

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 12, 2002 in Room 231-N, of the Capitol.

All members were present except: Senator Haley (EA)  
Senator Steineger

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department  
Ms. Lisa Montgomery, Revisor of Statute's Office  
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Ms. Susan Linn, Executive Secretary/Director,  
KS Board of Pharmacy

Others attending: See attached guest list

**Hearing on SB 482 - pharmacy act fees and civil fines**

Chairperson Wagle opened the meeting by announcing there would be a hearing on **SB482** - an act concerning the pharmacy act of the state of Kansas; licensure and fees relating thereto; civil fines; amending K.S.A. 2001 Supp. 65-1631, 65-1632, 65-1645, and 65-1658 and repealing the existing sections. She asked Ms. Emalene Correll, Kansas Legislative Research Department to give a briefing on the bill.

Ms. Correll covered the changes in the bill ranging from deleting the 30-day requirement, changing examinations to licensure by examination, two fees - one going directly to the board and one to the Board of Pharmacy, expirations of licenses, pharmacists who fail to pay fee, maximum statutory fees, change names of fees not the dollar amount, to "assess civil penalties".

As there were no questions to be asked of Ms. Correll, Chairperson Wagle introduced Ms. Susan Linn, Executive Secretary/Director for the Kansas State Board of Pharmacy.

Ms. Linn stated that the bill has two distinct areas that are addressed:

1. Changing "examination fee" to application fee:
  - a. The Board no longer administers competency or jurisprudence tests prior to licensing pharmacists, and
  - b. The fees for these exams increased beyond the Board statutory limit. The Board essentially paid for pharmacy students to take the exams; and
2. Civil fines incurred by the Board (this would allow the Board to recoup the actual costs of the hearings).

A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

Chairperson Wagle asked for questions or comments from the Committee. Questions were asked from Senators Salmans, Praeger, and Wagle and Ms. Correll ranging from why the increase in fees, why more court hearings, drug diversion cases, clarify the purpose of the dual fees, score transfer fees, mail orders or out-state pharmacists to not an application fee but a license fee. All questions were answered by Ms. Linn.

**Action on SB 419 - an act concerning retail food stores and food processing plants; relating to the enforcement authority of the Secretary of the Department of Health and Environment**

Chairperson then asked Senator Barnett to explain to the Committee his resolution to conflicting issues in SB419. Senator Barnett asked Ms. Correll to recap the changes to the bill. Ms. Correll stated that it amends a Supp. repealing the existing section, gives authority to the secretary to contract with other state agencies & other entities to conduct inspections of retail food stores and food processing plants in this state, amends definitions, and resolves issues of small meat packing facilities paying fees to two separate groups. A copy of the balloon is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

Senator Barnett then asked for comments from the floor. Mr. Steve Paige, KDHE commented that this was a good opportunity to fix the bill now. Mr. Dan Riley from the Department of Agriculture concurred with Mr. Paige.

Chairperson Wagle then asked for questions from the Committee. Senator Salmans asked if there were any fiscal notes and will this bill comply with federal guidelines. Both questions were answered by Mr. Dan Riley with no fiscal notes and the bill will comply.

Senator Barnett moved to amend the bill and Senator Jordan seconded the motion. The motion carried. Senator Barnett then moved to move **SB 419** as amended and Senator Haley seconded the motion. The motion carried.

**Adjournment**

As there was no further business, the meeting was adjourned. The time was 2:20 p.m.

The next meeting is scheduled for February 13, 2002.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Tuesday, 2-12-02

NAME	REPRESENTING
Rich Patton	Health Midwest
Michelle Peterson	K. Governmental Consulting
Pat Hubbell Assoc.	Pat Hubbell Assoc.
Vici Helsel	Budget
Dore Altman	Hein Ltd
Steve Page	KDHE
Dr Evan Sumner	KDA
DAN RILEY	KDA
Evan Bailey	note taking for Sen. Patey
Elaine Schwartz	KDOA
Jaffany Cornejo	Sen. Brungardt's Intern

# Kansas State Board of Pharmacy

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SUSAN A. LINN  
EXECUTIVE SECRETARY/DIRECTOR

STATE OF KANSAS



BILL GRAVES  
GOVERNOR

## Senate Bill 482

### PHARMACY PRACTICE ACT

Senate Public Health and Welfare Committee  
Susan Wagle, Chairperson  
Committee Members

The Kansas Board of Pharmacy requests favorable passage of SB 482

**SB 482** has two distinct areas that are addressed:

- 1) Changing "examination fee" to application fee
  - A) The Board no longer administers competency or jurisprudence tests prior to licensing pharmacists. The National Boards of Pharmacy (NABP) now administers and scores both the NAPLEX, a competency exam, and the MPJE, a jurisprudence exam.
  - B) In January, 2001 the fees for these exams increased beyond the Board statutory limit. The Board, essentially, paid for pharmacy students to take the exams.
- 2) The second part of SB 482 has to do with civil fines incurred by the Board.

This fee would allow the Board to recoup the actual costs of the hearings. On average, the Board has two disciplinary hearings a year that require a court reporter. The passage of SB 482 would allow the Board to use part of the fine imposed on the licensee to pay these costs.

Thank you for allowing me to present the Board's position. I will stand for any questions.

Respectfully,

Susan A. Linn  
Executive Director

*Senate Public Health & Welfare Committee  
Date: February 12, 2002  
attachment 1*

# SENATE BILL No. 419

By Committee on Public Health and Welfare

1-23

9 AN ACT concerning retail food stores and food processing plants; relat-  
10 ing to the enforcement authority of the secretary of the department  
11 of health and environment;

; amending K.S.A. 2001 Supp 65-688 and repealing  
the existing section.

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

14 Section 1. Any license issued under the provisions of K.S.A. 2001  
15 Supp. 65-689, and amendments thereto, may be renewed by making ap-  
16 plication to the secretary on or before the expiration date. The secretary  
17 shall adopt by rules and regulations the prescribed expiration date of any  
18 license issued under the provisions of K.S.A. 2001 Supp. 65-689, and  
19 amendments thereto. Application for renewal of a license shall be made  
20 on a form prescribed by the secretary and shall be accompanied by the  
1 license fee required for the issuance of an original license. If the secretary  
2 shall refuse to renew any license, the secretary shall give written notice  
23 to the licensee specifying the changes or alterations necessary in the es-  
24 tablishment to effect complete compliance with the applicable standards  
25 and stating that if such compliance is effected within the period of time  
26 designated in the notice, the license shall be renewed. If the licensee fails  
27 to effect complete compliance with the applicable standards within the  
28 time prescribed in such notice, the application for renewal of a license  
29 shall be denied and the secretary shall give written notice thereof to the  
30 applicant, stating also that the applicant is entitled to a hearing thereon  
31 if a written request therefor is filed with the secretary within 20 days of  
32 the date such notice is sent. Such hearing shall be held in accordance  
33 with the provisions of the Kansas administrative procedure act. If, for any  
34 reason, a licensee fails to renew a license prior to the expiration date, the  
35 licensee may obtain a renewal of such license within 30 days following  
36 the expiration date, by complying with the provisions of this section and  
37 paying a restoration fee in the amount of \$10.

New

38 Sec. 2. (a) The secretary shall inspect or cause to be inspected, at  
39 least once annually, every retail food store and food processing plant in  
40 this state. For such inspections the secretary or the secretary's lawful  
41 agent shall have the right of entry and access thereto, at any reasonable  
42 time. Whenever, upon inspection, it shall be determined that any retail  
43 food store or food processing plant does not comply with the rules and

New

The secretary shall have the authority to  
contract with other state agencies and other  
entities to conduct inspections of retail food  
stores and food processing plants in this  
state.

Senate Public Health & Welfare Committee  
Date: February 12, 2002  
Attachment 2

1 regulations of the secretary adopted pursuant to K.S.A. 65-673, and  
2 amendments thereto, it shall be the duty of the secretary to give written  
3 notice to the owner, proprietor or agent in charge of such retail food store  
4 or food processing plant of the changes or alterations necessary to effect  
5 complete compliance with such regulations. Such notice shall provide that  
6 the retail food store or food processing plant shall be brought into com-  
7 pliance with the applicable standards within a period of time specified in  
8 the notice, which shall be not less than 10 days, except that a shorter  
9 period of time for compliance may be provided in the notice whenever  
10 the secretary believes it essential to protect the public health and safety.  
11 Such notice shall also state that if compliance with the applicable stan-  
12 dards is not effected within the time period prescribed, the license for  
13 such retail food store or food processing plant shall be subject to suspen-  
14 sion or revocation. The licensee of any retail food store or food processing  
15 plant, for which a notice of noncompliance is given pursuant to this sec-  
16 tion, may apply to the secretary for an extension of the time prescribed  
17 in the notice for compliance with the applicable rules and regulations.  
18 Upon review of any such application, the secretary may grant or deny  
19 such application or modify the provisions of any such notice with respect  
20 to the time for compliance with any of the particulars stated therein. Upon  
21 reinspection of any retail food store or food processing plant for which a  
22 notice of noncompliance has been issued pursuant to this section, if such  
23 retail food store or food processing plant is found to be in noncompliance  
24 with the rules and regulations adopted by the secretary pursuant to K.S.A.  
25 65-673, and amendments thereto, the secretary may suspend or revoke  
26 the license for such retail food store or food processing plant, effective  
27 20 days after the date such notice is sent, unless the licensee files with  
28 the secretary a written request for a hearing on the proposed suspension  
29 or revocation within such time.

30 (b) If the secretary finds that the public health or safety is endangered  
31 by the continued operation of a retail food store or food processing plant,  
32 the secretary may suspend the license of such establishment temporarily  
33 without notice or hearing in accordance with the emergency adjudication  
34 procedures of the provisions of the Kansas administrative procedure act.

35 (c) In no case shall a temporary suspension of a license under this  
36 section be in effect for a period of time in excess of 90 days. At the end  
37 of such period of time, the license shall be reinstated unless the secretary  
38 has suspended or revoked the license, after notice and hearing, or the  
39 license has expired.

40 Sec. 3. (a) Any person who violates any provision of K.S.A. 2001  
41 Supp. 65-688 or 65-689, and amendments thereto, or any rules and reg-  
42 ulations adopted pursuant thereto, in addition to any other penalty pro-  
43 vided by law, may incur a civil penalty imposed under subsection (b) in

New

2-2

1 an amount not to exceed \$500 for each violation and, in the case of a  
2 continuing violation, every day such violation continues shall be deemed  
3 a separate violation.

4 (b) The director of the division of health, upon a finding that a person  
5 has violated any provision of K.S.A. 2001 Supp. 65-688 or 65-689, and  
6 amendments thereto, or any rules and regulations adopted pursuant  
7 thereto, may impose a civil penalty within the limits provided in this  
8 section upon such person, which civil penalty shall be in an amount to  
9 constitute an actual and substantial economic deterrent to the violation  
10 for which the civil penalty is assessed.

11 (c) No civil penalty shall be imposed pursuant to this section except  
12 upon the written order of the director of the division of health to the  
13 person who committed the violation. Such order shall state the violation,  
14 the penalty to be imposed and the right of such person to appeal to the  
15 secretary. Any such person may make a written request to the secretary  
16 for a hearing in accordance with the provisions of the Kansas administra-  
17 tive procedure act within 20 days after notification. The secretary shall  
18 affirm, reverse or modify the order of the director and shall specify the  
19 reasons therefor.

20 (d) The secretary may seek injunctive relief from the appropriate dis-  
21 trict court to enjoin any operator of a retail food store or food processing  
22 plant from conducting business when such operator has failed to make  
23 application for or to obtain a license for such purpose as required by  
24 K.S.A. 2001 Supp. 65-689 or when such license has been suspended or  
25 revoked.

26 (e) Any person aggrieved by an order of the secretary made under  
27 this section may appeal such order to the district court in the manner  
28 provided by the act for judicial review and civil enforcement of agency  
29 actions.

30 (f) Any penalty recovered pursuant to the provisions of this section  
31 shall be remitted to the state treasurer, deposited in the state treasury  
32 and credited to the state general fund.

New

33 Sec. 4. Proceedings under this act shall be conducted in accordance  
34 with the Kansas administrative procedure act.

See Insert A

35 Sec. 5. This act shall take effect and be in force from and after its  
36 publication in the statute book.

and renumber accordingly

## INSERT A

Sec. 5. K.S.A. 2001 Supp. 65-688 is hereby amended to read as follows: 65-688. (a) As used in ~~sections-2-through-4~~ this section and K.S.A. 2001 Supp. 65-689, and amendments thereto:

(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.

(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" does not mean a plant which is registered by the department of agriculture under article 7 of chapter 65 of the Kansas Statutes Annotated or which is licensed by the department of agriculture under article 6a of chapter 65 of the Kansas Statutes Annotated.

(3) "Secretary" means the secretary of health and environment.

(b) In order to reimburse the state of Kansas for inspections by the secretary of health and environment of retail food stores and food processing plants, the secretary of health



and environment shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food inspection fee fund.

(d) The secretary of health and environment shall adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 6. K.S.A. 2001 Supp. 65-688 is hereby repealed.