

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 22, 2004 in Room 313-S of the Capitol.

All members were present except:
Representative Dan Williams- excused

Committee staff present:
Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statutes
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

SB 424 - transfer of property into a trust affect of insurance coverage, homestead exemption, redemption rights and due on sale clause

A balloon was provided, that was agreed to by the Kansas Bar Association, Kansas Bankers Association Trust Division and Columbian Title. (Attachment 1)

Representative Loyd made the motion to adopt the balloon. Representative Owens seconded the motion. The motion carried.

Representative Goering made the motion to report SB 424 favorably for passage, as amended. Representative Loyd seconded the motion. The motion carried.

SB 343 - repeals K.S.A. 2003 supplement 65-441a concerning hospitals

The subcommittee recommended that the provided balloon addressed health care decisions being made by a surrogate when an agent is not available, be included into the bill. (Attachment 2)

Representative Long-Mast made the motion to adopt the balloon. Representative Crow seconded the motion. The motion carried.

Representative Patterson made the motion to report SB 343 favorably for passage, as amended. Representative Goering seconded the motion. The motion carried.

SB 28 - professional corporation law of Kansas

Chairman O'Neal announced that there are several parties which have not worked out their differences with regard to the bill and the committee would no longer hold up the bill. He also suggested that they might want to consider amending in **HB 2156 - professional corporation may include physician assistants.** (Attachment 3)

Representative Long-Mast made the motion to include "advanced registered nurse practitioners". It was pointed out that in order to be an advanced registered nurse practitioners one must be a registered nurse and they are already covered in the proposed bill. The Representative withdrew her motion.

Representative Pauls suggested adding after "license" "or registering or certification persons" Representative Long-Mast made the motion to amend in the balloon and Representative Pauls' suggestion. Representative Loyd seconded the motion. The motion carried.

Representative Long-Mast made the motion to report SB 28 favorably for passage, as amended. Representative Swenson seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 22, 2004 in Room 313-S of the Capitol.

SB 432 - Kansas Law Enforcement Training Center - law enforcement required to disclose criminal records

Representative Loyd made the motion to allow a Finney County resident, who is a citizen of another country, and working for the Garden City Police Department, to attend the KLETC. Representative Goering seconded the motion. The motion carried.

Representative Loyd made the motion to have the statute reflect that the central repository is to retain information on all law enforcement agents and that it would be accessible to any law enforcement agents when they are assessing a new hire for employment purposes. A terminated officer would have access to his employment record, similar to the same language as teachers accessing their personnel file. Representative Jack seconded the motion. The motion carried.

Representative Crow made the motion to include the Kansas Department of Corrections into the bill. Representative Goering seconded the motion. The motion carried.

Representative Jack made the motion to specify the amount of immunity one would have when releasing employment records and refer to K.S.A. 44-119a. Representative Newton seconded the motion. The motion carried.

Representative Loyd made the motion to report **SB 432** favorably for passage. Representative Goering seconded the motion. The motion carried.

SB 19 - mandatory retirement age

The subcommittee recommended that the Judicial Council study the issue of judicial evaluation and report back to the committee. They had no recommendations on extending the retirement age.

Representative Pauls made the motion to strike the evaluation section of the bill leaving only the mandatory retirement provisions applying to district court judges. Representative Jack seconded the motion. The motion failed 4-8.

SB 423 - wage garnishment; assignment of account

Representative Patterson made the motion to remove **SB 423** from the table. Representative Long-Mast seconded the motion. The motion failed 6-8.

SB 28 - professional corporation law of Kansas

Representative Loyd made the motion to have the committee reconsider it's action on **SB 28**. Representative Jack seconded the motion. The motion carried.

Representative Long-Mast made the motion to include occupational therapist into the bill. Representative Crow seconded the motion. The motion carried.

Representative Long made the motion to report **House Substitute SB 28** favorably for passage. Representative Loyd seconded the motion. The motion carried.

The committee meeting adjourned. The next meeting was scheduled for March 23, 2004.

Chm. O'Neal:

This is the version that the KBA Trust Division, Rich Hayze and Columbian Title all endorse

Thanks -

Kathy O'Neal
KBA

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 424

By Committee on Judiciary

2-2

10 AN ACT concerning trusts; relating to the transfer of property into a
11 trust.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) ~~The transfer of real or personal property to a trust shall~~
15 ~~not affect the coverage of any title, liability, comprehensive or other in-~~
16 ~~surance, and the trustee shall also be deemed to be so insured. Transfer~~
17 ~~to a trust shall not affect any homestead exemption or redemption rights~~
18 ~~and shall not cause a due on sale or similar clause to be effective under~~
19 ~~a mortgage or security interest, if the transferor is the primary income~~
20 ~~beneficiary of the trust at the time of the transfer.~~

21 *The transfer by warranty deed of real property into an inter vivos*
22 *trust shall not affect the coverage of any title insurance if:* (1) ~~Such~~
23 ~~real property qualifies as a homestead; and~~

24 ~~(2) the settlor of such trust is and remains a beneficiary and~~
25 ~~occupant of such real property.~~

of such trust during the settlor's lifetime.

26 (b) *Upon the transfer taking effect: (1) The trustee shall be*
27 *deemed to be insured; and*

28 (2) *the insurance coverage for such trust shall be subject to the*
29 *defenses which the insurance company has under the policy against*
30 *the original named insured.*

31 (c) ~~If the transferor is a beneficiary of such trust at the time of~~
32 ~~the transfer, the transfer of such property into such trust shall not:~~

settlor

33 (1) *Affect any homestead exemption or redemption rights; or*
34 (2) *cause a due on sale or similar clause to be effective under a*
35 *mortgage or security interest.*

36 (b) (d) *This section shall be a part of and supplemental to the Kansas*
37 *uniform trust code.*

38 Sec. 2. *This act shall take effect and be in force from and after its*
39 *publication in the statute book.*

Proposed amendment, drafted March 19, 2004.

Session of 2004

SENATE BILL No. 343

By Senator Vratil

1-23

AN ACT relating to hospitals; repealing K.S.A. 2003 Supp. 65-441a.

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

Section 1. K.S.A. 2003 Supp. 65-441a is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after publication in the statute book.

New Sec. 2.

(a) In accordance with the provisions of 21 C.F.R. 56.101, et seq., and amendments thereto, and 45 C.F.R. 46.101, et seq., and amendments thereto, in case of an adult or emancipated minor who: (1) Is being treated by a person licensed to practice medicine and surgery and who has medical staff membership with a medical care facility, as defined in K.S.A. 65-4921, and amendments thereto, that has its own, or contracts with, an independent institutional review board; and (2) is incapable of giving informed consent for the research protocol, which has been approved by an institutional review board, the research protocol may proceed upon obtaining the informed consent of the adult or emancipated minor's legal guardian or the attorney in fact with the authority to make health care decisions for that person pursuant to K.S.A. 58-625, et seq., and amendments thereto.

(b) If neither of the designations described in subsection (a) has been made or neither of the parties described in subsection (a) can be contacted using reasonably diligent efforts, any member of the adult or emancipated child's family, in the order listed in the subsection, who has the capacity to provide informed consent and can be contacted using reasonably diligent efforts may provide informed consent to a research protocol, as described in subsection (a). The order of priority for family members to provide consent is as follows:

- (1) The adult or emancipated minor's spouse, unless they are legally separated;
- (2) an adult child;
- (3) a parent; or
- (4) an adult relative by blood or marriage.

(c) Nothing in this section shall authorize a legal guardian, attorney in fact with the authority to make health care decisions or family member authorized to provide informed consent pursuant to subsection (b) to provide informed consent as to research protocols that are contrary to the incapacitated person's permission, expressed orally or in writing, regarding such research protocols.

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HOUSE BILL NO. 2156

Intent of the amendment is to permit a PA to have up to 100% ownership in a professional corporation when the PA is the sole member of the corporation or combines with eligible other mid-level practitioners. In a case where a PA seeks to join a professional corporation that employs physicians or has physician ownership the PA shall not own a majority percentage.

17-2707. Definitions. As used in this act, unless the context clearly indicates that a different meaning is intended:

- (a) "Professional corporation" means a corporation organized under this act.
- (b) "Professional service" means the type of personal service rendered by a person duly licensed by this state as a member of any of the following professions, each paragraph constituting one type:
 - (1) A certified public accountant;
 - (2) an architect;
 - (3) an attorney-at-law;
 - (4) a chiropractor;
 - (5) a dentist;
 - (6) an engineer;
 - (7) an optometrist;
 - (8) an osteopathic physician or surgeon;
 - (9) a physician, surgeon or doctor of medicine;
 - (10) a veterinarian;
 - (11) a podiatrist;
 - (12) a pharmacist;
 - (13) a land surveyor;
 - (14) a licensed psychologist;
 - (15) a specialist in clinical social work;
 - (16) a registered physical therapist;
 - (17) a landscape architect;
 - (18) a registered professional nurse;
 - (19) a real estate broker or salesperson;
 - (20) a clinical professional counselor;
 - (21) a geologist;
 - (22) a clinical psychotherapist; ~~and~~
 - (23) a clinical marriage and family therapist; ~~and~~
 - (24) a licensed physician assistant.**
- (c) "Regulating board" means the court, board or state agency which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render.
- (d) "Qualified person" means:
 - (1) Any natural person licensed to practice the same type of profession which any professional corporation is authorized to practice;
 - (2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the federal internal revenue code, as in effect on January 1, 2004, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the federal internal revenue code, as in effect on January 1, 2004; or
 - (3) the trustee of a revocable living trust established by a natural person who is licensed to practice the type of profession which any professional corporation is authorized to practice, if the terms of such trust provide that such natural person is the principal beneficiary and sole trustee of such trust and such

trust does not continue to hold title to professional corporation stock following such natural person's death for more than a reasonable period of time necessary to dispose of such stock.

17-2710. Same; purposes and powers. A professional corporation may be organized only for the purpose of rendering one type of professional service and service ancillary thereto and shall not engage in any other business, except that a single professional corporation may be organized to and render professional services under any two or more of the types set forth in items (2), (6), (13) and (17) or under any two or more of the types set forth in items (4), (5), (7), (8), (9), (11), (12), (14), (15), (16) or (18), **or under any two or more of the types set forth in items (8), (9), (18) and (24)** of subsection (b) of K.S.A. 17-2707, but shall be deemed to have the following purposes, whether or not authorized by its article of incorporation:

(a) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(b) to purchase, receive, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares of other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, insurance or annuities in any form, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(c) to pay pensions and establish pension plans, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees;

(d) to do all things necessary or incidental to the practice of the profession which the professional corporation is authorized to practice.

Suggested new statute in the Physician Assistant Act, Chapter 65 – Article 28a

Limitation on Professional Corporation Ownership; The Board shall adopt rules and regulation to limit the percentage of ownership when a licensed physician assistant forms a professional corporation in combination with other professional services.

Suggested new Kansas Administrative Regulation to be adopted by the Kansas Board of Healing Arts

A professional corporation organized pursuant to KSA 17-2707 by and between and among a licensed physician assistant and an osteopathic physician or surgeon; or a physician, surgeon or doctor of medicine is permitted as long as all shares owned by licensed physician assistants do not exceed a majority percentage of the total numbers of shares of the professional corporation. A Physician assistant is permitted to own a majority ownership percentage in a professional corporation when the Physician Assistant is the sole member of the corporation or combines with other mid-level practitioners.