrections.

Pursuant to the proposed bill, K.S.A. 8-1567 would:

- consolidate the intermediate period of substance abuse treatment into the postrelease supervision period,

- require the sentencing court to provide to the Department of Corrections a copy of the sentencing order at the time the sentence is imposed, and

Sen Jud 1-23-02 attz

- provide that the transfer of the custody of the offender by the local law enforcement agency to the department occur at a location designated by the department.

I appreciate your consideration of the department's request, and would be pleased to answer any questions that you might have.

CES/TGM

w/attachment

cc: Legislation file w/attachment

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

LEGISLATIVE TESTIMONY

TO: Members of the Senate Judiciary Committee

FROM: John Parisi, President-Elect
Kansas Trial Lawyers Association

RE: 2002 SB 377/Access to Medical Records

DATE: Jan. 23, 2002

Sen. Vratil and members of the committee, thank you for the opportunity to express our support for SB 377. I am John Parisi, a practicing attorney in Overland Park, and president-elect of the Kansas Trial Lawyers Association.

SB 377 is pro-consumer legislation unanimously passed by the Special Interim Committee on Judiciary. SB 377 gives Kansans a statutory right to access their medical records at an affordable cost and within a reasonable timeframe. In so doing, this bill assists Kansans as they make important health care decisions for themselves and their families.

SB 377 establishes procedures and standards that:

- Complies with federal regulations
- Protects patient confidentiality
- Makes health care records affordable
- Provides a remedy for patients who have been wrongly denied access to their own health care records "without just cause or excuse."

If asked, most Kansans will tell you that they believe they currently have a right to their health care records and assume it is guaranteed by statute. SB 377 makes that belief more than an assumption; it provides a statutory right to Kansans or their authorized representative that is guaranteed in 44 other states.

Access through affordability is a key component in this proposal. We have documented huge variations in the amounts charged patients to copy health care records – from as low as 25 cents per page to as high as $75 dollars for one page. Without a uniform cost schedule, the current approach is inequitable and can create a financial obstacle to patients' accessibility. We compared the Interim Committee's proposal of adopting the Missouri pricing formula of $15 administrative fee and 35 cents a page and found it to be very similar to our original proposal using the Workers Compensation Medical Fee Schedule. We also considered the Kansas Medical Society's proposal of raising the

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Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw @ ink.org

administrative fee to $20 and the per page cost to 50 cents. This would make the cost of obtaining medical records in Kansas among the most expensive in the nation.

	1 page	25 pages	50 pages	100 pages	500 pages
KBA/KTLA Consumer Proposal (based on KS Workers Comp Medical Fee Schedule	$16.00	$28.00	$28.00	$45.50	$185.50
Missouri Law (§191.227)	$15.35	$23.75	$32.50	$50.00	$190.00
KMS Proposal	$20.50	$32.50	$45.00	$70.00	$270.00

The Interim Committee also recommended that charges be adjusted annually by using the Health Care Financing Administration's (HCFA) Market Basket Survey. However, it has come to our attention within the past few days that Missouri has been unable to implement this provision, amended into their statute in 1998, because they cannot locate the index.

A recent letter to the Missouri Association of Trial Attorneys (MATA) describes in detail the frustration of an attorney in trying to locate the HCFA index. HCFA staff told the inquiring attorney that "there is no basket value existing for copying of records." A staff member of the Missouri Revisor's Office confirms that they have been unable to locate the index and that until the Missouri Legislature reviews this issue, that portion of the statute is unenforceable and the allowable limit on costs remains at $15 administrative fees and 35 cents per page.

The Missouri revisor also warned of problems arising because there is no oversight provision, no enforcement agency identified within the statute.

At Chairman Vratil's request, we have begun researching alternative escalators that can be substituted for the HCFA index. We will provide this information to the committee within the next few days.

Opponents will argue that SB 377 is not necessary because of provisions within the Health Insurance Portability and Accountability Act (HIPAA) which are federal regulations dealing with protecting the privacy of health care information. SB 377 protects those rights by specifically setting in statute the authorization criteria that must be met before records can be released. The authorization criteria within SB 377 mirrors HIPAA's authorization criteria. For additional assurance that patients' privacy would not be jeopardized, we asked the Kansas Insurance Department to review SB 377. The Department's response that SB 377 does not appear to conflict with Gramm-Leach-Bliley or Kansas regulations adopted to implement Title V. That letter is attached to our testimony.

The Kansas Board of Healing Arts is in the process of updating its regulations affecting the release of medical records to comply with HIPAA. We have reviewed those

regulations and believe they compliment SB 377. We met recently with the Kansas Board of Healing Arts to review their proposed amendment to SB 377. We're comfortable adding that amendment.

In conclusion, I again express our thanks to this committee and the four members who sat on the interim committee, for the consideration and support you have all given to this issue. Achieving a statutory right of access to health care records, at an affordable cost within 30 days remains our goal. We believe the interim committee's unanimous recommendation of SB 377 as well as the support expressed by our coalition members demonstrates that giving Kansans statutory, affordable and timely access to their medical records is important. On behalf of KTLA and our seven coalition members, I encourage you to support SB 377.

Thank you and I'm happy to answer any questions you may have.

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

January 13, 2002

Barb Conant
Director of Public Affairs
Kansas Trial Lawyers Association
Jayhawk Tower
700 SW Jackson, Suite 706
Topeka, Kansas 66603-3758

Dear Barb:

Thank you for your letter dated January 10, 2002. I have reviewed SB 377, and it does not appear to conflict with Title V of Gramm-Leach-Bliley or the Kansas regulations adopted to implement Title V. Those regulations specifically allow insurance licensees to disclose health information to comply with the law. If SB 377 were adopted, it would be an existing state law and would thus fit within this exception.

I hope this answers your question. Please feel free to give me a call with any questions.

Sincerely yours,

Matthew D. All
Assistant Commissioner

cc: Kathy Greenlee
Jeremy Anderson
Brent Getty
Linda DeCoursey

420 SW 9th Street
Topeka, Kansas 66612-1678
ksebelius@ins.wpo.state.ks.us

785 296-3071
Fax 785 296-7805

Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

Kansas Board of Healing Arts
Proposed Amendment to S.B. 377

This act shall not be construed to prohibit the state board of healing arts from adopting and enforcing rules and regulations that require licensees of the board to furnish health care records to patients or to their authorized representatives. To the extent that the board determines that an administrative disciplinary remedy is appropriate for violation of such rules and regulations, that remedy is separate from and in addition to the provisions of this act.

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KANSAS BAR ASSOCIATION

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FAX (785) 234-3813
www.ksbar.org

LEGISLATIVE TESTIMONY

January 23, 2002

TO: Chairman John Vratil and Members of the Senate Judiciary Committee

FROM: Paul Davis, KBA Legislative Counsel

RE: Senate Bill 377

My name is Paul Davis and I serve as Legislative Counsel to the Kansas Bar Association. The Kansas Bar Association is a diverse organization. We have 6,000 members, who are judges, prosecutors, plaintiffs' attorneys, defense attorneys, estate planning attorneys, etc.. Legislation that provides for patient access to medical records in a timely manner and at a reasonable cost is important to much of our diverse membership because this issue arises in so many different contexts during the attorney-client relationship.

What are the situations? A criminal defense attorney needs to get access to her client's mental health records to determine whether an insanity plea is plausible. An estate planning attorney needs to access his client's medical records to see if any special provisions need to be inserted in a durable power of attorney for health care (living will). A bankruptcy attorney needs to access her client's medical billing records to determine what health care services were delivered prior to the filing of a bankruptcy petition and are therefore dischargeable. An attorney representing someone in an automobile accident must obtain the client's health care records so that a settlement can be procured with the at-fault driver's insurance company. An attorney, hired by an insurance company, who is representing an insured must be able to access the injured party's medical records to determine whether the claim ought to be settled or defended in court. These are just a few of the many situations where patients and the attorneys that represent them need to be able to access medical records in a timely manner and at a reasonable cost.

This issue is not complex. A patient or a patient's authorized representative ought to be able to access that patient's medical records in a timely manner and at a reasonable cost. This is the premise of Senate Bill 377. With that said, we acknowledge that the medical community views this issue from a different perspective. We have had numerous meetings with representatives of the Kansas Medical Society and the Kansas

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Hospital Association to listen to their concerns. We have done our best to address their concerns without compromising the premise of the bill. This process has taken us through many different bill drafts. Please look at Attachments A and B which demonstrate how much language has been removed from the original Senate Bill 88 to address the concerns of health care providers. We will continue to negotiate in the spirit of compromise, but I believe the bill has been boiled down as much as possible.

I want to quickly touch on the components of Senate Bill 377, which are before you today. Section 1 is a definitional section that is wholly consistent with HIPAA. In fact, much of the language is pulled directly from HIPAA. We understand and agree with the concerns of health care providers that a separate standard from HIPAA not be created. I want to be very clear in saying that we have made every effort to ensure that this legislation does not conflict with HIPAA. Any argument to the contrary is simply fallacious.

Access and Reasonable Cost

Section 2 of the bill addresses the cost of producing medical records. There currently is no limit upon what health care providers can charge for the photocopying of medical records. The instances of exorbitant prices being assessed by health care providers are infinite. A representative of the Kansas Health Information Management Network (KHIMA) presented testimony to this committee when you conducted a hearing on Senate Bill 88 that her organization determined that a $1.57 per page charge was necessary for health care providers to simply break even on the costs of providing the records (Attachment C). If this is true, I suggest that we all quit our day jobs, sit by a copy machine and get rich.

I also want you to know that most health care providers are able to provide patients with their medical records in a timely manner and at a reasonable cost. What we are trying to get at today with this legislation is the distinct minority of providers that are not providing records in a timely manner and at a reasonable cost. I have attached a letter from Marlene Niesinger, who works for an attorney in Kansas City, Kansas (Attachment D). Her description of the struggle that patients and attorneys go through to obtain medical records and the costs that are charged is not an anomaly. I know this because I've heard the same story dozens of times.

The issue of obtaining medical records in a timely manner has been resolved by HIPAA, which requires health care providers to release records within thirty days of a request. Senate Bill 377 proposes to address the cost issue by utilizing a fee limits that are consistent with Missouri law. The fees that are charged in Missouri are entirely reasonable and are familiar to health care providers who operate in the Kansas City metropolitan area. Many health care providers outsource their medical records photocopying to vendors such as the Smart Corporation. Smart Corporation is alive and well in Missouri so any fears expressed on the part of health care providers that they would no longer be able to outsource medical records photocopying if this bill is enacted, simply aren't true.

An adequate remedy for patients

When the legislature amends the criminal code, you know that whatever legislation you pass has no meaning whatsoever without the police and other law enforcement agencies enforcing the newly created law. Since law enforcement can't enforce the provisions of this bill, there must be a provision that allows for either the patient or the health care provider to enforce the Act. That provision is contained in Section 3 of the bill. This provision is absolutely critical to the bill. You will notice that it is available to not only the patient and the patient's authorized representative, but also to the health care provider. This provision simply allows for any of these parties to bring a claim in a district court if another party is not complying the provisions of the Act.

How would this play out? If a health care provider is not willing to provide medical records that have been requested, a patient could file a claim in the district court to compel the provider to release the records. In order for a judge to make such a finding, the health care provider's reason for providing the records must be without just cause or excuse. Therefore, if the provider doesn't provide the records because they are protected by a separate statute, such as a peer review statute, than the provider certainly has just cause or excuse to withhold the records.

I can tell you from experience that this enforcement provision will be seldom utilized. Patients and the lawyers who represent patients will do everything possible to obtain medical records without having to go to court. However, it is essential that the provision exist so that providers know that if they don't comply with the Act, a remedy is available to patients. You might say that the provision acts as a "hammer". Similar provisions exist in many other states so this not something that is foreign to health care providers across the country (Attachment E).

During our last discussion with the health care providers, the Kansas Medical Society expressed strong opposition to Section 3 of the latest working draft. I want to take this opportunity to address some of the concerns that they have expressed. First of all, this provision simply does not create a new cause of action against physicians or other providers. It is a remedy provision and nothing more. Provisions similar to this exist in many other places in our statutes. For example, the legislature amended the Kansas Open Records Act in 2000. The new law requires that attorney fees be paid to persons requesting records when the denial was not in good faith or was without a reasonable basis. Additionally, public agencies who provide records can be subjected to a $500 fine. This is far more than what we are asking for. We simply request that upon a finding by a judge that a health provider who withheld medical records without just cause or excuse have to pay the costs of the court action (this is usually very minimal) and provide the medical records to the patient at no cost. We originally asked that health care provider pay attorney fees under these circumstances, but we have removed that provision in an effort to reach a compromise with the providers.

The Medical Society has suggested that an administrative remedy involving the Board of Healing Arts already exists and is more appropriate. This is not a workable solution for several reasons. The Board of Healing Arts is charged with licensing and regulating a number of health care providers. They do not regulate or license hospitals. The Board of Healing Arts does not have an established process for handling these situations nor should they be put in a position of making judgments about whether the Act is being followed or not. There may be timeliness issues, such as a speedy trial requirement or a statute of limitations issue, that demands a quick resolution of disputes. The court system is equipped for this, the Board of Healing Arts is not. Additionally, this act does not fall under the guise of the Kansas Administrative Procedures Act. Why have an administrative remedy for something that isn't an administrative action?

This legislation is about allowing patients to access their records in a timely manner and at a reasonable cost. We are currently one of six states that does not provide some type of statutory access to medical records for patients. An increasing number of states are also establishing limits on photocopying costs for medical records. The time has come for Kansas to get on the train. ***I ask you to embrace Senate Bill 377 and to recommend its enactment to the full Senate.***

I thank you for your consideration of this issue and welcome any questions that you have.

Session of 2001

SENATE BILL No. 88

By Committee on Judiciary

1-22

AN ACT concerning access to health care records and health care billing records by patients and others.

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

Section 1. As used in this act:

(a) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a podiatrist, an optometrist, a pharmacist, a dentist, a physical therapist, a psychiatrist, a psychologist, a licensed professional counselor, a licensed clinical professional counselor, a licensed master level psychologist, a licensed clinical psychotherapist, a licensed specialist clinical social worker, a baccalaureate social worker, a master social worker, a specialist social worker, a licensed marriage and family therapist, a nurse practitioner, a nurse anesthetist, a physician's assistant, a hospital, a medical center or clinic, a medical care facility, an ambulatory surgical center, a health maintenance organization, a psychiatric hospital, a mental health center or mental health clinic or other person or entity providing medical or health care within the State of Kansas;

(b) "patient" means a person who receives medical or health care from a health care provider, including but not limited to, any examination, testing, evaluation, diagnosis or treatment of any physical or psychological injury, illness or disorder or any claimed physical or psychological injury, illness or disorder;

(c) "representative of a patient" means: (1) A parent of a minor child patient; (2) a spouse, child or parent of a patient who is not competent; (3) the guardian or conservator of a patient; (4) an heir of a deceased patient or an executor, administrator or other representative of a deceased patient's estate; or (5) an attorney or other person designated in writing by a patient or by a representative of a patient;

(d) "authorized party" means a person or entity who has been authorized by the patient or the patient's representative, or by court order or operation of law, to have access to health care records or health care

Attachment 4

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billing records of the patient for a limited purpose;

(e) "health care" means the provision of care, services or supplies to a patient and includes any: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, counseling, service or procedure with respect to the physical or mental condition, or functional status, of a patient or affecting the structure or function of the body; (2) sale or dispensing of a drug, device, equipment or other item pursuant to a prescription; or (3) procurement or banking of blood, sperm, organs or any other tissue for a administration to patients;

(f) "health care records" means any information, recording, data, papers, records or documents generated or maintained by a health care provider whether in written, photographic, ultrasonographic, fluoroscopic, microfilm, audiotape, videotape or electronic form concerning medical or health care, treatment or evaluation of the patient, including but not limited to, notes, summaries, reports, forms, films, images, telephone orders or messages, x-rays, monitor strips, slides, electronically or computer stored data, printouts and correspondence; and

(g) "health care billing records" means any records or information concerning the charges or fees for medical or health care, treatment or evaluation of the patient, or any payments or adjustments thereto, including but not limited to, billings, ledgers, electronically or computer stored data, printouts and correspondence.

Sec. 2. (a) Except as provided in section 5, and amendments thereto, a patient or representative of a patient, upon reasonable notice or request, shall be entitled to inspect and copy any health care records or health care billing records in the possession of a health care provider concerning medical or health care of the patient.

(b) Any health care provider who receives a request from a patient or representative of a patient for access to or copies of any health care records or health care billing records, shall provide access to or copies of such records within 10 days after the receipt of such notice or request, or shall notify the patient or representative of the patient making the request within 10 days after the receipt of such notice or request, of the reason why access to or copies of such records is being withheld or delayed, indicating the date when access to or copies of such records will be provided.

Sec. 3. (a) Except as provided in section 5, and amendments thereto, an authorized party, upon reasonable notice or request, shall be entitled to inspect and copy any health care records or health care billing records in the possession of a health care provider concerning medical or health care of the patient, subject to any limitations upon the authorization.

(b) Any health care provider who receives a notice or request from an authorized party for access to or copies of any health care records or

Attachment A 5-6

health care billing records, shall provide access to or copies of such records within 10 days after the receipt of such notice or request, or shall notify the authorized party making the request within 10 days after the receipt of such notice or request of any reason why access to or copies of such records is being withheld or delayed, indicating the date when access to or copies of such records will be provided.

(c) An authorized party who has obtained health care records or health care billing records concerning a patient shall, upon notice or request, supply a copy of such records to the patient or representative of the patient.

(d) An authorized party who has obtained health care records or health care billing records concerning a patient shall maintain the confidentiality of such records and shall not use or release such records except for the purpose for which authorization was given by the patient or representative of the patient, or in connection with the proceedings for which authorization was given by court order or operation of law.

Sec. 4. (a) No charge for retrieving or copying health care records shall exceed the maximum fees allowed under the workers compensation schedule of medical fees issued by the Kansas department of human resources unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied without additional expense.

(b) A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records, and may demand that such reimbursement be provided in advance of providing access to or copies of such records.

(c) A health care provider shall not be entitled to reimbursement of any expenses incurred in retrieving or copying health care billing records unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied in the ordinary course of business.

(d) A health care provider shall not make any alterations, additions or deletions of information recorded in the health care records of a patient except that a health care provider may make additional contemporaneous entries in the health care records, and may make corrections or additions to the health care records which are clearly designated as late entries with the date of entry shown.

Sec. 5. (a) A health care provider may withhold or limit access to or copies of health care records or health care billing records, or a portion thereof, if the health care provider certifies that providing access to or copies of the requested records, or a portion thereof, will create a significant risk of harm to the patient.

(b) If a health care provider withholds or limits access to or copies of

Attachment #3

health care records or health care billing records under subsection (a) because releasing such records to the patient or to a specific representative of the patient or authorized party would create a significant risk of harm to the patient, the health care provider shall arrange to provide access to or copies of the requested records to another representative of the patient or authorized party, or to the patient, under conditions sufficient to protect the patient from the risk of such harm, if it is reasonably possible to do so.

Sec. 6. (a) Any health care provider, patient, representative of a patient or authorized party may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action may, in its discretion, award attorney fees for failure to comply with this act without just cause or excuse.

(b) The patient, or a representative of a minor, incompetent or deceased patient, shall be given reasonable notice of any action concerning access to or copying of health care records or health care billing records, and may intervene as a party in any such action.

Sec. 7. This act shall not be construed or interpreted to limit or impair access to health care records or health care billing records under any federal or state statute, law, regulation, rule or order.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

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Attachment 4

Session of 2002

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient or a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a $15 handling or service fee and $.35 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

Attachment B

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(b) The limits provided in subsection (a) shall be increased or decreased on an annual basis effective January 1 of each year in accordance with the centers for medicare and medicaid services market basket survey.

Sec. 3. Any health care provider, patient or authorized representative of a patient may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action, upon a showing that the failure to comply with this act was without just cause or excuse, shall award the costs of the action and order the patient's health care records produced without cost or expense to the requesting party.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

5-10
Attachment B

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

3. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is very complex and deals with all aspects of medical record keeping. Senate Bill 88 conflicts with HIPAA in many areas and the federal law will pre-empt any conflicting state law unless the state law is more stringent. An example of this: HIPAA privacy standards require health care providers to provide patients access to their health information except under very limited and specific circumstances. SB 88 allows information to be withheld if there is a "significant risk of harm" to the patient. This is a less stringent standard than HIPAA. Also, under HIPAA patients can request restrictions of uses and disclosures of their health information and SB 88 does not provide for this. These are just a couple of examples where HIPAA will pre-empt SB 88. Our question is why enact state legislation that is in obvious conflict with HIPAA.

MEDICAL RECORD COPY COST

4. We are concerned with Section 4 of SB 88 regarding the charge that will be allowed for copying health care records. The Workers' Compensation Fee Schedule was established for proceedings that are highly regulated with administrative law judges resolving disputes. There is no allowance for yearly Consumer Price Index (CPI) increases. The Workers' Compensation Fee Schedule would cover the cost of copying medical records if it was like Kinko's where you provide the papers and they make the copies. In Health Information the process is much more complex. The request is reviewed to identify the patient and what information is needed. This may require additional correspondence with the requester. Then the request is evaluated by a trained professional or person trained specifically to assure all the legal requirements have been met and that the medical information requested is complete. The cost includes the labor to retrieve the medical information from whatever medium or site of storage, copy multi size forms front and back (a very manual process), re-assemble and file the record, and the postage necessary to mail. Also, included in the cost is the paper, envelope, staples, copy machine and toner and I could go on and on with space, etc. KHIMA's last copy cost survey was completed in 1997 and indicated that we need $1.57 per page to break even on cost. Attorney requests for medical records usually require a complete copy of all medical records for the patient and thus many copies are made. We average 84 pages per request for attorneys at our facility. Workers' Compensation Fee Schedule will pay $36.90 for 84 pages compared to $131.88 at $1.57 per page. At this rate the provider will subsidize roughly $95.00 which ultimately drives up the cost of health care.

Thank you for your consideration of our request to oppose Senate Bill 88.

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Attachment C

LAW OFFICES
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KTLA Legislative Update
Jayhawk Tower, 700 S.W. Jackson
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To Whom It May Concern:

We are very glad to contribute with some of our problems in obtaining medical records. To begin with K. U. Medical Center and Occupational Medicine are the worst in replying to our requests. We are constantly forced to call them again and again for their medical records. We have cases where we have called for four to six months and up to a year for medical records. We have had several cases where they have called us on the phone and asked us if we still need particular medical records when the case has settled several months before.

We have trouble with other health care providers as well. When we call requesting information as to when the records will be sent, as for instance when the client is due to see another doctor soon, they say that payment must be made in advance although they will not always provide us with the amount for the charges. In a case like that, we will request they fax the charges in order to expedite the matter. Even when payment has been made in advance they are almost never willing to fax the medical records although we need them immediately. This is even in cases when there are only one to five pages of medical records.

Last year we had a very hard time getting medical records from KU Medical Center. For about two weeks they claimed that their computers were down. Then they said they were so far behind it was going to take several weeks until they could service our requests for medical records. At another time they said they had made a change in their staff and that its would take a lot of time to get caught up.

Other health care providers claim that all the records are collected through outside companies such as Smart Corporation or Still Corporation and that the matter is simply out of their hands. When they give us the number of their medical records collector we get the runaround from those same companies with excuses as to why the records have not been provided and a myriad of reasons for their delays. We constantly have a problem with medical records been received at the office after the need for them has passed.

There are several doctors and medical clinics that claim they only process medical records one day out of the week and tell you that you are simply out of of lot if you call the day after. They will not even consider making hand exception the matter how urging the need the records.

We are also in receipt of various billing statements for these medical records. There is no rhyme or reason to many of these bills. For the most part we do not see them following the medical fee schedule. We assume if we start making a lot of noise about the billings we will be put even further down the list for our medical record requests.

All in all it is a very frustrated enterprise trying to get these medical records even when there requested months in advance. I hope disinformation goods helpful. I wish to successive time to help improve the situation and take this opportunity to thank you in advance for you kind consideration of this matter.

Marlene Nicsinger Marlene Nicsinger
Medical Records Department

TOTAL P.02

Attachment D 512

AR ST S 16-46-106
A.C.A. § 16-46-106

ARKANSAS CODE OF 1987 ANNOTATED
TITLE 16. PRACTICE, PROCEDURE, AND COURTS
SUBTITLE 4. EVIDENCE AND WITNESSES
CHAPTER 46. DOCUMENTARY EVIDENCE GENERALLY
SUBCHAPTER 1. GENERAL PROVISIONS

Current through End of 1999 Reg. Sess.

16-46-106 Access to medical records.

(a)(1) In contemplation of, preparation for, or use in any legal proceeding, any person who is or has been a patient of a doctor, hospital, ambulance provider, medical health care provider, or other medical institution shall be entitled to obtain access, personally or by and through his or her attorney, to the information in his or her medical records, upon request and with written patient authorization, and shall be furnished copies of all medical records pertaining to his or her case upon the tender of the expense of such copy or copies.

(2) Cost of each photocopy, excluding X rays, shall not exceed one dollar ($1.00) per page for the first five (5) pages and twenty-five cents (.25 cents) for each additional page, except that the minimum charge shall be five dollars ($5.00).

(3) Provided, however, a reasonable retrieval fee for stored records of a hospital or an ambulance provider may be added to the photocopy charges.

(4) Provided, further, this section shall not prohibit reasonable fees for narrative medical reports or medical review when performed by the doctor or medical institution subject to the request.

(b)(1) If a doctor believes a patient should be denied access to his or her medical records for any reason, the doctor must provide the patient or the patient's guardian or attorney a written determination that disclosure of such information would be detrimental to the individual's health or well-being.

(2)(A) At such time, the patient or the patient's guardian or attorney may select another doctor in the same type practice as the doctor subject to the request to review such information and determine if disclosure of such information would be detrimental to the patient's health or well-being.

(B) If the second doctor determines, based upon professional judgment, that disclosure of such information would not be detrimental to the health or well-being of the individual, the medical records shall be released to the patient or the patient's guardian or attorney.

(3) If the determination is that disclosure of such information would be detrimental, then it either will not be released or the objectionable material will be obscured before release.

(4) The cost of this review of the patient's record will be borne by the patient or the patient's guardian or attorney.

(c) Nothing in this section shall preclude the existing subpoena process; however, if a patient is compelled to use the subpoena process in order to obtain access to, or copies of, their own medical records after reasonable requests

Attachment E 513

WEST'S ANNOTATED CALIFORNIA CODES
EVIDENCE CODE
DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES
CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

Current through end of 1999-2000 Reg.Sess.
and 1st Ex.Sess. and Nov. 7, 2000, election.

§ 1158. Inspection and copying of patient's records; authorization; failure to comply; costs

Whenever, prior to the filing of any action or the appearance of a defendant in an action, an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital, shall make all of the patient's records under his, hers or its custody or control available for inspection and copying by the attorney at law or his, or her, representative, promptly upon the presentation of the written authorization.

No copying may be performed by any medical provider or employer enumerated above, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.

Failure to make the records available, during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.

All reasonable costs incurred by any person or entity enumerated above in making patient records available pursuant to this section may be charged against the person whose written authorization required the availability of the records.

"Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents ($0.10) per page for standard reproduction of documents of a size 8 1/2 by 14 inches or less; twenty cents ($0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to an authorization; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars ($16) per hour per person, computed on the basis of four dollars ($4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person.

Where the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, the only fee for complying with the authorization shall not exceed fifteen dollars ($15), plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person.

CREDIT(S)

1995 Main Volume

5-14
Attachment E

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 20. PROFESSIONAL AND OCCUPATIONAL LICENSING, CERTIFICATION, TITLE PROTECTION AND REGISTRATION. EXAMINING BOARDS
CHAPTER 369. HEALING ARTS

Current through 1-1-2000

§ 20-7c. Access to medical records and information

(a) (1) A provider, except as provided in section 4-194, shall supply to a patient upon request complete and current information possessed by that provider concerning any diagnosis, treatment and prognosis of the patient; and (2) a provider shall notify a patient of any test results in the provider's possession that indicate a need for further treatment or diagnosis.

(b) Upon a written request of a patient, his attorney or authorized representative, or pursuant to a written authorization, a provider, except as provided in section 4-194, shall furnish to the person making such request a copy of the patient's health record, including but not limited to, bills, x- rays and copies of laboratory reports, contact lens specifications based on examinations and final contact lens fittings given within the preceding three months or such longer period of time as determined by the provider but no longer than six months, records of prescriptions and other technical information used in assessing the patient's health condition. No provider shall charge more than forty-five cents per page, including any research fees, handling fees or related costs, and the cost of first class postage, if applicable, for furnishing a health record pursuant to this subsection, except such provider may charge a patient the amount necessary to cover the cost of materials for furnishing a copy of an x-ray, provided no such charge shall be made for furnishing a health record or part thereof to a patient, his attorney or authorized representative if the record or part thereof is necessary for the purpose of supporting a claim or appeal under any provision of the Social Security Act [FN1] and the request is accompanied by documentation of the claim or appeal. A provider shall furnish a health record requested pursuant to this section within thirty days of the request.

(c) If a provider, as defined in section 20-7b, reasonably determines that the information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm himself or another, he may withhold the information from the patient. The information may be supplied to an appropriate third party or to another provider who may release the information to the patient. If disclosure of information is refused by a provider under this subsection, any person aggrieved thereby may, within thirty days of such refusal, petition the superior court for the judicial district in which he resides for an order requiring the provider to disclose the information. Such a proceeding shall be privileged with respect to assignment for trial. The court, after hearing and an in camera review of the information in question, shall issue the order requested unless it determines that such disclosure would be detrimental to the physical or mental health of the person or is likely to cause the person to harm himself or another.

(d) The provisions of this section shall not apply to any information relative to any psychiatric or psychological problems or conditions.

CREDIT(S)

1999 Main Volume

(1983, P.A. 83-413, § 2; 1986, P.A. 86-43, § 2; 1991, P.A. 91-137, § 2; 1993, P.A. 93-316, § 3; 1994, P.A. 94-158, § 2; 1995, P.A. 95-100; 1999, June Sp.Sess., P.A. 99-2, § 44.)

[FN1] 42 U.S.C.A. § 301 et seq.

<General Materials (GM) - References, Annotations, or Tables>

5-15
Attachment E

Citation | Found Document | Rank 1 of 1 | Database
GA ST 24-10-73 | | | GA-ST-ANN
Code, 24-10-73

TEXT

CODE OF GEORGIA
TITLE 24. EVIDENCE
CHAPTER 10. SECURING ATTENDANCE OF WITNESSES AND PRODUCTION AND PRESERVATION OF EVIDENCE
ARTICLE 4. PRODUCTION OF MEDICAL RECORDS

24-10-73 Payment of costs in advance; pauper's affidavit; tender prerequisite to contempt sanction; when costs deferred.

The court or agency compelling the production of medical records or of reproductions thereof pursuant to subsections (a) and (c) of Code Section 24-10-71 shall in civil cases and administrative proceedings, except upon pauper's affidavit, provide for payment in advance to the institution keeping the records of the reasonable costs of reproduction and reasonable costs incident to the transportation of the records. No institution or person shall be held in contempt or otherwise penalized for failure of production unless it appears of record that the costs provided in this Code section have been established and tendered. When the institution, at the time of service of a subpoena or order for production, is a party to the proceeding, the court or agency may in its discretion defer such costs and award them with the other costs in the proceeding.

CREDIT

(Ga. L. 1971, p. 441, § 2.)

<General Materials (GM) - References, Annotations, or Tables>

Code, 24-10-73
GA ST 24-10-73
END OF DOCUMENT

5-16
Attachment E

Formerly cited as IL ST CH 110 ¶ 8-2003

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 735. CIVIL PROCEDURE
ACT 5. CODE OF CIVIL PROCEDURE
ARTICLE VIII. EVIDENCE
PART 20. INSPECTION OF HOSPITAL RECORDS

Current through P.A. 91-800, apv. 6/13/2000

5/8-2003. Physician's and other healthcare practitioner's records

§ 8-2003. Physician's and other healthcare practitioner's records. Every physician and other healthcare practitioner except as provided in Section 8- 2004, shall, upon the request of any patient who has been treated by such physician or practitioner, permit such patient's physician or authorized attorney or the holder of a Consent pursuant to Section 2-1003 to examine and copy the patient's records, including but not limited to those relating to the diagnosis, treatment, prognosis, history, charts, pictures and plates, kept in connection with the treatment of such patient. Such request for examining and copying of the records shall be in writing and shall be delivered to such physician or practitioner. Such written request shall be complied with by the physician or practitioner within a reasonable time after receipt by him or her at his or her office or any other place designated by him or her. The physician or practitioner shall be reimbursed by the person requesting such records at the time of such examination or copying, for all reasonable expenses incurred by the physician or practitioner in connection with such examination or copying.

The requirements of this Section shall be satisfied within 60 days of the receipt of a request by a patient or his or her physician or authorized attorney or the holder of a Consent pursuant to Section 2-1003.

Failure to comply with the time limit requirement of this Section shall subject the denying party to expenses and reasonable attorneys' fees incurred in connection with any court ordered enforcement of the provisions of this Section.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

CREDIT(S)

1992 Main Volume

P.A. 82-280, § 8-2003, eff. July 1, 1982. Amended by P.A. 84-7, § 1, eff. Aug. 15, 1985.

2000 Electronic Update

Amended by P.A. 89-7, § 15, eff. March 9, 1995.

FORMER REVISED STATUTES CITATION

1992 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 110, ¶ 8-2003.

<General Materials (GM) - References, Annotations, or Tables>

VALIDITY

<Public Act 89-7, which amended this section, has been held unconstitutional in its entirety by the Illinois Supreme

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Attachment E

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 40. PUBLIC HEALTH AND SAFETY
CHAPTER 5. MISCELLANEOUS HEALTH PROVISIONS
PART XXIX. HEALTH CARE INFORMATION

Current through all 2000 Regular and Extraordinary Session Acts

§ 1299.96. Health care information; records

A. (1) Each health care provider shall furnish each patient, upon request of the patient, a copy of any information related in any way to the patient which the health care provider has transmitted to any company, or any public or private agency, or any person.

(2)(a) Medical records of a patient maintained in a health care provider's office are the property and business records of the health care provider.

(b) Except as provided in R.S. 44:17, a patient or his legal representative, or in the case of a deceased patient, the executor of his will, the administrator of his estate, the surviving spouse, the parents, or the children of the deceased patient, seeking any medical, hospital, or other record relating to the patient's medical treatment, history, or condition, either personally or through an attorney, shall have a right to obtain a copy of such record upon furnishing a signed authorization and upon payment of a reasonable copying charge, not to exceed one dollar per page for the first twenty-five pages, fifty cents per page for twenty-six to five hundred pages, and twenty-five cents per page thereafter, a handling charge not to exceed ten dollars for hospitals and five dollars for other health care providers, and actual postage. The individuals named herein shall also have the right to obtain copies of patient X-rays upon payment of reasonable reproduction costs. In the event a hospital record is not complete, the copy of the records furnished hereunder may indicate, through a stamp, coversheet, or otherwise, that the record is incomplete.

(c) If a copy of the record is not provided within a reasonable period of time, not to exceed fifteen days following the receipt of the request and written authorization, and production of the record is obtained through a court order or subpoena duces tecum, the health care provider shall be liable for reasonable attorney fees and expenses incurred in obtaining the court order or subpoena duces tecum. Such sanctions shall not be imposed unless the person requesting the copy of the record has by certified mail notified the health care provider of his failure to comply with the original request, by referring to the sanctions available, and the health care provider fails to furnish the requested copies within five days from receipt of such notice. Except for their own gross negligence, such health care providers shall not otherwise be held liable in damages by reason of their compliance with such request or their inability to fulfill the request.

(d) A health care provider may deny access to a record if the health care provider reasonably concludes that knowledge of the information contained in the record would be injurious to the health or welfare of the patient or could reasonably be expected to endanger the life or safety of any other person.

(e) Nothing in this Section shall be construed to limit or prohibit access to the information contained in the records of a patient maintained by a health care provider in any legally permissible manner other than those delineated pursuant to R.S. 22:213.2 and in this Section, subject to the provisions of R.S. 13:3734.

(3)(a) Medical and dental records shall be retained by a physician or dentist in the original, microfilmed, or similarly reproduced form for a minimum period of six years from the date a patient is last treated by a physician or dentist.

(b) Graphic matter, images, X-ray films, and like matter that were necessary to produce a diagnostic or therapeutic report shall be retained, preserved and properly stored by a physician or dentist in the original, microfilmed or similarly reproduced form for a minimum period of three years from the date a patient is last treated by the physician or dentist.

(7) <<+"Physician" means a person authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.+>>

(B) <<-A hospital shall prepare a finalized medical record for each patient who receives health care treatment at the hospital, within a reasonable time after treatment.->>

<<-(C)->> A patient <<+or patient's representative+>> who wishes to examine or obtain a copy of part or all of a <<-finalized->> medical record <<-covering a prior inpatient stay or outpatient treatment->> shall submit to the <<-hospital->> <<+health care provider+>> a <<- signed,->> written request <<+signed by the patient+>> dated not more than sixty days before the date on which it is submitted. The patient <<+or patient's representative+>> who wishes to obtain a copy of the record shall indicate in the request whether the copy is to be sent to the patient's residence<<+, physician or chiropractor, or representative,+>> or held for the patient at the <<-hospital->> <<+office of the health care provider+>>. Within a reasonable time after receiving a request that meets the requirements of this division and includes sufficient information to identify the record requested, <<-the hospital->> <<+a health care provider that has the patient's medical records+>> shall permit the patient to examine the record during regular business hours <<+ without charge+>> or<<+, on request,+>> shall provide a copy of the record in accordance with <<-the request->> <<+ section 3701.741 of the Revised Code+>>, except that if a physician <<+or chiropractor+>> who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient, the <<- hospital->> <<+health care provider+>> shall provide the record to a physician <<+or chiropractor+>> designated by the patient. The <<- hospital->> <<+health care provider+>> shall take reasonable steps to establish the identity of the <<-patient examining,->> <<+person making the request to examine+>> or <<-requesting->> <<+obtain+>> a copy of<<-,->> the patient's record.

<<-(D)->><<+(C)+>> If a <<-hospital->> <<+health care provider+>> fails to furnish a <<-finalized->> medical record as required by division <<-(C)->>(B) of this section, the patient <<+or patient's representative+>> who requested the record may bring a civil action to enforce the patient's right of access to the record.

<<-(E)->><<+(D)(1)+>> This section does not apply to medical records whose release is covered by <<+section 173.20 or 3721.13 of the Revised Code, by+>> Chapter 1347. or 5122. of the Revised Code <<-or->><<+,+>> by 42 C.F.R. part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records<<-.->><<+,+>>" <<-Nothing->> <<+or by 42 C.F.R. 483.10.+>>

<<+(2) Nothing+>> n this section is intended to supersede the confidentiality provisions of sections 2305.24 to 2305.251 of the Revised Code.

<< OH ST § 3701.741 >>

<<+Sec. 3701.741. (A) Through December 31, 2004, each health care provider and medical records company shall provide copies of medical records in accordance with this section.+>>

<<+(B) Except as provided in divisions (C) and (E) of this section, a health care provider or medical records company that receives a request for a copy of a patient's medical record may charge not more than the amounts set forth in this section. Total costs for copies and all services related to those copies shall not exceed the sum of the following:+>>

<<+(1) An initial fee of fifteen dollars, which shall compensate for the records search;+>>

<<+(2) With respect to data recorded on paper, the following amounts:+>>

<<+(a) One dollar per page for the first ten pages;+>>

<<+(b) Fifty cents per page for pages eleven through fifty;+>>

<<+(c) Twenty cents per page for pages fifty-one and higher.+>>

<<+(3) With respect to data recorded other than on paper, the actual cost of making the copy;+>>

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Attachment E

Citation
S ST S 36-2-16
SDCL § 36-2-16

Found Document

Rank 1 of 1

Database
SD-ST-ANN

TEXT

SOUTH DAKOTA CODIFIED LAWS
TITLE 36. PROFESSIONS AND OCCUPATIONS
CHAPTER 36-2. PRACTITIONERS OF HEALING ARTS IN GENERAL

Current through End of 2000 Reg. Sess.

36-2-16 Medical records released to patient or designee on request -- Expenses paid by patient -- Violation as misdemeanor.

A licensee of the healing arts shall provide copies of all medical records, reports and X-rays pertinent to the health of the patient, if available, to a patient or the patient's designee upon receipt by the licensee of a written request or a legible copy of a written request signed by the patient. A violation of this section is a Class 2 misdemeanor. The licensee may require before delivery that the patient pay the actual reproduction and mailing expense.

CREDIT

Source: SL 1979, ch 236, § 2; 1981, ch 258, § 3; 1992, ch 158, § 69.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Cross-References.
Hospitals and other institutions to furnish records to patients, § 34-12- 15.
Penalties for classified misdemeanors, § 22-6-2.

S D C L § 36-2-16
SD ST § 36-2-16
END OF DOCUMENT

5-20
Attachment E

Citation
W ST S 16-29-1
Code, § 16-29-1

Found Document

Rank 1 of 1

Database
WV-ST-ANN

TEXT

WEST VIRGINIA CODE 1966
CHAPTER 16. PUBLIC HEALTH.
ARTICLE 29. HEALTH CARE RECORDS.

§ 16-29-1 Copies of health care records to be furnished to patients.

Any licensed, certified or registered health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his authorized agent or authorized representative, within a reasonable time, furnish a copy, as requested, of all or a portion of the patient's record to the patient, his authorized agent or authorized representative subject to the following exceptions:

(a) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative following termination of the treatment program.

(b) Nothing in this article shall be construed to require a health care provider responsible for diagnosis, treatment or administering health care services in the case of minors for birth control, prenatal care, drug rehabilitation or related services or venereal disease according to any provision of this code, to release patient records of such diagnosis, treatment or provision of health care as aforesaid to a parent or guardian, without prior written consent therefor from the patient, nor shall anything in this article be construed to apply to persons regulated under the provisions of chapter eighteen [§§ 18-1-1 et seq.] of this code or the rules and regulations established thereunder.

(c) The furnishing of a copy, as requested, of the reports of X-ray examinations, electrocardiograms and other diagnostic procedures shall be deemed to comply with the provisions of this article: Provided, That original radiological study film from a radiological exam conducted pursuant to a request from a patient or patient's representative shall be provided to the patient or patient's representative upon written request and payment for the exam. The health care provider shall not be required to interpret or retain copies of the film and shall be immune from liability resulting from any action relating to the absence of the original radiological film from the patient's record.

(d) This article shall not apply to records subpoenaed or otherwise requested through court process.

(e) The provisions of this article may be enforced by a patient, authorized agent or authorized representative, and any health care provider found to be in violation of this article shall pay any attorney fees and costs, including court costs incurred in the course of such enforcement.

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Attachment E

provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request, which request shall comply with the requirements of subsection E of § 32.1-127.1:03. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for the service of maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney shall require a writing signed by the patient confirming the attorney's authority to make the request and shall accept a photocopy, facsimile, or other copy of the original signed by the patient as if it were an original.

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03, the patient or his attorney may cause a subpoena duces tecum to be issued. The subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual suit, would be required to be filed, and payment of the fees required by subdivision A 18 of § 17.1-275, and fees for service or (ii) by the patient's attorney in a pending civil case in accordance with § 8.01-407 if issued by such attorney at least five business days prior to the date that production of the record is desired upon payment of the fees required by subdivision A 23 of § 17.1-275 at the time of filing of a copy of the subpoena duces tecum with the clerk. The subpoena shall be returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to the clerk who shall then make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of

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Attachment E

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: January 23, 2002

TO: Senate Judiciary Committee

FROM: Charles E. Simmons
Secretary of Corrections

RE: SB 377

SB 377 creates statutory requirements for the provision of health care records to a patient or a patient's authorized representative. Additionally, SB 377 provides for an automatic expiration of an authorization for the release of such records. SB 377 is applicable to both patients receiving health care in the community through private health care providers as well as to offenders in the custody of the Department of Corrections. Due to the special circumstances existing relative to confined offenders and health care records, the Department would like to take this opportunity to identify its concerns with SB 377 and provide to the Committee an amendment to SB 377 which would address those concerns.

The Department's concerns are two fold. The first involves the provisions of SB 377 relative to the authority of an offender to limit the dissemination of his or her health care records. The second concern is in regard to the release of mental health records to an offender.

SB 377 provides that health care providers may only disseminate a patient's health care records pursuant to a written authorization and that an authorization for the release of such records shall automatically expire after one year. The Department of Corrections, through private vendors, provides extensive medical and mental health care to offenders sentenced to the Department's custody. In order to monitor and evaluate the health care provided as well as take appropriate action relative to the myriad of custodial issues regarding an offender's confinement related to the medical and mental health of

SJud 1-23-02 attb

offenders, it is necessary for appropriate persons to have access to an offender's health care records. The Department's ability to obtain health care records from its medical and mental health care providers or to disseminate those records to persons who have a need to access those records in the course of the Department meeting its responsibilities should not be contingent upon the authorization of the offender.

The scope of mental health care records that are subject to SB 377 is unlimited. The Department, however, in addition to providing mental health treatment, has psychiatric evaluations of offenders prepared for use by various officials, including the Parole Board and Department's classification administrators. Due to the nature of those evaluations, including that they may possibly contain information regarding victims, K.S.A. 75-5266 restricts dissemination. SB 377 would require the production of such records to offenders.

The Department urges that SB 377 be amended to exclude the application of its provisions regarding authorization for the release of the health care records of offenders and the access of offenders to mental health care records. The Department has prepared the attached balloon amendment that would address its concerns.

The Department requests favorable consideration of its proposed amendment during the Committee's consideration of SB 377.

CES/TGM

Cc: Legislative file w/attachment

Session of 2002

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

(d) The provisions of subsection (c) shall not apply to records of health care provided by the department of corrections or its contractors.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient or a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a $15 handling or service fee and $.35 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

; provided however, that furnishing of records pertaining to mental health treatment or evaluations prepared by the department of corrections or its contractors shall not be required unless authorized by the secretary of corrections or the secretary's designee.

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(b) The limits provided in subsection (a) shall be increased or decreased on an annual basis effective January 1 of each year in accordance with the centers for medicare and medicaid services market basket survey.

Sec. 3. Any health care provider, patient or authorized representative of a patient may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action, upon a showing that the failure to comply with this act was without just cause or excuse, shall award the costs of the action and order the patient's health care records produced without cost or expense to the requesting party.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

AARP Kansas

555 S. Kansas Avenue
Suite 201
Topeka, KS 66603
(785) 232-4070
(785) 232-8259 Fax

January 23, 2002

Good morning Senator Vratil and members of the Senate Judiciary Committee. My name is Dr. Ernest Pogge and I am the coordinator of the AARP Kansas Legislative Task Force. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our views in ***support*** of Senate Bill 377.

AARP believes that the management, privacy and confidentially of a patient's medical information is paramount. Individuals have a right to privacy with respect to their general medical information and a right to determine who may have access to all personally identifiable health information.

AARP promotes legislation that provides consumers with access to medical information and adequate protection against the unauthorized access or dissemination of medical information that includes:

- Individuals' explicit and written consent should be required to obtain access to, or the release of, their medical records or health information.
- The cost of acquiring individual's medical information should be fair and reasonable. We believe that there must be a standard fee schedule with a built-in mechanism for regular review and adjustments of the rates.
- Access to medical information is available to the individual in a reasonable and timely manner.
- Remedies are provided to consumers or their representatives for excessive delays or costs without just cause.

AARP supports legislation that protects consumer information and provides consumers with access to their medical information at a fair cost and in a timely manner. Therefore, AARP ***supports*** Senate Bill 377.

Thank you again for this opportunity. I stand ready to answer questions.

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KANSAS BOARD OF HEALING ARTS

BILL GRAVES
Governor

235 S. Topeka Blvd.
Topeka, KS 66603-3068
(785) 296-7413
FAX # (785) 296-0852
(785) 368-7102

January 23, 2002

The Honorable John Vratil
Chair, Senate Committee on the Judiciary
State Capitol
Room 120-S

Re: 2002 Senate Bill No. 377

Dear Senator Vratil:

Thank you for the opportunity to appear before the committee on behalf of the State Board of Healing Arts regarding Senate Bill 377. The Board agrees that patients should have a right to a copy of their record from their physicians, and supports a legislative pronouncement of that right.

The common law in this country had long ago established that the patient record is the property of the entity that creates the record, though the patient has an interest in the information contained in that record. In the absence of a statute or regulation, courts in some states recognized an additional duty to allow a patient access to records, but with some limitations. As stated in an opinion of the Council of Ethical and Judicial Affairs, the American Medical Association recognizes an ethical duty on the part of physicians to grant a patient access to the record. More recently, the federal Health Insurance Portability and Accountability Act (HIPPA) regulations, specifically appearing at 45 CFR § 164.524, established a patient's right to access records containing health information.

The Board is authorized by statute to take disciplinary action against a licensee for engaging in dishonorable conduct, a phrase that is not defined but that generally refers to ethical professional practice. In 1998 the Board adopted an amendment to K.A.R. 100-22-1 that defined dishonorable conduct to include the failure to provide records to the patient. A copy of the regulation is attached showing proposed amendments that will be considered at the February Board meeting. Those proposed amendments are intended to make the regulation more consistent with HIPAA. The Board continues to receive complaints alleging that doctors refuse to furnish records. Since July 2000 the Board has documented 30 of these complaints.

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Not all health care providers who would be subject to Senate Bill 377 are regulated by the Board's regulation, thus broader legislation might be proper to accomplish this same end. Senate Bill 377 creates a civil remedy that will assist patients in gaining access to their records. The Board is not opposed to that legislative choice. But the Board does believe that the civil action should not be the exclusive method of resolving disputes, and that the Board should be allowed to continue enforcement of K.A.R. 100-22-1 as an additional and alternative remedy. Of the 30 complaints mentioned above, in all but one Board staff have successfully assisted the patients in obtaining the records in a very short period of time and without the need for a formal proceeding.

In order to ensure that the Board's regulation remains valid, the Board requests that a new section be added to Senate Bill 377 stating: "This act shall not be construed to prohibit the state board of healing arts from adopting and enforcing rules and regulations that require licensees of the board to furnish health care records to patients or to their authorized representatives. To the extent that the board determines that an administrative disciplinary remedy is appropriate for violation of such rules and regulations, that remedy is separate from and in addition to the provisions of this act." A balloon with this proposed language is attached.

At a glance, Senate Bill 377 does not contain some of the detail found in the Board's regulation and in the federal HIPAA regulations. For example, K.A.R. 100-22-1(a)(1) now includes language that allows a physician to withhold the record from a patient if providing the information would endanger the patient. The federal regulation has a similar provision to protect the safety of the patient as well as of other persons. The Board has proposed to amend its regulation to be consistent with HIPAA. Senate Bill 377 does not address this issue. But I understand that the committee's intent is that the federal law would be read into the new statute. I would request that the committee state in its minutes whether there is a legislative intent that the statute to be construed in accordance with the detail provided by the federal law and by the Board's regulation, at least to the extent not inconsistent with the statute.

Once again, thank you for the opportunity to comment on the proposed bill.

Very truly yours,

Mark W. Stafford
General Counsel

Article 22 - DISHONORABLE CONDUCT

100-22-1. Release of records. (a) (1) Unless otherwise prohibited by law, each licensee shall, upon receipt of a signed ~~release~~ authorization from a patient, within a reasonable time furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally ~~designated~~ authorized representative. However, if the licensee reasonably determines that providing the information within the patient record ~~is detrimental to the mental or physical health of the patient~~ to the patient is likely to endanger the life or physical safety of the patient or of another person, then the licensee may withhold the record from the patient or the patient's legally authorized representative and furnish the record to another licensee designated by the patient.

(2) For purposes of this regulation, a "reasonable time" for furnishing a copy of the patient record to the patient shall be 30 days, unless the licensee notifies the patient before the expiration of the 30 days that additional time is required in order for the licensee to retrieve the records for copying. In no case shall a "reasonable time" be longer than 60 days.

(b) (1) A licensee may charge a person or entity for reasonable costs to ~~retrieve or~~ reproduce ~~a~~ and provide a copy of the patient record. A licensee shall not condition the furnishing of a patient record to another licensee upon prepayment of these costs.

(2) For purposes of this regulation, "reasonable costs" shall mean the costs of copying and delivering a record, taking into account all of the following:

(A) The medium of record storage;

(B) the cost of supplies required for copying;

(C) the cost of labor for copying; and

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(D) the postage necessary for delivering the patient record.

"Reasonable costs" shall not include the cost of storing the patient record.

(c) Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836 ~~(b)~~, and ~~any~~ amendments thereto. (Authorized by K.S.A. 65-2865; implementing K.S.A. ~~1997~~ 2000 Supp. 65-2836, as amended by L. ~~1998~~ 2001, Ch. ~~142~~ 31, Sec. ~~12~~ 2; effective May 1, 1985; amended Nov. 13, 1998; amended P-_____.)

Session of 2002

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient or a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a $15 handling or service fee and $.35 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

(b) The limits provided in subsection (a) shall be increased or decreased on an annual basis effective January 1 of each year in accordance with the centers for medicare and medicaid services market basket survey.

Sec. 3. Any health care provider, patient or authorized representative of a patient may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action, upon a showing that the failure to comply with this act was without just cause or excuse, shall award the costs of the action and order the patient's health care records produced without cost or expense to the requesting party.

Sec. ~~4.~~ 5. This act shall take effect and be in force from and after it's publication in the Kansas register.

Sec. 4. This act shall not be construed to prohibit the state board of healing arts from adopting and enforcing rules and regulations that require licensees of the board to furnish health care records to patients or to their authorized representatives. To the extent that the board determines that an administrative disciplinary remedy is appropriate for violation of such rules and regulations, that remedy is separate from and in addition to the provisions of this act.

Kansas Association of Osteopathic Medicine

1260 SW Topeka Boulevard
Topeka, Kansas 66612

Phone (785) 234 5563
Fax (785) 234 5564

TESTIMONY ON SB377
To The
SENATE JUDICIARY COMMITTEE
By Charles L. Wheelen
January 23, 2002

Thank you for the opportunity to testify against Senate Bill 377. The Kansas Association of Osteopathic Medicine is opposed to additional legislation regarding medical records because it is unnecessary. There already exist state and federal laws that assure access to the information contained in a patient's medical records. There are also regulations that provide for disciplinary action against physicians for failure to adhere to those laws.

Existing administrative laws prescribe standards for accuracy, storage, and retrieval of medical records as well as patient rights to obtain copies of medical records. Specifically, *Kansas Administrative Regulation* 100-22-1 demands that physicians provide copies of medical records to a patient or "a patient's legally designated representative." That regulation goes on to say that, "Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836(b), and any amendments thereto." In other words, the physician's license may be revoked, suspended, or limited if the Board of Healing Arts finds that the physician has denied the patient or the patient's representative a copy of the medical record, or has charged an unreasonable fee for the copy.

During hearings conducted by the 2001 Special Committee on Judiciary there were concerns expressed because the Board of Healing Arts regulation did not express a maximum fee nor did it impose a time limit. I relayed these concerns to the Executive Director of the Board and as a result, the Board of Healing Arts has proposed amendments to K.A.R. 100-22-1 that address these concerns. The official public hearing is scheduled February 21, 2002.

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Similar administrative laws govern hospitals and other medical care facilities. K.A.R. 28-34-9a prescribes standards for accuracy, storage, and retrieval of medical records, whereas item (8) under subsection (a) of K.A.R. 28-34-3b grants each patient or the patient's legally designated representative "access to the information contained in the patient's medical records within the limits of state law." The Secretary of Health and Environment has statutory enforcement authority.

In addition to the existing state laws governing retention and access to patient medical records, the new federal privacy regulations adopted by the Secretary of Health and Human Services (a.k.a. "HIPAA regs") provide another layer of stringent rules pertaining to personal health information. These new federal regulations grant patients the unquestionable right to examine and obtain copies of their own health care records, and request amendments to those records. In other words, *all Kansas patients already have the benefit of both state and federal laws and regulations which assure access to their own medical records*. Any additional legislation would be redundant.

Perhaps equally important is the question of whether regulation of patient health information is an executive or judicial function of government? We believe that patient rights to obtain information contained in their medical records should be enforced by the agencies that regulate the professions and institutions that create those records. If the existing administrative laws are somehow inadequate, we should be focusing our attention on amending or supplementing the regulations. The courts should be reserved for important criminal and civil matters.

For the above reasons we urge you to recommend that Senate Bill 377 *not* be passed. Thank you.

State of Kansas

Kansas Sentencing Commission

Notice of Meeting

The Kansas Sentencing Commission will meet from 1:30 to 3:30 p.m. Thursday, January 24, in the Senate Room of the Jayhawk Tower, 700 S.W. Jackson, Topeka. For further information, call (785) 296-0923.

Barbara Tombs
Executive Director

Doc. No. 027397

State of Kansas

Department of Revenue

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted by the Department of Revenue at 10 a.m. Tuesday, February 26, in Room 481, Docking State Office Building, 915 S.W. Harrison, Topeka, to consider the revocation of one regulation pertaining to the authorization to implement other regulations in Article 8, Cereal Malt Beverage Tax.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written comments from the public on the proposed regulation. All interested parties may submit written public comments on the proposed regulation prior to the hearing to Kathleen Smith, Tax Specialist, Office of Policy and Research, Room 230, Docking State Office Building, 915 S.W. Harrison, Topeka, 66625.

All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulation. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Kathleen Smith at (785) 296-3081 or TTY (785) 296-6461. Disabled parking is located in State Parking Lot No. 2, south of the Docking Building facing Harrison Street. The east entrance to the Docking Building is accessible.

The revocation of this regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and the economic impact follows:

Article 8.—CEREAL MALT BEVERAGE TAX

Revocation of 92-8-20. All other regulations in this article have been repealed and the implementing/authorizing statute does not exist. It appears to have been overlooked when eliminating other regulations in the past.

Economic Impact: No impact on the public, the department or other agencies is anticipated.

A copy of the regulation and the economic impact statement may be obtained from the Kansas Department of Revenue, Office of Policy and Research, Room 230, Docking State Office Building, 915 S.W. Harrison, Topeka, 66612-1588.

Stephen S. Richards
Secretary of Revenue

Doc. No. 027379

State of Kansas

Board of Healing Arts

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 10 a.m. Thursday, February 21, at the office of the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, to consider the adoption of one proposed amended rule and regulation dealing with the release of records.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the above referenced rule and regulation. All interested parties may submit comments prior to the hearing to the Board of Healing Arts at the address above. All interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the adoption of the regulation during the hearing. In order to give all persons an opportunity to present their views, it may be necessary to request each participant to limit any oral presentations to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the regulation and the economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Melissa Kipp at (785) 368-6425. Handicapped parking is located at the west end of the Hutton Building, and the northwest entrance to the building is accessible.

A summary of the proposed amended rule and regulation to be considered at the hearing and its respective economic impact is as follows:

K.A.R. 100-22-1. Release of records. This amended regulation specifies what a reasonable time means for furnishing a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally authorized representative. Additionally, the regulation defines what reasonable costs shall mean for delivering a record to a person or entity and what things can be taken into account when considering reasonable costs.

Copies of the proposed regulation and the associated economic impact statement may be obtained by contacting Betty Johnson, Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, 66603; (785) 296-3680, or by visiting the board's Web site at www.ksbha.org/pubinfo.-html.

Lawrence T. Buening, Jr.
Executive Director

Doc. No. 027398

10-3

Proposed amendments
Hearing scheduled 10am, Feb. 21, 2002
At Board of Healing Arts

ARTICLE 22 - DISHONORABLE CONDUCT

100-22-1. Release of records. (a) (1) Unless otherwise prohibited by law, each licensee shall, upon receipt of a signed ~~release~~ authorization from a patient, within a reasonable time furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally ~~designated~~ authorized representative. However, if the licensee reasonably determines that providing the information within the patient record ~~is detrimental to the mental or physical health of the patient~~ to the patient is likely to endanger the life or physical safety of the patient or of another person, then the licensee may withhold the record from the patient or the patient's legally authorized representative and furnish the record to another licensee designated by the patient.

(2) For purposes of this regulation, a "reasonable time" for furnishing a copy of the patient record to the patient shall be 30 days, unless the licensee notifies the patient before the expiration of the 30 days that additional time is required in order for the licensee to retrieve the records for copying. In no case shall a "reasonable time" be longer than 60 days.

(b) (1) A licensee may charge a person or entity for reasonable costs to ~~retrieve or~~ reproduce ~~a~~ and provide a copy of the patient record. A licensee shall not condition the furnishing of a patient record to another licensee upon prepayment of these costs.

(2) For purposes of this regulation, "reasonable costs" shall mean the costs of copying and delivering a record, taking into account all of the following:

(A) The medium of record storage;

(B) the cost of supplies required for copying;

(C) the cost of labor for copying; and

(D) the postage necessary for delivering the patient record.

"Reasonable costs" shall not include the cost of storing the patient record.

(c) Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836 ~~(b)~~, and ~~any~~ amendments thereto. (Authorized by K.S.A. 65-2865; implementing K.S.A. ~~1997~~ 2000 Supp. 65-2836, as amended by L. ~~1998~~ 2001, Ch. ~~142~~ 31, Sec. ~~12~~ 2; effective May 1, 1985; amended Nov. 13, 1998; amended P-_____.)

KANSAS MEDICAL SOCIETY
KMS

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To: Senate Judiciary Committee

From: Jerry Slaughter
Executive Director

Date: January 23, 2002

Subject: SB 377; access to health care records

The Kansas Medical Society appreciates the opportunity to appear today as you consider the subject of access to medical records and related privacy issues. As you are aware, the issue was heard and debated by this committee last session, and by the Interim Judiciary Committee last fall. SB 377 is essentially a much-amended version of the original, SB 88, which was the subject of the interim study.

We opposed SB 88 as it was introduced last session by the KTLA and KBA, and we are opposed to SB 377 as it is before you today. While we are opposed to the current version of the legislation, we are not opposed to the principles behind the proposal - that of assuring patients and their legal representatives access to their medical records, without unreasonable delay, and at a reasonable cost. Our opposition to SB 377 is based on our belief that current state law and recently promulgated federal privacy regulations already accomplish virtually everything that the proponents of this bill are seeking.

Last year we discussed with this committee the new federal regulations that were promulgated pursuant to §264 of the 1996 Health Insurance Portability and Accountability Act (HIPAA). Known as the "Privacy Rule," (the *Standards for Privacy of Individually Identifiable Health Information*, 45 CFR Parts 160 and 164), these regulations apply to all health care providers, health plans, and all others who compile, transmit or use protected health information in any manner. The Privacy Rule essentially creates a national standard for the protection of individuals' medical records and the personal health information contained therein. The regulations are quite detailed and comprehensive, and gives patients control over their health information, while holding health care providers and health plans accountable for violating patients' privacy rights. The date for implementation of the regulations has been set for April 14, 2003, in order to give health care providers and others time to adopt policies and procedures in their offices to meet compliance requirements. As you can imagine, an industry-wide educational effort is being undertaken to fully inform physicians, hospitals, health plans and others of their responsibilities under the new regulations. Additionally - and this is an important consideration - the Secretary of Health and Human Services has indicated that he intends to

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adopt several changes to the Privacy Rule in the coming months, in order to deal with many problem areas that have been identified by the provider community. In other words, the rules under which everyone must operate are still evolving, and we expect numerous changes and clarifications in the next several months leading up to the April 2003 compliance date.

Further, the Kansas Healing Arts Act and regulations adopted thereto already require licensees of the Healing Arts Board to release patient records upon receipt of a written authorization from the patient. Additionally, violation of the regulation is prima facie evidence of dishonorable conduct, which can result in sanctions up to and including loss of license.

We believe the new federal Privacy Rule, and the existing regulations of the Healing Arts Board already provide a more than adequate framework to protect patients' privacy, assure access to their medical information, and hold providers accountable for violations. There are essentially three main components to the issue before you:

- assuring patients and their legal representatives timely access to the patient's medical information;
- enforcement, or penalties for non-compliance; and
- assuring that any costs charged to the patient for retrieval and copying of the records to comply with the request are reasonable.

Both the Healing Arts Act regulations and the federal Privacy Rule address those three points in the following ways:

Access

Privacy Rule: §164.524(a)(1) - "...an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set...."; and §164.524(b)(2) - "...the covered entity must act on a request for access no later than 30 days after receipt of the request...."

Healing Arts regulations: K.A.R. 100-22-1 (a) - "...each licensee shall, upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to a patient's legally designated representative."

Enforcement

Privacy Rule: §160.306(a) - "A person who believes a covered entity is not complying with the applicable requirements of this part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter may file a complaint with the Secretary." The Secretary has the right to investigate and to informally resolve disputes. Additionally, the Secretary may impose civil money penalties of not more than $100 per violation, up to $25,000 per person, per year for each requirement or prohibition violated.

Healing Arts regulations: K.A.R. 100-22-1 (c) - "Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836(b), and any

amendments thereto."

Cost

Privacy Rule: §164.524(c)(4) - "...the covered entity may impose a reasonable, cost-based fee..." for copying requested protected health information.

Healing Arts regulations: K.A.R. 100-22-1 (b) - "A licensee may charge a person or entity for reasonable costs to retrieve or reproduce a patient record."

As you can see from the above, it should be very clear that Kansans already have a right of access to their medical information. Both the federal Privacy Rule, and the Healing Arts regulations assure it. Likewise, assuring enforcement, or provider compliance, should not be in question. The potential for sanctions by the Healing Arts Board, as well as an investigation and civil penalties by the Secretary of the United States Department of Health and Human Services, are more than adequate enforcement tools to assure compliance with a patient's request for their medical information. We believe it is unnecessary to create a new statutory standard in Kansas, since the federal Privacy Rule and existing state regulations already have dealt with the matter.

The only aspect of this issue that does not have explicit parameters set out either in federal or state regulation is that of cost. Both the state and federal regulations allow providers to receive "reasonable" charges for copying the requested records. Neither regulation establishes a specific cost for the retrieval and copying of medical records. We understand that point is a significant issue for the proponents of this legislation. We believe that a "reasonable, cost-based" standard is appropriate, and that health care providers should be able to charge for their actual costs to retrieve and copy medical records.

However, while we do not believe this legislation is necessary, if the Committee feels it must pass it with an explicit limitation on the recovery of duplication costs, the approach we favor is a fee schedule that allows $20 for the cost of supplies and labor, plus 50 cents per page copied. That is currently the fee schedule in use in the state of Nebraska, which we felt was fair and in the middle range of those around us. The other states and their respective fee schedules follow: Oklahoma and Arkansas were the lowest at a flat 25 cents per page; the Workers Comp fee schedule allows $16 for the first 10 pages, an additional $12 for the next 40 pages, and then an additional 35 cents per page for copies exceeding 50 pages; then Missouri with a $16.94 handling fee and 39 cents per page; then Nebraska at $20 handling fee and 50 cents per page; and Texas, which was the highest, using a $30 processing fee plus a three-tiered schedule for copying costs that started out at $1 per page through 60 pages, then 50 cents per page through 400 pages, and finally 25 cents per page for copies exceeding 400 pages. Colorado, South Dakota and Iowa do not have any limits, and allow providers to get their reasonable costs reimbursed, which was our original proposal last session.

We have attached a balloon amendment to the bill which would set the fee limits at the Nebraska model, as well as using language that we believe is more likely to be considered "HIPAA-compliant," or consistent with the federal privacy regulations. Also included in our balloon is a suggestion for a technical amendment. It appears on line 3, page 2 of the bill. The provision it amends sets up a method for annually adjusting the costs contained in section 2 of the bill. The language in the bill was adapted from the Missouri law, and it refers to the Centers for Medicare and Medicaid Services "market basket survey." However, there is no such thing. CMS does annually compute an index used to determine hospital reimbursement rates. That measurement is called the "Prospective Payment System Hospital Input Price Index." Our balloon inserts that language in place of the current reference.

Beyond addressing the cost issue in state law, we believe additional state rules about access, enforcement, and the other issues surrounding access to health information are unnecessary. The recently adopted privacy regulations required by HIPAA have effectively addressed virtually every main point in the bill. While we believe it is unnecessary because HIPAA addresses it, we have agreed in principle to support the establishment of a statutory fee limit for copying medical records, as outlined in the attached balloon. Thank you for the opportunity to appear today.

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Jerry Slaughter
Executive Director

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Session of 2002

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient or a patient's authorized representative within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a ~~$15 handling or service fee and $.35~~ $20 fee for the cost of supplies and labor and $.50 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

(b) The limits provided in subsection (a) shall be increased or decreased on an annual basis effective January 1 of each year in accordance with the centers for medicare and medicaid services ~~market basket survey~~ prospective payment system hospital input price index for the calendar year.

Sec. 3. Any health care provider, patient or authorized representative of a patient may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action, upon a showing that the failure to comply with this act was without just cause or excuse, shall award the costs of the action and order the patient's health care records produced without cost or expense to the requesting party.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

KANSAS HOSPITAL ASSOCIATION

Donald A. Wilson
President

To: Senate Judiciary Committee
From: Thomas L. Bell
Senior Vice President/Legal Counsel
Re: Senate Bill 377
Date: January 23, 2002

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of Senate Bill 377. This bill would create new statutes governing access to medical records, including time frames on responding to medical records requests and limits on what health care providers can charge for copying those records.

We recognize that the legislation introduced this session is a far cry from the complicated and confusing proposal submitted last year. We appreciate the efforts of the Interim Committee to craft a bill that accomplishes the stated goals of the proponents without resulting in unintended consequences. In that regard, SB 377 is certainly an improvement. At the same time, for the reasons stated below, we believe the bill is unnecessary.

By now legislators on this committee are well aware of the Health Insurance Portability and Accountability Act regulations promulgated by the federal government, which create an extensive set of guidelines governing patient privacy and medical records. These regulations are the result of literally years of work by many individuals in the public and private sector. While the regulations are not perfect, health care providers are now working toward their implementation. For this reason, we feel it is unnecessary for any state to pass legislation concerning any of the issues contained in the HIPAA regulations, including medical records copying costs. We are extremely concerned about the existence of inconsistent standards on the state and federal level.

Certainly, this committee hearing is not the time for an exhaustive review of HIPAA's requirements, but it is clear these regulations cover the main components of SB 377. First, access to records is granted within a certain time frame. Second, unlike SB 377's limitations, which may or may not cover costs in a given instance, HIPAA states that providers may charge a "reasonable, cost-based fee". Such a fee may only include the cost of labor, supplies, postage and preparation of a summary of the information. Finally, while SB 377 creates a statutory cause of action, the HIPAA regulations establish civil money penalties and criminal sanctions for violations of ***any*** HIPAA standard. While the HIPAA regulations are complicated, their focus is to provide guidance on how to perform the balancing act of assuring appropriate access to health care information, while concurrently maintaining patient privacy. Since SB 377 does nothing additional to further this goal, the bill is simply unnecessary.

Thank you for your consideration of our comments.

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Senate Judiciary Committee
Testimony re: SB 377
Presented by Ronald R. Hein
on behalf of
Wesley Medical Center
January 23, 2002

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Wesley Medical Center. Wesley is a licensed hospital in Wichita licensed for 760 acute care beds.

Wesley Medical Center opposes SB 377 in concept and in its present form because of certain provisions of the bill.

Wesley's number one concern is the statutory cause of action created pursuant to section 3 of the bill. A statutory cause of action is unnecessary. Even without this bill, attorneys can bring actions against hospitals and other providers seeking medical records. I am not aware of any prohibition in the statutes against seeking judicial relief. Statutory authority to enforce subpoenas already exists. In addition, federal regulations provide enforcement mechanisms that are already sufficient to enforce compliance with the obligation to provide medical records to a person with legitimate authorization to receive them.

Our second concern relates to the proposed statutory charges for obtaining healthcare records.

It is an expensive process for a hospital to supply medical records to lawyers, to other authorized agents, and to patients themselves. Federal legislation, specifically the Health Insurance Portability and Accountability Act (HIPAA), requires a hospital to do more than simply run photocopies of requested records.

In order to insure confidentiality of certain information, medical records personnel must make certain that any information being provided is permitted by federal and state law to be released, and is in compliance with a specific request. For example, if an attorney requests medical records of a patient as the result of an auto accident, the patient's records being provided must be reviewed so as to insure that information which is not relevant to the auto accident which may relate to otherwise medically confidential information is not inadvertently released.

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This process involves trained, credentialed personnel and requires review of records, not simply photocopying of records by untrained personnel.

What this bill does not address, in its effort to insure that attorneys and others can get the appropriate medical information they want in a timely manner, is the fact that the medical facility faces another penalty or potential cause of action against the hospital if it releases information which should not have been released under federal law.

First, if this legislation is to be enacted, we believe that it should be applicable to all entities who request medical records, so we would suggest amending line 33 to read as follows:

> "shall be furnished to a patient, a patient's authorized representative, or any other entity authorized by law to obtain such records"

Secondly, Wesley has calculated our costs to provide medical records on a per copy basis and has determined that a charge of 72 cents per page is necessary to cover Wesley's costs. If the costs of providing copies of such medical records are not covered by copy charges, then such costs must be borne by our patients or the hospital.

With the cost reimbursement framework set out in SB 377, those who request the fewest pages of medical records pay the most per copy, and those who request more pages pay less per copy. In Wesley's experience, requests for medical records made by attorneys or by subpoena average more copies per request than requests made by individual patients. In 2001, requests by attorneys averaged 102 copies and subpoenaed requests averaged 171 copies. The net effect of the structured cost of records plan set out in SB 377 is to require individual patients to subsidize the cost of medical records supplied to attorneys.

Wesley's preference would be to set a per copy rate which allows Wesley and other healthcare providers to recover the cost of copying medical records. This would also reduce the costs for individuals requesting fewer copies. A 75 cents per page charge would have covered our costs in 2001.

Therefore, we would recommend that the costs set out in section 2(a) (at line 39 of page 1) of SB 377 be changed either by increasing the charge per copy to at least 75 cents per page, or by increasing the handling or service fee to $20 per request, and the copy charge to 50 cents per page.

Lastly, we want to insure that the legislative intent of section 2(a) (specifically page 1, lines 32-36) is that, if the medical records are not able to be provided within the 30 day period from receipt of authorization, a response from the healthcare provider setting out the reasons for delay will comply with the time deadlines in this legislation.

We appreciate the efforts of the Special Committee on Judiciary which conducted hearings on this issue. Although the interim committee was not able to totally wordsmith SB 377, this legislation is considerably more palatable than 2001 SB 88.

Although we still believe that this legislation is not necessary, we would change our position to neutral if the balloon amendments attached hereto and discussed within this testimony are adopted in their entirety.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Session of 2002

SENATE BILL No. 377

By Special Committee on Judiciary

1-8

AN ACT concerning access to health care records by patients and authorized representatives.

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

Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient ~~or~~ a patient's authorized representative, or any other person or entity authorized by law to obtain such records within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. Health care providers may condition the furnishing of the patient's health care records to the patient or the patient's authorized representative upon the payment of charges not to exceed a $15 handling or service fee and $.35 per page for copies of health care records routinely duplicated on a standard photocopy machine. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

Alternative #1: delete "a $15 handling or service fee and" and delete "$.35" and insert "$.75" before "per page"

Alternative #2: delete "$15" and insert "$20" before "handling" and delete "$.35" and insert "$.50" before "per page"

Ron Hein

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(b) The limits provided in subsection (a) shall be increased or decreased on an annual basis effective January 1 of each year in accordance with the centers for medicare and medicaid services market basket survey.

Sec. 3. ~~Any health care provider, patient or authorized representative of a patient may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction of such claim or action, upon a showing that the failure to comply with this act was without just cause or excuse, shall award the costs of the action and order the patient's health care records produced without cost or expense to the requesting party.~~

~~Sec. 4.~~ This act shall take effect and be in force from and after its publication in the Kansas register.

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AMERICAN CANCER SOCIETY® Hope. Progress. Answers.

January 23, 2002

Statement in support of Senate Bill 377 Under Review by the Senate Committee on the Judiciary

Chairman Vratil, Members of the Committee, and guests:

As the Government Relations Director for the American Cancer Society, I represent over 270,000 volunteers and supporters in Kansas, and on their behalf, I support Senate Bill 377, a bill that would enable cancer patients statutory access to their records in a reasonable amount of time and at a reasonable cost.

During the interim committee hearings, I submitted testimony from Lea Robrahn, an eleven-month breast cancer survivor from Overland Park, Kansas, who had her own battle with this issue. Please allow me to present her touching story to you:

> "On January 19, 2001 I was diagnosed with breast cancer. In the rush to surgery, my surgeon picked a plastic surgeon for the reconstruction. When he was not available, another was picked. After meeting with him, the cancer surgery and first part of the reconstruction was completed.
>
> A few months later, another plastic surgeon was chosen to complete the reconstruction. I made a call to the first plastic surgeon to get a copy of the file in mid-July. It took about a week for the "file" person to call me to tell me I needed to sign a release. No other requirements were stated. She sent it in the mail.
>
> The paper I received was just a release. It had no stipulations as to cost or how much time it would take. I signed it and returned it the same day. The release had stated that the file copy would be sent to me.
>
> Three weeks later, I called to ask about the file. There was no return call from either the file clerk or the doctor's nurse.
>
> My stress level was sky high during this period. As a part of my chemotherapy, my vital signs were taken every week. Every time I had to deal with this doctor or his office, my pulse was racing and my blood pressure was high. I was tense and irritable all the time. The second part of chemotherapy was easy on my body. The frustration, anger and depression I felt originated from dealing with this doctor. I was angry day and night, not sleeping, and just plain stressed.

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I did finally receive a copy of my file. It took about six weeks in all. The cost was $ 15.50 plus 35 cents per page. At 12 pages total, a short file, it was $19.70. While not a large amount, I felt it was unreasonable both in the time frame it took to receive it and in cost.

I do not think that 30 days is soon enough. All it requires is someone to pull the file and copy the pages. My file was about reconstruction, not a life-threatening event. If it had been life threatening, the file should have been surrendered immediately."

-- Lea Robrahn
9908 Mastin
Overland Park, KS 66212

As Lea stated, her case was not life threatening, but what if it had been? Without this legislation, medical record-holders have no incentive to increase their production and limit their charges. This bill would set fair and equitable time limits and fee schedules, giving peace of mind to thousands of cancer patients. Where there is no standard, there is opportunity to take advantage of loopholes in the system. These loopholes hurt Lea and her family. They hurt your constituents. With your help, these wrongs can be made right.

Thank you for your time and kind consideration. I urge you to support Senate Bill 377.

Stephanie Sharp
Government Relations Director
American Cancer Society
1315 SW Arrowhead
Topeka, KS 66604

Kansas AFL-CIO

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UNION YES

TO: Members of the Special Committee on Judiciary

FROM: Wayne Maichel, Kansas AFL-CIO

RE: Senate Bill 377

DATE: Jan. 23, 2002

Mr. Chairman and members of the Senate Judiciary Committee, thank you for the opportunity to comment on SB 377. Kansas AFL-CIO continues its support of legislation giving Kansans a statutory right to access their own medical records within 30 days and at an affordable cost.

The AFL-CIO supports the efforts of the Judiciary Interim Committee to address these issues. SB 377 accomplishes the initial goals of providing Kansans a statutory right of access, within a reasonable time and at a standard, predictable cost.

Thank you for the opportunity to comment on SB 377. I respectfully urge the committee to support passage of this bill.

KANSAS AFL-CIO SOLIDARITY

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NAMI Kansas

Kansas' Voice on Mental Illness

Testimony in support of Senate Bill 377
Submitted January 23, 2002, to the
Senate Judiciary Committee

By: Elizabeth F. Adams, Executive Director, NAMI Kansas
The National Alliance for the Mentally Ill

Thank you for hearing our voice on Senate Bill 377. NAMI Kansas consists of family members of persons with mental illness and those citizens with biological disorders of the brain that manifest as mental illness. We have a paid membership of over 1,500 Kansans and an affiliation of thousands of voters across the state concerned with rights and services for people with mental illness and their families.

We respect and support the rights of access to a citizen's own medical records without undue expense and in a timely manner. We believe Kansas law should uphold these rights as legislation does in 45 other states.

Late last year, I received a plea for help from a consumer of mental health services whose need for access was denied. Upon receiving proper signed release, the consumer's doctor did not release the records for five months, resulting in a delayed hearing. Many have suffered the frustration, loss and indignity of access denial. Please protect their rights and well being by providing them with legislation that requires appropriate access to their medical records, permitting them to progress with their lives. Thank you.

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January 22, 2002

Senate Judiciary Committee
Chairman Vratil
State Capitol
Topeka, KS 66610

Dear Chairman Vratil:

I am Linda Gray and am a breast cancer survivor. I ask you and your committee to *support Senate* Bill 377, a bill concerning access to health care records and health care billing records by patients and others. This bill would enable appropriate representatives of a patient to acquire medical records in a reasonable amount of time, and at a reasonable cost. When cancer patients are dealing with the enormous physical, emotional, and financial anxiety of surgery, recovery, and treatment, the last thing they need to worry about is getting the "run-around" over their medical records. Transferring records from a primary doctor, or between hospitals or clinics, or to a lawyer can often be an unnecessary, lengthy, trying, and expensive project.

I experienced the frustration first hand when I decided to go out of town for another opinion. Since this was a second cancer diagnosis for me I was really on needles and pins and didn't need the added aggravation of dealing with the hospital/clinic bureaucracy.

Please help to make the transfer of records easier for all of us.

Thank you.

Linda K. Gray

Linda K. Gray

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KAMU

Kansas Association for the Medically Underserved
The State Primary Care Association

112 SW 6th Ave., Suite 201 Topeka, KS 66603 785-233-8483 Fax 785-233-8403 www.ink.org/public/kamu

January 22, 2002

Senator Vratil
Judiciary Committee

Please accept this testimony in support of SB 377. I am sorry I will be unable to attend the committee meeting Wednesday January 23. Please do not hesitate to contact our office if you are in need of any other information or if you have questions.

Thank you,

Joyce Volmut

Joyce Volmut
Executive Director
jvolmut@swbell.net

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Phillip B. Journey
President Kansas Second Amendment Society (PAC)
Director at Large Kansas State Rifle Assoc.

Testimony in support of SB 116
An Act concerning firearms and firearms dealers; relating to the limitation on certain civil actions

SB 116 is a bill that is sweeping the nation's state legislatures, in 28 states it has already been enacted and is close to enactment in others. President Bush signed similar legislation prior to his leaving the Texas Governor's office. In 1999 HB2540, a bill very similar to this one passed the Kansas House of Representatives 80 to 42. The legislation is a reaction to the lawsuits filed by cities such as Chicago and Atlanta. The lawsuits filed by these cities attempt to make firearms manufactures financially liable for the acts of criminals based in part on the theory that manufacturers, distributors and dealers negligently market their products or create a public nuisance. These lawsuits are an attempt by lawyers to copy the financial success of the tobacco suits. Many of the players remain the same. Unlike tobacco there is a constitutionally protected right to keep and bear arms. The transparent goal of taking a large number of weak cases to court simultaneously is not to win verdicts, but to bankrupt the industry by inflicting massive legal expenses upon them. One manufacturer dissolved the corporation on the day it won the appeal.

Firearms manufactures, distributors and dealers have strong arguments for the substantial benefits their products offer their customers, guns are used three times more often to protect against crime than they are used to commit crime. I would be surprised to hear where a cigarette saved someone's life. The Chicago Tribune wrote in an editorial " the Chicago lawsuit attempts to elevate good morality...not [to] sell guns to people you have reason to think are bad guys... to the level of a legal requirement that no legislation has seen fit to impose.... It seeks to use the courts and the public treasury to make the gun industry comply...or face bankruptcy." In real product liability suits injured plaintiffs sue manufactures of defective products and seek compensation for injuries caused by those defects. Defendants in such suits can assert the defense that the product was not defective and worked as intended. However the suits against the firearms industry are for products that properly yet tragically functioned as intended. Criminal or negligent use of correctly working products is not a cause of action against the manufacturer, distributor or retailer. "The mere fact that a product is capable of being misused to criminal ends does not render the product defective" Armijo v. Ex Cam Inc. 656 F.Supp771, 773 (D. N.M. 1987)

These suits are merely attempts to end firearm ownership in this nation when the proponents of disarming the American people are unable to politically accomplish their goals through the legislature and lawyers seeking to enrich themselves at the expense of our liberty. This body sets public policy for the state and this bill stands for the proposition that, when criminals commit crimes, the criminal is to blame, not the store that complies with all federal, state and local laws. If marginally successful these suits could substantially increase the price of firearms across the board. This price increase will increase the costs to all of us including local and state governments. It will put the price of self-defense further out of the reach of the poor who need the means to protect themselves, their families and their property. They are arguably the ones who need them the most.

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Kansas and out of state hunters who come here spend 555 million dollars each year in Kansas. This consumer spending translates into 14,500 jobs, 255 million paid in wages, over 32 million in state revenue and 1.1 Billion in economic activity in the state annually according to the Congressional Sportsmen's Foundation. There are 437,000 Kansas sportsmen and women in the state, which is more than the combined population of the cities of Wichita and Topeka. They deserve to have their sport protected from these frivolous civil suits.

This bill does not prevent appropriate suits from being brought against those who sell defective products in breach of warranties by individuals or governmental entities. It does not prevent suits against those who negligently or intentionally sell firearms to persons who can not legally possess or purchase firearms. If these lawsuits succeed it will set a dangerous precedent that will establish legal theories that will be applied to other industries. Suits against car manufactures or liquor producers their distributors and retailers for the carnage caused by drunk drivers. Suits against the beef industry for heart disease. Suits against cutlery manufactures for the crime perpetrated with their products. The possibilities are endless. The organizations I am here representing today urge you to stop it here and now and to fast track this bill to the full Senate for approval as soon as possible. The KSRA and KSAS have thousands of members in the state. Let us collectively thank the committee for its' attention and the opportunity to address the committee.

Respectfully Submitted

Phillip B. Journey
President Kansas Second Amendment Society (PAC)
Director-at-Large Kansas State Rifle Assoc.
Member Legislative Committee

KANSAS SENATE BILL #116
Hearings before Senate Judiciary Committee January 23, 2002

My name is Robert Hodgdon. I am President of Hodgdon Powder Company, which has offices in Overland Park and a manufacturing plant in Herington, KS. We package and store products in our Shawnee facility, and do some processing and storage in the old ammunition facilities at Forbes Air Force Base in Topeka. We manufacture Pyrodex, a propellant for muzzleloading sportsmen, and produce smokeless powder primarily for sportsmen who reload their own ammunition. We sell to many ammunition manufacturers, including those as large as Remington Arms, and to one which manufactures specialty ammunition for the Navy Seals program. One of our products separates the bolts holding the liquid fuel tanks to the NASA shuttles. We hire 75 – 85 people who work in our three locations; have around a $4 million payroll.

My testimony is prepared to inform the committee of the economic importance of the firearms and related industries to the State of Kansas , which could be grievously injured should these manufacturers be impaired or bankrupted by the massive legal costs incurred fighting newly-concocted legal theories in courts throughout the U.S.

The firearms industry goes far beyond only the manufacturers of firearms and ammunition, and those engaged in its commerce are employed in nearly every city and town in Kansas, as well as in many rural settings. The sportsmen who hunt, or are involved in sports shooting activities enjoy their sport, not just during a season, but around the calendar. They equip themselves not only with the necessary firearms and ammunition, but with specialized wearing apparel and accessories, raingear and boots, SUV's, a variety of off-road vehicles, optical gear, photographic equipment, game calls and devices, duffels and luggage, gun cases, cleaning equipment, and gun safes for storage, to name a few. Their interest in this sport carries over into facets which become hobbies of their own, requiring equipment such as reloading tools and components, chronographs, home gunsmithing items, woodworking equipment, taxidermy equipment and supplies, wild animal feeders, and animal care supplies, etc. Technology has not left the hunter behind; there are every imaginable type of cyber-hunting experiences available on computer programs to let the activist realistically practice off-season.

Among manufacturers in Kansas who depend on firearms are:

Coleman Co.	Wichita
Sugar Valley Products	Mound City
Bell & Carlson	Dodge City
Bushnell Corp.	Overland Park
Hodgdon Powder Co.	Overland Park
Nelson/Weather-rite	Lenexa
Quality Machine Sales	Wichita
Sellior & Bellot	Shawnee Mission
CZ Guns	Kansas City, KS
Outland Sports	Overland Park
Discover the Outdoors	Overland Park

plus at least 30 shooting parks, manufacturers reps. firms and over 200 hunting preserves who belong to NSSF.

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The dollars brought to rural communities during hunting seasons are often the backbone of their economy. Motel rooms filled, restaurants serving meals, gasoline being pumped, and supplies being replaced at the local gunshop or hardware store helps sustain economies, which otherwise may rely solely on the shifting fortunes of agriculture or animal husbandry. Fortune Magazine says, "there, merchants look to hunting season the way Macy's looks to Christmas: it can make or break the year."

Obviously, all of law enforcement in the State of Kansas and its municipalities depend on products produced by our industry, as do security companies and officers. Programs of the Kansas National Guard and armed forces stationed on Kansas bases revolve significantly around small arms manufactured by the firearms industry. In short, our citizens would be much less secure without a continuing flow of products, which are now threatened by lawsuits recently initiated by cities against the industry.

According to the National Shooting Sports Foundation, overall shooting sports related activity in the U.S. amounts to $30.9 billion annually! This activity supports nearly 1,000,000 jobs. This is less than 1 percent of all U.S. employment, but represents more people than are employed in Wyoming and West Virginia combined, and more people than work in cities such as Kansas City and Wichita combined.

IN PERSPECTIVE

The following comparisons are provided to help put in perspective the economic significance of the sporting firearms and ammunition industries and related activities.

- In the few minutes it takes to review this report, the nation's hunters and shooters will generate enough economic activity to support eight jobs.

- Each day, the firearms and ammunition industry, and related hunting and shooting activities, generate enough economic activity to support 1,640 jobs.

- Hunting and shooting related industries employ more people than all Walmart stores.

- The $30.0 billion in economic activity generated by the hunting and shooting sports industries exceeds the annual sales of companies such as Coca-Cola, Anheuser Busch, McDonalds, Home Depot, Johnson & Johnson, Caterpillar Tractor, Goodyear Tire & Rubber, Hewlitt Packard, RJR Nabisco and scores of other highly recognizable "Fortune 500" companies.

- The blockbuster movie Titanic grossed $376 million in 9 weeks. The hunting and shooting sports generate that much in just 4 days.

- The entire motion picture industry gross revenue from theater admissions is about $5 billion, annually-the firearms and ammunition industry and related activities generate that much in two months.

20-2

- More than 21 million Americans participated in shotgun, handgun and rifle target shooting activities in 1999. That is roughly the same number of people who played golf.

- Hunting and target shooting activities employ more people than Chrysler, Phillip Morris, United Parcel Service, and Ford combined.

Hunting and target shooting in Kansas accounts for some **$581 million** in economic activity each year. Retail sales data calculated from the U.S. Bureau of Census and applied to U.S. Fish & Wildlife figures, shows the multiplier effect of economic impact on Kansas can total as much as **$1.1 billion**. Firearms products annually directly donate to Kansas sales tax of **$16.7 million**, and jobs produce an income tax of **$4.2 million**. Sportsmen's license fees are **$15.2 million**. The Federal Aid in Wildlife Restoration Trust Funds (an excise tax of 11% on firearms and ammunition imposed by the industry on themselves in the 1930's) generates an additional **$2.6 million** per year to the Kansas Dept. of Wildlife and Parks; for a total direct tax contribution to the State coffers of **$38.7 million (not including taxes on ancillary activities).**

In Missouri, the greatest tourist attraction is **not** the Arch in St. Louis, Silver Dollar City, Branson itself, the Lake of the Ozarks, or any other lake. It is the retail store and museum of Johnny Morris's Outdoor World Bass Pro in Springfield! This reflects the tremendous power of the outdoors and nature's pull on sportsmen.

According to the BATF, Kansas has 1493 federally licensed firearms dealers, some of which represent multiple locations. Perhaps the sporting goods department at Walmart (s) would be Kansas' greatest tourist attraction, especially right before and during our hunting season.

There were 209,734 hunters in Kansas in 1999, the last year for which we have figures. The National Sporting Goods Association, in their 1999 annual report, reported there were 177,000 target shooters in the state. This would indicate 14% of Kansans participate in a shooting sports event at least once a year.

SUMMARY

We do not maintain that hunting, recreational shooting, or the purchase of firearms for personal or home protection are acceptable merely because they make a significant contribution to our national and local economies. These activities are an acceptable, responsible and desirable ingredient of our nation's heritage, and should be continued, because experience, statistical evidence and common sense tells us so. The economic impact of these activities must be considered when well-meaning, but less than fully informed individuals, suggest that America would be a better place without hunting, recreational shooting, or the right of self-protection.

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Judiciary Committee

FROM: Sandy Jacquot, Director of Law/Legal Counsel

DATE: January 23, 2002

RE: Opposition to SB 116

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to SB 116. I testified in opposition to this bill last year and my testimony today is very much the same. One of the fundamental powers of cities, found in the very first statute that sets out the corporate powers of cities, K.S.A. 12-101*First*, is the power of cities to sue and be sued. This is a fundamental aspect of the corporate powers of the 627 cities in Kansas and modification of this power should not be undertaken lightly.

SB 116 identifies a specific group of manufacturers, trade associations and dealers and prohibits lawsuits brought by cities in Kansas on behalf of their citizens and taxpayers, against these manufacturers, trade associations and dealers. We suggest this is a dangerous road to start down. If this legislation is successful this year, we suspect that some other group will approach the legislature in the near future asking for the same consideration, essentially removing the possibility that a city, county or other municipality might bring a lawsuit against them.

We are unaware of any city in Kansas currently contemplating such a lawsuit. However, to set a precedent prohibiting lawsuits in this area as a matter of state statute appears to us to be extreme and unwise public policy. We strongly urge the committee to reject SB 116 as a matter of sound public policy.

Once again, I want to thank the Committee for the opportunity to appear before you today in opposition to SB 116.

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Safe State *Kansas*

Safe State Kansas is a program affiliated with Inter-Faith Ministries and a chapter of Americans For Gun Safety

829 N. Market • Wichita, KS 67214-3519
Phone: 316-264-9303 • Fax: 316-264-2233

To: Senator John Vratil, Chairman
Senate Judiciary Committee

From: Karole Bradford, Program Director,
Safe State Kansas, Inter-Faith Ministries

Re: SB116: An Act concerning firearms, ammunition and firearms dealers, limiting certain civil actions

Date: January 23, 2002

I oppose SB116 because the right for cities, and counties, to sue negligent manufacturers is necessary for public safety.

SB116 denies cities and counties the right to sue gun distributors, dealers and trade associations. This makes it impossible to seek redress for negligent manufacture, sale, or marketing of a consumer product. This bill limits the liability of a particular industry for negligence in making or marketing their products. More specifically, SB116 would make it nearly impossible to control the quality of firearms sold or manufactured in Kansas.

You have no doubt heard of "Saturday Night Specials" or "junk guns". These are poorly made, cheap guns that pose a danger to the user. Because they are made of cheap alloys, with shoddy machining, they tend to explode in the hands of the user, fire when dropped or jostled, and are generally undependable.

Junk guns exist because firearms are the only products made in the United States that are not regulated by the Consumer Product Safety Commission. That means that unlike cars, toys,

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clothes, and bb guns, the Federal Government can not force a recall on firearms, nor can they insist on production standards. There is no such thing as a "substandard" U.S.-made gun. In fact, we allow U.S. manufacturers to make guns that are so shoddy that, were they made overseas, we could not legally import them.

The ***only*** thing that forces gun manufacturers to make even minimally safe guns is the threat of litigation. Litigation in other states has forced junk gun manufacturers to produce higher quality firearms, thus protecting the rights of gun owners and helping to ensure public safety.

This bill limits the liability of gun makers who are negligent in their manufacture or sale of firearms. This bill removes a right from cities and counties that is guaranteed by the Kansas Constitution. Some say this bill is designed to limit frivolous lawsuits aimed at honest gun makers. Kansas already has laws that deal with frivolous lawsuits. This bill precludes cities and counties from forcing negligent gun makers to clean up their acts. *Why should any legislator redesign the Kansas legal system to encourage the manufacture of poorly made, inherently dangerous products?*

I urge you to oppose SB116, which would encourage the manufacture of dangerously poorly made firearms, and would endanger gun owners and the general public. Don't make Kansas a haven for junk gun manufacturers.

BEFORE THE SENATE JUDICIARY COMMITTEE
SENATOR JOHN VRATIL, CHAIRMAN
JANUARY 23, 2002

TESTIMONY OF KELLY W. JOHNSTON
CHAIR, SAFE STATE KANSAS
SENATE BILL 116

I Chair the Council of Directors for Safe State Kansas, a state-wide gun violence prevention organization which exists under the umbrella of Inter-Faith Ministries. We appear today to express our concerns regarding Senate Bill 116, which would serve in several ways to insulate and immunize the firearm industry, from top to bottom, from civil legal liability in our courtrooms. Safe State Kansas opposes this legislation because we do not believe the firearm and munitions industries are so critical to the economy or the orderly functioning of society that protective legislation is deserved. I would like to review this legislation section by section.

Section 1(a)

This language seeks to establish new statutory defenses for civil liability from lawsuits not only by governmental entities, but also potentially from lawsuits by Kansas citizens who have been injured by gunfire. Unlike the other sections of this bill, there is no language in section 1(a) that limits application to the rights of cities or counties to file lawsuits. Therefore, section 1 (a) could be interpreted to create new defenses for gun dealers, licensed or unlicensed, or even pawn shops, in lawsuits by Kansas citizens for injuries caused by their business activities.

In addition, section 1(a) could be interpreted to eliminate civil liability for "lawful" but still negligent or reckless conduct in the design, marketing, manufacture or sale of firearms or ammunition. Hypothetically, this language could immunize a manufacturer from "dumping" into the Kansas market (presumably, after passing legislation such as this) large quantities of defective firearms or ammunition, which the manufacturer knew to be defective or dangerous. As long as the sale and marketing was not unlawful under the Criminal Code, physical harm resulting from the purchase and use of the defective equipment might be difficult to remedy because of these new statutory defenses.

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Section 1(b)

This language is constitutionally infirm from a separation of powers perspective. This language reserves to the legislature the sole authority to determine whether any manufacturer, dealer or seller of firearms has engaged in an act or omission that would create a cause of action for damages, injunction or otherwise. This language expressly attempts to disenfranchise the judicial branch of government from involvement in the process of determining whether a Kansas citizen, corporation or governmental entity had suffered a harm as a result of conduct by the firearms industry. In other words, this language could require the victims of negligent or intentional misconduct by the firearms industry to only file damage claims with the legislature, and not through the civil justice system. This new role for the legislature in our society would be a substantial departure from the separation of powers doctrine, and is likely to be unconstitutional. From a practical standpoint, does the legislature really want to become the arbiter of all civil disputes over accidents, injuries and disputes involving firearms and ammunition?

Section 2(a)

There would be at least two important consequences of passing this language into law. First, cities, counties and other governmental entities would be prevented from using civil nuisance law to attempt to remedy a local law enforcement problem with a firearm or ammunition manufacturer, marketer, distributor, seller (licensed or unlicensed) or even a pawn shop. In Wichita, civil nuisance suits have been used effectively from time to time to remedy the general state of lawlessness that develops around adult entertainment businesses and purveyors of liquor. Because the owners of these businesses sometimes protect themselves well from the actual criminal misconduct that can be witnessed and prosecuted, the civil nuisances laws have provided an effective tool for local municipalities to shut down businesses that do not safely regulate their operations. Since this legislation would insulate any firearm or ammunition dealer, would an adult entertainment business/tavern who also sold firearms be able to use this legislation as a shield against local law enforcement or business regulation? *In these times of significant domestic security concerns, and limited governmental budgets to bring to bear on community law enforcement problems, does it sound like good public policy to be limiting the options that*

cities and counties have at their disposal to remedy and regulate irresponsible conduct of certain kinds of businesses?

The other observation to make about section 2(a) is that this language represents the next step on the "slippery slope" that was started last session by the passage of Senate Bill 117, which granted immunity from certain kinds of noise pollution/nuisance lawsuits by cities and counties against shooting ranges. Passing this bill will provide additional immunization for shooting ranges, to the extent that those ranges also sell firearms and ammunition. The commercial shooting range operation with which I am familiar in Wichita also sells handguns and ammunition. Passing Senate Bill 116, therefore, will add another layer of insulated business activity to shooting ranges in addition to that which was enacted last year. As long as the legislature sees fit to continue granting immunity to firearm dealers and businesses from legal liability, they will continue to bring more and more proposals for broader and broader grants of immunity to the legislature. This is the time to put a stop to granting special protection and privilege to this industry.

Subsection 2(b)

Passing this bill, and applying it retroactively to any lawsuit, civil nuisance action or other legal proceeding already filed may very well prove unconstitutional. Generally speaking, it is an axiom of law that disputes should be resolved in accordance with the laws in effect on the date the dispute arose. This language would contravene that axiom.

Summary

Our society and economy works best when the respective rights of individuals and corporations are allowed to function autonomously. We should all be free to pursue wealth and happiness within the context of lawful behavior. When the economic rights of a family or a corporation are injured, our judicial system provides a forum for resolution of those disagreements. Senate Bill 116 is designed to erect artificial barriers between individuals, cities and counties, and one esoteric segment of our economy – the firearms industry - and for what compelling reasons? Safe State Kansas submits that passage of this bill will disenfranchise people and governments of legal rights, and this industry is undeserving of such special treatment.

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Judiciary Committee

FROM: Kansas Trial Lawyers Association

RE: 2001 SB 116

DATE: Jan. 23, 2002

Sen. Vratil and members of the committee, my name is John Parisi and I am an attorney practicing law in Overland Park, Kansas. I am President-Elect of the Kansas Trial Lawyers Association and I want to thank you for the opportunity for allowing us to submit our written testimony in opposition of SB 116.

KTLA opposes SB 116 because it sets the dangerous precedent of denying Kansas counties and municipalities access to our court system. KTLA believes that all Kansas citizens, corporations, and political subdivisions should have, as a fundamental right, access to the state and federal courts. SB 116 infringes upon this right for cities and municipalities by prohibiting them from bringing an action in state or federal court should those vested with authority to do so under state law decide it is in their best interest to do so.

KTLA is not here to debate the wisdom or folly of pursuing an action against a manufacturer, trade group or dealer of any firearm or ammunition. However, KTLA is here to urge the committee to leave the decision of whether to proceed with such a course of action, or to elect not to do so, with those elected and/or appointed by the Kansas citizens to make that decision. By usurping the authority of duly elected and/or appointed officials, SB 116 takes the unwarranted step of infringing on the decision making of our government and denying them access to the courts.

Taking away the right of Kansas counties and municipalities to sue for redress of injury is unwise. Often, it is only a municipality or county that is in a position to bring an action to protect its citizens. In fact, it is just such lawsuits by municipalities that resulted in the removal of asbestos in schools, thereby protecting our school children. KTLA believes all Kansans, including cities and counties, should continue to have unfettered access to the courts to seek redress for injury. We oppose SB 116 precisely because it takes away that right of unfettered access and removes important decision making powers from those in the best position to determine what is right for their constituents.

To the extent that SB 116 attempts to address a concern over unwarranted or even frivolous litigation, that concern is misplaced. There are abundant procedures in place in both Kansas state court and the United States Federal District Courts in Kansas to eliminate unwarranted or frivolous lawsuits. These provisions include mechanisms for dismissal of lawsuits filed without legal basis, as well as sanctions for attorneys who file frivolous lawsuits.

For the reasons discussed above, we urge the committee to reject SB 116.

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Terry Humphrey, Executive Director

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NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030-7400

STATE & LOCAL AFFAIRS DIVISION
RANDY KOZUCH, DIRECTOR

MEMORANDUM IN SUPPORT

TO: Members of the Kansas State Senate Judiciary Committee
FR: Randy Kozuch, Director NRA-ILA State & Local Division
Tom Burgess, Kansas Sportsmens Alliance Lobbyist
RE: SB 116
Date: January 22, 2002

On behalf of the more than 40,000 NRA members living in the State of Kansas, I respectfully urge you to support SB 116, a proposal which would protect lawful manufacturers and sellers of firearms from the types of reckless and financially-devastating lawsuits that have been leveled against the firearms industry in recent months.

These lawsuits are nothing more than a transparent attempt to achieve their legislative goals through the court system, to blame a lawful industry for cities' failed attempts to control crime and to bankrupt smaller manufacturers and dealers through litigation.

- SB 116 will ensure that city and county officials, like all other citizens of Kansas, must make laws by utilizing the legislature rather than the courts.
- SB 116 would **not** prevent individuals or groups of individuals from filing suit against ammunition or firearm manufacturers.
- SB 116 would **not** prevent cities or counties from filing suit for breach of contract or warranty.
- SB 116 would prevent law-abiding firearm and ammunition manufacturers from being held responsible for big-city mayors failure to prevent crime.
- **Every product** manufactured can be used improperly to achieve undesirable consequences. However, in any year, less than 1% of the firearms in America are used in violent crimes. In that same year firearms are used 2.5 million times in self-defense.

A bill (HB2540), identical to this one passed the Kansas House of Representatives in 1999 by a vote of 80-42. Clearly the people of Kansas want this legislation passed.

In the event that you would like to discuss NRA's position on SB 116 or any other piece of legislation pending before the Kansas Legislature, please do not hesitate to contact us at (703) 267-1202 or Tom Burgess, with the Kansas Sportsmens Alliance at (785) 234-2728. Again, thank you for your careful consideration on this matter.

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Fact Sheet

National Rifle Association of America • Institute for Legislative Action • Research & Information Div.
11250 Waples Mill Road • Fairfax, VA 22030 • 703-267-1170 • http://www.nraila.org

8/2001

Courts Reject Lawsuits Against Gun Makers

More than two dozen cities and counties have filed suit against the firearms industry for law enforcement and public health expenses those localities say they incur from gun injuries and deaths. Court after court, including the U.S. Supreme Court and three state Supreme Courts, have rejected these lawsuits. Spearheaded by the anti-gun lobby, the suits are intended to circumvent Congress and state legislatures—all of which have rejected handgun prohibition legislation—by attempting to achieve handgun prohibition through the courts.

There are basically two claims used by the localities that have filed suit. Their "public nuisance" claims allege that manufacturers have created a public nuisance by flooding the market, in areas with less-restrictive gun control laws, so that the criminals in other areas can gain access to guns. This theory is severely flawed on several counts, chief among them the belief that gun control laws prevent crime and that, somehow, criminals will obey such laws. It's also ridiculous to believe that the gun industry wants to supply guns to the criminal element.

Other suits allege that the manufacturers have been negligent because they have not developed a "smart" gun which can be fired only by its owner. The plaintiffs conveniently ignore the fact that the technology they demand has yet to become practical. In a *National Review* article (Dec. 21, 1998), Prof. John R. Lott, Jr. wrote: "The futuristic guns advocated in the New Orleans suit . . . are far from reliable and will cost $900 when they are finally available." That cost, he said, "will fall far more heavily on law-abiding citizens than on criminals, decreasing the number of innocent people who could use guns to protect themselves." Even if so-called "smart" guns prevented some accidental gun deaths, they would do so at what price? How many more lives might be lost because mandating such technology diminishes the ability of less affluent citizens to defend themselves and their families?

In all these suits the plaintiffs seek to wipe out centuries-old tort law principle. In product liability cases, plaintiffs traditionally have been able to sue for compensation for injuries because: 1) a product was defective, 2) the defect posed an unreasonable danger to the user, and 3) the defect caused the injury. A "defective" product is one that doesn't operate as a reasonable manufacturer would design and make it, as a reasonable consumer would expect, or as other products of its type. Courts uniformly have held that a defect must exist in the product at the time it was sold, and that a plaintiff's injury must have been the result of that defect. Defendants can't be held liable for injuries that occur only because a properly operating product is criminally or negligently misused.

Recognizing that the real intent of anti-gun politicians and their lawyers is to bankrupt a lawful industry with exorbitant legal expenses, state legislatures across the nation are reacting by prohibiting localities from filing these suits. Since the first suit was introduced, 27 states have enacted NRA-backed legislation that does just that (Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Michigan, Missouri, Montana, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming) and other states have pending legislation.

While anti-gun organizations, including the American Bar Association, have used crime victims to create these lawsuits in order to further their political agenda, courts in numerous states have made it clear that these cases have no basis in law.

On Oct. 7, 1999, Ohio Judge Robert Ruehlman dismissed with prejudice Cincinnati's suit, calling it "an improper attempt to have this court substitute its judgment for that of the legislature, something which this court is neither inclined nor empowered to do."

On December 10, 1999, Superior Court Judge Robert F. McWeeny threw out the city of Bridgeport's suit, writing: "[T]he court finds as a matter of law that the plaintiffs lack standing to litigate these claims; thus, the court is without jurisdiction to hear this case."

On December 13, 1999 Florida Circuit Judge Amy Dean dismissed Miami-Dade County's lawsuit against the industry with a similar decision, stating that: "Public nuisance does not apply to the design, manufacture, and distribution of a lawful product."

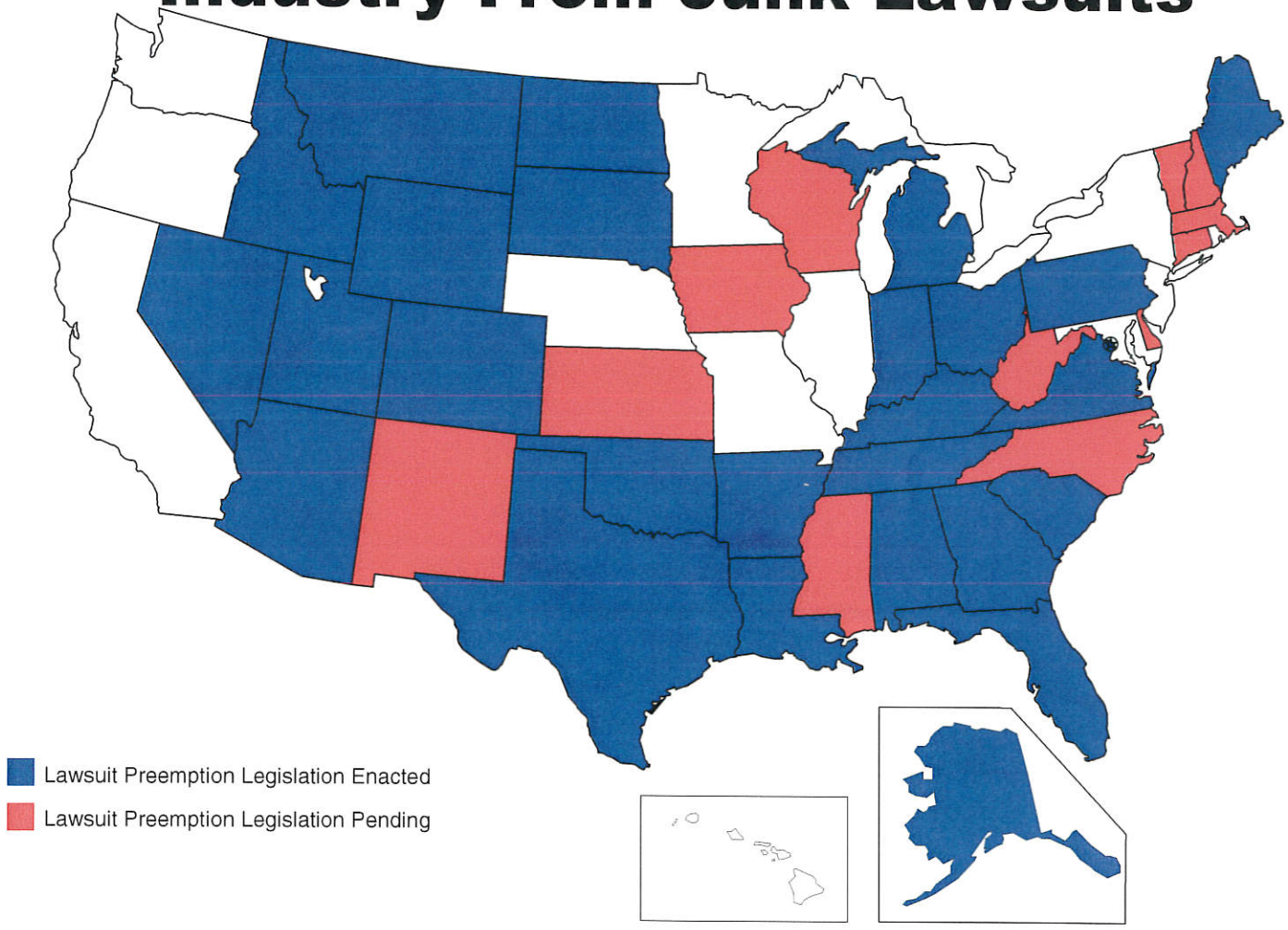
Recently, three state supreme courts ruled against frivolous lawsuits:

On April 3, 2001, the Louisiana Supreme Court voted 5-2 to dismiss the City of New Orleans suit, the first of its kind to be filed, upholding the state law which forbids municipalities in Louisiana from bringing these types of suits. (In October, the U.S. Supreme Court allowed the Louisiana court's decision to stand, by refusing to review the case on appeal.)

On August 6, 2001, the California Supreme Court issued a 5-1 ruling that gun manufacturers cannot be held responsible when their products are used to commit crimes. The Court decision referred to a 1983 California law prohibiting this type of lawsuit.

On October 1, 2001, the Connecticut Supreme Court upheld a ruling that dismissed Bridgeport's suit in 1999 because the city lacked "...any statutory authorization to initiate...claims" of liability against the firearms industry. After the rejection of the New Orleans suit, Bridgeport's Mayor Joseph Ganim told the *Associated Press* an appeal of his city's suit to the U.S. Supreme Court was, "probably not a likely route for us" and "It's not likely we're in a very strong position."

Protecting the American Firearms Industry From Junk Lawsuits



written

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To: Senator John Vratil, Chairman
Senate Judiciary Committee

From: Ann Hebberger, Public Policy Chair

Re: SB116: An Act concerning firearms, ammunition and firearms dealers, limiting certain civil actions

Date: January 23, 2002

The MAINstream Coalition, is a non-partisan group of moderate religious, business, political and community leaders, founded in 1993. We count over 2,500 members on our rolls. Our mission is to serve as a counter-force to those religious and political extremists who would threaten constitutional freedoms. We do not believe that the 2nd Amendment has any bearing on this particular issue, and furthermore, we believe that no select industry should be exempt from the right of consumers to sue.

SB116 strips cities and counties of the right to sue gun distributors, dealers and trade associations. It appears that the Kansas Attorney General would also be prevented from filing lawsuits against the gun industry without the permission of the legislature.

There are many reasons to oppose this legislation such as: the effect on local control, the protections of a select industry, and the denial of the right to sue by the Attorney General. However, MAINstream opposes this bill as an extension of our long-term opposition to the gun lobby's efforts to encourage the unregulated proliferation of guns.

Thank you for your consideration.

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Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

To: The Honorable John Vratil, Chairman
Members, Senate Judiciary Committee

From: Ashley Sherard, Intergovernmental Relations Manager

Date: January 23, 2002

Subject: **SB 116 – Limits on Civil Actions Against Firearms and Ammunitions Dealers**

I would like to express the Johnson County Commission's opposition to SB 116, which preempts the authority of any county or municipality to bring action against a firearms manufacturer, dealer or seller and declares that authority to be within the strict prerogative of the state.

The Commission opposes this bill because, in an attempt to carve out special protection for a single industry, it directly preempts local governments' traditional regulatory and enforcement authority. We believe communities are best served when local officials are allowed to conduct the business of their jurisdiction in a manner that best reflects residents' values and standards and best benefits that community. To this end, we believe it is critical that longstanding principles of local control, a cornerstone of Kansas government, be respected and retained.

Because it would preempt regulatory and enforcement authority traditionally recognized as being within the purview of local government and create a poor precedent in the process, the Johnson County Commission strongly urges you to reject SB 116.

Thank you for your time and consideration.

National Council Of
Jewish Women
NCJW
Greater Kansas City Section

January 23, 2002

Testimony of Barbara Holzmark, Kansas Public Affairs Chair
National Council of Jewish Women, Greater Kansas City Section (NCJW)
8504 Reinhardt Lane, Leawood, Kansas 66206
(913)381-8222, Fax: (913)381-8224, E-Mail: bjbagels@aol.com

Senator Vratil and Members of the Judiciary Committee:

My name is Barbara Holzmark, I am the State Public Affairs Chair for the National Council of Jewish Women (NCJW). I am writing to you in opposition to SB116.

With concern for the well-being of children and families at heart, NCJW has long advocated for laws to restrict and regulate guns. While limiting civil actions to ammunition, firearm dealers, and trade associations, we do not feel that prevention and even the most common-sense gun measures are being addressed. Today, we are a nation united in the commitment to keep our country safe-to strengthen "Homeland Security", a move that cannot be accomplished without gun measures. We struggle against a powerful and well-funded gun lobby. By disallowing civil suites, you are discriminating against other industries, while eliminating the protection of civil rights and individual liberties.

I urge you to vote no on SB116. Thank you.

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children and families and to ensure individual rights and freedoms for all. Founded in 1893, the National Council of Jewish Women is the oldest Jewish Women's organization in the country with over 900 members in the greater Kansas City area, nearly 200 sections across the United States and with nearly 90,000 members nationwide.

TESTIMONY

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Senate Bill 116
Special Protection for Gun Manufacturers and Dealers

Delivered January 23, 2002
Senate Judiciary Committee

Senate Bill 116 would prohibit any local government from bringing a nuisance abatement or damage action against businesses lawfully making or dealing in guns or ammunition. All such suits would be reserved exclusively to the state. Obviously, this is a special interest bill designed to protect one particular industry.

It seems Senate Bill 116 is in response to lawsuits filed against gunmakers by several major cities in other parts of the country. It is highly unlikely the City of Wichita would ever want to or try to initiate such a lawsuit. But that's not the point. The debate over this bill needs to go way beyond gun manufacturers and dealers. This bill is bad public policy because it infringes on the rights of local government to protect citizens.

It's one thing to be concerned about the interests of gunmakers, gun dealers, gun owners and the positions of the National Rifle Association. It's another to create a special class of citizen which has immunity from laws everyone else has to follow. The City of Wichita is not interested in debating gun control or the right to keep and bear arms. The City of Wichita's opposition to Senate Bill 116 has nothing to do with guns. We oppose the bill because it sets the dangerous precedent of putting one type of business and industry above the law.

If you approve Senate Bill 116, are you prepared to also put other types of businesses and special interest groups above the law?

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