

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Senator Les Donovan at 8:30 a.m. on March 21, 2002 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Brian Cox, Legal Dept., KDOR
Eileen King, Riley Co. Treasurer
Judy Moler, Ks. Association of Counties
Terri Roberts, Ks. State Nurses Association
Dean Carlson, Secretary, KDOT

Others attending: See attached list

HB 2662: Re accessible parking; certain fees

Brian Cox, attorney, Kansas Department of Revenue, Legal Services Bureau, explained the purpose of this bill is to eliminate statutory requirement for the County "service fee" charged to applicants for disabled parking placards and ID cards. These are issued in accordance with ADA implementing regulations which generally prohibit charging disabled persons for implementation of such non-discriminatory treatment. Suits have been filed in several states and such fees have generally been held illegal. Kansas, since 1996, has been a defendant in a case in federal court. In response to this case, one portion of the fee has already been removed and this bill would repeal the second portion. Some states have had to pay reimbursement for fees previously collected. The Kansas case is now before the US Supreme Court. Repeal of the subject statute would effectively end the contest. While repeal will not stop a second lawsuit seeking reimbursement, it will be a good faith sign that such costs will no longer be imposed. Mr. Cox included a balloon amendment to deal with technical clean up of the bill (Attachment 1).

Eileen King, Riley County Treasurer and Representative for the Kansas County Treasurer's Association, clarified that the \$3.00 State charge was an administrative fee imposed by Rules and Regulations, which the Joint Committee could rescind. However, the \$3.00 "County fee" is imposed by statute and this legislation is needed to effect the change (Attachment 2). She also provided examples of problems created at the county level by this situation. Judy Moler, Kansas Association of Counties, advised that the Association adopted language within their 2002 platform that supports repeal of this statute (Attachment 3). Terri Roberts, Executive Director, Kansas State Nurses Association, asked for support of the provision adding Advanced Registered Nurse Practitioners and Physician Assistants to the list of healthcare providers authorized to certify a person with a disability (Attachment 4).

Senator Salmans moved to adopt the proposed amendment. Senator Harrington seconded the motion. Motion carried. Senator Salmans moved the bill as amended favorable for passage. Senator Schodorf seconded the motion. Motion carried.

Final action

Chairman Donovan directed members attention to **SB 646**, which the committee heard on March 19, 2002. Dean Carlson, Secretary, Kansas Department of Transportation, reported that concerned parties had met and negotiated a compromise. They compromised on one demonstration project per year rather than two. The demonstration project program will be

CONTINUATION SHEET

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE at 8:30 a.m. on March 21, 2002 in Room 245-N of the Capitol.

limited to the life of the current Comprehensive Transportation Program. Seven years remain in the Program. That means authorizing seven such projects out of the 4,200 planned for the next seven years. Construction can begin on only one demonstration project per year. If a year goes by without beginning such a project, that one is lost. The Department asked for a limit of 20 miles per project. The Contractors wanted it limited to 10 miles per project. The compromise was on 15 miles per project. Staff Revisor had prepared an amendment containing these changes. Members reviewed the proposed amendment. Senator Schodorf moved to adopt the amendment. Senator Goodwin seconded the motion. Motion carried. Senator Harrington moved to recommend **SB 646** as amended favorable for passage. Senator Gooch seconded the motion. Motion carried. Senator Lyon wished to be recorded as abstaining from the discussion and voting on **SB 646**.

Members returned to consideration of **HB 2699** which deals with prohibiting the covering of license plates, adding new language to current law. It spells out prohibited coverings and fines for violations. Discussion focused on the perceived lack of real need for this legislation. Senator Harrington moved to table the bill. Senator Jackson seconded the motion. Motion carried.

Approval of minutes

Senator Salmans moved to approve minutes of the March 19, 2002 meeting. Senator Harrington seconded the motion. Motion carried.

The meeting adjourned at 9:15 a.m.

The next meeting is scheduled for March 26, 2002.

SENATE TRANSPORTATION COMMITTEE

GUEST LIST

DATE: MARCH 21, 2002

NAME	REPRESENTING
Anthony A. Faddale	AOA / Admin
Cindy Melin	KAC
Gilbert King	KCTA
John King	KDOT
Terri Roberts	Kansas State Nurses Assn.
GARY DAUENPORT	KS Motor Carriers Assn
Christi Stewart	K M C A
Deana Williams	K M C A
Nancy Bogina	KDOT
E. Dean Carlson	KDOT
Sheila Walker	KDOT - DMV
J. Brian Cox	KDOT - Legal

TESTIMONY

To: Presented to the Senate Transportation Committee, 2002 Legislature
FROM: Brian Cox, attorney, Kansas Department of Revenue, Legal Services Bureau
DATE: March 19, 2002
RE: House Bill 2662 relating to charges for disabled parking placards and ID cards

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

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

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

First, former K.A.R. 92-51-40 imposed a \$2.00 fee for placards and a \$1.00 fee for the ID card. Such funds came to the State.

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

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

1-1

SENATE TRANSPORTATION
— COMMITTEE -DATE: 3-21-06 —
ATTACHMENT: 1

previously collected, however, that case is now before the United States Supreme Court (petition for certiorari filed January 2002). A reversal of the case would open the State up to paying reimbursement. Second, the plaintiffs added two (2) individual defendants which left the State open to an order that such fees no longer be charged.

In response, effective September 27, 2001, the Secretary of Revenue repealed K.A.R. 92-51-40 providing for the first part of the fee. This bill will clean up the related statutory language in K.S.A. 8-1,125(a), (c).

This bill also proposes to repeal the second part of the fee, the Counties' "service fee" provided for by K.S.A. 8-145d. I am advised that a judgment was recently rendered against the State of Florida for \$30 million for reimbursement of such fees (although that case will be appealed).

Although there remain some issues which might be litigated concerning the legality of K.S.A. 8-145d, their merit is uncertain and the repeal of the statute will end the contest.

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

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



TREASURER'S OFFICE

R. Eileen King, CFE
County Treasurer

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

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

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

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

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

2-1

SENATE TRANSPORTATION
— COMMITTEE -DATE: 3-21-02 —
ATTACHMENT: 2



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
Senate Transportation Committee
On
HB 2662
March 21, 2002

Thank you Chairman Donovan and Members of the Committee for allowing the Kansas Association of Counties to provide testimony on HB 2662.

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

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

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

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

SENATE TRANSPORTATION
— COMMITTEE — DATE: 3-21-02 —
ATTACHMENT: 3

3-1



1208 SW TYLER
TOPEKA, KANSAS 66612-1735
785.233.8638 * FAX 785.233.5222
www.nursingworld.org/snas/ks
THE VOICE AND VISION OF NURSING IN KANSAS

TERRI JOHNSON M.S.N., A.R.N.P.
PRESIDENT

TERRI ROBERTS J.D., R.N.
EXECUTIVE DIRECTOR

For More Information Contact
Terri Roberts J.D., R.N.
troberts@sound.net
March 21, 2002

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

Senator Donovan and members of the Senate Transportation Committee, my name is Terri Roberts and I am the Executive Director of the Kansas State Nurses Association. I am here to ask for your support of H.B. 2662 that contains language to amend the list of healthcare providers authorized to sign an application for verifying what constitutes a "disability" pursuant to statute. This language was amended into H.B. 2662 by the House Transportation Committee at the request of KSNA and the Kansas Academy of Physician Assistants.

Current law authorizes *"a person licensed to practice the healing arts in any state, a licensed optometrist or a Christian Science practitioner listed in The Christian Science Journal"* to certify a person with a disability. The amendments would add Advanced Registered Nurse Practitioners and Physician Assistants to the list.

We would like to ask for your support for this bill, and adding Advanced Registered Nurse Practitioners (ARNP's), to certify and sign an application for a disabled special license plate or permanent/temporary placard. This is particularly important in small rural communities that have rural health clinics staffed exclusively by ARNP's (and PA's) and in the medically underserved clinics meeting the needs of the uninsured.

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

We appreciate your consideration of this bill.

4-1
SENATE TRANSPORTATION
COMMITTEE -DATE: 3-21-02 -
ATTACHMENT: 4

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

CONSTITUENT OF THE AMERICAN NURSES ASSOCIATION

4-2



[Home](#)

[Helpful Hints](#)

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

8-1,124

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

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

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

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